

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 340

(Senators Kagan and Waldstreicher)

Judicial Proceedings

Judiciary

Criminal Law - False Statements - Emergency or Commission of Crime
(Antiswatting Act of 2023)

This bill establishes prohibitions related to the making of a false statement, report, or complaint of an “emergency” or alleging the commission of a crime to a “governmental emergency report recipient.” Violators are subject to criminal penalties and are civilly liable, as specified. The bill may not be construed to conflict with specified federal statutes. The bill contains a severability clause specifying that if any provision of the bill or the application of the bill is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of the bill.

Fiscal Summary

State Effect: The bill is not expected to materially affect State finance and operations.

Local Effect: The bill is not expected to materially affect local finances and operations.

Small Business Effect: Potential minimal.

Analysis

Bill Summary:

Definitions

An “emergency” is a condition that poses an imminent threat to public safety and results in or is likely to result in (1) the response of a public official or (2) the evacuation of an area, a building, a structure, a vehicle, or any other place.

A “governmental emergency report recipient” is (1) a peace officer; (2) a police agency of the State or a unit of local government; (3) a person involved in the operation of a public safety answering point; or (4) any other government employee or contractor who is authorized to receive reports of a crime or an emergency.

Prohibitions and Criminal Penalties

A person may not make, or cause to be made, a statement, report, or complaint of an emergency or alleging the commission of a crime that the person knows to be false as a whole or in material part to a governmental emergency report recipient with reckless disregard of causing bodily harm to an individual as a direct result of a response to the statement, report, or complaint. Violators are guilty of a misdemeanor, punishable by imprisonment for up to three years and/or a fine of up to \$2,000.

The bill establishes a separate prohibition and penalty if a person violates this prohibition by making a false statement, report, or complaint alleging the commission of a crime and the result of the act is a response from law enforcement and serious physical injury to a person or the death of a person as a proximate result of lawful conduct arising out of the response. Under these circumstances, a violator is guilty of a felony, punishable by imprisonment for up to 10 years and/or a \$20,000 maximum fine.

If a person is convicted under §10-304(1)(i) of the Criminal Law Article (hate crimes – harassment and destruction of property) based on a violation of the bill’s provisions, the sentence imposed for the hate crime must be concurrent with a sentence imposed under the bill.

In addition to these penalties, a court, in imposing a sentence on a person convicted under the bill, may order the person to reimburse any individual who incurs damages as a proximate result of lawful conduct arising out of the response to the statement, report, or complaint.

Civil Liability

In addition to the criminal penalties, a person who violates the bill’s prohibitions is civilly liable to any individual who incurs damages as a proximate result lawful conduct arising out of the response to the statement, report, or complaint.

Juvenile Cases

A first-time violation of the bill’s prohibitions by a minor is a civil offense subject to the procedures and dispositions provided in specified statutory provisions pertaining to juvenile cases. A child may not be committed to the Department of Juvenile Services for

out-of-home placement if the child's most serious offense is a first-time violation for making a false statement, report, or complaint of an emergency or a crime as prohibited under the bill.

Venue

A person who violates the bill's provisions may be charged, prosecuted, tried, and convicted in (1) the county where the defendant made the false statement, report, or complaint; (2) the county in which the statement, report, or complaint was received by a governmental emergency report recipient; or (3) the county in which a governmental emergency report recipient responded to the statement, report, or complaint.

Current Law:

Swatting

While there is no statutory definition of "swatting," the term is often used to refer to the making of fake calls to 9-1-1 in an effort to elicit a significant response by law enforcement and other emergency services personnel. Several statutory prohibitions are related to this type of conduct.

Section 9-501 of the Criminal Law Article (False Statement – To Law Enforcement Officer) and Related Hate Crimes Violations

Generally, a person is prohibited from making, or causing to be made, a statement, report, or complaint that the person knows to be false as a whole or in material part, to a law enforcement officer with the intent to deceive and to cause an investigation or other action to be taken as a result of the statement, report, or complaint. Violators are guilty of a misdemeanor, punishable by imprisonment for up to six months and/or a \$500 maximum fine.

