

Legislative Analysis



MAKING FALSE OR MISLEADING STATEMENTS DURING CRIMINAL INVESTIGATIONS: PROHIBIT

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House Bill 5050 (Substitute H-4)

House Bill 5051 (Substitute H-1)

Sponsor: Rep. John Walsh

Committee: Judiciary

First Analysis (2-7-12)

BRIEF SUMMARY: House Bill 5050 would make it a crime to conceal material facts from a peace officer in a criminal investigation or to make false or misleading statements regarding a material fact in a criminal investigation and establish penalties for a violation. House Bill 5051 would place the maximum term of imprisonment within the sentencing guidelines. Both bills would take effect 90 days after enactment.

FISCAL IMPACT: The bills could result in an indeterminate fiscal impact to state and local governmental units as discussed in more detail later in the analysis.

THE APPARENT PROBLEM:

Federal law makes it a crime to intentionally lie to an FBI agent. But if a person deliberately lies to a state or local police officer in the course of a criminal investigation, there are no penalties. According to law enforcement officers and county prosecutors, some people purposely fabricate lies to throw investigators off the track. Whether to protect themselves or others, such lies waste valuable time and resources in apprehending criminals. While law enforcement follows up on worthless leads, a perpetrator is free to commit other crimes.

A few states have enacted laws that make it a crime to knowingly and intentionally lie to police when questioned in a criminal investigation. Many in law enforcement in this state believe enacting a similar law would give them an important tool to fight a rising tide of crime.

THE CONTENT OF THE BILLS:

House Bill 5050 would make it a crime to conceal material facts from a peace officer in a criminal investigation or to make false or misleading statements regarding a material fact in a criminal investigation; establish penalties for a violation; provide exceptions for victims of a crime or victims of domestic violence; protect 5th Amendment rights; and define terms. House Bill 5051 would place the maximum term of imprisonment for a high court misdemeanor conviction within the sentencing guidelines. (Unlike other misdemeanors, two-year misdemeanors are subject to sentencing guidelines like felonies.)

Both bills would take effect 90 days after enactment.

House Bill 5050 would add a new section to the Michigan Penal Code (MCL 750.479c). A person who is informed by a peace officer that the officer is conducting a criminal investigation would be prohibited from knowingly and willfully doing any of the following related to a criminal investigation:

- Concealing from the peace officer (by any trick, scheme, or device) any material fact.
- Making any statement to the peace officer that is false or misleading regarding a material fact.
- Issuing or providing any writing or document to the peace officer that the person knows is false or misleading regarding a material fact.

Penalties

The bill would create a tiered-penalty structure for violations based on the underlying crime being investigated as detailed below:

For an investigation of a serious misdemeanor, the penalty would be a misdemeanor punishable by up to 93 days in jail and/or a fine of not more than \$500.

For an investigation of a misdemeanor punishable by more than one year imprisonment or a felony punishable by imprisonment for less than four years, the penalty would be a misdemeanor punishable by imprisonment for not more than one year and/or a fine of not more than \$2,500.

For an investigation of a felony punishable by imprisonment by four years or more, the penalty would be a high court misdemeanor punishable by imprisonment for not more than two years and/or a fine of not more than \$5,000. (A high court misdemeanor is treated like a felony and so an offender is subject to sentencing guidelines, has the right to a preliminary examination and bindover to Circuit Court, and, if placed on probation, is supervised by the Department of Corrections.)

Exceptions.

The bill would not apply to either of the following:

- Any statement made or action taken by an alleged victim of the crime being investigated by the police officer.
- A person acting under duress or out of a reasonable fear of physical harm to himself or herself or to another person from a spouse or former spouse, a person with whom he or she has or has had a dating relationship, a person with whom he or she has had a child in common, or a resident or former resident of his or her household. "Dating relationship" would mean frequent, intimate associations primarily characterized by the expectation of affectional involvement. This term would not include a casual relationship or an ordinary fraternization between two persons in a business or social context.

In addition, the bill's provisions would not prohibit an individual from invoking Fifth Amendment rights under the U.S. Constitution (the right to not incriminate oneself, protection from double jeopardy, and other due process rights) or similar rights under Section 17 of the State Constitution. The bill would also not prohibit a person from declining to speak to or otherwise communicate with a peace officer concerning the criminal investigation.

Definitions.

"Peace officer" would be defined to mean any of the following within the state of Michigan:

- County sheriff or deputy sheriff.
- Officer of a police department or a marshal of a city, village, or township.
- Constable of any local unit of government.
- State trooper.
- Conservation officer.
- Security employee employed by the state to protect state property (e.g., Capitol Security Police).
- Motor carrier officer.
- Police officer or public safety officer of a community college, college, or university who is authorized by that institution's governing board to enforce state law and the rules and ordinances of that institution.
- Park and recreation officer or state forest officer commissioned under the Natural Resources and Environmental Protection Act.
- Investigator of the state Department of Attorney General.

"Serious misdemeanor" would mean that term as defined in the William Van Regenmorter Crime Victim's Rights Act, MCL 780.811. These crimes include assault and battery, including domestic violence; breaking and entering; intentionally aiming a firearm; indecent exposure; stalking; drunk driving resulting in property damage or injury or death to another person; and selling or furnishing alcohol to a minor if the violation results in injury or death.

