

Legislative Analysis



PUBLIC THREAT ALERT SYSTEM

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House Bill 4061 as reported from committee

Sponsor: Rep. Bradley Slagh

Committee: Government Operations

Complete to 9-1-21

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY: House Bill 4061 would amend the Public Threat Alert System Act to prohibit activation of the Public Threat Alert System plan to announce a new law or executive order except when necessary to respond to an immediate or nearly immediate loss of life or property.

FISCAL IMPACT: The bill would not have a fiscal impact on the state or local units of government.

THE APPARENT PROBLEM:

The Public Threat Alert System Act was enacted in the wake of a shooting spree in Kalamazoo County in February 2016 in which six people were killed and two injured. Although local media broke news of the shootings shortly after the first occurred, no alert was issued by a local governmental unit or law enforcement agency to warn people in the area. The act created a system for notifying people in a specific area of an ongoing public threat, so they can take necessary precautions, and for disseminating confirmed information in an orderly fashion.

The act requires the Department of State Police (MSP) to maintain a Public Threat Alert System plan to rapidly send useful emergency information to radio and television stations and to wireless devices through the federal Wireless Emergency Alert (WEA) system. (The WEA system is described in **Background**, below.) Public threat alerts are transmitted similarly to two other emergency alerts that address specific situations: blue alerts (when a law enforcement officer is killed or seriously injured and the identified suspect is at large) and AMBER alerts (when a child is missing or abducted). The Public Threat Alert System became active on September 22, 2016.

On July 13, 2020, an emergency alert from the Governor's Office was sent through the WEA system that read in part, "Michiganders are REQUIRED by executive order to wear face coverings in public indoor and crowded outdoor spaces. Businesses must refuse entry or service to those who do not wear a face covering (with limited exceptions)." The alert referred to Executive Order 2020-147, which mandated the wearing of masks as described.¹ That order was issued on July 10 and took effect July 13.

Some believe that the Public Threat Alert System, which is designed to provide alerts about such immediate threats as nearby active shooters, will be compromised and diminished if it is used to send alerts about situations that do not involve that high level of urgency and danger. Legislation has been offered to prohibit announcing a new law or executive order through the Public Threat Alert System, except under certain circumstances, and to change the definition of "public threat" for purposes of the act.

¹ Executive Order 2020-147, issued July 10, 2020: <https://www.legislature.mi.gov/documents/2019-2020/executiveorder/pdf/2020-EO-147.pdf>.

THE CONTENT OF THE BILL:

Activation of the Public Threat Alert System plan

The Public Threat Alert System Act requires MSP to maintain a Public Threat Alert System plan to rapidly disseminate useful information to radio and television stations and to wireless devices through the WEA system operated under federal law. The plan must be activated only in accordance with policies established by MSP.²

The bill would add that the plan must not be activated to transmit an announcement of a new law or executive order except when doing so is necessary to respond to an immediate or nearly immediate loss of life or property.

Definition of “public threat”

The act currently defines **public threat** as a clear, present, persistent, ongoing, and random threat to public safety, such as an act of terrorism or an unresolved mass shooting or mass shooting spree.

Under the bill, **public threat** would mean a clear, present, persistent, ongoing, and random threat to public safety *that is likely to lead to an immediate or nearly immediate loss of life or property*, such as an act of terrorism, an unresolved mass shooting or mass shooting spree, a natural disaster such as a severe storm or flood, an industrial explosion, a train derailment, or an announcement that an individual is missing and endangered. The bill would thus both expand the scope of the term **public threat** for purposes of the act (for example, to include severe storms) and limit its applicability (because a threat would have to be likely to lead to an immediate or near immediate loss of life or property).

This change in definition would affect a provision of the act that prohibits a person from intentionally making, or causing to be made, a false report of a **public threat** to a peace officer, state or local police agency, 9-1-1 operator, or another government worker or contractor authorized to receive such a report, if the person knows it to be false. A violation is a felony punishable by imprisonment for up to four years or a fine of up to \$2,000, or both. The person also can be ordered to pay to the state or a local unit of government and the media the costs of responding to the false report.

