

Legislative Analysis



ADDRESS CONFIDENTIALITY PROGRAM ACT

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

Senate Bill 70 (H-2) as reported
Senate Bill 72 as reported
Sponsor: Sen. Ruth Johnson

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

Senate Bill 71 (S-1) as reported
Sponsor: Sen. Tom Barrett

Senate Bill 73 (H-1) as reported
Sponsor: Sen. Stephanie Chang

Senate Bill 75 (H-1) as reported
Sponsor: Sen. Lana Theis

Senate Bill 74 (H-1) as reported
Sponsor: Sen. Erika Geiss

Senate Bill 76 as reported
Sponsor: Sen. Kimberly LaSata

House Committee: Judiciary
Senate Committee: Judiciary and Public Safety
Revised 7-23-20

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 six 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

In addition, several bills that are part of the Address Confidentiality Program were previously passed by the House of Representatives and are pending Senate action. Those bills would amend the following acts to implement the proposed program:

- 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

Senate Bill 70 would create the Address Confidentiality Program in the Department of the Attorney General (AG). An individual could 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 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 being threatened or physically harmed 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 purposes of receiving mail and service of process.
- The mailing address, phone 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 the 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 new act.

The certification of a minor as a participant would not prohibit a parent or guardian 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.
- 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 and vote as a program participant.
- Provide the program participant with information on receiving a corrected driver license or state personal ID card.
- Provide the program participant with information on how to protect a confidential address, including 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 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 was 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 and filing the certification before turning 19.

Participation card

The AG would have to create a program participation card containing 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 a **governmental entity** to use the designated address as the participant's address, and the governmental entity would have to comply. (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.

DTMB responsibilities

On each day DTMB was open for business, it would have to forward to a program participant all of that participant's first-class, registered, or certified mail that it received. DTMB could contract with the U.S. Postal Service for special rates for this mail forwarding. Service by mail of court papers, other than service of process, would be complete three days after DTMB forwarded the mail to the participant. If DTMB received service of process on behalf of a participant, it would have to immediately forward the process by certified mail, return receipt requested, and disclose the mailing date to the person attempting to serve the participant. In response to a query from a person intending to serve process on an individual, the AG or DTMB could only confirm whether the individual was or was not a program participant.

Cancellation of certification

The AG could cancel a participant's certification if the participant was not reachable for 60 or more days at the mailing address, phone number, or email address the participant provided. 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, phone number, and email address from the AG if it needed that information for a legitimate governmental purpose. A request could be submitted only 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 required for a legitimate governmental purpose. (Except as provided in the act, 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 investigation, the AG would have to promptly provide the participant with notice of the request.

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; certify a person who completed the program; and provide the names and contact information of those individuals on its website. An application assistant or victim advocate complying with the act would not be considered to be practicing law without a license.

Database

The AG would have to create and maintain a computerized database containing the name, unique identification number, confidential address, mailing address, phone number, and email address of each program participant. The database would also have to include, if applicable, the type of victimization the participant identified as the reason for participation. The AG, DTMB, and SOS could have access to the database as required to implement the 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 access the database only 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 promptly forward the notice to the program participant.

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. The AG would have to develop and implement the program within two years after an appropriation was made to the fund for the program.

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.
- A representative of a local unit of government.

The AG would have to call the first meeting of the advisory council within four years after the act took effect. The council could not deliberate on or render a decision on public policy. A council 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 evaluate the program and study its operations 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 FOIA disclosure.

Violations and penalties

A person would be prohibited from knowingly making a false statement in an application to the program. A person authorized to access or provided with a confidential address, phone number, or email address of a participant could not knowingly disclose that information unless the participant consented to disclosure of that information for that purpose or 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.

Rule promulgation

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

Senate Bills 71 to 76 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 provisions of law such 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. Senate Bills 71 to 76 would each take effect 180 days after being enacted.

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

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 parent or guardian to opt a student out of address disclosure.

Currently under the code, statewide agencies and schools are strictly limited in disclosing student information; if they do so, they must inform the student and his or her parent or guardian. 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, or 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

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

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>

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.

MCL 380.1136

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

- Require a program participant who is applying for a license or state personal ID card to present his or her participation card to SOS.
- Beginning March 16, 2021, require SOS to issue a corrected license or ID card to an individual upon notice from the AG that the individual is a program participant. The corrected license or card would have to display the participant's 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.

