

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 1726 (Aguiar-Curry)
Version: May 16, 2022
Hearing Date: May 31, 2022
Fiscal: Yes
Urgency: No
CK

SUBJECT

Address confidentiality program

DIGEST

This bill provides additional protections and eases requirements applicable to participants in the Secretary of State's Safe at Home address confidentiality program.

EXECUTIVE SUMMARY

Safe at Home is a confidential address program administered by the Secretary of State (SOS) that enables victims of domestic violence, stalking, sexual assault, human trafficking, and elder and dependent adult abuse to obtain a substitute mailing address to receive mail. Government agencies in California must accept this address in lieu of a residential or other address. The program, established in 1999, has protected thousands of victims.

The author and sponsor have identified a number of challenges facing participants in the Safe at Home program. The goal of the bill is to address those challenges and make the program more accessible and successful for participants. This includes extending various deadlines in civil cases, easing provisions that might jeopardize participation in the program, and clarifying the information necessary for applicants.

The bill also bolsters existing protections within the program and creates a rebuttable presumption that prevents unnecessary disclosure of participants' addresses and locations.

This bill is sponsored by the California Partnership to End Domestic Violence. It is supported by the Sunita Jain Anti-Trafficking Initiative at Loyola Law School. There is no known opposition.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the Safe at Home program in order to enable: (1) state and local agencies to respond to requests for public records without disclosing the changed name or location of a victim of the conduct described above; (2) interagency cooperation with the SOS in providing name and address confidentiality for such victims; and (3) state and local agencies to accept a program participant's use of an address designated by the SOS as a substitute mailing address. (Gov. Code § 6205.)
- 2) Authorizes an adult person, or a guardian on behalf of a minor or an incapacitated person, to apply to participate in the Safe at Home program by stating that they are a victim of the conduct described above, designating the SOS as the agent for service of process and receipt of mail, and providing the SOS with any address they wish to be kept confidential. (Gov. Code § 6206.)
- 3) Provides that a person who falsifies information on an application, as specified, is guilty of a misdemeanor, and requires that a bold-type conspicuous notice of this penalty be printed on the face of the application. (Gov. Code § 6206.)
- 4) Requires the SOS to provide each program participant a notice in clear and conspicuous font that contains information relating to: (1) using the confidential address in real property deeds and transactions, (2) changing one's name, and (3) entities that provide legal services. (Gov. Code § 6209.5.)
- 5) Provides that all moving and supporting papers shall be served and filed at least 16 court days before a hearing and that the moving and supporting papers served shall be a copy of the papers filed or to be filed with the court, except as provided. (Code Civ. Proc. § 1005(b).)
- 6) Provides that in the case of service by mail, service is complete when a notice or other paper is deposited in a post office box or other office or receptacle maintained by the U.S. Postal Service, in a sealed envelope with postage paid and properly addressed, but that the time period for timely service shall be extended for specified periods as provided. (Code Civ. Proc. § 1013.)
- 7) Requires that a defendant's response in a summary proceeding to obtain real property shall be filed within five days, excluding Saturdays and Sundays and other judicial holidays, after the complaint is served upon the defendant. (Code Civ. Proc. § 1167(a).)

- 8) Authorizes the SOS to terminate a Safe at Home participant's certification and invalidate their authorization card for several reasons, including failure to update their residential address within seven days and when a service of process document or mail forwarded to the program participant by the SOS is returned as nondeliverable. (Gov. Code § 6206.)
- 9) Authorizes the SOS to refuse to renew a program participant's certification if the person has abandoned their domicile in this state. (Gov. Code § 6206.7.)
- 10) Prohibits the disclosure of a participant's home address with the intent to threaten the participant or to incite harm against the participant, as provided. (Gov. Code § 6208.1.)
- 11) States that participation in the Safe at Home program does not constitute evidence of domestic violence, stalking, sexual assault, human trafficking, or elder or dependent adult abuse for purposes of making custody or visitation orders. (Gov. Code § 6209.7.)

