

# HOUSE BILL REPORT

## HB 2823

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### As Reported by House Committee On: Education

**Title:** An act relating to creating a program to provide students and the community with the means to report anonymously concerning unsafe or violent activities, or the threat of these activities.

**Brief Description:** Creating a program to provide students and the community with the means to report anonymously concerning unsafe or violent activities, or the threat of these activities.

**Sponsors:** Representatives Parker, Riccelli, Manweller and Bergquist.

#### **Brief History:**

##### **Committee Activity:**

Education: 2/1/16, 2/4/16 [DPS].

#### **Brief Summary of Substitute Bill**

- Establishes the Students Protecting Students program (Program) within the Office of the Superintendent of Public Instruction to provide students and the community statewide with the means to relay information anonymously concerning unsafe, potentially harmful, dangerous, violent, or criminal activities, or the threat of these activities.
- Provides that the Program must establish methods of anonymous reporting via phone, text, and electronic mail that comply with federal privacy laws.
- Requires that information received be promptly forwarded to the relevant building principal or alternate school official, and, if immediately actionable, to the appropriate local law enforcement officers and public safety officers.
- Requires school districts to teach students about the Program every year, beginning in the 2016-17 school year.
- Requires districts and schools to disseminate information about the Program using normal means of existing communication, beginning in the 2016-17 school year.
- Provides that personally identifiable information (PII) created or obtained through the Program is confidential, and knowing disclosure of PII by an employee of the program is a misdemeanor offense.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

- Contains provisions limiting disclosure of PII except upon the motion of a criminal defendant, and after ex parte in camera review.
- Provides that PII received, made, kept by, or received from the Program is exempt from disclosure under the Public Records Act.

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## HOUSE COMMITTEE ON EDUCATION

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 18 members: Representatives Santos, Chair; Reykdal, Vice Chair; Magendanz, Ranking Minority Member; Muri, Assistant Ranking Minority Member; Stambaugh, Assistant Ranking Minority Member; Bergquist, Caldier, Griffey, Hargrove, Harris, S. Hunt, Kilduff, Klippert, McCaslin, Orwall, Pollet, Rossetti and Springer.

**Minority Report:** Without recommendation. Signed by 3 members: Representatives Ortiz-Self, Vice Chair; Hayes and Kuderer.

**Staff:** Megan Wargacki (786-7194).

### **Background:**

#### School Safety.

In Washington, all public school districts and schools must have current Safe School Plans and procedures in place. The Office of the Superintendent of Public Instruction's (OSPI's) School Safety Center provides resources to help in the development of high-quality emergency operations and safety plans. The website of the School Safety Center has information about bullying and harassment, gang activity in schools, and crisis resources, among other things.

Some states have launched initiatives to provide safe and anonymous ways for students and members of the community to report concerns of safety. A national nonprofit organization called Safe2Tell National is trying to create national Safe2Tell school safety models. This company provides technical assistance and guidance to states wanting to replicate its model. Colorado adopted the Safe2Tell model. In 2007 Colorado passed a bill supporting the Safe2Tell program that ensured that reports to the hotline would be anonymous and records would remain confidential.

#### Federal Privacy Laws.

The Family Educational Rights and Privacy Act (FERPA) is a federal law that protects the privacy of student education records. In general, schools must have written consent from the parent, or student when the right has transferred, to release any personally identifiable information (PII) from a student's education record. Under FERPA, PII includes the following:

- the student's name;
- the name of the student's parent or other family members;
- the address of the student or student's family;

- a personal identifier, such as the student's social security number, student number, or biometric record;
- other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;
- other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or
- information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) establishes nationwide standards for the use, disclosure, storage, and transfer of protected health information. Entities covered by the HIPAA must have a patient's authorization to use or disclose health care information, unless there is a specified exception. Some exceptions pertain to disclosures for treatment, payment, and health care operations; public health activities; judicial proceedings; law enforcement purposes; and research purposes.

#### The Public Records Act.

The Public Records Act (PRA) requires all state and local agencies to disclose public records to any person upon request, unless the record falls within certain statutory exemptions. Under the PRA, a public record is any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency, regardless of physical form or characteristics.

Over 500 specific references in the PRA or other statutes remove certain information from application of the PRA, provide exceptions to the public disclosure and copying of certain information, or designate certain information as confidential. The provisions requiring public records disclosure must be interpreted liberally while the exemptions must be interpreted narrowly to effectuate the general policy favoring disclosure.

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### **Summary of Substitute Bill:**

#### Program Description.

The Students Protecting Students program (Program) is established within the OSPI. The primary purpose of the statewide program is to provide an anonymous way that students and the community can report unsafe, potentially harmful, dangerous, violent, or criminal activities, or the threat of these activities. The Program must:

- establish and maintain methods of anonymous reporting via, at a minimum, phone, text message, and electronic mail;
- establish methods and procedures, consistent with the HIPA and the FERPA, to ensure that the identity of the reporting party remains anonymous;
- establish methods and procedures so that information obtained from a reporting party who voluntarily discloses his or her identity and verifies willingness to be identified

- may be shared with employees or persons operating the Program, law enforcement officers, public safety officers, and school officials;
- establish methods and procedures to ensure that the identity of a reporting party who becomes known through any means other than voluntary disclosure is not further disclosed; and
  - promptly forward information received to the relevant building principal, or alternate school official, and, if deemed immediately actionable, to the appropriate local law enforcement officers and public safety officers.

