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SFA



BILL ANALYSIS

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Senate Bills 633, 634, and 635

PUBLIC ACTS 370-372 of 2000

Sponsor: Senator William Van Regenmorter (Senate Bills 633 & 634)

Senator Dale L. Shugars (Senate Bill 635)

Senate Committee: Judiciary

House Committee: Criminal Law and Corrections

Date Completed: 3-12-01

RATIONALE

After two students at Columbine High School in Littleton, Colorado killed 15 people in their school, including themselves, numerous high schools around Michigan and across the country were the targets of bomb threats. While the vast majority of the bomb threats turned out to be false reports, the threats and the reactions to them apparently were very disruptive to the school districts and to the lives of the students and staff at the affected schools. Although falsely reported crimes are already illegal under the Michigan Penal Code (which includes specific provisions relating to bombings and bomb threats), some people believe that this activity might be more effectively deterred and more appropriately punished if criminal penalties are stiffer and courts are authorized to assess costs for emergency responses to falsely reported crimes and the prosecution of offenders.

The bills will take effect on April 1, 2001. Senate Bill 634 was tie-barred to Senate Bill 633 and House Bill 6052 (described below).

Senate Bills 633 and 635 define "local unit of government" as a city, village, township, county, local or intermediate school district, public school academy, or community college. The bills also specify that "state" includes a State institution of higher education.

Senate Bill 633

Revised Penalties

The Penal Code prohibits a person from intentionally making a false report of the commission of a crime to a member of the Michigan State Police, a sheriff or deputy sheriff, a local police officer, or any other Michigan peace officer, knowing the report to be false. A false report of a misdemeanor is punishable by up to 93 days' imprisonment, a maximum fine of \$100, or both. A false report of a felony is punishable by the penalty for the falsely reported crime or up to four years' imprisonment and/or a maximum fine of \$2,000, whichever is less. The bill retains the penalty for a falsely reported misdemeanor and deletes the first sentencing option for a falsely reported felony, so that a false report of a felony will be punishable by up to four years' imprisonment, a maximum fine of \$2,000, or both. Currently, if a false report of a crime that relates to a bombing, attempted bombing, or threat to bomb is intentionally communicated to a peace officer or any other person, and the person reporting the crime knows the report to be false, the offense is punishable by the penalty for the falsely reported crime or up to four years' imprisonment and/or a maximum fine of \$2,000, whichever is less. The bill deletes these provisions.

CONTENT

Senate Bill 633 amends the Michigan Penal Code and Senate Bills 634 and 635 amend the Code of Criminal Procedure, to do the following:

- **Revise the penalties for falsely reporting a felony and falsely reporting an explosives offense.**
- **Prohibit a person from threatening to commit an explosives offense.**
- **Authorize court-ordered reimbursement of costs to the State and local units of government for falsely reported crimes.**
- **Include attempted offenses among those for which a court may order reimbursement of costs.**
- **Revise the sentencing guidelines provisions relating to false reports of crimes.**
- **Include cyberstalking crimes in the guidelines.**

The bill makes it a felony to do either of the following:

Senate Bill 634

- Knowingly make a false report of a violation or attempted violation of Chapter 33 or Section 327 or 328 of the Penal Code and communicate the false report to any other person.
- Threaten to violate Chapter 33 or Section 327 or 328 and communicate the threat to any other person.

A first offense will be punishable by up to four years' imprisonment, a maximum fine of \$2,000, or both. A second or subsequent offense will be punishable by up to 10 years' imprisonment, a maximum fine of \$5,000, or both. (Chapter 33 of the Penal Code governs bombing and explosives offenses. Section 327 provides a penalty for causing a death due to explosives carried on a passenger vehicle or vessel. Section 328 provides a penalty for causing a death due to explosives placed with the intent to destroy a building or object.)

Cost Recovery

The bill specifies that a court may order a person convicted of falsely reporting an explosives offense or threatening to commit an explosives offense, as provided above, to pay to the State or a local unit of government the costs of responding to the false report, including use of police or fire emergency response vehicles and teams.

If a person ordered to pay costs is a juvenile under the jurisdiction of the family division of circuit court, and the court determines that the juvenile is or will be unable to pay all of the costs, the court may order the parent or parents having supervisory responsibility over the juvenile at the time of the incident to pay any portion of the outstanding costs. The bill specifies that an order for a juvenile's parent to pay costs does not relieve the juvenile of his or her obligation to pay costs as ordered, but the amount owed by the juvenile is to be offset by payments made by a parent. (These provisions do not apply to a foster parent.)

If a court orders a parent to pay costs, the court must take into account the parent's financial resources and the burden that payment will impose with due regard to any other moral or legal financial obligations the parent may have. If the court orders payment by a parent, the court must provide for payment in specified installments and within a specified period of time.

A parent ordered to pay costs may petition the court for a modification of the amount of the costs owed by the parent or for a cancellation of any unpaid portion of the parent's obligation. The court must cancel all or part of the parent's obligation if the court determines that payment will impose a manifest hardship on the parent.

Currently, the sentencing guidelines provisions of the Code of Criminal Procedure classify falsely reporting a bombing or threat to bomb as a Class F felony against the public order, with a statutory maximum sentence of four years' imprisonment. The bill retains that classification for a first offense of falsely reporting or threatening to commit an explosives offense. The bill classifies a subsequent offense as a Class D felony against the public order, with a statutory maximum sentence of 10 years' imprisonment, as provided by Senate Bill 633.

