

Legislative Analysis



ADDRESS CONFIDENTIALITY PROGRAM ACT

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

Senate Bills 70 (S-1) and 72 as passed by the Senate
Sponsor: Sen. Ruth Johnson

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

Senate Bill 71 (S-1) as passed by the Senate
Sponsor: Sen. Tom Barrett

House Bill 5054 as introduced
Sponsor: Rep. Diana Farrington

Senate Bill 73 (S-1) as passed by the Senate
Sponsor: Sen. Stephanie Chang

House Bill 5055 as introduced
Sponsor: Rep. Julie Calley

Senate Bill 74 as passed by the Senate
Sponsor: Sen. Erika Geiss

House Bill 5056 as introduced
Sponsor: Rep. Kristy Pagan

Senate Bill 75 (S-1) as passed by the Senate
Sponsor: Sen. Lana Theis

House Bill 5057 as introduced
Sponsor: Rep. Daire Rendon

Senate Bill 76 as passed by the Senate
Sponsor: Sen. Kimberly LaSata

House Bill 5058 as introduced
Sponsor: Rep. Kyra Harris Bolden

House Committee: Judiciary

Senate Committee (for SBs 70-76): Judiciary and Public Safety

Complete to 11-5-19

BRIEF SUMMARY:

Senate Bill 70 would create the Address Confidentiality Program Act, to be administered by the Department of the Attorney General, which would allow certain victims to apply for and receive a “designated address” to be used generally in place of their actual address for their own protection.

The other eleven bills are complementary legislation that would amend the following acts to implement the proposed Address Confidentiality Program:

- Senate Bill 71: Michigan Election Law
- Senate Bill 72: Revised School Code
- Senate Bill 73: Michigan Vehicle Code
- Senate Bill 74: Enhanced Driver License and Enhanced Official State Personal Identification Card Act
- Senate Bill 75: State Personal Identification Card Act
- Senate Bill 76: Revised Judicature Act
- House Bill 5054: Sexual Assault Victim’s Access to Justice Act
- House Bill 5055: Code of Criminal Procedure
- House Bills 5056, 5057, and 5058: William Van Regenmorter Crime Victim’s Rights Act

DETAILED SUMMARY:

Senate Bill 70 would create the Address Confidentiality Program in the Department of the Attorney General (AG). An individual would be eligible to apply to the program, with the assistance of an *application assistant* or *victim advocate*, if he or she was an adult or emancipated minor, a parent or guardian on behalf of a minor, or an authorized guardian of a ward, and the subject of the application was changing residences. (A registered sex offender would not be eligible to submit an application or be certified as a program participant.)

Application assistant would mean an employee of or volunteer at an organization that serves victims of domestic violence, stalking, human trafficking, or sexual assault who has been trained and certified by the AG to help individuals complete applications to become program participants.

Victim advocate would mean an employee of the AG, the Department of State (SOS), or the Department of Technology, Management, and Budget (DTMB) who has been trained and certified by the AG to help individuals complete the applications and is responsible for assisting program participants in navigating through and accessing all aspects of the program.

Application to the program

The application would have to be filed with the AG and would have to include all of the following:

- A notarized statement by the person applying that, if the address to be made confidential were disclosed, the subject of the application would face increased risk of threat or physical harm by another person or that the subject was a victim of domestic violence, stalking, human trafficking, or sexual assault.
- A knowing and voluntary designation of DTMB as the agent for the purposes of receiving mail and service of process.
- The mailing address, telephone number, and email address, if applicable, at which the AG, SOS, or DTMB could contact the subject of the application.
- The address of residence that the applicant requests not be disclosed.
- The signature of the applicant, the name and signature of the application assistant or victim advocate who assisted the applicant, and the date the application was signed.

The application could also include an option for an applicant to select the type of victimization the applicant believes warrants the need for participation in the program. The AG could not consider information provided or withheld in that application section in certifying a program participant.

If the information provided in the application changed, a program participant would have to submit a notice of change to the AG and update information within 30 days. An application and the information in the database (described below) would be confidential, not a public record, and exempt from disclosure under the Freedom of Information Act (FOIA), and could only be disclosed as authorized under the proposed new act.

