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BILL



ANALYSIS

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Senate Bill 374 (Substitute S-3 as reported)
Sponsor: Senator Judy K. Emmons
Committee: Education

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RATIONALE

Incidents of school violence, bullying, suicide, and other serious problems may be prevented if someone with knowledge about a possible incident alerts authorities, but many students evidently fear repercussions for being a "snitch". According to a study of 37 incidents of school violence, the United States Secret Service and United States Department of Education found that in 81% of the surveyed incidents, at least one other person had some prior knowledge of the attacker's plan. In 59% of the surveyed incidents, more than one person had prior knowledge. The study also found that bystanders were more likely to come forward if they knew that they would be believed and the report would be kept confidential.

Following the 1999 school shooting in Columbine, Colorado, a program called "Safe2Tell" was developed to provide for anonymous reporting of threats of violence. This approach apparently has proven successful in deterring violence. In 2012, Cadillac Public Schools introduced a similar program, which reportedly has been met with success. Many people believe that Michigan should adopt such a program at a statewide level to encourage students to report threats of school violence and other potentially harmful activities.

CONTENT

The bill would create the "Michigan Student Safety Act" to provide for the development and implementation of a program that would allow for confidential reports of unsafe, potentially harmful, dangerous, violent, or criminal activities to a toll-free hotline. Specifically, the bill would do the following:

- Allow the Attorney General to develop the program in cooperation with any existing programs, including nonprofit entity programs.
- Require the Michigan Department of State Police (MSP), with the cooperation of the Attorney General and the Department of Education (DOE), to establish, operate, and staff the program.
- Prohibit the disclosure of a confidential identity except as otherwise provided.
- Require an annual report of information reported to the hotline, and allow the information to be used to evaluate the need for additional violence prevention programs.
- Require the Attorney General to develop, maintain, and manage the program webpage, and develop a plan to promote the hotline.
- Create the "Student Safety and Consumer Protection Enforcement Fund" to carry out the purposes of the Act.
- Authorize the Attorney General to create a nonprofit corporation to maintain, improve, and promote community safety by supporting the program.
- Authorize the Attorney General, MSP, and DOE to contract with third parties to administer the program, and require a contract to bind third party vendors to the Act's requirements.
- Provide that the Act's requirements to establish, operate, or staff a program would be subject to legislative appropriations.

Definitions

"Confidential identity" would mean the identity of a person who makes a communication to the MSP or the Attorney General or an agent of either under the Act.

"Hotline" would mean a statewide, toll-free telephone line, cable, cellular telephone system, or other means of communication that transmits voice, e-mails, texts, or other multimedia messaging concerning unsafe, potentially harmful, dangerous, violent, or criminal activities, or the threat of these activities, to appropriate law enforcement organizations, public safety agencies, or school officials.

Program Requirements

The program established under the Act would have to be maintained 24 hours a day, 365 days a year. It would have to provide for confidential reporting, including telephone, e-mail, text, and multimedia messaging, concerning unsafe, potentially harmful, dangerous, violent, or criminal activities or the threat of those activities. Except for a confidential identity, all reported information could be shared with law enforcement agencies, school officials, and appropriate parents and guardians.

The program could share the identity of a reporting person if that person voluntarily disclosed his or her identity and verified that he or she was willing to be identified to others. The confidential identity of a minor could be disclosed with consent of the minor and his or her parents or guardians.

The program would have to have a mechanism in place to promptly provide the reported information to the local law enforcement agency and school district.

Confidential Identities; Disclosure

Any material provided and maintained by a public body under the proposed Act would be confidential, not a public record, and exempt from disclosure under the Freedom of Information Act, and could not be released.

("Material" would mean any record, report, claim, writing, document, multimedia, or information reported to the program or

information related to the source of those items.)

The program generally could not be required either to disclose confidential identities by way of testimony or otherwise; or to produce, under subpoena, any records, documentary evidence, opinions, or decisions relating to a confidential identity. The Attorney General could appear in any action to oppose the disclosure of a confidential identity.

The program, however, could be required to disclose a confidential identity or produce records relating to a confidential identity in the case of either of the following circumstances.

First, an individual arrested and charged with a criminal offense could petition the court for a hearing, conducted in chambers outside the presence of the defendant, of materials that contain information relating to a confidential identity. The petition would have to allege facts showing that the materials would provide evidence favorable to the defendant and would be relevant to the issue of guilt or punishment. The court could determine whether the person was entitled to any of the materials, and order production and disclosure as it considered appropriate.

Second, a prosecuting attorney could petition the court for an inspection of materials that contained information relating to a confidential identity if he or she contended the report was made for the purpose of providing false or misleading information to the program. The petition would have to allege facts showing that the materials would provide evidence supporting the prosecuting attorney's contention and would be relevant to the issue of guilt or punishment. The court could determine whether the prosecutor was entitled to any of the materials, and order production and disclosure as it considered appropriate. The proposed Act would not create any liability or diminish any immunity otherwise provided by law.

Annual Report

By January 31 of each year, the Attorney General, with the cooperation of the MSP, would have to prepare an annual report. The report would have to categorize the

number of calls, e-mails, texts, and multimedia messages, and the types of incidents reported, to the hotline. The report would have to be sent to the Governor, the Senate Majority Leader, and the Speaker of the House of Representatives, and posted on the program webpage. This information could be used to evaluate future program needs and the need for additional school violence prevention programs.

