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BILL



ANALYSIS

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Senate Bill 267 (as enacted)
Sponsor: Senator Judy K. Emmons
Senate Committee: Education
House Committee: Appropriations

PUBLIC ACT 100 of 2017

Date Completed: 7-10-18

RATIONALE

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 proved successful in deterring violence. In Michigan, in 2012, Cadillac Public Schools introduced a similar program, which reportedly met with success. To expand these efforts across the State, it was suggested that a hotline be established for reporting harm or threats. In response, Public Act 183 of 2013 enacted the Student Safety Act.

In 2014, the Department of Attorney General instituted the OK2SAY program under the requirements of the Act. OK2SAY established a hotline that allows students to confidentially report tips on potential harm or criminal activities directed at school students, school employees, and schools. The program also provides free presentations for students in grades 6 through 12 to explain the confidentiality of the hotline and the protocol for submitting tips about bullying, cyberbullying, suicide threats, self-harm, drugs, assault, sexting, sexual misconduct, planned school attack, weapons possession, and other matters.

Since the program began operation on September 1, 2014, through March 31, 2017, it had accumulated 7,349 tips and facilitated 3,071 presentations for 361,941 people, according to the Department. In March 2017, the program accumulated 529 tips and facilitated 118 presentations before 17,129 people.

The Act was scheduled to sunset on October 1, 2017. Many people believe that the OK2SAY program is successful and should be continued.

CONTENT

The bill amended an enacting section of the Student Safety Act to delay the sunset date of the Act from October 1, 2017, to October 1, 2021.

The Act is described below.

Program Requirements

The Act required the Attorney General, in consultation with the Michigan Department of State Police (MSP), the Department of Community Health (now part of the Department of Health and Human Services), and the Department of Education, to the extent that funds were appropriated for this purpose, to establish a program for receiving reports and other information from the public regarding potential self-harm and potential harm or criminal acts directed at school students, school employees, or schools in the State. The program must include a hotline for receiving the reports and information, and the hotline must be available for use 24 hours a day, 365 days a year. Calls to the hotline must be transmitted to a vendor under contract with the Attorney General.

(The Act defines "hotline" as a statewide toll-free telephone line or other means of communication, or a combination of a toll-free telephone number and another means of communication, that transmits voice, text, photographic, and other multimedia messages and information to a vendor, including information forwarded to the vendor through the Attorney General departmental website.)

The Attorney General is responsible for the continued operational and administrative oversight of the program. The program must provide for a means to review all information submitted through the hotline, and to direct the information and reports, including any analysis of the potential threat as determined appropriate by the Attorney General or vendor, to local law enforcement officials and school officials. The program also must include a means by which responses at the local level are determined and evaluated for effectiveness. The Attorney General must ensure that program personnel are given appropriate training in all of the following areas:

- Crisis management, including recognizing mental illness and emotional disturbance.
- The resources that are available in the community for providing mental health treatment and other human services.
- Other matters determined by the Attorney General to be relevant to the administration and operation of the program.

A report or other information submitted to the hotline will be considered a report to a law enforcement agency, and must be maintained as a record by the vendor for at least one year, subject to the Act's confidentiality requirements.

Mental Health Referral & Resources

The Attorney General must ensure that any hotline information that suggests that a psychiatric emergency is taking place within a county is immediately referred to the community mental health services program crisis line for that county.

The Attorney General also must develop a source of information on available community mental health resources and contacts, including mental health services. The Attorney General must notify schools and law enforcement of this information source. The notice must include the Attorney General's recommendation that school and law enforcement, upon investigating a case and determining that mental illness or emotional disturbance is or may be involved, use this information in aiding subjects and their parents or guardians.

Confidential Information; Disclosure

Any report or information submitted to the hotline is confidential and exempt from the Freedom of Information Act, and may not be released except as provided in the Student Safety Act. This also applies to any hotline report or information that the vendor forwards to a law enforcement official or school official.

As necessary for purposes of the Act and to address reports and information received under the Act, information regarding a report or information submitted to the hotline, including any identifying information, may be disclosed by the vendor and its employees acting in the course of their duties. Also, as necessary, information regarding a report or information may be disclosed by the Attorney General, law enforcement agencies, schools, and community mental health services programs, and their employees acting in the course of their duties, although they may not disclose information that would identify the person who submitted the report or information to the hotline.

In addition, information regarding a report or information submitted to the hotline, including identifying information, may be disclosed with the permission of the person or, if the person is a minor, the minor and his or her parents or guardians. The information also may be disclosed pursuant to a court order under the circumstances specified below.

A person who intentionally discloses information in violation of the Act to another person will be guilty of a misdemeanor punishable by imprisonment for up to 90 days or a maximum fine of \$500, or both.

If a report to the hotline does not result in a referral, or the investigation of a subject results in a determination that no action regarding the subject is warranted, the subject's name must be expunged from the records of all entities involved in the hotline program, except as otherwise provided by law.