House Bill 5051 would amend the Code of Criminal Procedure (MCL 777.16x) to specify that providing false information to a peace officer conducting a criminal investigation (if the underlying crime was a felony punishable by imprisonment for four or more years) would be a Class G felony against the Public Order with a maximum term of imprisonment of two years. Under Michigan law, any crime for which the penalty is more than one year is treated as a felony; therefore, the maximum term of imprisonment is included in the sentencing guidelines even though the crime is designated a misdemeanor. The bill is tie-barred to House Bill 5050.

FISCAL INFORMATION:

House Bill 5050 provides that a person that violates the bill's provisions during the investigation of a felony crime punishable by imprisonment for four years or more is

guilty of a two-year misdemeanor. House Bill 5051 establishes this as a Class G felony (even though it is designated as a high misdemeanor) with a maximum prison sentence of two years.

To the extent that the bills result in a greater number of convictions, it could increase costs on state and local correctional systems. Information is not available on the number of persons that might be convicted under these provisions. New felony-like convictions could result in increased costs related to state prisons, county jails, and/or state probation supervision. New misdemeanor convictions could increase costs related to county jails and/or local misdemeanor probation supervision. 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 costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. State costs for 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.

ARGUMENTS:

For:

Criminal investigations can be severely impacted if people being questioned deliberately lie in order to throw the police off the track of the real perpetrator. Chasing down false leads is costly in time and resources, slows down an investigation, and enables a perpetrator to remain at large to commit new crimes and hurt others.

Current law does make it a crime to obstruct justice, or to aid and abet a criminal; for instance, to drive a perpetrator away from a crime or help bury a dead body. However, according to law enforcement officers, those are specific crimes that have narrow application. And all officers expect a perpetrator to deny knowledge or participation in a crime. But they maintain there is a big difference between saying, "I didn't do it" or "I don't know anything" and presenting a fake suicide note or false information in a statement that leads investigators on a wild goose chase.

Florida and Georgia are two states that have enacted laws to make it a separate crime to intentionally lie to police when questioned as part of a criminal investigation. Enacting the bills would give Michigan law enforcement officers an important tool in encouraging truthful statements when undergoing questioning.

For:

The bills would prohibit a person from using a "trick, scheme, or device" as a means of providing false information. According to committee testimony, an example would be a person or suspect who had a cell phone that could link him or her to the commission of a crime. Rather than denying possession or ownership of that phone (something that investigators usually can easily resolve), the "trick, scheme, or device" would be if the perpetrator threw away the original phone, purchased another phone, and then said that

he or she never had the phone in question. Again, investigators almost expect people to lie about owning something that could link them to a crime. But the example given shows a deliberate course of action taken with the sole purpose to throw investigators off the perpetrator's scent.

For:

House Bill 5050 would not allow forced confessions on the threat of prosecution. To begin with, it doesn't apply to persons placed under arrest for they are given a Miranda warning that their statements could be used against them. Secondly, the bill's provisions would only be triggered if a police officer or other investigator authorized under the bill informed the person that a criminal investigation was being conducted. Most importantly, the bill would not criminalize good faith efforts to cooperate but with bad information given. Witnesses get facts wrong. The intent, according to committee testimony, isn't to send someone to jail for giving wrong information, but to have the power to punish someone who intentionally provides misleading or false information.

The bill also specifically protects a person's right to not implicate himself or herself and to refuse to answer an investigator's questions. Moreover, it is not uncommon for a crime victim to give false information about the incident or the attacker. In domestic violence cases especially, victims may give false information under duress or fear of retaliation. In these cases, the victims would be protected from prosecution under the bill.

Against:

Even with the protections mentioned above, the bills invite abuse from aggressive law enforcement officers. House Bill 5050 doesn't require officers to inform the person being questioned that they do not have to answer any questions or that they have a right to remain silent and not implicate themselves like with a Miranda warning if placed under arrest. Some vulnerable populations, especially persons with cognitive impairments or mental illnesses, may misunderstand and think they had to say something or go to jail, thus encouraging rather than discouraging false statements or confessions.

In addition, House Bill 5050 protects crime victims and victims of domestic violence from giving false information, but does not protect witnesses who also may fear for their lives or the lives of loved ones. Authorities say that in some neighborhoods, "snitches" are targeted for reprisals, with witnesses sometimes killed or injured. It is unfair to threaten some with jail time if they don't give truthful answers but protect others.

Response:

Many times new legislation has a bumpy start in implementation. Police officers and other investigators will need to be instructed to accurately inform a person they are questioning about the new law. Most people know that they do not have to answer questions. The bill only criminalizes the intentional misleading of investigators through false statements.

Against:

The bill should be expanded to cover civil investigations as federal law does. Increasingly, federal prosecutors are going after drug lords and other heads of criminal

enterprises via civil penalties. Sometimes using civil means flushes out evidence of criminal activity. In addition, the list of investigators that lying to would be a crime should be expanded to include investigators hired or appointed by a court or governmental agency and also court officers who often seize property used in the commission of crimes under state seizure and forfeiture provisions.

POSITIONS:

Representatives of the Detroit Police Department and Wayne County Prosecutor's Office testified in support of the bills. (1-26-12)

The Wayne County Association of Chiefs of Police submitted written testimony in support of the bills. (1-17-12)

The Prosecuting Attorneys Association of Michigan indicated support for the bills. (1-26-12)

The Michigan State Police indicated support for the bills. (2-2-12)

The Criminal Defense Attorneys of Michigan indicated support for the bills. (2-2-12)

The ACLU of Michigan indicated support for the bills. (2-2-12)

The Michigan Coalition Against Domestic and Sexual Violence indicated a neutral position on the bills. (1-26-12)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.