

CHAPTER 58

CRIMINAL LAW AND PROCEDURE

SENATE BILL 12-079

BY SENATOR(S) King S., Cadman, Morse, Aguilar, Bacon, Boyd, Foster, Giron, Guzman, Heath, Hodge, Hudak, Jahn, King K., Lambert, Newell, Roberts, Schwartz, Spence, Steadman, Tochtrop, White, Williams S.; also REPRESENTATIVE(S) Stephens, Fields, Priola, Schafer S., Barker, Casso, Conti, Ferrandino, Gardner B., Gerou, Hamner, Kerr J., Labuda, Nikkel, Szabo, Todd, Vigil, Williams A., Wilson, Young.

AN ACT

CONCERNING REVISIONS TO THE SAFE2TELL PROGRAM RELATING TO ADVANCES IN COMMUNICATIONS TECHNOLOGY.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **amend** 16-15.8-101 as follows:

16-15.8-101. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) According to the United States secret service AND DEPARTMENT OF EDUCATION, in ~~seventy-five~~ EIGHTY-ONE percent of dangerous or violent incidents in schools, someone other than the attacker knew the incident was going to happen but did not report or act on that knowledge. ADDITIONALLY, IN INCIDENTS OF TARGETED SCHOOL VIOLENCE, MOST ATTACKERS ENGAGED IN SOME BEHAVIOR PRIOR TO THE INCIDENT THAT CAUSED OTHERS CONCERN OR INDICATED A NEED FOR HELP;

(b) The ability to anonymously report information about UNSAFE, POTENTIALLY HARMFUL, dangerous, violent, or criminal activities before or after they have occurred is critical in reducing, RESPONDING TO, AND RECOVERING FROM these types of events in schools;

(c) The ~~national safe-2-tell~~ SAFE2TELL program empowers students ~~teachers, other school employees,~~ and the community by ~~allowing them~~ OFFERING A COMPREHENSIVE PROGRAM OF EDUCATION, AWARENESS, AND TRAINING AND A READILY ACCESSIBLE TOOL THAT ALLOWS STUDENTS AND THE COMMUNITY to easily provide anonymous information about UNSAFE, POTENTIALLY HARMFUL, dangerous, violent, or criminal activities, OR THE THREAT OF THESE ACTIVITIES, to appropriate

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

law enforcement and public safety agencies ~~through a single electronic hotline~~ AND SCHOOL OFFICIALS; ~~and~~

(d) The ~~safe-2-tell~~ SAFE2TELL program has a proven ~~national~~ record of success in prevention and intervention in cases of threats to people or property, assaults, bullying, child abuse, substance abuse, cutting, suicide, gangs, weapons, internet safety, or other UNSAFE, POTENTIALLY HARMFUL, dangerous, violent, or criminal activities; AND

(e) THE SAFE2TELL PROGRAM SERVES AS A COMMUNITY PARTNER IN THE SCHOOL RESPONSE FRAMEWORK DESCRIBED IN SECTION 22-32-109.1 (4), C.R.S., AND THE PROGRAM MAY ENGAGE IN INFORMATION SHARING AND INTEROPERABLE COMMUNICATIONS WITH OTHER COMMUNITY PARTNERS AS PART OF A COORDINATED RESPONSE TO A SCHOOL-RELATED INCIDENT.

(2) The general assembly therefore finds that it is appropriate and necessary to provide for the anonymity of a person who provides information ~~through~~ TO the ~~safe-2-tell hotline~~ SAFE2TELL PROGRAM and to provide for the confidentiality of ~~safe-2-tell program records~~ SAFE2TELL MATERIALS.

SECTION 2. In Colorado Revised Statutes, **repeal and reenact, with amendments**, 16-15.8-102 as follows:

16-15.8-102. Definitions. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "IN CAMERA REVIEW" MEANS AN INSPECTION OF MATERIALS BY THE COURT, IN CHAMBERS, TO DETERMINE WHAT, IF ANY, MATERIALS ARE DISCOVERABLE.

(2) "MATERIALS" MEANS ANY RECORDS, REPORTS, CLAIMS, WRITINGS, DOCUMENTS, OR INFORMATION ANONYMOUSLY REPORTED OR INFORMATION RELATED TO THE SOURCE OF THE MATERIALS.

(3) "SAFE2TELL", "SAFE2TELL PROGRAM", OR "PROGRAM" MEANS THE PROGRAM DESCRIBED IN SECTION 16-15.8-103 THAT PROVIDES STUDENTS AND THE COMMUNITY WITH THE MEANS TO RELAY INFORMATION ANONYMOUSLY CONCERNING UNSAFE, POTENTIALLY HARMFUL, DANGEROUS, VIOLENT, OR CRIMINAL ACTIVITIES, OR THE THREAT OF THESE ACTIVITIES, TO APPROPRIATE LAW ENFORCEMENT AND PUBLIC SAFETY AGENCIES AND SCHOOL OFFICIALS.