The certification of a minor as a participant would not prohibit a parent from voluntarily disclosing the minor's confidential address or amend or affect custody proceedings or orders.

Responsibilities of the Department of the Attorney General

Once the application was filed, the AG would have to do all of the following:

- Certify the subject of the application as a program participant (unless the AG knew that the address to be confidential had been provided to SOS for that individual).
- Issue the program participant a unique identification number and participation card.
- Classify each eligible address listed in the application as a confidential address.
- Provide the program participant with information concerning how he or she could use the DTMB as his or her agent for the purposes of receiving mail and service of process.
- If the program participant was eligible to vote, provide him or her with information on the process to register to vote and to vote as a program participant.
- Provide the program participant with information on receiving a corrected driver's license or personal identification card.
- Provide the program participant with information on methods to protect a confidential address, including information on the risks of disclosing the address to others, using social media, and other information considered useful by the AG.

Term of validity; renewal

Unless canceled by the AG, a program participant's certification would be valid for four years from the application date, renewal application date, or certification continuance application date. A participant who continued to be eligible could renew his or her certification under the same unique identification number.

A minor program participant could apply for and receive a certification continuance if he or she turned 18 years old while the certification remained valid. The AG would have to mail the application to the participant and inform him or her of the right to choose to continue or discontinue the program. The participant could continue certification after turning 19 years old by completing the certification as before and filing it before turning 19.

Participation card

The AG would have to create a participation card for the program that contained the name and unique identification number of a program participant and the designated address.

Use of designated address by a governmental entity

A program participant could request that a *governmental entity* use the designated address as the participant's address, and the governmental entity would have to do so. (This would not apply for voting purposes, or for a municipally owned utility, which would have to maintain confidentiality.) The participant could provide his or her participation card as proof of his or her certification as a program participant.

Governmental entity would mean the state, a local unit of government, or any department, agency, board, commission, or other instrumentality of the state or a local unit of government.

If a participant's employer, school, or institution of higher education was not a governmental entity, the participant could likewise request it to use the designated address in lieu of the participant's address.

DTMB responsibilities

On each day DTMB was open for business, it would have to forward all first-class, registered, or certified mail of a program participant that it received to the respective participant. DTMB could contract with the U.S. Postal Service for special rates for this mail forwarding. Likewise, if DTMB received service of process on behalf of a participant, it would have to forward the process by certified mail, return receipt requested, immediately. If a person intended to serve process on an individual and inquired with the AG or DTMB if the individual was a program participant, the AG or DTMB could only confirm that the individual was or was not a participant.

Cancellation of certification

The AG could cancel a participant's certification if the participant was not reachable at the mailing address, telephone number, or email address the participant provided for 60 or more days. The AG would have to cancel certification in any of the following circumstances:

- The participant's application contained one or more false statements.
- The participant (or applicant on behalf of the participant) filed a notarized request for cancellation on the appropriate form.
- The participant failed to file a renewal application while the initial certification was valid. (The AG could promulgate a rule to provide for a grace period.)
- The participant failed to file a continuance application before turning 19.

Governmental request for information

A state department, a law enforcement agency, or a local unit of government could request a participant's confidential address, telephone number, and email address from the AG if it required that information for a legitimate governmental purpose. A request could only be submitted if the entity was unsuccessful in contacting the participant using the designated address. Upon receiving the request, the AG would have to confirm whether the person was a program participant but could not disclose further information unless it determined, after consideration of whether disclosure would be harmful to the participant, that the information was necessary for a legitimate governmental purpose. (A person who received this information could not disclose it to another person.) Additionally, unless the participant was identified in the request as a suspect in a criminal inspection, the AG would have to provide the participant with notice of the request promptly.

Training program for application assistants and victim advocates

The AG would have to develop and offer a training program for application assistants and victim advocates to obtain certification and would have to certify a person who completed the program. It would have to provide the names and contact information of those individuals on its website. An application assistant or victim advocate complying with the proposed act would not be in violation of the prohibition of the unauthorized practice of law.

Database

The bill would require the AG to create and maintain a computerized database containing the name, unique identification number, confidential address, mailing address, telephone number, and email address of each program participant. The database would also have to include the type of victimization the participant identified as the reason for participation, if the participant provided that information. The AG, DTMB, and SOS could have access to the database as required to implement the proposed act.

