

BILL ANALYSIS

C.S.H.B. 1293
By: Alvarado
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Due to the sensitive nature of certain sexual, family violence, or human trafficking offenses, there is a way to protect a victim's identity in order to ensure the victim's safety. Currently, obtaining a pseudonym for use in certain public records is an option for a victim of such offenses who wishes to remain anonymous. Interested parties assert that this protection should also be available to a victim of stalking because a stalking victim's safety may be similarly in jeopardy if the victim's identity is prematurely made public. C.S.H.B. 1293 seeks to address this concern.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1293 amends the Code of Criminal Procedure to require the office of the attorney general, not later than October 1, 2015, to develop and distribute to all state law enforcement agencies a pseudonym form to record the name, address, telephone number, and pseudonym of a victim of a stalking offense or of an offense that is part of the same criminal episode as a stalking offense. The bill authorizes a victim to choose a pseudonym to be used instead of the victim's name to designate the victim in all public files and records concerning the offense and requires a victim who elects to use a pseudonym to complete and return the pseudonym form to the law enforcement agency investigating the offense. The bill prohibits the requirement that a victim who so completes and returns a form disclose the victim's name, address, and telephone number in connection with the investigation or prosecution of the offense. The bill establishes that a completed and returned pseudonym form is confidential and prohibits the disclosure of the form to any person other than the victim identified by the pseudonym form, a defendant in the case, or the defendant's attorney, except on an order of a court of competent jurisdiction.

C.S.H.B. 1293 requires the law enforcement agency receiving a completed pseudonym form to remove the victim's name and substitute the pseudonym for the name on all reports, files, and records in the agency's possession; to notify the attorney for the state of the pseudonym and that the victim has elected to be designated by the pseudonym; to provide to the victim a copy of the completed pseudonym form showing that the form was returned to the law enforcement agency; and to maintain the form in a manner that protects the confidentiality of the information contained on the form. The bill requires an attorney for the state who receives notice that a victim has elected to be designated by a pseudonym to ensure that the victim is designated by the

pseudonym in all legal proceedings concerning the offense. The bill authorizes a court of competent jurisdiction to order the disclosure of a victim's name, address, and telephone number only if the court finds that the information is essential in the trial of the defendant for the offense, the identity of the victim is in issue, or the disclosure is in the best interest of the victim, but expressly does not require such a finding to disclose the confidential pseudonym form to the victim identified by the pseudonym form, the defendant in the case, or the defendant's attorney. The bill prohibits a public servant or other person who has access to or obtains the name, address, telephone number, or other identifying information of a victim younger than 17 years of age from releasing or disclosing the identifying information to any person who is not assisting in the investigation, prosecution, or defense of the case, except as required or permitted by other law or by court order. The bill excludes from that prohibition the release or disclosure of a victim's identifying information by the victim or the victim's parent, conservator, or guardian, unless the victim's parent, conservator, or guardian allegedly committed the offense.

C.S.H.B. 1293 makes it a Class C misdemeanor for a public servant with access to the name, address, or telephone number of a victim 17 years of age or older who has chosen a pseudonym to knowingly disclose the name, address, or telephone number of the victim to any person who is not assisting in the investigation or prosecution of the offense or to any person other than the defendant, the defendant's attorney, or the person specified in the order of a court of competent jurisdiction. The bill makes it a Class C misdemeanor for a public servant or other person who has access to or obtains that information with respect to a victim younger than 17 years of age to knowingly make such a disclosure to those persons, unless the disclosure is required or permitted by other law, and establishes an affirmative defense to prosecution for this offense that the actor is the victim or the victim's parent, conservator, or guardian, unless the victim's parent, conservator, or guardian allegedly committed the offense.

C.S.H.B. 1293 does not affect a victim's responsibility to provide documentation of stalking in order to terminate the victim's lease, vacate the victim's dwelling, and avoid related liability and does not affect a person's power or duty to disclose information the person receives regarding such a circumstance or a circumstance in which a tenant is a victim or a parent or guardian of a victim of certain sexual offenses.

C.S.H.B. 1293 amends the Property Code to require a tenant who is seeking to terminate the tenant's lease, vacate the dwelling, and avoid related liability following certain stalking offenses to provide to the landlord or the landlord's agent a copy of a pseudonym form completed and returned under the bill's provisions if the applicable law enforcement incident report identifies the victim of stalking by means of a pseudonym.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1293 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Title 1, Code of Criminal Procedure, is amended by adding Chapter 57A to read as follows:

CHAPTER 57A. CONFIDENTIALITY OF IDENTIFYING INFORMATION OF

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Title 1, Code of Criminal Procedure, is amended by adding Chapter 57A to read as follows:

CHAPTER 57A. CONFIDENTIALITY OF IDENTIFYING INFORMATION OF

VICTIMS OF STALKING

Art. 57A.01. DEFINITIONS.

Art. 57A.02. CONFIDENTIALITY OF FILES AND RECORDS. (a) The office of the attorney general shall develop and distribute to all law enforcement agencies of the state a pseudonym form to record the name, address, telephone number, and pseudonym of a victim.

(b) A victim may choose a pseudonym to be used instead of the victim's name to designate the victim in all public files and records concerning the offense, including police summary reports, press releases, and records of judicial proceedings. A victim who elects to use a pseudonym as provided by this article must complete a pseudonym form developed under this article and return the form to the law enforcement agency investigating the offense.

(c) A victim who completes and returns a pseudonym form to the law enforcement agency investigating the offense may not be required to disclose the victim's name, address, and telephone number in connection with the investigation or prosecution of the offense.

