



COUNTY ADVISORY BULLETIN

CAB

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SAFE AT HOME – ADDRESS CONFIDENTIALITY PROGRAM

APPLICABLE LEGISLATION: Sub. HB 359 (131st General Assembly)

REVISED CODE SECTIONS: Amends ORC Sections 109.57, 149.43, 149.45, 319.28, 1901.25, 2313.06, 2929.18, 2929.28, 3113.31, 3503.13, 3503.16, 3503.21, 3503.23, 3503.24, 3503.26, 3504.02, 3504.04, 3509.03, 3509.04, 3509.05, 3509.06, 3509.07, 3509.09, 3511.02, 3511.05, 3511.11, and 3511.12. Enact ORC Sections 111.41, 111.42, 111.43, 111.44, 111.45, 111.46, 111.47, 111.48, 111.99, 3113.45, 3113.451, 3113.452, 3113.453, 3113.454, 3113.455, 3113.456, 3113.457, 3113.458, and 3113.459. Repeals ORC Section 3505.19.

LEAD SPONSORS: Representative Mike Duffey and Representative Anne Gonzales

HOUSE COSPONSORS: Bishoff, Anielski, Hall, LaTourette, Perales, Stinziano, Antani, Grossman, Sears, Scherer, Sprague, Patmon, Buchy, Butler, Curtin, Leland, Amstutz, Antonio, Arndt, Ashford, Baker, Bocchieri, Boggs, Boose, Boyce, Boyd, Brenner, Brown, Burkley, Celebrezze, Conditt, Craig, Cupp, Derickson, Dever, DeVitis, Dovilla, Driehaus, Fedor, Ginter, Green, Hackett, Hagan, Hambley, Hayes, Henne, Hill, Howse, Huffman, T. Johnson, Koehler, Kuhns, Kunze, Landis, Lepore-Hagan, Maag, Manning, McClain, M. O'Brien, S. O'Brien, Patterson, Pelanda, Phillips, Ramos, Reece, Reineke, Retherford, Rezabek, Roegner, Rogers, Ruhl, Ryan, Schaffer, Schuring, Sheehy, Slaby, Slesnick, K. Smith, Strahorn, Sweeney, Sykes, Terhar, Thompson, Young

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EFFECTIVE DATE: September 8, 2016

BULLETIN SUMMARY

On September 8, 2016, Ohio joined 38 other states that have enacted an address confidentiality program. The legislation that created this program was Substitute House Bill 359 (HB 359). This new law will allow certain crime victims the opportunity to shield their residential address from public records, including voting records.

Program participants will be allowed to apply, with the help of an application assistant, for a substitute address provided by the Ohio Secretary of State (SOS). The substitute address will be P.O. Box 910, Lot xxxx, Columbus, Ohio 43216. Each participant will receive their own unique lot number. The SOS office will then receive and collect the participant's mail and redirect it to their actual residential address. This new program is called Safe at Home. The SOS is also directed to develop procedures for program participants to cast a ballot while maintaining confidentiality.

Additionally, HB 359 would do the following:

1. Update the public records laws to establish that the residential and familial information of federal law enforcement officers does not constitute a public record.
2. Clarifies that a federal law enforcement officer, as well as, a probation officer, bailiff, or community-based correctional facility employee may request the county auditor to substitute the person's initials for the person's name on any publicly available property records similar to what is done for a peace officer.

This County Advisory Bulletin (CAB) will summarize the permanent changes made to Ohio's voting laws and public records laws. For a copy of the new act, please go to the following website: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-359>.

BACKGROUND

Until HB 359 became effective, Ohio had no method of concealing the address of a victim of domestic violence or sexual assault. Many victims move their residence to avoid their abuser. However, some victims fear that their abuser will be able to find their new address by tracking them down through voter records and other public records. This causes many victims to not register to vote or even vote for fear of their safety.

Since the SOS is the chief election official in Ohio, victim rights advocates worked with the legislature to create an address confidentiality program within the SOS office. This new program is called Safe at Home. The Safe at Home program is administered by the SOS to allow victims of domestic violence, stalking, human trafficking, rape or sexual battery to apply for a substitute address designated by the SOS to serve as the person's mailing address.

More information about the Safe at Home program is available at the following website www.SafeatHomeOhio.com. Additionally, you may contact the SOS at (614) 995-2255 or email at safeathome@ohiosecretaryofstate.gov regarding this program.