This bill:

- 1) Extends the time period within which various moving and supporting papers must be served and filed and the time within which specified responses must be made where the relevant place of address is the SOS address confidentiality program, Safe at Home.
- 2) Revises Safe at Home application requirements regarding an applicant's minor child's additional parent. The bill allows for this section to be left blank where no other parent has been established for the minor child.
- 3) Requires an applicant to provide an email address where they can be contacted, if available.
- 4) Provides that certification in the Safe at Home program cannot be used as evidence that minor children in the participant's care are at risk.
- 5) Extends from seven days to 30 days the time period in which a Safe at Home program participant must update their residential address or legal name change, after which the SOS may terminate a program participant's certification.
- 6) Requires the SOS to first attempt to contact the participant by telephone and email to resolve a mail delivery issue before terminating a Safe at Home participant's certification due to nondeliverable mail.

- 7) Modifies the ability of the SOS to terminate a Safe at Home participant from the program on the grounds of having abandoned their domicile in this state in the following ways:
 - a. if the program participant or parent or guardian acting on behalf of a minor or incapacitated person relocates to a state *with* an address confidentiality program, they shall not be terminated until they have resided outside of this state for over 60 consecutive days; and
 - b. if the relocation is to a state *without* an address confidentiality program, the participant shall remain enrolled in the program and have their mail forwarded to them for the remainder of their certification term.
- 8) Clarifies that intentional, public disclosure of a participant's home address, telephone number, or image is prohibited on the internet or any other public space with the intent to incite harm to the participant or to threaten the participant. The bill makes clear that disclosure alone may be considered a threat, depending on the totality of the circumstances.
- 9) Provides that the fact that a participant is registered with the program creates a rebuttable presumption that disclosure of information about the participant's location and activities during the period of the registration, including, but not limited to, the participant's current and past residential, work, or school addresses, and other location information would lead to the discovery of the participant's actual residential address or physical location; would endanger the safety of the participant; and is not authorized. This presumption affects the burden of producing evidence and may be rebutted by clear and convincing evidence of the contrary.
- 10) Provides that the presumption governs discovery requests under the Civil Discovery Act. A participant shall not be required to provide their residential address or other location information reasonably likely to lead to the discovery of these addresses unless ordered to do so by a court after the other party has rebutted the presumption.
- 11) Specifies that the presumption may not be rebutted merely by the other parent's desire to know the participant's address and requires the court to weigh participant safety. If the court finds the presumption is rebutted, it must provide its reasons on the record.

COMMENTS

1. Safe at Home

In 1998, SB 489 (Alpert, Ch. 1005, Stats. 1998) established the "Address Confidentiality for Victims of Domestic Violence" program, which is now referred to as the "Safe at

Home” program. This was based on the Legislature’s finding that persons attempting to escape from actual or threatened domestic violence, sexual assault, stalking, human trafficking, or elder or dependent adult abuse frequently establish new names or addresses in order to prevent their assailants or probable assailants from finding them.

The Safe at Home program is available to victims of domestic violence, sexual assault, stalking, human trafficking, or elder or dependent adult abuse, and provides these individuals with a substitute mailing address in order to protect the confidentiality of the participant’s home, work, or school address.

The substitute mailing address is an assigned post office box, and the SOS is designated as the participant’s agent for service of process and receipt of mail. Mail is forwarded by the SOS from the post office box to the participant. Thus, the Safe at Home program allows participants to have a publicly available address without disclosing the participant’s actual residence or alternate location. Upon successful application, a program participant is certified to remain in the program for four years, subject to early termination or withdrawal. The participant must re-certify pursuant to the SOS’s renewal process if they wish to continue in the program beyond the four-year enrollment period. For victims not yet of the age of majority, or for incapacitated persons, a parent or guardian may apply to enroll the victim into the program. In 2020, there were nearly 5,000 active participants.¹

2. Purpose of the bill

According to the author:

For 25 years, Safe at Home has provided a critical measure of protection and safety to survivors of domestic violence and stalking, sexual assault, human trafficking, and elder and dependent abuse, as well as reproductive health care workers. Safe at Home offers these survivors, as well as reproductive health care workers, a substitute mailing address to receive first class, certified, and registered mail. This address is also accepted by California state, county, and city government agencies in lieu of a residential or other mailing address where a victim can be tracked down, keeping the residence address confidential and out of the hands of someone who might want to harm the victim.

