



**House
Legislative
Analysis
Section**

House Office Building, 9 South
Lansing, Michigan 48909
Phone: 517/373-6466

**FALSE OR MISLEADING CRIME
INFORMATION**

**House Bill 5399 (Substitute H-2)
Sponsor: Rep. Gary Woronchak**

**House Bill 5445 (Substitute H-3)
Sponsor: Rep. John Pappageorge**

**House Bill 5446 (Substitute H-1)
Sponsor: Rep. Derrick Hale**

**First Analysis (1-31-02)
Committee: Criminal Justice**

THE APPARENT PROBLEM:

Many law enforcement agencies employ civilian personnel, and sometimes contract with other agencies, to provide dispatch services and to take crime reports. According to a representative from the Oakland County Prosecutor's Office, if a person makes a false crime report to one of these non-law enforcement personnel, it is not prosecutable under current law. The Michigan Penal Code prohibits the false reporting of crimes, and establishes penalties for such offenses, but the prohibition applies only to reports made to a member of the Michigan State Police, a sheriff or deputy sheriff, a local police officer, or any other Michigan peace officer. Legislation has been introduced to close this loophole.

In addition, legislation in the 1999-2000 session amended various laws regarding jury tampering and intimidating witnesses. Legislation has also been offered to further clarify some provisions and to increase penalties for jury tampering.

THE CONTENT OF THE BILLS:

House Bill 5399. The Michigan 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. The bill would amend the code (MCL 750.411a) to also prohibit a person from intentionally causing a false report of the commission of a crime to be made. Additionally, the bill would change the current reference to law enforcement officials and expand the reference to include others who may lawfully receive

crime reports. Under the bill, it would be a crime to make a false report of a crime to a peace officer, state or local police agency, 9-1-1 operator, or any other governmental employee or contractor, or employee of a contractor, who was authorized to receive reports of a crime.

It is also a felony offense to knowingly make a false report (and communicate that false report to any person) of a violation or attempted violation of Chapter XXXIII of the code (regarding explosives), Section 327 (death due to explosives), or Section 328 (bomb placed in a building that causes death of a person). The bill would include Sections 397a (harmful object placed in food) and 436 (mingling poisonous substances in food, water, or medications), and would expand the provision to prohibit the causing of the communication of the false report to be made to another person knowing that the report was false.

A violation of the prohibition on making false crime reports can result in the court ordering the defendant to reimburse municipalities for the costs incurred in responding to the false report, e.g., fire trucks, ambulances, etc. The bill would allow a court to impose reimbursement of costs incurred when responding to a threat of a violation of the explosives chapter, or Sections 327, 328, 397a, or 436.

The bill would not prohibit an individual from being charged with, convicted of, or punished for any other violation of law that was committed by the individual while violating the bill's provisions.

House Bills 5399, 5445, and 5446 (1-31-02)

(The Michigan Penal Code defines a “peace officer” as a state or local police officer, a police officer of any entity of the U.S., a county sheriff or his or her deputy, a public safety officer of a college or university who is authorized by the governing board of that college or university to enforce state law and the rules and ordinances of that college or university, or a state or federal conservation officer.)

House Bill 5445. Under the Michigan Penal Code, a person is prohibited from giving, promising, or offering anything of value to an individual in order to interfere with the testimony of any person in a present or future official proceeding. More specifically, the code prohibits bribing a person to discourage attendance, testimony, or the provision of information at a present or future official proceeding; to influence testimony; or to encourage the avoidance of legal process or the provision false testimony; under House Bill 5445, this would not apply to behavior constituting perjury. The bill would also amend the code (750.122) to 1) prohibit a person from knowingly providing false or misleading testimony at a present or future official proceeding, knowing that it was false or misleading; and 2) prohibit a person from knowingly influencing or attempting to influence any individual to provide false or misleading testimony at a present or future official proceeding, knowing it to be false or misleading. These provisions would not apply to behaviors constituting perjury.

Further, the code provides an affirmative defense to charges of bribery of a witness where the conduct was lawful and the defendant’s sole intention was to encourage, induce, or cause the other person to provide a statement or evidence truthfully. The defendant has the burden of proving the existence of the defense by a preponderance of the evidence. The affirmative defense would apply to the proposed provisions described above as well.

