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Senate Bill 74 (as introduced 2-16-23)
Sponsor: Senator Sam Singh
Committee: Civil Rights, Judiciary, and Public Safety

Date Completed: 4-12-23

INTRODUCTION

The bill would create the "Higher Education Sexual Assault Prevention, Advocacy, and Resource Officer Act" to require the Department of Civil Rights to establish an Office with the same name as the Act. The executive officer of the Office (the advocacy officer) would have to advocate for students at institutions of higher education who could be victims of sexual assaults and encourage these institutions to improve the services they provide to assist students who could be victims of sexual assaults, among other things. Additionally, the bill would require any communication between the advocacy officer and any person regarding a possible sexual assault to be treated as confidential, except as provided in the Child Protection Law, and exempt from the Freedom of Information Act (FOIA) any records possessed by the Office in the performance of an official function.

The bill would take effect 90 days after its enactment.

FISCAL IMPACT

Implementation of the proposed Act would add costs to the Department of Civil Rights. The Department has indicated that the primary costs would be due to hiring additional staff. The Department estimates that four additional FTEs would need to be hired to properly implement the Act. Also, there would be some office start-up costs for equipment and supplies and the rental of office space. The first-year costs are estimated at \$500,000 to \$650,000. The bill would require the Legislature to appropriate funds annually for implementation of the Act, although the Legislature cannot commit a future Legislature to spend.

PREVIOUS LEGISLATION

(Please note: The information in this summary provides a cursory overview of previous legislation and its progress. It does not provide a comprehensive account of all previous legislative efforts on the relevant subject matter.)

The bill is a reintroduction of House Bill 5795 of the 2017-2018 Legislative Session. The bill passed the House and was reported by the Senate Committee on Judiciary but received no further action.

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CONTENT

The bill would enact the "Higher Education Sexual Assault Prevention, Advocacy, and Resource Officer Act" to do the following:

- Create the Office of the Higher Education Sexual Assault Prevention, Advocacy, and Resource Officer within the Department of Civil Rights.**
- Require the advocacy officer to be appointed by and serve at the pleasure of the Department.**
- List the responsibilities of the advocacy officer.**
- Require the advocacy officer to submit an annual report on the conduct of the Office to the Department and certain members of the Legislature.**
- Require any communication between the advocacy officer and any person regarding a possible sexual assault to be treated as confidential, except as provided in the Child Protection Law.**
- Exempt from FOIA any record owned, used, possessed, or retained by the Office in the performance of an official function and all records kept by the advocacy officer.**
- Require the Department to promulgate rules to implement the Act.**
- Require the Legislature to appropriate annually a sum sufficient to implement the Act.**

Definitions

"Institution of higher education" would mean a degree- or certificate-granting public or private college or university, junior college, or community college in Michigan.

"Sexual assault" would mean a violation or attempted violation of criminal sexual conduct in the first, second, third, or fourth degree, or assault with intent to commit second-degree criminal sexual conduct or criminal sexual conduct involving sexual penetration.

Office Creation

The Office of the Higher Education Sexual Assault Prevention, Advocacy, and Resource Officer would be created within the Department. The principal executive officer of the Office would be the advocacy officer, who would have to be appointed by and serve at the pleasure of the Department. An individual appointed to the position would have to be qualified by training and experience to perform the duties and exercise the powers of the officer and the Office.

Advocacy Officer Responsibilities & Actions

Under the supervision of the Department, exercised in consultation with experts on sexual assault and sexual harassment, including the Michigan Domestic and Sexual Violence Prevention and Treatment Board, the advocacy officer would have to do all the following:

- Advocate for students at institutions of higher education who could be victims of sexual assaults committed on the campuses of those institutions or at programs, activities, or events sponsored or otherwise provided or supported by those institutions.
- Encourage institutions of higher education to improve the quality and coordination of services they provide to assist students who could be victims of sexual assaults on their campuses or at programs, activities, or events that they sponsored or otherwise provided or supported.
- Promote public awareness of the issue of sexual assault at institutions of higher education.

- Provide information and referral services to students who could be victims of sexual assaults at institutions of higher education to ensure that their rights were protected.
- Provide information to students who could be victims of sexual assaults at institutions of higher education regarding programs and services provided for them by each level of government.
- Promote new services, when necessary, for student-victims of sexual assaults at institutions of higher education.
- Maintain statistics, facts, and data pertaining to the incidence and nature of sexual assaults of students at institutions of higher education.
- Provide technical assistance to institutions of higher education regarding preventive and corrective measures to mitigate the likelihood and effects of sexual assaults on their campuses or at programs, activities, or events that they sponsored, provided, or supported.
- Coordinate efforts to identify campus sexual assault systems' response practices to remove barriers to victims receiving helping services and reporting, and as needed, convene working group and campus response experts to identify gaps and solutions.

Under the Department's supervision and in consultation with experts on sexual assault and treatment, the officer would have to encourage institutions of higher education to improve the quality and coordination of preventive and corrective measures taken by those institutions to mitigate the likelihood and effects of sexual assaults on their campuses or at programs, activities, or events that they sponsored or provided or supported, including institutional policies, procedures, and protocols for responding to and reporting incidents of sexual assaults of students; sexual assault prevention and response training for institutional personnel; sexual assault prevention and response presentations for courses for students; and publication of information about campus and community resources available to student-victims of sexual assaults.

In addition, under the Department's supervision and in consultation with experts, the officer would have to coordinate and collaborate with the Department of State Police, the Department of Health and Human Services, and any other State agency with responsibilities that included preventing sexual assault on college campuses to review and evaluate the use of State funds dedicated to sexual assault prevention, including grants awarded under the Campus Sexual Assault Grant Program, and make recommendations to State agencies, the Legislature, and the Governor regarding proposed legislation, rules, hearings, future funding allocations, and investigations considered necessary or proper to promote student safety at institutions of higher education.

Under the supervision of the Department, the advocacy officer could do any of the following:

- Except as otherwise provided by law and with the written consent of a student who could be a victim of sexual assault, obtain access to all information, records, and documents in the possession of an institution of higher education pertaining to the possible sexual assault and that the advocacy officer considered necessary in the performance of the duties set forth above.
- Request and receive from an institution of higher education a progress report concerning the processing of any report of sexual assault made to the institution by a student.

Advocacy Officer Annual Report

The advocacy officer would have to submit an annual report on the conduct of the Office to the Department of Civil Rights and the chairpersons of all committees in the Senate and House of Representatives responsible for the oversight of institutions of higher education. A report would have to be posted to the Department's website and address specific issues as prescribed

by the Department. A report could not disclose the identity of any individual who could have been involved in any way, as a complainant, respondent, witness, or otherwise, in any alleged sexual assault.

In addition to the annual report, the Office could, as needed, provide intermediate reports relating to specific matters of concern.

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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.