It is a hate crime for a person to make or cause to be made a false statement, report, or complaint that the person knows to be false, either as a whole or in material part, to a law enforcement officer, in violation of § 9-501 of the Criminal Law Article, about a group or person with the intent to deceive and to cause an investigation or other action to be taken as a result of the statement, report, or complaint when the perpetrator's actions were motivated in whole or in substantial part by the subject's race, color, religious beliefs, sexual orientation, gender, gender identity, disability, national origin, or homeless status. In general, violators are guilty of a misdemeanor, punishable by imprisonment for up to three years and/or a \$5,000 maximum fine. A sentence imposed for this hate crime may be separate from and consecutive to or concurrent with a sentence for any crime based on the act establishing the hate crime violation.

Section 9-503 (False Statements – To Public Official Concerning Crime or Hazard)

A person may not make or cause to be made a statement or report that the person knows to be false as a whole or in material part to an official or unit of government, as specified, concerning the commission of a crime or the existence of a condition that is imminently dangerous to public safety or health, with the intent that the official or unit investigate, consider, or act upon the statement or report. A violator is guilty of a misdemeanor, punishable by imprisonment for up to six months and/or a \$500 maximum fine.

Section 9-504 (False Statement – Destructive Device or Toxic Material)

With specified exceptions, a person may not circulate or transmit to another, with intent that it be acted on, a statement or rumor that the person knows to be false about the location or possible detonation of a destructive device or the location or possible release of toxic material. A violator is guilty of a felony, punishable by imprisonment for up to 10 years and/or a fine of up to \$10,000. In addition to these penalties, a court may order a person convicted or found to have committed a delinquent act under § 9-504 to pay restitution, as specified.

Task Force to Study the Practice Known as “Swatting”

Chapter 150 of 2022 established the Task Force to Study the Practice Known as “Swatting.” The task force must (1) study the laws applicable to, and otherwise relating to, the practice known as “swatting” and (2) make recommendations relating to legislative changes needed to prohibit the practice known as “swatting.” By June 1, 2023, the task force must report its findings and recommendations to the Governor and the General Assembly.

State Expenditures: The Office of the Public Defender (OPD) advises that the bill will result in new cases and may require an additional attorney, at a cost of \$110,101. The Judiciary advises that there may be an increase in court operations, such as hearings, as well as an increase in felony charges to be adjudicated. However, the Judiciary does not anticipate that the bill will have a significant fiscal or operational impact on the courts.

While the bill may result in additional OPD cases and increased court activity, the Department of Legislative Services advises that any potential expenditures solely attributable to the bill are likely to be minimal and do not materially affect State finances.

Additional Comments: While “swatting” statistics are not currently available, the Judiciary reports that during fiscal 2022, there were 721 alleged violations and 47 convictions in the District Court and 131 alleged violations and 23 convictions in the circuit courts under § 9-501 of the Criminal Law Article (see above). Information is not

available as to how many of these cases involved behavior that would also be a violation of the bill's prohibitions. According to the Department of Public Safety and Correctional Services, during fiscal 2022, there were no incarcerations in Baltimore City for violations of § 9-501 (the incarceration penalty for that offense does not qualify for the Division of Correction), and the Division of Parole and Probation opened cases for 53 individuals for violations of § 9-501.

Additional Information

Prior Introductions: Similar legislation has been introduced within the last three years. See SB 881 of 2022 and SB 635 and HB 960 of 2020.

Designated Cross File: HB 745 (Delegate Hill, *et al.*) - Judiciary.

Information Source(s): Frederick, Montgomery, and Somerset counties; City of Havre de Grace; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; University System of Maryland; Morgan State University; Department of General Services; Department of Juvenile Services; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Department of Legislative Services

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