SYNOPSIS

Address Confidentiality Program

Under the new law, an adult, when changing their residential address, may apply with the help of an application assistant to the SOS to have their new address kept confidential if the person fears for their safety or the safety of a member of their household. A person can only participate in the address confidentiality program if the person or household member is a victim of domestic violence, menacing by stalking, human trafficking, rape or sexual battery. Additionally, a parent or guardian, when changing residence, may apply to have a minor, incompetent or ward certified as a participant.¹ Tier I, Tier II or Tier III sex offender/child-victim offenders are not permitted to participate in the address confidentiality program.²

The SOS is required to develop forms, training and procedures to administer the new address confidentiality program. The new program will be funded by additional fines imposed for certain offenses, including domestic violence, rape and human trafficking.

Persons who would like to participate in the address confidentiality program must work with an application assistant. An application assistant is an employee or volunteer of an agency or organization that serves victims of domestic violence or other specified offenses. Application assistants are required to receive training and certification from the SOS. Many application assistants work for domestic violence crisis centers, YWCAs, as well as county prosecutors' offices. A current list of application assistants can be found at the following website:

<https://www.sos.state.oh.us/SOS/agency/initiatives/SafeatHomeOhio/victims/Organizations.aspx>.

Participants are prohibited from making a false statement on their application. Should this happen, the participant could be found guilty of a first degree misdemeanor and could be sent to prison for six months and fined \$1,000.³

Once a program application is completed, the SOS will provide the participant a unique identification number, a newly designated substitute address and a Safe at Home Participant Card. The participant is entered into the program for four years, which can be renewed. The participant may also leave the program by making a request to exit the program to the SOS. By becoming a participant, a person can then request to have their voter registration record become confidential.

The participant will use their Safe at Home Participant Card when they contact a public office. A participant may request that a public office use their newly designated substitute address as their public address on public records. It is the participant's responsibility to contact the public office. The SOS will not be contacting public offices to update any records. The burden is on the program participant to contact and work with the office to update records to use the participant's substitute address.

¹ R.C. 111.42 (A)

² R.C. 111.42 (F)

³ R.C. 111.41, 111.42(A) and (F), 111.99(A) and (D), 2929.24, not in the act, and 2929.28.

Sample Safe at Home Participant Card



SOS Substitute Address

The new substitute address provided by the SOS is an address that a program participant may use to receive mail. Most government entities must use the participant's SOS substitute address if the participant requests the government entity use the substitute address. The participant may request that their employer, school or institution of higher education use the SOS substitute address if these entities are not a government entity. These entities are not required to use the SOS substitute address.⁴

This program does not fully apply to boards of elections because the new law develops additional requirements for board of elections to follow. Additionally, it does not apply to a municipal-owned public utility as residential addresses maintained by the utility are not public records and must not be released by the utility or an employee of the utility.⁵

The SOS has indicated that the new SOS substitute addresses will all be P.O. Box 910, Lot xxxx, Columbus, Ohio 43216. Each participant will then have a unique lot number. The SOS will be responsible for receiving any mail sent to the substitute address, and is

⁴ R.C. 111.43 (A) and (B)

⁵ R.C. 111.43 (D)

required to forward all mail to the participant. The SOS is given the authority to contract with the U.S. Postal Service to establish special postal rates for these mailings.⁶

Public Offices and Substitute Addresses

The new law requires that a government entity, other than a board of elections or a municipal-owned public utility, must accept the substitute address as the participant's address should the participant make a request to the government entity.⁷ The participant must contact the government entity; the SOS will not be contacting government entities for the participant. A government entity is defined under ORC Section 114.41 (C) as:

"Governmental entity means the state, a political subdivision of the state, or any department, agency, board, commission, or other instrumentality of the state or a political subdivision of the state."

Further the new law requires that a government entity must keep confidential a participant's actual residence, school, institution of higher education, business or place of employment. The new law designates this additional information as a confidential address. A confidential address is not a public record under the public records law and must be kept confidential.⁸

Public employees should also be aware that the new law prohibits any person who has access to a substitute address or a participant's telephone number because of the person's employment or official position from knowingly disclosing it, except as required by law, and specifies that a violation is a first degree misdemeanor.⁹

The SOS has indicated in a letter to CCAO that participants will be issued a Safe at Home Participant Card which they may present when requesting an entity to use their new substitute address. This card will have the participant's name, substitute address, expiration date and the seal and signature of the SOS. The SOS cannot confirm or deny a person's participation in the program, nor disclose any information about the participant. For a copy of this letter, please go to the following website:
<http://www.ccao.org/userfiles/Safe%20at%20Home.pdf>.

