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BILL ANALYSIS



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Senate Bill 374 (as introduced 5-21-13)
Sponsor: Senator Judy K. Emmons
Committee: Education

Date Completed: 6-5-13

CONTENT

The bill would create the "Michigan Student Safety Act" to require 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:

- Require the Department of the Attorney General to develop the program.
- 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.
- Prescribe requirements for the program with regard to maintenance, confidentiality, and notification of law enforcement and school districts.
- Prohibit the disclosure of confidential communications 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.

Definitions

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

"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 communication, all reported information could be shared with law enforcement agencies, school officials, and appropriate parents and guardians.

The program would have to establish methods and procedures to ensure that a reporting person's identity that became known through any means other than voluntary disclosure was not further disclosed. 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 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 Communications; 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 communications by way of testimony or otherwise; or to produce, under subpoena, any records, documentary evidence, opinions, or decisions relating to a confidential communication. The Department of the Attorney General could appear in any action to oppose the disclosure of a confidential communication.

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

First, an individual arrested and charged with a criminal offense could petition the court for an inspection conducted in camera of a confidential communication concerning that individual. 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 a confidential communication that the attorney contended was made for the purpose of providing false or misleading information. The petition would have to allege facts showing that the materials would provide evidence supporting the attorney's contention and would be relevant to the issue of guilt or punishment. The court could determine whether the attorney 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. 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.

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.

Legislative Analyst: Glenn Steffens

FISCAL IMPACT

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 Department of Attorney General also would potentially incur costs to establish a charitable purpose nonprofit corporation to implement the Act. The bill does not make an appropriation for these costs. Without an appropriation, funding for this program would come from existing resources and reduce other departmental operations.

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, but the State Treasurer would be responsible for the investment of the Fund and money from the Fund could be spent only pursuant to an appropriation. The Fund would be authorized to 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 a simple phone school violence hotline which 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 FTEs, along with training needs and considerable technology costs for the program. To date, the Department has not completed its cost assessment.

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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.