Enforcement Fund

The Student Safety and Consumer Protection Enforcement Fund would be created in the State Treasury. The Fund would have to be administered by the Attorney General. The State Treasurer could receive money and other assets from any source to deposit into the Fund, would have to direct the investment of the Fund, and would have to credit interest and earnings from Fund investments, to the Fund. Money in the Fund could be spent only, upon appropriation, in a manner to carry out the purposes of the Act. Any money in the Fund at the close of the fiscal year would have to remain in the Fund, and could not lapse to the General Fund.

Authorization to Contract with Third Parties

The Department of the Attorney General, the MSP, and the DOE could contract with all necessary third parties to secure services that would contribute to the program's effective administration. Any contract with a third party would have to be written only in furtherance of the Act, and require the vendor to be bound by the Act's requirements, including its confidentiality provisions.

Nonprofit Corporation Establishment

The Department of the Attorney General would be authorized to initiate the incorporation of a charitable purpose nonprofit corporation to implement the requirements of the Act. The corporation would have to be incorporated on a nonstock, directorship basis, under the Nonprofit Corporation Act.

The articles of incorporation would have to provide that the corporation was organized for the purpose of maintaining, improving, and promoting community safety by

supporting the program. The Department of Attorney General could draft the initial bylaws and spend funds from the proposed Fund as necessary to establish the corporation.

As soon as practicable, a board of directors would have to be appointed, and the corporation would have to apply for and make its best effort to obtain tax-exempt status as a 501(c)(3) corporation under the Internal Revenue Code.

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

In order to ensure that students help to prevent violence, bullying, and other dangerous or illegal activity in schools, the proposed program, commonly called "OK-2-SAY", would remove barriers that currently discourage children and young adults from reporting these activities.

The program would encourage students to report by offering contact via telephone hotline, e-mail, the OK-2-SAY website, text messages, and other forms of multimedia messaging. Allowing more avenues to report information by incorporating modern social and media technology should increase the program's appeal to students.

A big obstacle to soliciting students for information about threats of violence is a prevalent culture of silence that discourages students from "snitching" on their peers. As mentioned earlier, 81% of the incidents studied by the U.S. Secret Service and the U.S. Department of Education involved an individual who had some prior knowledge of an attacker's plan. That study determined that students are fearful of not being believed, and being ridiculed for being a snitch. It also found that students were more likely to report information if they knew that they would be believed and the information they provided would be protected. The OK-2-SAY program would address these findings head-on by guaranteeing confidentiality.

Supporting Argument

Programs similar to OK-2-SAY have been met with great success. They have been

proven to save lives and promote effective intergovernmental operations with regard to appropriately responding to threats. According to Cadillac Public Schools officials, the hotline program in that district, which started in 2012, proved critical in receiving tips. At least four helpful tips were reported through that program.

According to the Attorney General, the anonymous "Safe2Tell" program in Colorado has resulted in the intervention of 28 planned school attacks, 275 weapon incidents, 442 sexual offenses, 890 planned suicides, and 1,636 bullying incidents.

In Missouri, an anonymous school violence hotline program allows for tips through a mobile smartphone application. According to the Attorney General, over 1,000 reports were made through this application in 2011, and 80% of law enforcement officials said the hotline promoted cooperation between law enforcement and schools.

Opposing Argument

The OK-2-SAY program would be duplicative of existing school violence prevention programs. Rather than replicate the efforts of successful programs that are already established and well-known, the State should seek a partnership with existing programs to expand these services statewide.

For example, Kent County Silent Observer started a privately funded "Fast 50" program that gives students the ability to call in, text, or e-mail information relating to violent or illegal activity. Reportedly, this program has succeeded in stopping three acts of school violence, alerted authorities to two suicide threats, and resulted in the removal of many weapons and drugs from schools. According to Kent County Silent Observer, similar programs are present in Calhoun, Kalamazoo, Livingston, Macomb, Monroe, Oakland, Ottawa, St. Clair, Washtenaw, and Wayne Counties. Also, the MSP already offers telephone hotline services, and MSP representatives have admitted that the hotline could be advertised more effectively and made more useful.

Response: The bill would authorize the Attorney General to develop OK-2-SAY in cooperation with existing programs. These could include programs like Kent County Silent Observer's Fast 50 and the existing MSP hotline.

FISCAL IMPACT

The bill would make establishment of a confidential hotline program subject to legislative appropriation. If funds were appropriated and the program were created, the Department of Attorney General and the Department of State Police would have increased costs of an unknown amount to establish a confidential hotline to receive and monitor reports of threats or unsafe activities. This would include costs for telecommunications, information technology, and staff. In addition, these Departments would incur costs to analyze the types of incidents and prepare a report. The Michigan Department of Education would be involved as a cooperating agency. The bill does not make an appropriation for these costs.

The bill would create the Student Safety and Consumer Protection Enforcement Fund within the State Treasury. The Department of Attorney General would administer the Fund, and would be authorized to spend money from the Fund to establish a nonprofit corporation to implement the Act. The State Treasurer would be responsible for the investment of the Fund. The Fund could receive contributions from any source. It would retain interest earnings on the Fund balance, which would carry forward from year-to-year and not lapse to the General Fund.

The Department of State Police is currently evaluating its costs of converting from the simple phone school violence hotline that it currently operates, to a more sophisticated multi-media reporting system, with primary costs coming from the need to add 6.0 to 8.0 new full-time employees, along with training needs and considerable technology costs for the program.

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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.