Address Confidentiality Program, Law Enforcement Exceptions

The SOS will work with the Ohio Attorney General to provide Safe at Home participants' information on the Ohio Law Enforcement Gateway (OHLEG). OHLEG is a statewide electronic database that is used by law enforcement. It is maintained and operated by the Bureau of Criminal Identification and Investigation, which is an office under the Ohio Attorney General's office. OHLEG is to contain the names, mailing addresses, substitute addresses and telephone numbers of program participants. This confidential information is to be only accessed by chiefs of police, village marshals, county sheriffs, county prosecuting attorneys and a designee of each of these individuals.

⁶ R.C. 111.43 (C)(1)

⁷ R.C. 111.43 (A)

⁸ R.C. 111.41 (B)

⁹ R.C. 111.41 (B), 111.99 (B) and (D), and 149.43 (A)(1)(dd)

As with public employees who knowingly disclose a participant's confidential information, the new law prohibits any person who obtains a participant's confidential information from OHLEG from knowingly disclosing this information. A violation of this prohibition is also first degree misdemeanor.¹⁰

Should a chief legal officer, such as a city law director, like access to a participant's confidential information for a legitimate governmental purpose, the new law sets a procedure to provide this information. The requester must do the following:

1. Contact the SOS to confirm that the participant is in the program.
 - a. The SOS must provide confirmation to the requester, but
 - b. May not disclose any other information regarding the participant.
2. Petition the Franklin County Court of Common Pleas to order the Secretary to make that address or telephone number available to the petitioner.
 - a. The court must set a date for a hearing, and the clerk of the court must serve a notice of the date, time, place and purpose of the hearing upon the petitioner and the Secretary.
 - b. Upon receipt of the notice, the Secretary must immediately send a copy of it to the program participant by certified mail, return receipt requested.
3. The requester must appear at the hearing, and the program participant or the participant's attorney also may appear and be heard.

After the hearing and considering the testimony, the court must issue the requested order only if it appears to the court by clear and convincing evidence that the disclosure of the address or telephone number to the petitioner is necessary for a legitimate governmental purpose.¹¹

SOS to Act as Agent for Service of Process in Legal Matters

The SOS acts as a program participant's agent for receiving service of process in legal matters. Service of process is the judicial process of all orders, demands, notices or other papers required to be served on a participant. Should a person sue a program participant, the person would have to provide formal notice of the lawsuit to the participant. The new law would require the person to contact the SOS to confirm that the participant is in the program. The SOS must provide confirmation to the requester, but may not disclose any other information regarding the participant.

The SOS must forward the process by certified mail, return receipt requested, to the program participant. The new law provides that service of process upon the SOS on behalf of a program participant to constitute service upon the program participant under the Rules of Civil Procedure.¹²

¹⁰ R.C. 111.99 (C)

¹¹ R.C. 111.46, and 111.99(C)

¹² R.C. 111.41(F) and 111.43(C)(2); Section 3 of the act; and *Ohio Rules of Civil Procedure*, Rule 4.2, available at: supremecourt.ohio.gov/LegalResources/Rules/civil/CivilProcedure.pdf.

The new law requests that the Supreme Court of Ohio revise the Ohio Rules of Civil Procedure to allow service of process. Also, the law allows the SOS to write rules to further outline the office's process in these matters.

State Immunity

The new law provides immunity to state employees in any civil action or proceeding involving the performance or nonperformance of a public duty under the confidentiality program, except if the performance or nonperformance was outside the scope of the employee's office or the employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner.¹³

Address Confidentiality Program Funding by Additional Fines

Under the new law a court may impose an additional fine of \$70 to \$500 on a person who is guilty of the following offenses: domestic violence, menacing by stalking, rape or sexual battery and human trafficking. The additional fine must be transferred to the Treasurer of State (TOS) to be credited to the Address Confidentiality Program Fund which the SOS will use to administer the program.¹⁴

The SOS has provided county clerks of courts with written instructions and a form regarding the collection and disposition of fines. For a copy of these instructions, please go to the following website page:

<http://www.ccao.org/userfiles/Combined%20Safe%20at%20Home.pdf>.

Boards of Elections and Address Confidentiality Program

The following section summarizes the SOS Address Confidentiality Program and its procedures as it pertains to a county board of elections (BOE). BOEs should work closely with the SOS when implementing these new procedures.

The new law allows a program participant who is an eligible voter to request the BOE to keep the participant's voter registration record confidential. The participant must submit an official SOS application to the director of the board. This form will include the following:

1. The applicant's name, address, date of birth, a form of identification, the current date and the applicant's signature.
2. The applicant's program identification number issued by the SOS.
3. If the applicant is currently registered to vote in another county or another state, that address and a statement that authorizes the director to instruct the appropriate authority to cancel the existing voter registration.
4. A statement that the applicant understands all of the following:

¹³ R.C. 111.47(A)

¹⁴ R.C. 111.48, 2929.18(B)(10), and 2929.28(D).