Disclosure Pursuant to Court Order

An individual charged with a criminal offense as a result of a report or information submitted to the hotline may petition the court for the disclosure of the report or information, including any identifying information. The prosecuting attorney for the local unit of government having jurisdiction and the Attorney General must be notified of the petition at least seven days before the hearing on it or as otherwise provided by the court. Both the prosecuting attorney and the Attorney General have the right to appear in the proceedings to oppose the petition. The court may conduct a hearing on the petition. The hearing must be in chambers and outside the presence of the petitioner. If the court determines that the information is relevant to the criminal proceedings and is essential to the petitioner's fair trial, the court may order the disclosure of the information, including any identifying information, as it determines appropriate.

In addition, the prosecuting attorney for a local unit of government may petition the court for the disclosure of a report or information submitted to the hotline, including any identifying information, if he or she has reason to believe that the report or information was falsely provided to the vendor through the hotline. The Attorney General must be notified of the petition and has the right to appear in the proceedings to oppose the petition. If the court determines that there is reason to believe that the report or information may have been falsely provided, the court may order the disclosure of the information, including any identifying information, as it determines appropriate.

In either scenario, if the court orders the disclosure of information, it may place restrictions on the release and use of the report or information, or redact material as it considers appropriate. Court-reviewed material that is not ordered released or that is redacted must be maintained by the court under seal for purposes of appeal only.

The Attorney General also may appear in any other action to oppose the release of any report or information obtained through the hotline, including any identifying information.

Student Safety Fund

The Act creates the Student Safety Fund in the State Treasury. The Attorney General may spend money from the Fund, upon appropriation, only for one or more of the following purposes: 1) to pay the costs of the Attorney General for administering the Act, 2) to pay the costs of the vendor for operating the hotline, and 3) to promote public awareness of the program, including the availability of the hotline and the website operated by the Attorney General.

Annual Report

In consultation with the vendor, the Department of Health and Human Services, and the Department of Education, the Attorney General must prepare an annual report and file it by July 31. Copies of the report must be filed with the Governor, Secretary of the Senate, Clerk of the House of Representatives, and clerks of the Senate and House Appropriations Committees. The report also must be maintained on the Attorney General departmental website. The report must contain all of the following information:

- The number of reports and other information reported to the hotline.

- The number of reports and information reported to the hotline that are forwarded to local law enforcement officials and school officials.
- The number of hotline reports resulting in referral to mental health services.
- The nature of the reports and information reported in categories established by the Attorney General.
- The responses to the reports and information at the local level in categories established by the Attorney General.
- The source of all funds deposited into the Student Safety Fund.
- The itemized costs and expenditures incurred by the Attorney General in implementing the Act.
- The itemized costs and expenditures incurred by the MSP in implementing the Act.
- The contributions of, and the costs and expenditures incurred by, the vendor.
- An analysis of the overall effectiveness of the program in addressing potential self-harm and potential harm or criminal acts directed at schools, school employees, and school students.

MCL 750.911-752.918

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

According to the OK2Say program's 2017 Annual Report (the most recent annual report available on the Attorney General's website), the program received 4,605 tips that year in categories that included bullying, cyberbullying, suicide threats, self-harm, drugs, assault, sexting, sexual misconduct, planned school attack, weapons possession, and others. OK2SAY technicians then made 2,330 referrals to school officials, 576 referrals to local law enforcement, 127 referrals to community mental health agencies or other social service agencies, and the remainder to online resources, crisis lines, talk lines, and similar resources. These numbers illustrate the success of the program and the importance of its efforts to ensure the safety of students. By delaying the Act's sunset date, the bill will ensure that this success continues.

The program keeps students safe in a culture of silence that permeates the American educational landscape. Threats of retaliation and stigmatization often discourage students from reporting the dangerous behaviors of their peers. OK2SAY helps to eliminate this culture of silence by providing a confidential, collaborative communication system where students and authorities can work together to respond to safety threats. Other programs with similar goals are less successful because they do not ensure the anonymity of the student providing the tip. When students know that it is safe to speak up, they want to do so and they do.

This program is successful, in part, because it offers a variety of communication methods, allowing a student to engage in the way he or she feels the most comfortable and safe. Students can supply tips via telephone calls, emails, and text messages. Text messaging is the most common method of communication among students and less successful programs receive tips only using dedicated phone lines.

According to Committee testimony on behalf of the Attorney General's Department, the program helped to save lives when a student was on a bridge seeking to commit suicide, a student was writing funeral notes, and a student had taken a handful of pills. The program also has led to the confiscation of guns and knives, and provided for intervention when a student was bragging about bringing a weapon to school and hurting anyone in his way. These are just a few examples of why the program should be continued.

Legislative Analyst: Nathan Leaman

FISCAL IMPACT

The Department of Attorney General initially requested funding totaling \$470,000 for fiscal year (FY) 2017-18 to continue the OK2SAY program. Supplemental funding totaling \$1.0 million, and 100.0 temporary FTEs, were added via Public Act 207 of 2018 to increase funding to a total of \$1,470,000 for FY 2017-18. This funding is sufficient to continue the OK2SAY program for FY 2017-18.

The bill will have no fiscal impact on local government.

Fiscal Analyst: Joe Carrasco

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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.