SB 73: MCL 750.40b et seq.

SB 75: MCL 28.291 et seq.

Senate Bill 74 would amend the Enhanced Driver License and Enhanced Official State Personal Identification Card Act to require, beginning in 2021, that SOS issue a corrected enhanced driver license or enhanced state personal ID card to an individual upon notice from the AG that the individual is a program participant. The corrected enhanced license or card would have to display the participant's 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 driver license or state personal ID card.

MCL 28.304

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 present the court with his or her participation card as proof of participation in the program.

MCL 600.916 and 600.1307a

Tie-Bars: Senate Bill 70 is tie-barred to SBs 73, 74, and 75. Senate Bills 71 to 76 are tie-barred to SB 70. A bill cannot become law unless each bill to which it is tie-barred is also enacted.

BRIEF DISCUSSION:

By some estimates, one in four women and one in nine men have experienced intimate partner violence, and four of five Indigenous women have experienced violence. All too often, the violence doesn't end when the relationship does. Putting distance between a former partner or perpetrator of violence does not necessarily guarantee that a victim will not be found, as often a new address can be easily located via the internet by a persistent stalker. The bill package, along with House Bills 5054 to 5058 (which have been passed by the House), seeks to provide a greater level of protection to women and men who have been victims of domestic violence, human trafficking, stalking, or sexual assault.

In an attempt to reduce the risk to victims of violence, at least 37 states have adopted programs that keep the actual address of program participants hidden. When a physical address must be provided, whether for a magazine subscription or a driver's license or when enrolling a child in school, program participants could use a designated address provided by the state agency administering the program. Under the bills, the attorney general would oversee the program. There is no guarantee that participation in the program will keep a victim safe from a persistent stalker, but address confidentiality programs do provide an additional layer of protection and enable victims to resume normal activities of life, such as registering to vote or buying a house, without fearing that public records could betray their whereabouts to those seeking to do them harm.

A concern was raised regarding the cost of implementing the program during a time when governmental budgets are strained due to the COVID-19 pandemic. At a time when available state resources must be diverted to support the most crucial functions, perhaps program participants could share in the cost of implementation based on ability to pay. Even a modest fee for those who could afford it could help offset costs such as employing people to repackage participants' mail and postage or delivery charges associated with remailing letters, magazines, and packages. On the other hand, states currently operating similar programs have reported low costs. By some estimates, the number of program participants in Michigan are likely to be in the hundreds, rather than thousands or tens of thousands. Though the state will be facing economic challenges for a few years, the cost to maintain the program should be minimal. Moreover, some see protecting members of the public from harm, as the program would do, as a function of government.

FISCAL IMPACT:

Senate Bill 70 would have an indeterminate fiscal impact on the state and on local units of government. The number of convictions that would result under provisions of the bill is not known. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. Costs of local incarceration in county jails and local misdemeanor probation supervision, and how those costs are financed, vary by jurisdiction. The fiscal impact on local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. Increased costs could be offset, to some degree, depending on the amount of additional court-imposed fee revenue generated. Any increase in penal fine revenue would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

The bill would also 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 annual costs for personnel, information technology (IT) programming, and program materials would be approximately \$350,000. 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. It is not yet known what costs would be necessary to establish the necessary technology capabilities required by the bill. 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. Costs would not likely exceed \$50,000 and would be able to be accommodated within DTMB's ongoing appropriations.

The development of the program must commence within two years 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.

POSITIONS:

Representatives of the following entities testified in support of the bills (11-5-19):

- Michigan Coalition to End Domestic and Sexual Violence
- Michigan State Council of Junior Leagues State Public Affairs Committee

The following entities indicated support for the bills:

- Michigan Domestic and Sexual Violence Prevention and Treatment Board (5-19-20)
- Michigan Poverty Law Program Family Law Task Force (5-19-20)
- Prosecuting Attorneys Association of Michigan (1-14-20)
- Junior League of Birmingham, Michigan (1-14-20)
- Safe and Just Michigan (11-5-19)
- American Association of University Women (11-5-19)
- Family Law Section of the State Bar of Michigan (11-5-19)

The Michigan Association of School Boards indicated support for Senate Bill 72. (5-19-20)

The State Bar of Michigan indicated opposition to Senate Bill 76. (11-5-19)

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