

AMENDED IN ASSEMBLY MAY 24, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 849**

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**Introduced by Assembly Member Garcia**

February 21, 2013

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

LEGISLATIVE COUNSEL'S DIGEST

AB 849, as amended, 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.~~

~~*This bill would authorize the application to be completed at a community-based assistance program that serves victims of elder or dependent adult abuse, as specified. This bill would also require the Secretary of State to conduct outreach activities to identify and recruit state and local agencies and nonprofit agencies that provide counseling and shelter services to victims, as specified.*~~

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

*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, stalking, or abuse of an elder or dependent adult, to enable~~  
11    ~~interagency cooperation with the Secretary of State in providing~~  
12    ~~name and address confidentiality for victims of domestic violence,~~  
13    ~~sexual assault, or stalking, and to enable state and local agencies~~  
14    ~~to accept a program participant's use of an address designated by~~  
15    ~~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.~~

1 ~~(a) “Abuse of an elder or dependent adult” means an act as~~  
2 ~~defined in Section 15610.07 of the Welfare and Institutions Code.~~

3 ~~(b) “Address” means a residential street address, school address,~~  
4 ~~or work address of an individual, as specified on the individual’s~~  
5 ~~application to be a program participant under this chapter.~~

6 ~~(c) “Domestic violence” means an act as defined in Section~~  
7 ~~6211 of the Family Code.~~

8 ~~(d) “Domicile” means a place of habitation as defined in Section~~  
9 ~~349 of the Elections Code.~~

10 ~~(e) “Program participant” means a person certified as a program~~  
11 ~~participant under Section 6206.~~

12 ~~(f) “Sexual assault” means an act or attempt made punishable~~  
13 ~~by Section 220, 261, 261.5, 262, 264.1, 266e, 269, 285, 286, 288,~~  
14 ~~288.5, 288a, 289, or 647.6 of the Penal Code.~~

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

17 ~~SEC. 3.~~

18 *SECTION 1.* Section 6206 of the Government Code is amended  
19 to read:

20 6206. (a) An adult person, a parent or guardian acting on behalf  
21 of a minor, or a guardian acting on behalf of an incapacitated  
22 person, who is domiciled in California, may apply to the Secretary  
23 of State to have an address designated by the Secretary of State  
24 serve as the person’s address or the address of the minor or  
25 incapacitated person. An application shall be completed in person  
26 at a community-based victims’ assistance program *or a*  
27 *community-based assistance program that serves victims of elder*  
28 *or dependent adult abuse pursuant to the Elder Abuse and*  
29 *Dependent Adult Civil Protection Act (Chapter 11 (commencing*  
30 *with Section 15600) of Part 3 of Division 9 of the Welfare and*  
31 *Institutions Code). The application process shall include a*  
32 *requirement that the applicant shall meet with a victims’ assistance*  
33 *counselor and receive orientation information about the program.*  
34 The Secretary of State shall approve an application if it is filed in  
35 the manner and on the form prescribed by the Secretary of State  
36 and if it contains all of the following:

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

39 (A) That the applicant, or the minor or incapacitated person on  
40 whose behalf the application is made, is a victim of domestic

1 violence, sexual assault, ~~stalking, or abuse of an elder or dependent~~  
2 ~~adult or stalking.~~

3 (B) That the applicant fears for his or her safety or his or her  
4 children's safety, or the safety of the minor or incapacitated person  
5 on whose behalf the application is made.

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

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

12 (B) Documentation from a domestic violence or sexual assault  
13 program if the person is alleged to be a victim of domestic violence  
14 or sexual assault.

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

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

23 (3) If the applicant alleges that the basis for the application is  
24 that the applicant, or the minor or incapacitated person on whose  
25 behalf the application is made, is a victim of ~~stalking or abuse of~~  
26 ~~an elder or dependent adult~~, the application may be accompanied  
27 by evidence including, but not limited to, any of the following:

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

29 (B) Documentation from a legal, clerical, medical, or other  
30 professional from whom the applicant or person on whose behalf  
31 the application is made has sought assistance in dealing with the  
32 alleged ~~stalking or abuse of an elder or dependent adult.~~

33 (C) Any other evidence that supports the sworn statement, such  
34 as a sworn statement from any other individual with knowledge  
35 of the circumstances that provide the basis for the claim, or physical  
36 evidence of the act or acts of ~~stalking or abuse of an elder or~~  
37 ~~dependent adult.~~

38 (4) The name and last known address of the applicant's minor  
39 child or children, the name and last known address of the other  
40 parent or parents of the minor child or children of the applicant,

1 and all court orders related to the minor child or children of the  
2 applicant, and legal counsel of record in those cases.

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

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

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

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

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

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

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

33 (8) The signature of the applicant and of any individual or  
34 representative of any office designated in writing under Section  
35 6208.5 who assisted in the preparation of the application, and the  
36 date on which the applicant signed the application.

37 (b) Applications shall be filed with the office of the Secretary  
38 of State.

39 (c) Upon filing a properly completed application, the Secretary  
40 of State shall certify the applicant as a program participant.

1 Applicants shall be certified for four years following the date of  
 2 filing unless the certification is withdrawn or invalidated before  
 3 that date. The Secretary of State shall by rule establish a renewal  
 4 procedure. A minor program participant, who reaches 18 years of  
 5 age during his or her enrollment, may renew as an adult following  
 6 the renewal procedures established by the Secretary of State.

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

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

26 ~~SEC. 4.~~

27 *SEC. 2.* Section 6208.5 of the Government Code is amended  
 28 to read:

29 6208.5. The Secretary of State shall designate state and local  
 30 agencies and nonprofit agencies that provide counseling and shelter  
 31 services to victims of domestic violence, *sexual assault, or stalking,*  
 32 ~~or abuse of an elder or dependent adult as well as agencies that~~  
 33 *serve victims of elder or dependent adult abuse pursuant to the*  
 34 *Elder Abuse and Dependent Adult Civil Protection Act (Chapter*  
 35 *11 (commencing with Section 15600) of Part 3 of Division 9 of the*  
 36 *Welfare and Institutions Code) to assist persons victims of domestic*  
 37 *violence, sexual assault, or stalking applying to be program*  
 38 *participants. The Secretary of State shall conduct outreach*  
 39 *activities to identify and recruit the agencies. Any assistance and*

1 counseling rendered by the office of the Secretary of State or its  
2 designees to applicants shall in no way be construed as legal advice.

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

10 ~~In order to protect the victims of crimes, it is necessary that this~~  
11 ~~act take effect.~~

12 ~~SEC. 6. No reimbursement is required by this act pursuant to~~  
13 ~~Section 6 of Article XIII B of the California Constitution for certain~~  
14 ~~costs that may be incurred by a local agency or school district~~  
15 ~~because, in that regard, this act creates a new crime or infraction,~~  
16 ~~eliminates a crime or infraction, or changes the penalty for a crime~~  
17 ~~or infraction, within the meaning of Section 17556 of the~~  
18 ~~Government Code, or changes the definition of a crime within the~~  
19 ~~meaning of Section 6 of Article XIII B of the California~~  
20 ~~Constitution.~~

21 ~~However, if the Commission on State Mandates determines that~~  
22 ~~this act contains other costs mandated by the state, reimbursement~~  
23 ~~to local agencies and school districts for those costs shall be made~~  
24 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~  
25 ~~4 of Title 2 of the Government Code.~~