

ASSEMBLY BILL

No. 849

Introduced by Assembly Member Garcia

February 21, 2013

An act to amend Sections 6205, 6205.5, 6206, and 6208.5 of the Government Code, relating to public records.

LEGISLATIVE COUNSEL'S DIGEST

AB 849, as introduced, Garcia. Protection of victims: address confidentiality.

Existing law authorizes victims of domestic violence, sexual assault, or stalking to complete an application in person at a community-based victims' assistance program to be approved by the Secretary of State for the purpose of enabling state and local agencies to respond to requests for public records without disclosing a program participant's residence address contained in any public record and otherwise provide for confidentiality of identity for that person, subject to specified conditions. Any person who makes a false statement in an application is guilty of a misdemeanor.

This bill would include victims of abuse of an elder or dependent adult, as defined, within these provisions. By including a new category of eligible persons, this bill would impose new duties on local public officials and expand the scope of an existing crime, thereby creating a state-mandated local program.

Existing constitutional provisions require that a statute that limits the right of access to public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6205 of the Government Code is amended
2 to read:

3 6205. The Legislature finds that persons attempting to escape
4 from actual or threatened domestic violence, sexual assault, or
5 stalking frequently establish new names or addresses in order to
6 prevent their assailants or probable assailants from finding them.
7 The purpose of this chapter is to enable state and local agencies
8 to respond to requests for public records without disclosing the
9 changed name or location of a victim of domestic violence, sexual
10 assault, ~~or~~ stalking, *or abuse of an elder of dependent adult*, to
11 enable interagency cooperation with the Secretary of State in
12 providing name and address confidentiality for victims of domestic
13 violence, sexual assault, or stalking, and to enable state and local
14 agencies to accept a program participant's use of an address
15 designated by the Secretary of State as a substitute mailing address.

16 SEC. 2. Section 6205.5 of the Government Code is amended
17 to read:

18 6205.5. Unless the context clearly requires otherwise, the
19 definitions in this section apply throughout this chapter.

20 (a) "Abuse of an elder or dependent adult" means an act as
21 defined in Section 15610.07 of the Welfare and Institutions Code.

22 (a)

23 (b) "Address" means a residential street address, school address,
24 or work address of an individual, as specified on the individual's
25 application to be a program participant under this chapter.

26 (b)

1 (c) “Domestic violence” means an act as defined in Section
2 6211 of the Family Code.

3 (e)

4 (d) “Domicile” means a place of habitation as defined in Section
5 349 of the Elections Code.

6 (f)

7 (e) “Program participant” means a person certified as a program
8 participant under Section 6206.

9 (e)

10 (f) “Sexual assault” means an act or attempt made punishable
11 by Section 220, 261, 261.5, 262, 264.1, 266c, 269, 285, 286, 288,
12 288.5, 288a, 289, or 647.6 of the Penal Code.

13 (f)

14 (g) “Stalking” means an act as defined in Section 646.9 of the
15 Penal Code.

16 SEC. 3. Section 6206 of the Government Code is amended to
17 read:

18 6206. (a) An adult person, a parent or guardian acting on behalf
19 of a minor, or a guardian acting on behalf of an incapacitated
20 person, who is domiciled in California, may apply to the Secretary
21 of State to have an address designated by the Secretary of State
22 serve as the person’s address or the address of the minor or
23 incapacitated person. An application shall be completed in person
24 at a community-based victims’ assistance program. The application
25 process shall include a requirement that the applicant shall meet
26 with a victims’ assistance counselor and receive orientation
27 information about the program. The Secretary of State shall
28 approve an application if it is filed in the manner and on the form
29 prescribed by the Secretary of State and if it contains all of the
30 following:

31 (1) A sworn statement by the applicant that the applicant has
32 good reason to believe both of the following:

33 (A) That the applicant, or the minor or incapacitated person on
34 whose behalf the application is made, is a victim of domestic
35 violence, sexual assault, ~~or~~ stalking, *or abuse of an elder or*
36 *dependent adult.*

37 (B) That the applicant fears for his or her safety or his or her
38 children’s safety, or the safety of the minor or incapacitated person
39 on whose behalf the application is made.

1 (2) If the applicant alleges that the basis for the application is
2 that the applicant, or the minor or incapacitated person on whose
3 behalf the application is made, is a victim of domestic violence or
4 sexual assault, the application may be accompanied by evidence
5 including, but not limited to, any of the following:

6 (A) Police, court, or other government agency records or files.

7 (B) Documentation from a domestic violence or sexual assault
8 program if the person is alleged to be a victim of domestic violence
9 or sexual assault.

10 (C) Documentation from a legal, clerical, medical, or other
11 professional from whom the applicant or person on whose behalf
12 the application is made has sought assistance in dealing with the
13 alleged domestic violence or sexual assault.

14 (D) Any other evidence that supports the sworn statement, such
15 as a statement from any other individual with knowledge of the
16 circumstances that provides the basis for the claim, or physical
17 evidence of the act or acts of domestic violence or sexual assault.

18 (3) If the applicant alleges that the basis for the application is
19 that the applicant, or the minor or incapacitated person on whose
20 behalf the application is made, is a victim of stalking *or abuse of*
21 *an elder or dependent adult*, the application may be accompanied
22 by evidence including, but not limited to, any of the following:

23 (A) Police, court, or other government agency records or files.