In addition, Senate Bill 634 includes sentencing guidelines classifications for offenses prohibited by House Bill 6052 (Public Act 475 of 2000). (That Act, which will take effect on April 1, 2001, prohibits a person from posting a message through any medium of communication, including the Internet, if the person knows that posting the message could cause two or more "separate noncontinuous acts of unconsented contact with the victim"; if posting the message is intended to cause conduct that would make the victim feel frightened, intimidated, threatened, harassed, or molested; if conduct arising from the posting would cause a reasonable person to suffer emotional distress and to feel frightened, intimidated, threatened, harassed, or molested; or if conduct arising from the posting causes the victim to suffer emotional distress and to feel frightened, intimidated, etc. Enhanced penalties apply under certain aggravating circumstances, e.g., posting the message is in violation of a condition of probation or parole, or results in the communication of a credible threat to the victim.)

Under Senate Bill 634, the unlawful posting of a message is classified as a Class G offense against a person with a statutory maximum penalty of two years' imprisonment. The unlawful posting of a message with aggravating circumstances is classified as a Class E offense against a person with a statutory maximum of five years' imprisonment.

Senate Bill 635

The Code of Criminal Procedure lists offenses for which, as part of a sentence, a court may order the offender to reimburse the State or a local unit of government for expenses incurred in relation to that incident, including expenses for an emergency response and expenses for prosecuting the offender. The bill adds the following to that list of offenses:

- A violation or attempted violation of Chapter 33 or Section 327, 327a, or 328 of the Penal Code.
- Falsely reporting a violation or attempted violation of Chapter 33 or Section 327, 327a, or 328.
- Threatening to commit a violation of Chapter 33 or Section 327, 327a, or 328.

(As noted above, Chapter 33 pertains to explosives offenses and Sections 327 and 328 penalize causing a death due to explosives. Section 327a provides a penalty for selling or furnishing gunpowder, nitroglycerine, dynamite, or blasting caps to a minor without the consent of his or her parent or guardian.)

Currently, the reimbursement provisions apply to certain alcohol- or drug-related offenses involving the operation of a motor vehicle, snowmobile, off-road vehicle, aircraft, vessel, or locomotive engine. The bill also applies the provisions to an attempt to commit any of those offenses.

The expenses for which reimbursement may be ordered presently include salaries or wages of law enforcement personnel; salaries, wages, or other compensation of fire department and emergency medical service personnel; and the cost of medical supplies. The bill also includes the salaries, wages, or other compensation, including overtime pay, of prosecution personnel for time spent investigating and prosecuting the crime or crimes resulting in conviction.

MCL 750.411a (S.B. 633)
777.16t (S.B. 634)
769.1f (S.B. 635)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

While some may consider false crime reports, including phony bomb threats, to be pranks, those reports must be taken very seriously. There is nothing innocent or humorous about them. False bomb threats undermine the security of public places and can result in immeasurable emotional cost for those who are forced to endure them. If a school receives a bomb threat, for example, the students, teachers, and other personnel may have to be evacuated (which itself can be a dangerous situation); police may have to inspect the building and grounds with bomb-sniffing dogs; classroom time is lost, and pupils' attention may be diverted for days or weeks; counseling may be necessary; and parents might demand additional security measures.

The bills respond to a rash of false bomb threats at schools around the State after highly publicized incidents of violence occurred at several schools across the country, most notably the killing of 15 people and the rigging of various types of bombs at Columbine High School in Colorado. By establishing more specific penalties, and providing enhanced penalties for second or subsequent offenses relating to bombings or bomb threats, the bills should serve

as a deterrent to false reports of crimes. In addition, allowing a court to order cost recovery for the State and local units of government for expenses incurred in responding to a false report of a crime, will place the cost for those responses exactly where it belongs--on the person who made a false report.

Supporting Argument

Senate Bill 633 corrects a flaw in the statute proscribing false crime reports, which was pointed out by the Michigan Court of Appeals in June 2000 (*People v Fratangelo*). In this case, the defendant had been charged with making a false bomb report. The charge was dismissed because the defendant had made an actual threat to bomb, not a false report of a threat to bomb. According to the Court, "If the Legislature intended to criminally sanction the making of a threat to bomb, rather than the false report of a threat to make a bomb, it must state this more clearly." Senate Bill 633 provides the necessary clarification.

Legislative Analyst: P. Affholter
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FISCAL IMPACT

The bills will have an indeterminate fiscal impact on State government.

In 1997, there were three people committed to prison for falsely reporting of a crime with an average minimum sentence of 1.3 years. Assuming these offenders serve the average minimum sentence, the cost of incarceration will be about \$85,800. Senate Bill 634 classifies a first-time violation as a Class F felony with a minimum sentencing guideline range from 0-3 months to 17-30 months, and a subsequent violation as a Class D felony with a minimum sentencing guideline range from 0-6 months to 43-76 months.

If one assumed that each year three offenders are incarcerated for committing this offense for the first time and serve the longest minimum sentence, the costs for incarceration will be about \$165,000 annually. Under the bill, if one of the three offenders each year is a second-time offender and is incarcerated for the longest minimum sentence, the cost for incarceration will increase to \$250,000 annually.

There are no data available to indicate how many people may be convicted of unlawful posting of a message or unlawful posting of a message with aggravating circumstances. Given that unlawful posting of a message is a Class G offense with a minimum sentencing guideline range between 0-3 months and 7-23 months and the maximum length of sentence is two years, local units of government will incur the cost of incarceration. If two people a year

are convicted of unlawful posting of a message with aggravating circumstances and serve the longest allowable sentence, given that the offense is a Class E offense with a minimum sentencing guideline range between 0-3 months and 24-38 months, the costs of incarceration to the State will be \$140,000.

Senate Bill 633 also allows a court to require a person to pay the State or local unit of government for the costs of responding to a false report. Senate Bill 635 allows a court to order a person to reimburse the State or a local unit for the expenses related to a false report of a crime involving bombing, attempted bombing, or threat to bomb.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.