

080272336

## SENATE BILL NO. 764

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice)

(Patron Prior to Substitute—Senator Ticer)

Senate Amendments in [ ] — February 8, 2008

A BILL to amend and reenact § 2.2-515.2 of the Code of Virginia, and to amend and reenact the second and third enactments of Chapter 599 of the Acts of Assembly of 2007, relating to victims of domestic violence.

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-515.2 of the Code of Virginia is amended and reenacted as follows:

§ 2.2-515.2. (Contingent scope of application - See Editor's notes) Address confidentiality program established; victims of domestic violence; application; disclosure of records.

A. As used in this section:

"Address" means a residential street address, school address, or work address of a person as specified on the person's application to be a program participant.

"Applicant" means a person who is a victim of domestic violence or is a parent or guardian of a minor child or incapacitated person who is the victim of domestic violence.

"Domestic violence" means an act as defined in § 38.2-508 and includes threat of such acts committed against an individual in a domestic situation, regardless of whether these acts or threats have been reported to law-enforcement officers. Such threat must be a threat of force which would place any person in reasonable apprehension of death or bodily injury.

"Domestic violence programs" means public and not-for-profit agencies the primary mission of which is to provide services to victims of sexual or domestic violence.

"Program participant" means a person certified by the Office of the Attorney General as eligible to participate in the Address Confidentiality Program.

B. The Statewide Facilitator for Victims of Domestic Violence shall establish a program to be known as the "Address Confidentiality Program" to protect victims of domestic violence by authorizing the use of designated addresses for such victims. An individual who is at least 18 years of age, a parent or guardian acting on behalf of a minor, a guardian acting on behalf of an incapacitated person, or an emancipated minor may apply to the Office of the Attorney General to have an address designated by the Office of the Attorney General as the applicant's address in person, at domestic violence programs that provide services where the role of the services provider is (i) to assist the eligible person in determining whether the address confidentiality program should be part of such person's overall safety plan; (ii) to explain the address confidentiality program services and limitations; (iii) to explain the program participant's responsibilities; and (iv) to assist the person eligible for participation with the completion of application materials. The Office of the Attorney General shall approve an application if it is filed in the manner and on the form prescribed by the Attorney General and if the application contains the following:

1. A sworn statement by the applicant that the applicant has good reason to believe that:
  - a. The applicant, or the minor or incapacitated individual on whose behalf the application is made, is a victim of domestic violence; and
  - b. The applicant fears further violent acts from the applicant's assailant; and
  - c. The applicant is not on active parole or probation supervision requirements under federal, state, or local law.

2. A designation of the Office of the Attorney General as agent for the purpose of receiving mail on behalf of the applicant;

3. The mailing address where the applicant can be contacted by the Office of the Attorney General applicant's actual address to which mail can be forwarded and a telephone number where the applicant can be called;

4. The new address that the applicant requests not be disclosed because of the increased risk of domestic violence A listing of any minor children residing at the applicant's actual address, each minor child's date of birth, and each minor child's relationship to the applicant; and

5. The signature of the applicant and any person who assisted in the preparation of the application and the date.

C. Upon approval of a completed application, the Office of the Attorney General shall certify the applicant as a program participant. An applicant shall be certified for one year following the date of the institution of the program, unless the certification is withdrawn or invalidated before that date. A program participant may apply to be recertified every year.

D. Upon receipt of first-class mail addressed to a program participant, the Attorney General or his

ENGROSSED

SB764ES1

60 designee shall forward the mail to the actual address of the program participant. The actual address of a  
61 program participant shall be available only to the Attorney General and to those employees involved in  
62 the operation of the Address Confidentiality Program and to law-enforcement officers ~~for~~  
63 ~~law-enforcement purposes~~. A program participant's actual address may be entered into the Virginia  
64 Criminal Information Network (VCIN) system so that it may be made known to law-enforcement officers  
65 accessing the VCIN system for law-enforcement purposes.

66 E. The Office of the Attorney General may cancel a program participant's certification if:

- 67 1. The program participant requests withdrawal from the program;
- 68 2. The program participant obtains a name change through an order of the court;
- 69 3. The program participant changes his residence address and does not provide seven days' notice to  
70 the Office of the Attorney General prior to the change of address;
- 71 4. The mail forwarded by the Office of the Attorney General to the address provided by the program  
72 participant is returned as undeliverable; ~~or~~
- 73 5. Any information contained in the application is false-;
- 74 6. *The program participant has been placed on parole or probation while a participant in the*  
75 *address confidentiality program; and*
- 76 7. *The applicant is required to register as a sex offender pursuant to Chapter 9 (§ 9.1-900 et seq.) of*  
77 *Title 9.1.*