MCL 28.672 and 28.673

BACKGROUND INFORMATION:

The July 13 alert was sent through the State Emergency Operations Center in MSP and appears to have been sent through the federal Wireless Emergency Alert system without involving the state Public Threat Alert System per se. The WEA system is a federal program created in 2012 and administered by the Federal Communications Commission (FCC) that allows authorized government authorities to send emergency messages to the public through participating wireless service providers.³ The messages can be targeted to specific geographic areas. Each can be up to 360 characters long. For someone receiving a WEA message, it is accompanied by unique notification/alarm signals and looks like a text message. Members of the public can

² https://www.michigan.gov/msp/0,4643,7-123-1878_77949-393495--,00.html

³ See https://www.michigan.gov/miready/0,8237,7-375-89492_96177---,00.html

opt out of receiving WEA alerts, except for presidential alerts, and in most cases can do so by message type. There are four types of message allowed under the system:

- Presidential alerts, issued by the president or his or her designee.
- Imminent threat alerts, describing extreme weather or other threatening emergencies in a specific area.
- AMBER alerts, containing information about children who have been abducted.
- Public safety messages, advising the public as to one or more prescribed actions likely to save lives or safeguard property during an emergency. These messages must be issued in conjunction with one of the alerts described above.

Public safety messages were added as an allowed message type in December 2019, when the maximum number of characters for WEA messages also was increased from 90 to 360. In its guidance to authorized alert originators about how and when to use the new “public safety” type of message, the FCC said:⁴

The availability of Public Safety Messages gives alert originators the ability to provide additional information to their communities during emergencies when that information is essential to saving lives or property but does not meet the criteria for issuing an Imminent Threat or AMBER Alert. [...]

If you’re not sure whether it’s appropriate to issue a Public Safety Message, ask yourself the following four questions:

- Is your emergency operations center activated?
- Has a competent, authorized party declared a state of emergency and/or are emergency orders being issued?
- In order to promote public safety, is there a need for broad public action or awareness of a condition that is occurring or likely to occur?
- Will the message prevent public fear or serve to preserve critical public safety functions that are (or could be) overwhelmed (e.g., inappropriate use of 911)?

If the answer to any of these questions is “yes,” it may be appropriate to send a Public Safety Message.

On April 2, 2020, the FCC released a public notice that the commission said “reminds authorized alert originators, including state and local governments, that the Wireless Emergency Alert (WEA) system is available as a tool to provide life-saving information to the public during the coronavirus COVID-19 pandemic.”⁵ The FCC noted that recent enhancements to the WEA system included “the option to convey recommended actions for saving lives or property (e.g., a reminder to stay at home due to COVID-19) for use in connection with Imminent Threat Messages.” The public notice cited a March 2020 bulletin from the Federal Emergency Management Agency (FEMA) advising that the WEA system could be used to convey health orders, detail curfew information, notify of assembly guidelines or restrictions, or advise of other COVID-19-related information.⁶

⁴ <https://www.fcc.gov/wireless-emergency-alert-enhancements-faqs-authorized-alert-originators>

⁵ <https://docs.fcc.gov/public/attachments/DA-20-367A1.pdf>

⁶ https://www.fema.gov/media-library-data/1584564224092-16298bb999ce6440ec36e3ae3d240073/March_2020_IPAWS_Tip.pdf

ARGUMENTS:

For:

Supporters of the bill argue that the Public Threat Alert System was designed to provide life-saving information to people in immediate danger, such as those in the vicinity of an active shooter situation. Sending a public threat alert for another reason, such as to notify recipients of a change in law or policy, could eventually diminish the urgency and importance of public threat alerts in general. The fact that people who do not want such notifications can opt out of the alerts is more a problem than a solution—they might then miss out on a public threat alert that could help them in an emergency. Proponents argue that restricting activation of the Public Threat Alert System to threats that present imminent danger of property loss or death, while expanding it to include a broader range of those threats, such as those that involve severe storms or missing and endangered persons, would help to ensure that public threat alerts remain effective and that their urgency is not lost in a fog of overuse.

Against:

Critics of the bill argue that invoking “alert fatigue” over the governor’s WEA alerts is itself sounding an alarm in response to a not very urgent threat. The COVID-19 pandemic is unprecedented, and during its emergent phases officials at every level had to find the right tools to keep their communities safe and informed. The WEA system was used statewide to notify residents of a stay-at-home order in March 2020 and a mask mandate in July. While these emergency alerts did not warn of active shooters, they were issued to widely inform people of public health and safety measures directly affecting their conduct during a state of emergency. Critics of the bill argue that the alerts were justified in the circumstances and that, because those circumstances were unusual and the number of alerts was small, there is no need to prohibit sending similar alerts through the Public Threat Alert System.

Concerns also were raised in committee that some of the language of the bill might be vague in a way that could lead someone to violate its provisions inadvertently. (For example, what would be included in phrases such as “likely” or “nearly immediate” under the bill?)

Response:

To the last point, supporters noted that the bill’s language is intended to provide a flexible framework for responding to public threats whose specific nature we cannot now know.

POSITIONS:

The Department of Health and Human Services indicated opposition to the bill. (2-25-21)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.