

BILL ANALYSIS

S.B. 309
By: Lucio
Criminal Jurisprudence
Committee Report (Amended)

BACKGROUND AND PURPOSE

Currently Texas does not provide a legal mechanism by which victims of family violence, sexual assault, or stalking can seek a confidential physical address.

S.B. 309 creates an Address Confidentiality Program that allows the attorney general's office to establish a confidential post office box address for any victim of family violence, sexual assault, or stalking, once the victim has met the program's eligibility requirements.

The program is designed to provide for the safety and protection of victims of family violence, sexual assault, and stalking. These particular crimes are intrusive to the victims because of the ongoing threat that the perpetrators of those crimes often present to their victims. Even if the victims are able to move away from an address known to the perpetrator, there are no mechanisms or safeguards in place that ensure that the victim's location is kept confidential and away from a person who presents a serious threat. This program affords such protection by keeping a victim's physical address confidential when the victim lives at or moves to an address that is unknown to the alleged perpetrator.

Participants may use the substitute address in place of the participant's true residential, business, or school address. A state or local agency must accept the substitute address unless the participant's true address is needed by the agency to perform a duty or function imposed by law and the attorney general permits the required disclosure. If the true address is requested by a law enforcement agency or required by a court order, the attorney general is required to disclose the participant's true address.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the attorney general SECTION 1 (Articles 56.83, 56.89, and 56.93, Code of Criminal Procedure) of this bill.

ANALYSIS

SECTION 1. Amends Chapter 56, Code of Criminal Procedure, by adding Subchapter C, as follows:

SUBCHAPTER C. ADDRESS CONFIDENTIALITY PROGRAM FOR VICTIMS OF FAMILY VIOLENCE, SEXUAL ASSAULT, OR STALKING

Art. 56.81. DEFINITIONS. Defines "applicant," "family violence," "family violence shelter center," "mail," "participant," and "program."

Art. 56.82. ADDRESS CONFIDENTIALITY PROGRAM. (a) Requires the attorney general to establish an address confidentiality program (program), as provided by this subchapter, to assist a victim of family violence or an offense under Section 22.011 (Sexual Assault), 22.021 (Aggravated Sexual Assault), 25.02 (Prohibited Sexual Conduct), or 42.072 (Stalking), Penal Code, in maintaining a confidential address.

(b) Requires the attorney general to designate a substitute post office box address that a participant may use in place of the participant's true residential, business, or school address, to act as agent to receive service of process and mail on the

participant's behalf, and to forward to the participant mail received by the office of the attorney general on the participant's behalf.

(c) Authorizes a summons, writ, notice, demand, or process to be served on the attorney general on behalf of the participant by delivery of two copies of the document to the office of the attorney general. Requires the attorney general to retain a copy of the summons, writ, notice, demand, or process and forward the original to the participant not later than the third day after the date of service on the attorney general.

(d) Requires the attorney general to make and retain a copy of the envelope in which certified mail is received on behalf of the participant.

Art. 56.83. ELIGIBILITY TO PARTICIPATE IN PROGRAM. (a) Sets forth the requirements the applicant must meet in order to be eligible to participate in the program, including filing an application for participation.

(b) Sets forth the information and statements the application for participation must contain.

(c) Requires an application for participation to be completed by the applicant in person at the state or local agency or other entity with which the application is filed. Provides that an applicant who knowingly or intentionally makes a false statement in an application is subject to prosecution under Chapter 37 (Perjury and Other Falsification), Penal Code.

(d) Requires a state or local agency or other entity with which an application for participation is filed to forward the application to the office of the attorney general.

(e) Authorizes the attorney general, by rule, to establish additional eligibility requirements for participation in the program that are consistent with the purpose of the program as stated in Article 56.82(a). Authorizes the attorney general to establish procedures for requiring an applicant, in appropriate circumstances, to submit with the application for participation independent documentary evidence of the commission of family violence, sexual assault, or stalking under certain provisions of the Penal Code. Sets forth the permitted forms of the documentary evidence.

(f) Provides that any assistance or counseling provided by the attorney general or an employee or agent of the attorney general to an applicant does not constitute legal advice.

Art. 56.84. CERTIFICATION; EXPIRATION. Requires the attorney general to certify for participation in the program an applicant who satisfies the eligibility requirements under Article 56.83. Provides that a certification under this article expires on the third anniversary of the date of certification.

Art. 56.85. RENEWAL. Requires a participant, to renew a certification under Article 56.84, to satisfy the eligibility requirements under Article 56.83 as if the participant were originally applying for participation in the program.

Art. 56.86. INELIGIBILITY AND CANCELLATION. (a) Provides that an applicant is ineligible for, and a participant may be excluded from, participation in the program if the applicant or participant knowingly makes a false statement on an application for participation.

(b) Authorizes a participant to be excluded from participation in the program if mail forwarded to the participant by the attorney general is returned undeliverable on at least four occasions, the participant changes the participant's true address

and does not notify the attorney general at least 10 days prior to the change, or the participant changes the participant's name.

Art. 56.87. WITHDRAWAL. Authorizes a participant to withdraw from the program by notifying the attorney general in writing of the withdrawal.

Art. 56.88. CONFIDENTIALITY; DESTRUCTION OF INFORMATION. (a) Provides that information relating to a participant is confidential, except as provided by Article 56.90, and may not be disclosed under Chapter 552 (Public Information), Government Code.