#### Program Awareness.

Beginning in the 2016-17 school year, students in each common school must be taught about the Program, including how to report anonymously concerning unsafe, potentially harmful, dangerous, violent, or criminal activities, or the threat of these activities, to appropriate law enforcement agencies, public safety agencies, and school officials. The information taught must be age-appropriate.

Beginning in the 2016-17 school year, schools and districts must disseminate information about the Program, including the contact information for anonymous reporting, through any normal means of existing communication to students and families.

#### Confidential Material.

The PII created or obtained by the Program is confidential and must not be disclosed. "Personally identifiable information" means the name of the reporting party; the address, phone number, or email address of the reporting party; personal indirect identifiers of the reporting party, such as social security number, student number, date of birth, mother's maiden name; or other information that, alone or in combination, with other information, could be used to determine the identity of the reporting party.

#### Compelling Disclosure of Material.

The Program and its employees may be compelled to produce PII only before a court or other tribunal and only under a court order for an in camera review. "In camera" means a confidential review by the judge alone in his or her chambers. An in camera review must be limited to an inspection of PII that is relevant to the specific case pending before the court. The Attorney General acting on behalf of the Program has standing in an action to oppose the disclosure of PII in the custody of the Program.

The Program and its employees may be compelled to produce PII on the motion of a criminal defendant, supported by an affidavit that the PII contains impeachment or exculpatory evidence. After an ex parte in camera review, the court may order the PII be produced under a protective order that includes the redaction of the reporting party's identity and limitations on the use of the PII. Any PII excised under a judicial order must be sealed and preserved in the records of the court, to be made available to the appellate court in the event of an appeal. After the time for appeal has expired, the court must return the PII to the Program.

#### Public Records Act Exemption.

The PII received, made, kept by, or received from, the Program that is confidential is exempt from disclosure under the PRA.

Violation of Confidentiality.

An employee or person operating the program who knowingly discloses PII in violation of these provisions commits a misdemeanor punishable by up to 90 days imprisonment, up to \$1,000 in fines, or both.

**Substitute Bill Compared to Original Bill:**

The substitute bill:

- clarifies that the program is a statewide program;
- specifies that the method and procedures to ensure that the identity of the reporting party remain unknown must comply with the HIPA and the FERPA;
- clarifies that the misdemeanor provisions apply to an employee or person operating the program; and
- replaces the term "material" and its definition (meaning a record, report, claim, writing, document, information anonymously reported, or information related to the source of the material) with the term "PII" and its definition (name of the reporting party; the address, phone number, or email address of the reporting party; personal indirect identifiers of the reporting party, such as social security number, student number, date of birth, mother's maiden name; or other information that, alone or in combination, with other information, could be used to determine the identity of the reporting party).

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**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on February 4, 2016.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) This legislation will prevent school violence. The origin of the bill surfaces from the Columbine tragedy of 1999. The bill is designed to set up a safe, efficient, and accessible transmission of information from students to school officials. Research on school shootings indicates that students tend to hear and see problems before school officials and law authorities.

(Opposed) None.

(Other) Finding ways that students can anonymously and safely alert the appropriate authorities when concerned about a friend is a very important issue in our schools. There are some procedural and liability concerns. This bill will bring new liabilities to school officials. It is important to look carefully at how the bill is written to clear up problems before they ensue: who bears the full responsibility and the full liability of disclosures, does the program reside in the OSPI, or do school district employees run district programs? If a

teacher reports a threat to the principal, the principal should report it to the authorities so that the report does not get lost.

This bill will have unintended consequences for youth who have experienced sexual violence. Sexual violence is the most serious personal and unreported offense. The consequences for youth being questioned about sexual violence that is given in an anonymous report are extremely significant and could greatly impact the wellbeing and safety of that youth. Mandatory reporting laws already exist in Washington to address responding to sexual violence and will override any anonymous reporting of this crime. The scope of the types of reports accepted by the program should be narrowed to imminent harm to another person or school property. It is not reasonable to accomplish anonymous reporting through some of the identified methods. There are concerns about the identity of the source of the information remaining confidential. Minors can provide their identity and this might be forwarded to law enforcement without parental contact or notification. Reports of sexual violence should be limited and not forwarded to multiple parties. The language around disclosure after in camera review should be tightened by adding that the material be relevant as exculpatory or impeachment evidence and that only part of the record be released. In addition, the victims should be notified of the release of information under in camera review. Students should be fully informed of the process under this bill and how it impacts mandatory reporting laws.

**Persons Testifying:** (In support) Representative Parker, prime sponsor.

(Other) Lucinda Young, Washington Education Association; and Andrea Piper-Wentland, Washington Coalition of Sexual Assault Programs.

**Persons Signed In To Testify But Not Testifying:** None.