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BILL ANALYSIS

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Senate Bills 74 and 134 (as reported without amendment)

Sponsor: Senator Mike Goschka (S.B. 74)

Senator Nancy Cassis (S.B. 134)

Committee: Judiciary

Date Completed: 3-15-05

RATIONALE

In keeping with the establishment of AMBER Alert plans in other states, Public Act 712 of 2002 enacted the Michigan Amber Alert Act to authorize the Department of State Police to establish and maintain the Michigan Amber Alert plan. These plans are designed to disseminate useful information about certain child abductions to radio and television stations rapidly and in a predetermined manner. The idea behind AMBER Alert plans is that broad and early public awareness of a child abduction, through bulletins announced by media outlets in the same manner as weather advisories, can help to locate the child and solve the case quickly. ("AMBER" refers to "America's Missing: Broadcast Emergency Response".) It has been pointed out that a false AMBER Alert could cause various problems with the AMBER Alert system, including wasting resources and reducing the system's effectiveness. Although there apparently are no known Michigan cases of an Alert being issued in response to a false report of a child abduction, other states reportedly have had such incidents. In order to prevent a false Amber Alert in Michigan, some people believe that falsely reporting a child abduction should be a crime. (Please see **BACKGROUND** for further information on the AMBER Alert system and Michigan's Amber Alert plan.)

CONTENT

Senate Bills 74 and 134 would amend the Michigan Amber Alert Act and the Code of Criminal Procedure, respectively, to establish a criminal

penalty for intentionally making a false report of a child abduction.

Senate Bill 134 is tie-barred to Senate Bill 74.

Senate Bill 74

The bill would prohibit a person from intentionally making a false report of the abduction of a child, or intentionally causing a false report of a child abduction to be made, to a peace officer, State or local police agency, 9-1-1 operator, or any other governmental employee or contractor who was authorized to receive the report, knowing the report to be false. A violation would be a felony punishable by up to four years' imprisonment and/or a maximum fine of \$2,000.

Senate Bill 134

The bill would include a false report of a child abduction in the sentencing guidelines. The offense would be a Class F felony against the public order, with a statutory maximum sentence of four years' imprisonment, as proposed by Senate Bill 74.

Proposed MCL 28.754 (S.B. 74)
MCL 777.11b (S.B. 134)

BACKGROUND

The AMBER Alert system began in 1996 when broadcasters in the Dallas-Fort Worth area teamed with local law enforcement agencies to develop an early warning system

to help locate abducted children. The system was created as a legacy to Amber Hagerman, a nine-year-old girl who was kidnapped in Arlington, Texas, and then murdered. Other communities and states soon began establishing their own AMBER Alert plans. All 50 states and several regions and localities now have AMBER Alert plans in place.

Beginning in June 2001, the Michigan State Police and members of the Michigan Broadcasters Association began a voluntary Amber Alert plan, which Public Act 712 of 2002 statutorily authorized. Under Michigan's Amber Alert plan, radio and television stations receive information regarding certain child abduction cases directly from the State Police, then broadcast that information every 15 minutes for the first three hours and every 30 minutes for the following five hours, and continue to provide information of the abduction for the next 40 hours. Amber Alert information also is posted on electronic highway message signs in the Detroit and Grand Rapids areas.

Michigan's Amber Alert plan may be activated by the State Police when an endangered missing person under 17 years old is reported to law enforcement and one of the following circumstances exists:

- The child suffers from severe mental or physical disability that greatly impairs his or her ability to care for himself or herself.
- The child was taken against his or her will by a stranger or by an acquaintance of the child or the child's family.
- The child is in the company of a person who has a confirmed criminal history of child abuse or neglect, sexual assault, domestic assault, or a crime involving the victimization of children; has made statements of intent to harm the missing child; or is suicidal.
- The child has been abducted by a noncustodial parent whose parental rights have been terminated.

An Amber Alert cannot be activated for a runaway child or a child who is a victim of a parental abduction involving a civil dispute.

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

The AMBER Alert system can be an effective public safety and crime-fighting tool. Indeed, as of March 1, 2005, there had been 195 recoveries of children nationwide under the AMBER Alert system, according to the website of the National Center for Missing and Exploited Children (<http://www.missingkids.com>). In Michigan, as of February 28, 2005, there had been 76 Amber Alert activations for 89 children since the inception of the State's program in June 2001, according to the coordinator of Michigan's Amber Alert program. Of those children, 83 were recovered safely and six were found deceased.

Abusing the Amber Alert system by falsely reporting a missing child could undermine the system's effectiveness. While it is unclear whether an Amber Alert has been issued in Michigan based on a false child abduction report, there reportedly have been problems in other states. According to testimony before the Senate Judiciary Committee, in Maryland a mother who called police and claimed that her husband had taken their baby at gunpoint was arrested after investigators found her allegations to be false. In addition, a child in Oklahoma evidently reported his teenage sister missing so that their father would not discover that she was out with a boy against the father's wishes. If an Amber Alert were issued in Michigan in response to a false report of an abduction, it would result in an unnecessary use of valuable resources by law enforcement agencies, the Michigan Department of Transportation, and broadcasters, and could cause needless concern and fear in the general public. Moreover, false reports resulting in Amber Alerts could desensitize the general public to the significance of the Alerts, undermining the public awareness aspect of the system.

By prohibiting and prescribing penalties for intentionally making a false report of the abduction of a child, the bills would provide an appropriate penalty for abusing the Amber Alert system, deter people from making false claims of child abduction, and protect the integrity of the system.

Opposing Argument

The bills are unnecessary because falsely reporting a crime already is prohibited under the Michigan Penal Code (MCL 750.411a). If the report is a false report of a felony, the violation is a felony punishable by up to four years' imprisonment and/or a maximum fine of \$2,000, the same penalty proposed by Senate Bill 74. Moreover, the Amber Alert system's integrity is protected in that only law enforcement agencies can initiate the system; the general public cannot trigger an Amber Alert. If certain criteria are met in a missing child investigation, the investigating agency can request that the State Police issue an Amber Alert. Since an alert is initiated by a law enforcement investigation, the State Police reportedly view all Amber Alerts as legitimate. If a law enforcement agency requested the State Police to issue an alert in response to a false missing child report, Michigan law already provides a criminal penalty for the false reporting.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would be convicted of the proposed felony. An offender convicted of a Class F offense is eligible for a sentencing guidelines minimum sentence range from 0-3 months to 17-30 months. Local governments incur the costs of local incarceration, which vary by county. The State incurs the cost of felony probation at an average annual cost of \$2,000, as well as the cost of incarceration in a State facility at an average annual cost of \$28,000.

Fiscal Analyst: Bethany Wicksall

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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.