The AG would have to ensure that the database immediately notified DTMB and SOS upon a participant's certification for, or cancellation from, the program.

The Michigan Intelligence Operations Center in the Department of State Police (MSP) could only access the database in exigent circumstances and provide a participant's information to a law enforcement agency if the center received all of the following information from the requesting law enforcement agency:

- The originating agency identifier.
- A description of the exigent circumstances requiring disclosure.
- The agency's incident report number associated with the exigent circumstances.
- Whether the participant was a suspect in a criminal investigation related to the exigent circumstances.

MSP would have to provide the AG with prompt notice if a participant's information was provided to a law enforcement agency in this way. Unless the participant was identified as a suspect in a criminal investigation, the AG would have to forward the notice to the participant promptly.

Rule promulgation

In consultation with the Michigan Domestic and Sexual Violence Prevention and Treatment Board, DTMB, and SOS, the AG could promulgate rules to implement the proposed act.

Confidential Address Fund

The Confidential Address Fund would be created in the state treasury and administered by the AG. The treasurer could receive money and assets from any source for deposit into the fund and would have to direct the investment of the fund. Money in the fund at the close of the fiscal year would remain in the fund and not lapse to the general fund.

Once an appropriation was made to the fund for the program, the AG would have to wait at least one year before developing and implementing the program.

Violations and penalties

A person would be prohibited from knowingly making a false statement in an application to the program. Also, a person authorized to access or provided with a confidential address, telephone number, or email address of a participant could not knowingly disclose that information unless authorized under the act. Violation of either prohibition would be a misdemeanor punishable by imprisonment for up to 93 days or a fine of up to \$500, or both.

Advisory council

The AG would have to establish an Address Confidentiality Program Advisory Council composed of the following members:

- The Attorney General or a designee.
- The director of DTMB or a designee.
- The Secretary of State or a designee.
- The executive director of the Michigan Coalition to end Domestic and Sexual Violence or a designee.
- The executive director of the Michigan Domestic and Sexual Violence Prevention and Treatment Board or a designee.
- A representative of the State Court Administrative Office.

Within four years after the new act took effect, the AG would have to call the first meeting of the advisory council. The council could not deliberate on or render a decision on public policy, and a meeting would not be a meeting of a public body under the Open Meetings Act. The members would serve without compensation, but could be reimbursed for actual and necessary expenses associated with their duties.

The advisory council would study the operations of and evaluate the program and submit a report to the legislature on its findings. The report could not include the names or identifying information of program participants. The report would be made available to the public in compliance with FOIA, but all other information collected by the advisory council would be exempt from disclosure under FOIA.

Senate Bills 71 to 76 and House Bills 5054 to 5058 would amend various acts to implement the Address Confidentiality Program by incorporating references to the new act; by stipulating that application assistants or victim advocates are not practicing law without a license when performing their responsibilities under the new act; and by accommodating the address confidentiality of program participants in such provisions of law as those that govern voting, state-issued identification, school records, other records or application forms, and notices that must be mailed to a victim of domestic violence or sexual assault. Each bill is tie-barred to SB 70, which means it could not take effect unless SB 70 were also enacted. A description of each bill follows.

Senate Bill 71 would amend the Michigan Election Law. Under the bill:

- A voter registration application of a voter who is a program participant, as well as the participant's qualified voter profile and absent voter ballot application, would be confidential and not subject to disclosure under FOIA.
- Any poll list or poll book created for or used at an election would have to contain only the name of a program participant with a notation for the precinct election inspectors to contact the city or township clerk on how to process the program participant voter.
- The Qualified Voter File would have to include a program participant's unique identification number issued by the AG.
- Absent voter ballots and absent voter ballot applications would have to provide spaces for a program participant's identification number and designated address.
- The city or township clerk would have to mail an absent voter ballot to a program participant's designated address upon receipt of an application for an absent voter ballot from that participant.¹

The bill would take effect 180 days after enactment.

MCL 16.509q, 168.759, and 168.761 and proposed MCL 168.499b and 168.735a

Senate Bill 72 would amend the Revised School Code to allow a student to be opted out of address disclosure by a parent or guardian.