House Bill 5446. The Michigan Penal Code establishes tiered penalties for attempting to influence jurors by means other than those allowed in appropriate court proceedings. The bill would amend the code (750.120a) to make a technical correction to a reference that exempts intimidation that involved the commission or attempted commission of a crime or a threat to kill or injure any person, or to cause property damage, from a provision that makes intimidation of a juror a four-year felony offense with a fine up to \$5,000.

The bill would also restructure the tiered penalties for jury tampering and increase the maximum sentence by five years for the top two tiers. Specifically,

under the bill, if the intimidation was committed in a felony criminal case or involved committing or attempting to commit a crime or a threat to cause property damage, or the violation was punishable by life imprisonment or for any terms of years, the person would be guilty of a felony punishable by imprisonment for up to 15 years or a fine of not more than \$20,000, or both. If the intimidation involved a threat to kill or injure anyone or caused death or injury to anyone, the person would be guilty of a felony punishable by imprisonment for up to 20 years or a fine of not more than \$25,000, or both.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, House Bill 5399 is unlikely to have a significant fiscal impact, even though the changes could potentially result in additional violations of the code’s provisions (and, therefore, penal fine revenue earmarked for local libraries and/or state and local correctional costs).

The agency also reports that House Bills 5445 and 5446 could increase state or local correctional costs to the extent that convictions or sentences increased under the new provisions; however, these costs would be indeterminate at this time. (1-29-02)

ARGUMENTS:

For:

Many law enforcement agencies use the services of civilians to act as dispatchers or in other capacities in which the civilian takes reports of crimes. Where current law prohibits the making of false crime reports to state police troopers, sheriffs and their deputies, police officers, and peace officers, the statute does not specifically address the civilians who also take crime reports. Because of this, prosecutors are not able to charge someone under this statute who calls in, or otherwise makes, a false report of a crime. Reportedly, the provision has been interpreted very literally by the courts. Therefore, prosecutors have requested that the statute be amended to specifically include 9-1-1 operators and other nonpolice officers (including contract employees) who may be authorized to take crime reports within the scope of their employment. House Bill 5399 would close this loophole.

Further, the bill would make the false report of placing a harmful substance in food (needles, etc.) and mingling poison in food, water supplies, or medications, a felony offense. Another bill that is currently pending action on the House floor, House Bill 5507, would increase penalties for placing poison in food, water supplies, and medications. In

light of recent events, and the potential for terrorist threats to disrupt the safety of the state's food and water supplies, the two bills complement each other and would provide courts with adequate penalty structures to properly punish heinous crimes.

The bill would also allow local governments to recoup their expenses for responding to a threat of a potential bombing or harmful substance placed in the food or water supply. Emergency response teams must respond to all calls and incur expenses for sending emergency response vehicles and teams to false reports or to threatened actions just as they incur expenses for responding to actual emergencies. It is only fair that a person who threatens to violate the law also pay for the costs of the municipalities the same as a person who phones in a false report.

For:

Current law already prohibits bribing or threatening a witness to not attend, testify falsely, or otherwise influence a witness at an official proceeding. House Bill 5445 would also prohibit a witness from providing false or misleading testimony when he or she knew that the testimony was incorrect or misleading. The bill would also ensure that provisions relating to tampering with a witness or providing false or misleading evidence at an official proceeding would not conflict with the code's provisions relating to perjury.

For:

House Bill 5446 would increase the maximum sentence for imprisonment for a conviction of jury tampering that involved the commission (or threat) of a crime, injury to another, or the death of another. Jurors need to know that they will be protected from harm regardless of the verdict they vote on. The bill's harsher penalties may provide a deterrent to individuals considering threatening or harming a jury member.

POSITIONS:

The Oakland County Prosecutor's Office supports House Bills 5399 and 5445. (1-29-02)

A representative of the Department of State Police indicated that the department supports House Bills 5399 and 5445, and is neutral on House Bill 5446. (1-29-02)

Analyst: S. Stutzky

■ 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.