- a. The participant may vote only by absentee ballot by mail.
- b. The participant may provide their program identification number instead of their residence address on an application for an absentee ballot or on an absentee ballot identification envelope.
- c. That casting any ballot in person will reveal the applicant's precinct and residence address to election officials which may reveal that information to the public.
- d. If the participant signs an election petition, their residential address will be made available to the public.

Once a BOE receives a valid confidential application, either the director or deputy director must contact the SOS to confirm the participant's identification number. If the participant is registered to vote in the county, the director or deputy must do the following:

1. Remove the residence address and precinct information from the participant's voter registration record, the Statewide Voter Registration Database and the official registration list.
2. Remove the participant's name and registration information from any poll book, poll list or signature poll book and from any publicly available registration list.
3. Send an acknowledgment notice to the participant that their application has been processed.

If the participant is currently registered to vote in another county, the director or deputy must notify the BOE of that county to cancel the participant's registration. Should the participant be registered in another state, the director or deputy must notify the appropriate authority in that state to cancel the participant's registration.

The participant's application is now considered the participant's voter registration record. It must be stored in a secure manner, so only the members of the BOE, the director and the deputy director have access to it.

It is important to point out that because of this process, program participants will no longer be able to serve on a jury, since their information is no longer included in a county or municipal jury source list.¹⁵

Participant Absentee Voting

Not later than the 45 days before the election, the SOS will mail a notice to each program participant who has a confidential voter registration record. The notice will inform the participant that if the participant wishes to vote in the election, the participant

¹⁵ R.C. 319.28 and 1901.25

should cast an absentee ballot by mail. The notice will also inform the participant the procedure necessary to receive and vote an absentee ballot by mail.¹⁶

In order to vote by an absentee ballot, a participant must request an absentee ballot be sent to them by the BOE on an absentee ballot request form. When filling out a request form the participant must provide the participant's program identification number instead of their registration address. The participant also must provide their identification number instead of their registration address on the identification envelope statement when the participant returns their ballot to the BOE. Once the BOE receives a participant's absentee ballot by mail, the director and the deputy director must personally process it.

The new law requires that election observers, who generally are permitted to witness the examination and opening of identification envelopes and the counting of absentee ballots at BOEs, are not allowed to witness that processing of ballots cast by program participants.

Terminating a Confidential Voter Registration Record

A participant may terminate their confidential voter registration record by submitting an application to the BOE on a form prescribed by the SOS. A participant can also terminate their confidential voter registration record by making a request to the SOS to exit the Safe at Home program. When the SOS cancels a person's certification as a program participant, the SOS will notify the director of the BOE of the county where the former participant resides.

Once the BOE receives the participant's application or receives notice from the SOS that the participant has exited the program, the director or deputy director must:

1. Store the participant's registration form like other voter registration forms.
2. Remove the person's program identification number from the registration form and from the Statewide Voter Registration Database.
3. Ensure that the Database and any poll list, poll book, or registration list accurately reflects the participant's current name and registration information.

Should the director receive the application or notice less than 30 days before the Election Day, the new law allows the voter to vote in that election.

The law also allows the participant to cancel their voter registration. Should a participant make this request, the director or deputy must cancel the voter's registration.

Federal Law Enforcement Officer Residential and Familial Information Are Not Public Records

Ohio's Public Records Law is primarily established in [ORC Section 149.43](#). The law requires every public office to maintain its records in accordance with statutory requirements or record retention schedules. For counties, record retention schedules are approved by the county records commission. Records cannot be removed,

¹⁶ R.C. 111.44(C)(3)

transferred or destroyed unless approved by the county records commission. For more information, please see *CCAO County Commissioners Handbook* [Chapter 128 - Public Records and Records Commissions](#).

It is also important that ORC Section 149.43 defines a “public record” and specifies which public records are “exempt” from being released. The new law adds federal law enforcement officers to the list of law enforcement related individuals whose residential and familial information are not a public record, or exempt under Ohio’s Public Records Law. A federal law enforcement officer is defined under [ORC Section 9.88 \(A\)](#) as:

“Federal law enforcement officer means any United States officer whom federal law authorizes to conduct investigations and make arrests for federal law violations.”

The new law allows a federal law enforcement officer to request that a public office redact the officer's address from any record made available to the general public on the Internet. Additionally, a federal law enforcement officer may request a county auditor to substitute the officer's initials for the officer's name in any publicly available property record. Both are currently permitted under current law for other law enforcement related individuals. The act also clarifies that a probation officer, bailiff or community-based correctional facility employee may make such a request as well.

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