

# Legislative Analysis

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## SWATTING: CRIMINALIZE & PROVIDE PENALTY

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**House Bill 5431 with committee amendment**  
**Sponsor: Rep. Kurt Heise**

**House Bill 5432 as introduced**  
**Sponsor: Rep. Pat Somerville**

**House Bill 5433 as introduced**  
**Sponsor: Rep. Kevin Cotter**

**Committee: Judiciary**  
**Complete to 5-17-12**

## A SUMMARY OF HOUSE BILLS 5431-5433 AS REPORTED BY COMMITTEE

House Bill 5431 would make it a crime to intentionally make a false report of a medical or other emergency to law enforcement, fire fighters, and 9-1-1 operators and establish penalties for a violation.

House Bill 5432 would allow a court to order a person convicted of the crime to reimburse the state or local government for expenses related to the incident. House Bill 5433 would place the maximum term of imprisonment for a conviction of the crime in the sentencing guidelines.

The bills would take effect July 1, 2012.

**House Bill 5431** would amend the Michigan Penal Code (MCL 750.411a). Currently, it is against the law to intentionally make, or cause to be made, a false report of the commission of a crime. The bill would also make it a crime to intentionally make a false report of a medical or other emergency to a peace officer; police agency, firefighter, or fire department of this state or of a local unit of government; 9-1-1 operator; medical first responder; or any governmental employee or contractor or employee of a contractor who is authorized to receive reports of medical or other emergencies. "Medical first responder" would mean that term as defined in the Public Health Code, MCL 333.20906.

A person who violated the prohibition on making a false report of a medical emergency would be guilty of a crime as follows:

- A felony punishable by imprisonment for not more than four years and/or a fine of not more than \$2,000.
- A felony punishable by imprisonment for not more than 10 years and/or a fine of not more than \$10,000 if the false report results in a response to address the

reported emergency and a person is injured as a proximate result of lawful conduct arising out of that response.

- A felony punishable by imprisonment for not more than 15 years and/or a fine of at least \$5,000 but not more than \$10,000 if the false report results in a response to address the reported emergency and a person is killed as a proximate result of lawful conduct arising out of that response

A violation or attempted violation of the bill's provisions would occur if the communication of the false report originated within Michigan, was intended to terminate in Michigan, or was intended to terminate with a person who was in Michigan. A violation or attempted violation could be prosecuted in any jurisdiction in which the communication originated or terminated.

In addition, Section 411a allows the court to order a person convicted of making a false report to pay to the state or local unit of government the cost of responding to such a report, including the use of police or fire emergency response vehicles or teams as allowed under Section 1f of Chapter IX of the Code of Criminal Procedure, which deals with court-ordered reimbursements. The bill would allow the court to also order reimbursement for violations of the new crime category and would include medical or other emergency response vehicles and teams to the list for which reimbursement could be ordered.

**House Bill 5432** would amend the Code of Criminal Procedure (MCL 769.1f). Under existing Michigan law, a court may order the defendant, as part of the sentence for a conviction of certain offenses, to also reimburse a governmental unit for its expenses related to the incident: for instance, the defendant could be ordered to reimburse a city for ambulance or fire services it provided, and for the expenses incurred by the county or city for prosecuting the crime.

Under the bill, a court could also impose these governmental reimbursement costs on a person who intentionally made a false report of a medical or other emergency under provisions proposed by House Bill 5431. The bill is tie-barred to House Bill 5431.

[The code specifies the expenses for which reimbursement may be ordered. Currently, expenses include salaries or wages of law enforcement personnel involved in the arrest, investigation, report writing, etc.; salaries or wages of fire department and emergency medical service personnel for time spent in responding to and providing firefighting, rescue, and emergency medical services; the cost of medical supplies lost or expended while providing firefighting and emergency medical services; and salaries or wages for prosecution personnel for time spent investigating and prosecuting the crime resulting in conviction.]

**House Bill 5433** would also amend the Code of Criminal Procedure (MCL 777.16t). It would place the penalties for making a false report of a medical emergency within the sentencing guidelines. Specifically, a false report of a medical or other emergency would be a Class F felony against the Public Order with a four-year maximum term of

imprisonment. A false report of a medical or other emergency resulting in physical injury would be a Class F felony against the Public Order with a maximum term of imprisonment of 10 years. A false report of a medical or other emergency resulting in death would be a Class F felony against the Public Order with a maximum term of imprisonment of 15 years. The bill would also make several revisions of a technical nature. House Bill 5433 is tie barred to both House Bill 5431 and 5432.

#### **FISCAL IMPACT:**

House Bills 5431 and 5433 create a new Class F felony conviction for intentionally making a false report of a medical or other emergency with maximum prison sentences of between 4 and 15 years depending upon whether the false report results in a physical injury or death during the response to the report. No information is available to determine the number of new felony convictions that would result from the bills.

To the extent that House Bill 5431 results in felony convictions that would not otherwise have occurred, it could increase state and/or local correctional costs. The average cost of prison incarceration in a state facility is roughly \$34,000 per prisoner per year, a figure that includes various fixed administrative and operational costs. The cost of local incarceration in a county jail varies by jurisdiction. Costs of parole and felony probation supervision, exclusive of the cost of electronic tether, average about \$2,200 per supervised offender per year. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

House Bill 5431 would have an indeterminate fiscal impact on the Judiciary. Depending on the number of new case filings, courts may face higher costs due to an increase in caseload.

House Bills 5431 and 5432 may have a positive fiscal impact on state or local governments if they are able to recoup the costs of responding to false emergency reports. The actual amount that will be recovered through legal action is indeterminate, and would depend on how much state and local governments currently spend responding to false reports.

#### **BACKGROUND SECTION:**

"Swatting" is a relatively new crime in which a person uses the Internet to report a serious crime or medical emergency in progress at the home or business of another using "spoofing" technology so that the report appears to be originating from the address where the supposed emergency is taking place. It is called "swatting" because the nature and scope of the crimes being reported using this technology are such that SWAT teams are often called upon to respond. A federal law criminalizing swatting was enacted in 2010 and several persons have been convicted already under that law. But swatting has also occurred in Michigan. In 2011, the Troy Police Department sent every available unit to a

home after receiving a report about armed gunmen only to discover that it was a false report.

Supporters of the bills say that swatting is dangerous and costly. The FBI estimates that each incident of swatting costs law enforcement \$10,000 in resources, on average. Tying up police and medical emergency resources on a false report also divert law enforcement away from true criminal or medical emergencies. Some fear that terrorists could use swatting as a diversion. Moreover, swatting puts officers, medical responders, and the general public at risk. Traffic accidents can occur when responders are rushing to what they believe is a life-or-death situation. Having heavily armed officers believing they may be under imminent attack puts them and civilians in danger of an accidental shooting, or a citizen literally being scared to death when a SWAT team breaks into their home in the middle of the night.

However, as written, the bills do not clearly limit the penalties to swatting. In fact, without knowing the background for the legislation, the bills could be read to apply to any false report involving any type of crime, even minor ones that would not result in the type of emergency response the bills are purported to be deterring. As a result, the legislation could in the future capture persons and situations not intended to do so today.

#### **POSITIONS:**

A representative of the Oakland County Sheriff Office testified in support of the bills. (4-26-12)

Mid-Michigan Health indicated support for the bills. (4-26-12)

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