Currently under the code, statewide agencies and schools are strictly limited in disclosing pupil information; if they do so, they must disclose as much to the student and parent or guardian.

¹ Ballot Proposal 3 of 2018 amended the Michigan Constitution to allow no-reason absentee voting.
http://www.house.mi.gov/hfa/PDF/Alpha/Ballot_Proposal_2018-3_Promote_The_Vote.pdf

At the time these requirements were implemented, districts, intermediate school districts (ISDs), and public school academies (PSAs) were charged with developing an “opt-out” form that parents could sign and return if they did not wish to have their information released.²

The bill would prohibit those entities, as well as the Michigan Department of Education (MDE), the Center for Educational Performance and Information (CEPI), an educational management organization, and an authorizing body (an entity, such as a community college or university, that authorized a PSA), from disclosing the confidential address of a student if the student or his or her parent or guardian had obtained a participation card issued by the AG and provided notice of the card in the form and manner prescribed by MDE.

The bill would take effect 180 days after enactment.

MCL 380.1136

Senate Bills 73 and 75 would amend the Michigan Vehicle Code and State Personal Identification Card Act, respectively. The bills would do all of the following:

- Require a program participant who is applying for a license or ID card to provide SOS with his or her participation card.
- Beginning in 2021, require SOS to issue a corrected license or ID card to an individual upon notice from the AG that he or she is a program participant. The corrected license or card would have to display his or her designated address and could not display his or her residence address. The program participant would have to destroy his or her old license or ID card.
- Update the definition of “highly restricted personal information,” for purposes of the Vehicle Code, to include the confidential address of a program participant.

Each bill would take effect 180 days after enactment.

MCL 750.40b et seq. (SB 73)

MCL 28.291 et seq. (SB 75)

Senate Bill 74 would amend the Enhanced Driver License and Enhanced Official State Personal Identification Card Act.

The bill would, beginning in 2021, require SOS to issue a corrected enhanced license or ID card to an individual upon notice from the AG that he or she is a program participant. The corrected enhanced license or card would have to display his or her designated address and could not display his or her residence address.

The bill would also require, if applicable, proof of enrollment in the program when applying for an enhanced license or card.

The bill would take effect 180 days after enactment.

MCL 28.304

² House Fiscal Agency analysis of 2016 PA 367 (SB 33). <http://www.legislature.mi.gov/documents/2015-2016/billanalysis/House/pdf/2015-HLA-0033-F78086C8.pdf>

Senate Bill 76 would amend the Revised Judicature Act (RJA).

Currently, the RJA generally prohibits persons from practicing law or engaging in the business of law without being licensed and authorized to practice law in Michigan. There is currently an exception to this requirement for assistance provided by a domestic violence victim advocate, and the bill would add an exception for assistance provided by an application assistant or victim advocate under the proposed new act.

Additionally, the bill would allow a program participant to claim exemption from jury service for the duration of his or her participation in the program. The program participant would have to provide the court with his or her participation card as proof of participation in the program.

The bill would take effect 180 days after enactment.

MCL 600.916 and 600.1307a

House Bill 5054 would amend the Sexual Assault Victim's Access to Justice Act. Currently, if a sexual assault victim requests certain information from an investigating law enforcement agency, the victim may specify whether the response is to be provided by telephone, by email, or in writing mailed to the victim. Under the bill, if the sexual assault victim is a program participant who requests that the information be mailed to his or her designated address, the law enforcement agency would have to send the written response to that address.

The bill would take effect 90 days after enactment.

MCL 752.954

House Bill 5055 would amend the Code of Criminal Procedure. Currently, after investigating or intervening in a domestic violence incident, a peace officer is required to provide the victim with a copy of a notice that includes certain information, such as the name and telephone number of the responding law enforcement agency. The bill would require the notice to also inform a victim that he or she may apply to the AG for certification as a program participant.

The notice also requires the victim to be informed of the legal right to petition for a personal protection order (PPO) and lists conduct from which the abuser would be restrained or enjoined. Under the bill, the PPO would have to include, as conduct that could be restrained, the following:

- Injuring, killing, torturing, neglecting, removing, or retaining an animal in which the victim has an ownership interest to cause the victim mental distress or to exert control over the victim.
- Threatening to injure, kill, torture, or neglect an animal in which the victim has an ownership interest to cause the victim mental distress or to exert control over the victim.

