

SUBJECT: Obstruction or retaliation offense for posting public servants' information

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 5 ayes — Moody, Hunter, Leach, Shaheen, Simpson

2 nays — Herrero, Canales

SENATE VOTE: On final passage, May 6 — 31-0

WITNESSES: (*On House companion bill, HB 1758*)

For — (*Registered, but did not testify*: Jessica Anderson, Houston Police Department; Lon Craft, Texas Municipal Police Association; Frank Dixon, Austin Police Department; Bobby Gutierrez and Carlos Lopez, Justice of the Peace and Constables Association of Texas; Shanna Igo, Texas Municipal League; Chris Jones, Combined Law Enforcement Associations of Texas; Charles Reed, Dallas County Commissioners Court; James Smith, San Antonio Police Officers Association; Eddie Solis, City of Arlington; Raymond Smith)

Against — (*Registered, but did not testify*: Kristin Etter, Texas Criminal Defense Lawyers Association)

BACKGROUND: Penal Code, sec. 36.06 establishes the crime of obstruction or retaliation. The offense includes intentionally or knowingly harming or threatening to harm another by an unlawful act that is in retaliation for or on account of the service of another as a public servant. Offenses are third-degree felonies (two to 10 years in prison and an optional fine of up to \$10,000).

DIGEST: SB 923 would amend the offense of obstruction or retaliation to make it an offense for a person to post on a publicly accessible website the residence address or telephone number of an individual the actor knew was a public servant or member of a public servant's family or household. This action would need to be taken with the intent to cause harm or threat of harm to the individual or a member of the individual's family or household and in retaliation for or on account of the service or status of

the individual as a public servant.

It would be prima facie evidence of the intent to cause harm or a threat of harm under the bill if the person posting the information received a written demand from the individual to not disclose the address or telephone number for reasons of safety and either:

- failed to remove the address or telephone number from the publicly accessible website within 48 hours of receiving the demand; or
- reposted the address or telephone number on the same or a different publicly accessible website, or made the information publicly available through another medium, within four years of receiving the demand, regardless of whether the individual was no longer a public servant.

The offense would be a third-degree felony except that it would be a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000) if the conduct resulted in the bodily injury of a public servant or a member of a public servant's family or household.

The bill would take effect September 1, 2015, and would apply only to offenses committed on or after that date.

**SUPPORTERS
SAY:**

SB 923 would update the law on obstruction or retaliation to reflect an emerging threat to public servants called "doxing." This practice can involve using the Internet to research and publish online personal information, such as phone numbers, addresses, Social Security numbers, passwords, and financial information. Some are using this practice to try to harm public officials and their families. Although current law could cover some forms of retaliation based on someone being a public servant, it may not specifically cover the type of doxing in SB 923 and may not apply to some of these cases.

SB 923 would address this problem by giving law enforcement authorities another tool to combat those who would retaliate against public servants. The bill would be narrowly tailored to ensure that only those who

intended to cause harm or whose conduct resulted in bodily injury would be subject to the offense. The bill would require intent to cause harm or threat of harm and in retaliation for someone being a public servant.

The penalties in SB 923 would be in line with current penalties for obstruction and retaliation and would be appropriate for this kind of behavior that causes harm or a threat of harm or that results in bodily injury.

**OPPONENTS
SAY:**

SB 923 would be too broad of an expansion of the current offense of obstruction or retaliation. It would capture actions that should not be punished as harshly as a third-degree felony. It would be better to approach the issue of doxing by focusing on other crimes if they are committed. For example, the crimes of making a terrorist threat or harassment or the current offense of retaliation could cover actions relating to doxing in some cases.