

058035424

HOUSE BILL NO. 2802

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 4, 2005)

(Patron Prior to Substitute—Delegate Moran)

A BILL to amend the Code of Virginia by adding a section numbered 8.01-400.3 and by adding in Article 1 of Chapter 16 of Title 19.2 a section numbered 19.2-271.4, relating to confidential communications.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 8.01-400.3 and by adding in Article 1 of Chapter 16 of Title 19.2 a section numbered 19.2-271.4 as follows:

8.01-400.3. Communications between domestic violence or sexual assault advocates and alleged victims.

All written and oral communications between an alleged victim of a crime of domestic violence or a sexual assault and a domestic violence or sexual assault advocate, who is serving in his official or professional capacity as an advocate, or an interpreter for such an advocate or for an alleged victim, shall be presumed confidential. Disclosure of such communications shall not be compelled in any civil or administrative proceeding without (i) the written consent of the victim or (ii) a finding by a judge that such information is relevant, and probative of issues in dispute in that proceeding. This section shall not relieve an advocate or interpreter from the reporting or testimony requirements set forth in § 63.2-1509 or 63.2-1606 in matters relating to child abuse and neglect, or adult abuse, neglect, or exploitation. In the case of the death of the victim this privilege shall be waived.

For purposes of this section, "domestic violence advocate" or "sexual assault advocate," means a person (i) who works or volunteers under the direction of a supervisor in a domestic violence or sexual assault center or program, which exists primarily to provide direct services to victims of domestic violence or sexual assault; (ii) who has undergone training in domestic violence or sexual assault; and (iii) whose primary function is to provide counseling or assistance to victims of domestic violence or sexual assault. "Domestic violence advocate" or "sexual assault advocate" does not include a victim-witness advocate or victim advocate who is employed by or volunteers for the attorney for the Commonwealth or a law-enforcement agency.

§ 19.2-271.4. Communications between domestic violence or sexual assault advocates and alleged victims.

All written and oral communications between an alleged victim of a crime of domestic violence or a sexual assault and a domestic violence or sexual assault advocate, who is serving in his official or professional capacity as an advocate, or an interpreter for such an advocate or for an alleged victim, shall be presumed confidential. Disclosure of such communications shall not be compelled in any criminal proceeding without (i) the written consent of the victim or (ii) a finding by a judge that such information is relevant, and probative of issues in dispute in that proceeding. This section shall not relieve an advocate or interpreter from the reporting or testimony requirements set forth in § 63.2-1509 or 63.2-1606 in matters relating to child abuse and neglect, or adult abuse, neglect, or exploitation. In the case of the death of the victim this privilege shall be waived.

For purposes of this section, "domestic violence advocate" or "sexual assault advocate," means a person (i) who works or volunteers under the direction of a supervisor in a domestic violence or sexual assault center or program, which exists primarily to provide direct services to victims of domestic violence or sexual assault; (ii) who has undergone training in domestic violence or sexual assault; and (iii) whose primary function is to provide counseling or assistance to victims of domestic violence or sexual assault. "Domestic violence advocate" or "sexual assault advocate" does not include a victim-witness advocate or victim advocate who is employed by or volunteers for the attorney for the Commonwealth or a law-enforcement agency.

HOUSE SUBSTITUTE

HB2802H1