(b) Prohibits the attorney general, except as provided by Article 56.82(d), from making a copy of any mail received by the office of the attorney general on behalf of the participant.

(c) Requires the attorney general to destroy all information relating to a participant on the third anniversary of the date participation in the program ends.

Art. 56.89. ACCEPTANCE OF SUBSTITUTE ADDRESS; EXEMPTIONS. (a) Requires a state or local agency, except as provided by Subsection (b), to accept the substitute post office box address designated by the attorney general if the substitute address is presented to the agency by a participant in place of the participant's true residential, business, or school address.

(b) Authorizes the attorney general, by rule, to permit an agency to require a participant to provide the participant's true residential, business, or school address, if necessary for the agency to perform a duty or function that is imposed by law.

Art. 56.90. EXCEPTIONS. Requires the attorney general to disclose a participant's true residential, business, or school address if requested by a law enforcement agency or required by a court order. Authorizes the attorney general to disclose a participant's true residential, business, or school address if the participant consents to the disclosure and the disclosure is necessary to administer the program.

Art. 56.91. LIABILITY. (a) Provides that the attorney general or an agent or employee of the attorney general is immune from liability for any act or omission by the agent or employee in administering the program if the agent or employee was acting in good faith and in the course and scope of assigned responsibilities and duties.

(b) Provides that an agent or employee of the attorney general who does not act in good faith and in the course and scope of assigned responsibilities and duties in disclosing a participant's true residential, business, or school address is subject to prosecution under Chapter 39 (Abuse of Office), Penal Code.

Art. 56.92. PROGRAM ASSISTANCE. Requires the attorney general to identify state and local agencies and other entities, whether for-profit or nonprofit, that provide counseling and shelter services for victims of family violence, and to require the identified agencies to provide access to the program, including making program information and application materials available and providing assistance in completing program applications.

Art. 56.93. RULES. Requires the attorney general to adopt rules to administer the program.

SECTION 2. Amends Article 56.54, Code of Criminal Procedure, by amending Subsection (c) and adding Subsection (1), to authorize the attorney general to use the compensation to victims of crime auxiliary fund to cover costs incurred by the attorney general in administering the address confidentiality program established under Subchapter C. Makes conforming and nonsubstantive changes.

SECTION 3. Amends Section 18.005(a), Election Code, to require each original and supplemental list of registered voters to contain the voter's residence address or substitute post office box address, if required by Section 18.0051, rather than the voter's residence address.

SECTION 4. Amends Subchapter A, Chapter 18, Election Code, by adding Section 18.0051, as follows:

Sec. 18.0051. CONTENTS OF LIST: SUBSTITUTE ADDRESS. Requires an original or supplemental list of registered voters to contain a voter's substitute post office box address designated by the attorney general under Article 56.82(b), Code of Criminal Procedure, for use by the voter in place of the voter's true residential, business, or school address if the voter is eligible for early voting by mail under Section 82.007 and has submitted an early voting ballot application as required by Section 84.0021.

SECTION 5. Amends Chapter 82, Election Code, by adding Section 82.007, as follows:

Sec. 82.007. PARTICIPATION IN ADDRESS CONFIDENTIALITY PROGRAM. Provides that a qualified voter is eligible for early voting by mail if, at the time the voter's early voting application is submitted, the voter is accepted for participation in the address confidentiality program administered by the attorney general under Chapter 56, Code of Criminal Procedure.

SECTION 6. Amends Subchapter A, Chapter 84, Election Code, by adding Section 84.0021, as follows:

Sec. 84.0021. CONTENTS OF APPLICATION FOR PARTICIPANT IN ADDRESS CONFIDENTIALITY PROGRAM; CONFIDENTIAL INFORMATION. (a) Requires an early voting ballot application submitted by a qualified voter who is eligible for early voting by mail under Section 82.007 to include the applicant's name and address at which the applicant is registered to vote, the substitute post office box address designated by the attorney general under Article 56.82(b), Code of Criminal Procedure, and an indication of each election for which the applicant is applying for a ballot.

(b) Provides that the information contained in an application under this section relating to the address at which the applicant is registered to vote is confidential except that the information is required to be disclosed if requested by a law enforcement agency or required by a court order.

SECTION 7. Amends Chapter 221, Election Code, by adding Section 221.018, as follows:

Sec. 221.018. EXAMINATION OF CERTAIN CONFIDENTIAL INFORMATION. (a) Authorizes a tribunal hearing an election contest, notwithstanding Section 84.0021(b), to examine the information contained in an application under Section 84.0021 relating to the address at which the applicant is registered to vote.

(b) Authorizes information to be examined under this section only for the purpose of hearing an election contest.

SECTION 8. Requires the attorney general to establish the address confidentiality program and adopt rules to administer the program as required by Subchapter C, Chapter 56, Code of Criminal Procedure, as added by this Act, not later than June 1, 2006.

SECTION 9. Effective date: upon passage or September 1, 2005.

EFFECTIVE DATE

Upon passage or September 1, 2005.

EXPLANATION OF AMENDMENTS

Committee Amendment 1

S.B. 309 79(R)

The committee amendment specifies that the attorney general may by rule permit an agency to require a participant to provide the participant's true address if necessary for the agency to perform a duty or function that is imposed by administrative requirement. The amendment also requires the attorney general to disclose a participant's true address if requested by the Department of State Health Services or a local health authority for the purpose of making a notification described by Article 21.31 or by Section 54.033, Family Code, or Section 81.051, Health and Safety Code