



The Honorable Brian P. Kemp
Governor
State of Georgia
206 Washington Street
Suite 203, State Capitol
Atlanta, Georgia 30334

April 17, 2019

Dear Governor Kemp:

We write on behalf of the Center for Democracy & Technology to urge you to veto SB 15 because it is unconstitutional, violative of federal law, and could do more harm than good to student safety. We are also concerned that the bill would have a disproportionate negative impact on students of color. Vetoing the bill would give the legislature a chance to correct these problems and produce legislation that will actually make students safer.

Our organization, CDT, is a non-partisan, non-profit technology policy advocacy organization based in Washington, DC. CDT is dedicated to protecting civil liberties and human rights, including privacy, free speech, and access to information. We head CDT's student privacy and government surveillance work, and wanted to share with you our analysis of SB 15. While the bill is well-intentioned and its supporters no doubt want to enhance school safety, we have serious concerns.

Section 5 of the bill is plainly unconstitutional and violative of federal law. It authorizes Georgia police to issue subpoenas that would compel communications service providers to disclose the contents of communications. This is unconstitutional; absent an emergency, a warrant is required to compel the disclosure of communications content. *United States v. Warshak*, 631 F.3d 266, 288 (6th Cir. 2010) ("...we hold that a subscriber enjoys a reasonable expectation of privacy in the contents of emails "that are stored with, or sent or received through, a commercial ISP....The government may not compel a commercial ISP to turn over the contents of a subscriber's emails without first obtaining a warrant based on probable cause."); *Carpenter v. United States*, 38 S. Ct. 2206, 2222 (2018) ("We hold only that a warrant is required in the rare case where the suspect has a legitimate privacy interest in records held by a third party.") In addition, to the extent this provision authorizes the police to use a subpoena to compel a provider of electronic communications to disclose content 180 days old or less, it violates the federal Electronic Communications Privacy Act, particularly 18 U.S.C. Section 2703(a).

The bill authorizes Georgia police to impose a gag of indefinite duration on a communication service provider's ability to give a user notice that his or her information has been shared with law a law enforcement entity. Because the gag is indefinite, and because it is imposed without any judicial authorization, this provision is likely unconstitutional as well. Our brief on this



issue—joined by the U.S. Chamber of Commerce and others—in litigation brought by Microsoft can be found here: <https://cdt.org/files/2016/09/Exhibit-A-to-Motion-1.pdf>. On October 19, 2017, the U.S. Department of Justice issued binding guidance to federal prosecutors barring them from seeking indefinite gag orders absent exceptional circumstances, and requiring a factual basis for any application for a gag order, which prompted Microsoft to settle the case.

The bill expands information sharing between schools and law enforcement and encourages anyone who walks into a school building to report “suspicious, unsafe, or unlawful” activity. At the same time, the bill offers no guidance about the kind of suspicious or unsafe conduct that should be reported. This incentivizes reporting without sufficient caution about the consequences that errant reporting can have to a student. It is likely to result in reports based on racial and religious profiling and in reports on activities protected by the First Amendment.

Vague behavioral reporting requirements also increase the risk that students with disabilities will be unfairly targeted as “suspicious” because of a perception that school shooters who perpetrate violent acts that result in mass casualties suffer from severe mental illness despite evidence to the contrary. In a February 11 article regarding the Keeping Georgia Schools Safe Act, Polly McKinney of Voices for Children said that “[a] lot of kids with autism end up with disciplinary actions against them, because their behavior is atypical with what people expect[.]” Parents aware of the breadth of these behavioral reporting requirements may be dissuaded from seeking special education or mental health services that their children need.

Mandatory reporting to law enforcement invades students’ privacy, and risks chilling their speech, associations, movements, and access to important resources. It also runs the risk of transforming a school’s learning environment to one of surveillance and monitoring. Additionally, information that SB 15 requires school officials to report could become part of a student’s permanent educational record and have negative consequences for years to come.

For all of these reasons, we urge you to veto this bill and give the legislature a chance to address these and other problems in the legislation. We would be happy to work with the bill’s proponents to address these concerns should your veto provide us that opportunity.

Sincerely,

Gregory T. Nojeim
Director of Freedom, Security & Technology Project

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