24 (B) ~~Legal~~ Documentation from a legal, clerical, medical, or
25 other professional from whom the applicant or person on whose
26 behalf the application is made has sought assistance in dealing
27 with the alleged stalking *or abuse of an elder or dependent adult*.

28 (C) Any other evidence that supports the sworn statement, such
29 as a sworn statement from any other individual with knowledge
30 of the circumstances that provide the basis for the claim, or physical
31 evidence of the act or acts of stalking *or abuse of an elder or*
32 *dependent adult*.

33 (4) The name and last known address of the applicant's minor
34 child or children, the name and last known address of the other
35 parent or parents of the minor child or children of the applicant,
36 and all court orders related to the minor child or children of the
37 applicant, and legal counsel of record in those cases.

38 (5) A designation of the Secretary of State as agent for purposes
39 of service of process and for the purpose of receipt of mail.

1 (A) Service on the Secretary of State of any summons, writ,
2 notice, demand, or process shall be made by delivering to the
3 address confidentiality program personnel of the office of the
4 Secretary of State two copies of the summons, writ, notice, demand,
5 or process.

6 (B) If a summons, writ, notice, demand, or process is served on
7 the Secretary of State, the Secretary of State shall immediately
8 cause a copy to be forwarded to the program participant at the
9 address shown on the records of the address confidentiality
10 program so that the summons, writ, notice, demand, or process is
11 received by the program participant within three days of the
12 Secretary of State's having received it.

13 (C) The Secretary of State shall keep a record of all summonses,
14 writs, notices, demands, and processes served upon the Secretary
15 of State under this section and shall record the time of that service
16 and the Secretary of State's action.

17 (D) The office of the Secretary of State and any agent or person
18 employed by the Secretary of State shall be held harmless from
19 any liability in any action brought by any person injured or harmed
20 as a result of the handling of first-class mail on behalf of program
21 participants.

22 (6) The mailing address where the applicant can be contacted
23 by the Secretary of State, and the phone number or numbers where
24 the applicant can be called by the Secretary of State.

25 (7) The address or addresses that the applicant requests not be
26 disclosed for the reason that disclosure will increase the risk of
27 domestic violence, sexual assault, ~~or~~ stalking, *or abuse of an elder*
28 *or dependent adult*.

29 (8) The signature of the applicant and of any individual or
30 representative of any office designated in writing under Section
31 6208.5 who assisted in the preparation of the application, and the
32 date on which the applicant signed the application.

33 (b) Applications shall be filed with the office of the Secretary
34 of State.

35 (c) Upon filing a properly completed application, the Secretary
36 of State shall certify the applicant as a program participant.
37 Applicants shall be certified for four years following the date of
38 filing unless the certification is withdrawn or invalidated before
39 that date. The Secretary of State shall by rule establish a renewal
40 procedure. A minor program participant, who reaches 18 years of

1 age during his or her enrollment, may renew as an adult following
2 the renewal procedures established by the Secretary of State.

3 (d) Upon certification, the Secretary of State shall, within 10
4 days, notify the other parent or parents identified pursuant to
5 paragraph (4) of subdivision (a) of the designation of the Secretary
6 of State as agent for purposes of service of process and, unless
7 there is a court order prohibiting contact, the address designated
8 by the Secretary of State for the program participant. The notice
9 shall be given by mail, return receipt requested, postage prepaid,
10 to the last known address of the other parent to be notified. A copy
11 shall also be sent to that parent's counsel of record, if provided to
12 the Secretary of State by the applicant.

13 (e) A person who falsely attests in an application that disclosure
14 of the applicant's address would endanger the applicant's safety
15 or the safety of the applicant's children or the minor or
16 incapacitated person on whose behalf the application is made, or
17 who knowingly provides false or incorrect information upon
18 making an application, is guilty of a misdemeanor. A notice shall
19 be printed in bold type and in a conspicuous location on the face
20 of the application informing the applicant of the penalties under
21 this subdivision.

22 SEC. 4. Section 6208.5 of the Government Code is amended
23 to read:

24 6208.5. The Secretary of State shall designate state and local
25 agencies and nonprofit agencies that provide counseling and shelter
26 services to victims of domestic violence ~~or~~, *stalking, or abuse of*
27 *an elder or dependent adult* to assist persons applying to be
28 program participants. Any assistance and counseling rendered by
29 the office of the Secretary of State or its designees to applicants
30 shall in no way be construed as legal advice.

31 SEC. 5. The Legislature finds and declares that this act imposes
32 a limitation on the public's right of access to the meetings of public
33 bodies or the writings of public officials and agencies within the
34 meaning of Section 3 of Article I of the California Constitution.
35 Pursuant to that constitutional provision, the Legislature makes
36 the following finding to demonstrate the interest protected by this
37 limitation and the need for protecting the interest:

38 In order to protect the victims of crimes, it is necessary that this
39 act take effect.

1 SEC. 6. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution for certain
3 costs that may be incurred by a local agency or school district
4 because, in that regard, this act creates a new crime or infraction,
5 eliminates a crime or infraction, or changes the penalty for a crime
6 or infraction, within the meaning of Section 17556 of the
7 Government Code, or changes the definition of a crime within the
8 meaning of Section 6 of Article XIII B of the California
9 Constitution.

10 However, if the Commission on State Mandates determines that
11 this act contains other costs mandated by the state, reimbursement
12 to local agencies and school districts for those costs shall be made
13 pursuant to Part 7 (commencing with Section 17500) of Division
14 4 of Title 2 of the Government Code.