Safe at Home is provided free of charge to California residents who qualify as participants. Since the program began in 1999, Safe at Home has helped protect thousands of victims and reproductive health care workers. A recent Executive Order extended Safe at Home’s protections to local

¹ 2020 Annual Legislative Report for the Secretary of State’s Safe at Home Program, p. 2, available at <https://admin.cdn.sos.ca.gov/reports/2020/sah-annual-report.pdf> (as of May 16, 2021).

health officers and other public health officials, due to this group being subject to threats and other harassment in connection with their contributions to protecting public health against COVID-19.

AB 1726 seeks to update the program in several ways to improve functionality for its participants:

- Clarify that applicants are only required to provide information about additional parents if there is a 2nd or 3rd legal parent. Currently, the application process requires this information even if there is no additional legal parent.
- Clarify that participation in the program does not indicate children are at risk in the participant's care, an important clarification to protect survivors in custody or dependency case proceedings. Survivors should feel confident enrolling in the program without worrying that it will negatively impact their ability to retain custody.
- Strengthen protections against disclosing a participant's home address and contact information.
- Expand timelines for court documents to be served if the person is a Safe At Home participant. Since court documents must be sent to the Secretary of State's office and then forwarded to the participants, extended timelines are needed to ensure that participants receive their court paperwork with sufficient time to respond.

3. Bolstering the Safe at Home program and protecting its participants

As indicated by the author, the bill seeks to address a series of issues and barriers for participants within the program and associated with other laws that have been identified by advocates and survivors.

Existing law governing civil procedure establishes various timelines for serving and filing notices and motions and supporting or responsive documentation. The relevant statutes already extend these timelines in certain situations based on the location of the sender or recipient. Given the inherently indirect path that mail flows to participants in the Safe at Home program, the bill extends several of these timelines to ensure participants are provided adequate leeway. Writing in support, the Loyola Law School's Sunita Jain Anti-Trafficking Initiative emphasizes this point: "Since court documents must be sent to the Secretary of State's office and then forwarded to the participants', extended timelines are needed to ensure that participants receive their court paperwork with sufficient time to respond."

The bill also streamlines various elements of the program's initial application and maintenance of status within the program. For instance, it addresses an issue for applicants where there is no additional parent to include on the application. It also eases the events that would trigger termination. The bill requires the SOS to attempt to contact the participant by telephone and email to resolve a mail delivery issue before terminating a Safe at Home participant's certification due to nondeliverable mail. It also extends from seven days to 30 days the time period in which a Safe at Home program participant must update their residential address or legal name change, before the SOS may terminate a program participant's certification.

The bill also modifies the authority of the SOS to terminate a Safe at Home participant from the program on the grounds of having abandoned their domicile in California. It establishes a 60-consecutive-day grace period for participants that relocate to a state *with* an address confidentiality program. And, if the relocation is to a state *without* an address confidentiality program, the participant can remain enrolled in the program and have their mail forwarded to them for the remainder of their certification term. These timelines provide participants the opportunity to relocate and either enroll in the new state's address confidentiality program or put in place other safety plans.

The bill also bolsters the protection of participants' location in several ways. First, by clarifying that intentional, public disclosure of a participant's home address, telephone number, or image is prohibited on the internet or any other public space when done with the intent to incite harm to the participant or to threaten the participant. The bill makes clear that disclosure alone may be considered a threat, depending on the totality of the circumstances. This addresses the situation where, for example, an abusive party or other individuals disclose or threaten to disclose the confidential address of the participant in myriad ways, in order to intimidate and threaten the participant.

Secondly, the bill provides that the fact that a participant is registered with the program creates a rebuttable presumption that disclosure of information about the participant's location and activities during the period of the registration: (1) would lead to the discovery of the participant's actual residential address or physical location; (2) would endanger the safety of the participant; and (3) is not authorized. This includes disclosure of the participant's current and past residential, work, or school addresses, and other location information.

