



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

Senate Bill 74 (as enrolled)  
Senate Bill 134 (as enrolled)  
Sponsor: Senator Mike Goschka (S.B. 74)  
Senator Nancy Cassis (S.B. 134)  
Committee: Judiciary

Date Completed: 4-19-05

### **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 (S-1) and 134 would amend the Michigan Amber Alert Act and the Code of Criminal Procedure, respectively, to establish criminal penalties for intentionally making a false report of a child abduction or a**

**missing disabled child. Senate Bill 74 (S-1) also would allow the court to order an offender to pay the costs of responding to a false report.**

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

### **Senate Bill 74 (S-1)**

#### **Violations & Penalties**

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.

The bill also would prohibit a person from intentionally making a false report that a child who suffered from severe mental or physical disability that greatly impaired the child's ability to care for himself or herself was missing, or intentionally causing such a report 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 misdemeanor punishable by up to one year's imprisonment and/or a maximum fine of \$1,000.

## Payment of Costs

The court could order a person convicted of either violation under the bill to pay to the State or a local unit of government, and the media, the costs of responding to the false report or threat. The costs could include the use of police or fire emergency response vehicles and teams, pursuant to Section 1f of Chapter IX of the Code of Criminal Procedure, unless otherwise expressly provided for in the bill.

(Section 1f allows a court to order a person convicted of certain offenses to reimburse the State or a local unit for expenses incurred in relation to that incident, including expenses for an emergency response and for prosecuting the person. Allowable costs include salaries, wages, or other compensation; the cost of medical supplies used or lost in providing services; and the costs involved with extraditing a person from another state to Michigan, including travel and compensation costs for law enforcement and prosecution personnel.)

If a person ordered to pay costs under the bill were a juvenile under the jurisdiction of the family division of circuit court (family court), and the court determined that the juvenile was or would be unable to pay all of the costs ordered, after notice to the juvenile's parent or parents and an opportunity for them to be heard, the family court could order the parent or parents having supervisory responsibility for the juvenile to pay any portion of the outstanding costs. That order would not relieve the juvenile of his or her obligation to pay the costs as ordered, but the amount owed by the juvenile would have to be offset by any amount paid by his or her parent. ("Parent" would not include a foster parent.)

If the family court ordered a parent to pay costs, it would have to take into account the parent's financial resources and the burden that payment of costs would impose, with due regard to the parent's other moral or legal financial obligations. If a parent were required to pay costs, the family court would have to provide for payment to be made in specified installments and within a specified period.

A parent ordered to pay costs could petition the court for a modification of the amount

owed or for a cancellation of any unpaid portion of the parent's obligation. The court would have to cancel all or part of the parent's obligation, if it determined that payment of the amount due would impose a manifest hardship on the parent.

## **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 (S-1).

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-Ft. 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. The Michigan Department of Transportation also posts Amber Alert information 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 does not appear that 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 people 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 or of a missing disabled child, and allowing a court to order a convicted person to pay costs, the bills would provide an appropriate penalty for abusing the Amber Alert system, deter people from making false missing child claims, 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 (S-1) for falsely reporting the abduction of a child. The sentencing guideline proposed under Senate Bill 134 also is the same as the existing guideline for falsely reporting a felony. 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.

**Response:** Although the proposed penalty for making a false child abduction

report would be the same as the penalty under the Penal Code for falsely reporting a felony, Senate Bill 74 (S-1) would create a separate penalty for making a false report that a disabled child was missing. The bill also would provide for the recovery of costs from people who committed either of the proposed offenses. As a rule, the false report of a crime is not subject to the reimbursement provisions of the Code of Criminal Procedure.

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 offenses. An offender convicted of a Class F felony is eligible for a sentencing guidelines minimum sentence range from 0-3 months to 17-30 months. Local governments incur the costs of misdemeanor probation and local incarceration, both of 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.