SECTION 3. In Colorado Revised Statutes, **amend** 16-15.8-103 as follows:

16-15.8-103. Safe2tell - duties - functions. (1) In addition to any other requirements for articles of incorporation imposed by articles 121 to 137 of title 7, C.R.S., the articles of incorporation for a ~~safe-2-tell~~ THE SAFE2TELL program shall require that the ~~safe-2-tell~~ SAFE2TELL program:

(a) ~~Maintain, and expand if necessary, the existing hotline~~ ESTABLISH AND MAINTAIN METHODS OF ANONYMOUS REPORTING CONCERNING UNSAFE, POTENTIALLY HARMFUL, DANGEROUS, VIOLENT, OR CRIMINAL ACTIVITIES, OR THE THREAT OF SUCH ACTIVITIES;

(b) Establish ~~a method~~ METHODS AND PROCEDURES to ensure that the identity of ~~a person who provides information concerning dangerous, violent, or criminal activities, to the hotline~~ THE REPORTING PARTY remains unknown to all persons and entities, including law enforcement officers and employees OR OTHER PERSONS operating the ~~hotline~~ PROGRAM;

(c) Establish ~~a method to ensure that, if the identity of a person who provides information to the hotline becomes known, whether through voluntary disclosure or any other means, the identity is not further disclosed~~ METHODS AND PROCEDURES SO THAT INFORMATION OBTAINED FROM A REPORTING PARTY WHO VOLUNTARILY DISCLOSES HIS OR HER IDENTITY AND VERIFIES THAT HE OR SHE IS WILLING TO BE IDENTIFIED MAY BE SHARED WITH LAW ENFORCEMENT OFFICERS, EMPLOYEES OR OTHER PERSONS OPERATING THE PROGRAM, AND WITH SCHOOL OFFICIALS;

(d) ESTABLISH METHODS AND PROCEDURES TO ENSURE THAT A REPORTING PARTY'S IDENTITY THAT BECOMES KNOWN THROUGH ANY MEANS OTHER THAN VOLUNTARY DISCLOSURE IS NOT FURTHER DISCLOSED; AND

~~(d) (e) Assist law enforcement agencies and other public safety organizations in the detection of dangerous, violent, or criminal activities, and the apprehension of offenders or at-risk persons by Promptly forwarding~~ FORWARD information received concerning dangerous, violent, or criminal activities BY THE PROGRAM to the appropriate law enforcement or public safety agency OR SCHOOL OFFICIALS.

~~(e) Foster the detection of dangerous, violent, or criminal activities and encourage students, teachers, and other school employees to report information about such activities to the hotline; and~~

~~(f) Encourage local media providers to promote the hotline by informing the public of its functions and benefits.~~

SECTION 4. In Colorado Revised Statutes, **amend** 16-15.8-104 as follows:

16-15.8-104. In camera review - confidentiality of materials - criminal penalty. (1) (a) The ~~safe-2-tell~~ SAFE2TELL program ~~in~~ AND PERSONS implementing AND OPERATING the ~~safe-2-tell hotline~~ PROGRAM shall not be compelled to produce records concerning a report to the ~~hotline of dangerous, violent, or criminal activities before a court or other tribunal;~~ ANY MATERIALS except on the motion of a criminal defendant to the court in which the offense is being tried, supported by an affidavit establishing that the ~~records or report~~ MATERIALS contain impeachment evidence or evidence that is exculpatory to the defendant in the trial of that offense.

(b) ~~On motion of a defendant pursuant to paragraph (a) of this subsection (1), the defendant shall be authorized to subpoena records and reports for review by the court in accordance with this section. IF THE DEFENDANT'S MOTION IS GRANTED, the court shall conduct an ex parte in camera review of materials produced under the defendant's subpoena. to determine whether the materials contain impeachment evidence or evidence that is exculpatory to the defendant.~~

(c) If the court determines that the produced materials contain impeachment evidence or evidence that is exculpatory to the defendant, the court shall order the

materials to be produced to the defendant PURSUANT TO A PROTECTIVE ORDER THAT INCLUDES, AT A MINIMUM, THE REDACTION OF THE REPORTING PARTY'S IDENTITY AND LIMITATIONS ON THE USE OF THE MATERIALS, AS NEEDED, UNLESS CONTRARY TO STATE OR FEDERAL LAW. ~~In the event the materials contain information that would identify the person who was the source of the evidence, the court shall issue appropriate orders to ensure that the person's identity is not disclosed, unless the state or federal constitution requires the disclosure of the person's identity.~~ ANY MATERIALS EXCISED PURSUANT TO A JUDICIAL ORDER FOLLOWING THE IN CAMERA REVIEW SHALL 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 SHALL RETURN THE MATERIALS TO THE SAFE2TELL PROGRAM.