78 *For purposes of the address confidentiality program, residents of temporary housing for 30 days or*  
79 *less are not eligible to enroll in the address confidentiality program until a permanent residential*  
80 *address is obtained.*

81 The application form shall contain a statement notifying each applicant of the provisions of this  
82 subsection.

83 F. A program participant may request that any state or local agency use the address designated by  
84 the Office of the Attorney General as the program participant's address, *except when the program*  
85 *participant is [ applying for a concealed handgun permit or ] purchasing a firearm from a dealer in*  
86 *firearms*. The agency shall accept the address designated by the Office of the Attorney General as a  
87 program participant's address, unless the agency has ~~demonstrated~~ *received a written exemption from the*  
88 *Office of the Attorney General demonstrating to the satisfaction of the Attorney General that:*

- 89 1. The agency has a bona fide statutory basis for requiring the program participant to disclose to it  
90 the actual location of the program participant; ~~and~~
- 91 2. The disclosed confidential address of the program participant will be used only for that statutory  
92 purpose and will not be disclosed or made available in any way to any other person or agency-; *and*
- 93 3. *A state agency may request an exemption by providing in writing to the Office of the Attorney*  
94 *General identification of the statute or administrative rule that demonstrates the agency's bona fide*  
95 *requirement and authority for the use of the actual address of an individual. A request for a waiver*  
96 *from an agency may be for an individual program participant, a class of program participants, or all*  
97 *program participants. The denial of an agency's exemption request shall be in writing and include a*  
98 *statute of the specific reasons for the denial. Acceptance or denial of an agency's exemption request*  
99 *shall constitute final agency action.*

100 Any state or local agency that discloses the program participant's confidential address provided by  
101 the Office of the Attorney General shall be immune from civil liability unless the agency acted with  
102 gross negligence or willful misconduct.

103 *A program participant's actual address shall be disclosed pursuant to a court order.*

104 G. Records submitted to or provided by the Office of the Attorney General in accordance with this  
105 section shall be exempt from disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et  
106 seq.) to the extent such records contain information identifying a past or current program participant,  
107 including such person's name, actual and designated address, telephone number, and any email address.  
108 However, access shall not be denied to the person who is the subject thereof, or the parent or legal  
109 guardian of a program participant in cases where the program participant is a minor child or an  
110 incapacitated person, except when the parent or legal guardian is named as the program participant's  
111 assailant.

112 H. Neither the Office of the Attorney General, its officers or employees, or others who have a  
113 responsibility to a program participant under this section shall have any liability nor shall any cause of  
114 action arise against them in their official or personal capacity from the failure of a program participant  
115 to receive any first class mail forwarded to him by the Office of the Attorney General pursuant to this  
116 section. Nor shall any such liability or cause of action arise from the failure of a program participant to  
117 timely receive any first class mail forwarded by the Office of the Attorney General pursuant to this  
118 section.

119 *Any person who falsely and willfully attests in an application that disclosure of the address of the*  
120 *applicant would endanger the safety of the applicant, the applicant's minor children, or the minor or*  
121 *incapacitated person on whose behalf the application is made, or who willfully provides false or*

122 *incorrect information upon making an application is guilty of perjury pursuant to § 18.2-434.*  
 123 2. That the second and third enactments of Chapter 599 of the Acts of Assembly of 2007 are  
 124 amended and reenacted as follows:  
 125 2. That the provisions of this act shall be limited to and implemented solely within the ~~County~~  
 126 ~~of Arlington~~ *Counties of Albemarle, Arlington, Dickenson, Fairfax, Henry, Lee, Russell, Scott,*  
 127 *Washington, and Wise as well as the Cities of Charlottesville, Martinsville, Norfolk, and Roanoke .*  
 128 An evaluation of the program shall be prepared by the Office of the Attorney General and the  
 129 results forwarded to the members of the Senate Committee on General Laws and the House  
 130 Committee on General Laws by December 31, ~~2007~~ *2010*.  
 131 3. That following the evaluation of the program by the Office of the Attorney General in  
 132 accordance with the second enactment of this act, the continuation of the address confidentiality  
 133 program on a statewide basis shall be conditioned upon an appropriation effectuating the  
 134 purposes of this act ~~in the appropriation act~~ passed during the ~~2008~~ *2011* Session of the  
 135 General Assembly and signed into law by the Governor.  
 136 3. That the provisions of this act may result in a net increase in periods of imprisonment or  
 137 commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot  
 138 be determined for periods of imprisonment in state adult correctional facilities and is \$0 for  
 139 periods of commitment to the custody of the Department of Juvenile Justice.

ENGROSSED

SB764ES1