(d) A completed and returned pseudonym form is confidential and may not be disclosed to any person other than a defendant in the case or the defendant's attorney, except on an order of a court of competent jurisdiction. The court finding required by Subsection (g) is not required to disclose the confidential pseudonym form to the defendant in the case or to the defendant's attorney.

(e) If a victim completes and returns a pseudonym form to a law enforcement agency under this article, the law enforcement agency receiving the form shall:

- (1) remove the victim's name and substitute the pseudonym for the name on all reports, files, and records in the agency's possession;
- (2) notify the attorney for the state of the pseudonym and that the victim has elected to be designated by the pseudonym; and

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(b) A victim may choose a pseudonym to be used instead of the victim's name to designate the victim in all public files and records concerning the offense, including police summary reports, press releases, and records of judicial proceedings. A victim who elects to use a pseudonym as provided by this article must complete a pseudonym form developed under this article and return the form to the law enforcement agency investigating the offense.

(c) A victim who completes and returns a pseudonym form to the law enforcement agency investigating the offense may not be required to disclose the victim's name, address, and telephone number in connection with the investigation or prosecution of the offense.

(d) A completed and returned pseudonym form is confidential and may not be disclosed to any person other than the victim identified by the pseudonym form, a defendant in the case, or the defendant's attorney, except on an order of a court of competent jurisdiction. The court finding required by Subsection (g) is not required to disclose the confidential pseudonym form to the victim identified by the pseudonym form, the defendant in the case, or the defendant's attorney.

(e) If a victim completes and returns a pseudonym form to a law enforcement agency under this article, the law enforcement agency receiving the form shall:

- (1) remove the victim's name and substitute the pseudonym for the name on all reports, files, and records in the agency's possession;
- (2) notify the attorney for the state of the pseudonym and that the victim has elected to be designated by the pseudonym;
- (3) provide to the victim a copy of the completed pseudonym form showing that the form was returned to the law

(3) maintain the form in a manner that protects the confidentiality of the information contained on the form.

(f) An attorney for the state who receives notice that a victim has elected to be designated by a pseudonym shall ensure that the victim is designated by the pseudonym in all legal proceedings concerning the offense.

(g) A court of competent jurisdiction may order the disclosure of a victim's name, address, and telephone number only if the court finds that the information is essential in the trial of the defendant for the offense or the identity of the victim is in issue.

(h) Except as required or permitted by other law or by court order, a public servant or other person who has access to or obtains the name, address, telephone number, or other identifying information of a victim younger than 17 years of age may not release or disclose the identifying information to any person who is not assisting in the investigation, prosecution, or defense of the case. This subsection does not apply to the release or disclosure of a victim's identifying information by:

(1) the victim; or

(2) the victim's parent, conservator, or guardian, unless the victim's parent, conservator, or guardian allegedly committed the offense described by Article 57A.01(4).

Art. 57A.03. OFFENSE.

No equivalent provision.

No equivalent provision.

enforcement agency; and

(4) maintain the form in a manner that protects the confidentiality of the information contained on the form.

(f) An attorney for the state who receives notice that a victim has elected to be designated by a pseudonym shall ensure that the victim is designated by the pseudonym in all legal proceedings concerning the offense.

(g) A court of competent jurisdiction may order the disclosure of a victim's name, address, and telephone number only if the court finds that:

(1) the information is essential in the trial of the defendant for the offense;

(2) the identity of the victim is in issue; or

(3) the disclosure is in the best interest of the victim.

(h) Except as required or permitted by other law or by court order, a public servant or other person who has access to or obtains the name, address, telephone number, or other identifying information of a victim younger than 17 years of age may not release or disclose the identifying information to any person who is not assisting in the investigation, prosecution, or defense of the case. This subsection does not apply to the release or disclosure of a victim's identifying information by:

(1) the victim; or

(2) the victim's parent, conservator, or guardian, unless the victim's parent, conservator, or guardian allegedly committed the offense described by Article 57A.01(4).

Art. 57A.03. OFFENSE.

Art. 57A.04. EFFECT ON OTHER LAW. This chapter does not affect:

(1) a victim's responsibility to provide documentation of stalking under Section 92.0161, Property Code; or

(2) a person's power or duty to disclose the documented information as provided by Subsection (j) of that section.

SECTION 2. Section 92.0161(c-1), Property Code, is amended to read as follows:

(c-1) If the tenant is a victim or a parent or guardian of a victim of stalking under

Section 42.072, Penal Code, that takes place during the preceding six-month period on the premises or at any dwelling on the premises, the tenant shall provide to the landlord or the landlord's agent a copy of:

(1) documentation of a protective order issued under Chapter 7A or Article 6.09, Code of Criminal Procedure, except for a temporary ex parte order; or

(2) documentation of the stalking from a provider of services described by Subsection (c)(1), (2), or (3) and:

(A) a law enforcement incident report[;] or, [~~B~~] if a law enforcement incident report is unavailable, another record maintained in the ordinary course of business by a law enforcement agency; and

(B) if the report or record described by Paragraph (A) identifies the victim by means of a pseudonym, as defined by Article 57A.01, Code of Criminal Procedure, a copy of a pseudonym form completed and returned under Article 57A.02 of that code.

SECTION 2. Not later than October 1, 2015, the office of the attorney general shall develop and distribute to all law enforcement agencies of the state a pseudonym form to record the name, address, telephone number, and pseudonym of a victim as required by Article 57A.02, Code of Criminal Procedure, as added by this Act.

SECTION 3. Same as introduced version.

SECTION 3. This Act takes effect September 1, 2015.

SECTION 4. Same as introduced version.