The presumption affects the burden of producing evidence and may be rebutted by another party by clear and convincing evidence of the contrary. This presumption governs discovery requests, and a participant shall not be required to provide their residential address or other location information reasonably likely to lead to the discovery of these addresses unless ordered to do so by a court after the other party has rebutted the presumption. The author highlights cases where the opposing party has sought to use the discovery process as a way to gather information which will disclose the participant's actual residential address.

As for rebuttal, the bill specifies that the presumption may not be rebutted merely by another parent's desire to know the participant's address and requires the court to weigh participant safety. If the court finds the presumption is rebutted, it must provide its reasons on the record.

To avoid jeopardizing participants' custody of their children or related apprehension regarding applying for the program, the bill makes clear that certification in the Safe at Home program cannot be used as evidence that minor children in the participant's care are at risk. Writing in support, the California Partnership to End Domestic Violence, the sponsor of the bill, highlights this provision as "an important clarification to protect survivors in custody or dependency case proceedings." It argues: "Survivors should feel confident enrolling in the program without worrying that it will negatively impact their ability to retain custody."

SUPPORT

California Partnership to End Domestic Violence (sponsor)
Sunita Jain Anti-Trafficking Initiative at Loyola Law School

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation:

SB 1131 (Newman, 2022) establishes a Safe at Home program for election workers, as provided. The bill prohibits the names of precinct board members from being listed when posting information, as specified, and requires county elections officials to make certain information appearing on the affidavit of registration confidential upon request of an election worker. The bill also includes harassment as a basis for application in the existing Safe at Home program for reproductive health care service providers. The bill is currently in the Assembly pending referral.

AB 2381 (Daly, 2022) authorizes Safe at Home applicants to submit a certified statement by the employee, patient, or volunteer for a reproductive health care services facility that they have been the target of threats or acts of violence, or a workplace violence restraining order issued because of threats or acts of violence connected with a reproductive health care services facility, as specified, instead of a certified statement from a representative of the reproductive health care services facility. It also expands the address confidentiality program to include other individuals who face threats of violence or violence from the public because of their work, employment, or volunteer service. This bill was held in the Assembly Appropriations Committee.

AB 2872 (Weber, 2022) specifies that notification of another parent is required unless there is a court order prohibiting contact between the other parent or parents or guardian and the minor child or children of the participant. This bill is currently in this Committee.

Prior Legislation:

AB 277 (Valladares, Ch. 457, Stats. 2021) requires, by January 1, 2023, the SOS to provide application forms, notices, and explanatory materials related to the Safe at Home program in at least five languages; and the inclusion of information about the Safe at Home program on Judicial Council forms relating to domestic violence.

AB 611 (Quirk-Silva, Ch. 151, Stats. 2021) requires homeowner associations to keep a member's residential address and other specified contact information confidential, upon the request of the member, if the member is a participant in the Safe at Home program.

SB 1320 (Stern, Ch. 517, Stats. 2018) added a victims of elder or dependent adult abuse to those who qualify for the Safe at Home program.

SB 1233 (Oropeza, Ch. 326, Stats. 2010) made the Safe at Home program permanent, removing the sunset provision on the law.

SB 1062 (Bowen, Ch. 639, Stats. 2006) added sexual assault victims to those who qualify for the Safe at Home program.

AB 1669 (Assembly Committee on Judiciary, Ch. 668, Stats. 2000) exempted domestic violence victims from the publication requirement of the name change procedures of the Code of Civil Procedure for participants in the Safe at Home Program.

SB 1318 (Alpert, Ch. 562, Stats. 2000) added stalking victims to those who qualify for the Safe at Home program.

SB 489 (Alpert, Ch. 1005, Stats. 1998) *See* Comment 1.

PRIOR VOTES:

Assembly Floor (Ayes 68, Noes 0)

Assembly Appropriations Committee (Ayes 13, Noes 0)

Assembly Judiciary Committee (Ayes 10, Noes 0)