The bill would take effect 90 days after enactment.

MCL 764.15c

House Bills 5056, 5057, and 5058 would amend the William Van Regenmorter Crime Victim's Rights Act. The act was created to establish various rights for victims of adult felonies, juvenile offenses, and serious misdemeanors, and is divided into three articles that respectively apply to victims of these crimes. Under the act, among other things, victims have the right to be notified of the status of the case, to receive notification when the defendant is released on probation or parole, to address the parole board in person or in writing, and to receive restitution for injuries or property damage sustained by the crime.

The bills would amend each of the act's three articles to do the following:

- Specify that in performing a duty to provide notice by mail under each of the act's articles or Article 1 of the State Constitution, the court, the Departments of Corrections and Health and Human Services, the county sheriff, or the prosecuting attorney would have to mail the notice to the address provided by the victim. If the victim were a program participant, he or she could provide his or her designated address.
- Allow a victim who receives a notice under the act to use his or her designated address if he or she is a program participant.
- Require the form provided to a victim to receive certain notifications when the defendant, or the juvenile, is sentenced to a term of probation or imprisonment, or placed in a juvenile facility, to include a statement that the victim may use his or her designated address to receive notices if he or she is a program participant.

MCL 780.752a, 780.756, and 780.763a (HB 5056)

MCL 780.811b, 780.816, and 780.828a (HB 5057)

MCL 780.781a, 780.786, and 780.791a (HB 5058)

FISCAL IMPACT:

Senate Bill 70 would create increased costs for the Department of Attorney General (AG) and the Department of Technology, Management, and Budget (DTMB).

The Address Confidentiality Program would be established within the AG, and the AG would incur the greatest cost for the administration of the program. Administrative responsibilities include providing assistance to individuals applying to participate in the program, developing forms, providing participation cards, developing a training program for assisting applicants, creating and maintaining a computerized database to be shared with other departments, reviewing applications, and conducting a study and evaluation of the program. The AG was not able to provide an estimate of costs at the time of this analysis. Total costs for personnel, information technology (IT) programming, and program materials would potentially be approximately \$500,000. All costs related to IT would largely be one-time costs to establish the database, with nominal ongoing maintenance costs. The median cost for an IT project for the state government is approximately \$300,000. Each additional staff member, if needed, would cost approximately \$100,000 annually.

DTMB would incur marginal costs related to serving as the agent for receiving and processing mail for program participants. DTMB would be responsible for forwarding all first-class, registered, and certified mail to participants' confidential addresses. These costs would include renting a post office box, postage, and material for forwarding mail. DTMB was not able to

provide an estimate of costs at the time of this analysis, but they would not likely exceed \$50,000.

The development of the program must commence within one year of money being appropriated to the Confidential Address Fund. No appropriation has been proposed at the time of this analysis.

Senate Bills 71, 73, 74, and 75 would result in marginal cost increases to the Department of State related to updating the Qualified Voter File and issuing corrected driver's licenses and personal identification cards or enhanced versions of these cards. These additional costs would likely be able to be supported by current ongoing appropriations to the Department of State.

Senate Bill 72 would have an indeterminate cost increase for the state and an indeterminate cost increase for districts, intermediate school districts (ISDs), public school academies, educational management organizations, and authorizing bodies.

The Department of Education (MDE) and Center for Educational Performance and Information (CEPI) would incur an indeterminate cost increase for the purposes of compliance with this bill to not disclose confidential addresses of pupils that have obtained a participation card issued by the AG, which would, at a minimum, entail the tracking of these students in their data systems.

Districts, ISDs, PSAs, educational management organizations, or authorizing bodies would also incur an indeterminate cost increase for the purposes of compliance with this bill to not disclose confidential addresses of pupils that have obtained a participation card issued by the AG, which would, at a minimum, entail the tracking of these students in their data systems.

Senate Bill 76 would not have a fiscal impact on the state or on local units of government.

House Bills 5054 and 5055 would not have significant fiscal impacts on the Department of State Police (MSP) or other law enforcement agencies.

House Bills 5056, 5057, and 5058 would not create a significant increase in costs for the state or local units of government.

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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.