(d) ~~The court shall return to the safe-2-tell program all materials produced under this subsection (1) that are not disclosed to the defendant. The safe-2-tell program shall retain the materials until the conclusion of the criminal trial and the expiration of the time for all direct appeals in the case.~~

(2) (a) ~~Records and information~~ MATERIALS created or obtained through THE implementation OR OPERATION of the ~~safe-2-tell hotline~~ SAFE2TELL PROGRAM are confidential, and no person shall disclose the ~~records or information~~ MATERIAL. The ~~safe-2-tell~~ SAFE2TELL program ~~in~~ AND PERSONS implementing a ~~safe-2-tell hotline~~, OR OPERATING THE SAFE2TELL PROGRAM may be compelled to produce the ~~records or information~~ MATERIALS only before a court or other tribunal and only pursuant to court order for an in camera review. Any such review shall be limited to an inspection of ~~records and information~~ MATERIALS that are ~~relevant~~ MATERIAL to the specific case pending before the court. THE ATTORNEY GENERAL ACTING ON BEHALF OF THE SAFE2TELL PROGRAM SHALL HAVE STANDING IN ANY ACTION TO OPPOSE THE DISCLOSURE OF MATERIALS IN THE CUSTODY OF THE SAFE2TELL PROGRAM.

(b) A person who knowingly discloses ~~confidential records or information~~ MATERIALS in violation of the provisions of this subsection (2) commits a class 1 misdemeanor.

SECTION 5. In Colorado Revised Statutes, **amend** 22-1-126 as follows:

22-1-126. Safe2tell program. As described in section 16-15.8-103, C.R.S., there is established a ~~safe-2-tell electronic hotline~~ THE SAFE2TELL PROGRAM with the primary purpose of providing students ~~teachers, other school employees,~~ and the community with the means to relay information anonymously concerning UNSAFE, POTENTIALLY HARMFUL, dangerous, violent, or criminal activities, OR THE THREAT OF THESE ACTIVITIES, to appropriate law enforcement ~~or~~ AND public safety agencies ~~through a single anonymous electronic hotline~~ AND SCHOOL OFFICIALS.

SECTION 6. In Colorado Revised Statutes, 22-32-109.1, **amend** (4) (d) introductory portion as follows:

22-32-109.1. Board of education - specific powers and duties - safe schools.
(4) School response framework - school safety, readiness, and incident management plan. Each board of education shall establish a school response framework that shall consist of policies described in this subsection (4). By

satisfying the requirements of this subsection (4), a school or school district shall be in compliance with the national incident management system, referred to in this subsection (4) as "NIMS", developed by the federal emergency management agency. At a minimum, the policies shall require:

(d) Each school district, on or before July 1, 2009, to start to develop a school safety, readiness, and incident management plan, including, to the extent possible, emergency communications, that coordinates with any statewide or local emergency operation plans. In developing the plan, a school district may collaborate with local fire departments, state and local law enforcement agencies, local 911 agencies, INTEROPERABLE COMMUNICATIONS PROVIDERS, THE SAFE2TELL PROGRAM DESCRIBED IN SECTION 16-15.8-103, C.R.S., local emergency medical service personnel, local mental health organizations, local public health agencies, local emergency management personnel, and local or regional homeland security personnel, which entities are collectively referred to in this subsection (4) as "community partners". The school safety, readiness, and incident management plan shall, at a minimum, identify for each public school in the school district:

SECTION 7. In Colorado Revised Statutes, 24-72-204, **add** (2) (e) as follows:

24-72-204. Allowance or denial of inspection - grounds - procedure - appeal - definitions. (2) (e) NOTWITHSTANDING ANY PROVISION TO THE CONTRARY IN SUBPARAGRAPH (1) OF PARAGRAPH (a) OF THIS SUBSECTION (2), THE CUSTODIAN SHALL DENY THE RIGHT OF INSPECTION OF ANY MATERIALS RECEIVED, MADE, OR KEPT BY THE SAFE2TELL PROGRAM, AS DESCRIBED IN SECTION 16-15.8-103, C.R.S., THAT ARE CONFIDENTIAL PURSUANT TO SECTION 16-15.8-104, C.R.S.

SECTION 8. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: March 24, 2012