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HOUSE BILL NO. 1817

Offered January 9, 2019

Prefiled January 1, 2019

A *BILL to amend and reenact §§ 2.2-515.2, 8.01-42.4, 18.2-513, 19.2-10.2, 19.2-386.16, and 19.2-386.35 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-348.1, relating to promoting travel for prostitution; penalty.*

Patrons—Delaney, Adams, D.M., Brewer, Campbell, R.R., Cole, Edmunds, Fowler, Garrett, Helsel, Hugo, Jones, J.C., Landes, LaRock, McQuinn, Miyares, O'Quinn, Reid, Rodman, Roem, Thomas, Turpin, Webert and Wright

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-515.2, 8.01-42.4, 18.2-513, 19.2-10.2, 19.2-386.16, and 19.2-386.35 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-348.1 as follows:

§ 2.2-515.2. Address confidentiality program established; victims of domestic violence, stalking, sexual violence, or human trafficking; 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, stalking, or sexual violence or is a parent or guardian of a minor child or incapacitated person who is the victim of domestic violence, stalking, or sexual 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.

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

"Sexual or 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, or stalking. Such programs may also include specialized services for victims of human trafficking.

"Sexual violence" means conduct that is prohibited under clause (ii), (iii), (iv), or (v) of § 18.2-48, or § 18.2-61, 18.2-63, 18.2-64.1, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.4, 18.2-67.5, 18.2-348, 18.2-348.1, 18.2-349, 18.2-355, 18.2-356, 18.2-357, 18.2-357.1, or 18.2-368, regardless of whether the conduct has been reported to a law-enforcement officer or the assailant has been charged with or convicted of the alleged violation.

"Stalking" means conduct that is prohibited under § 18.2-60.3, regardless of whether the conduct has been reported to a law-enforcement officer or the assailant has been charged with or convicted for the alleged violation.

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, stalking, or sexual 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 in person at (i) sexual or domestic violence programs that have been accredited by the Virginia Sexual and Domestic Violence Program Professional Standards Committee established pursuant to § 9.1-116.3 and are qualified to (a) assist the eligible person in determining whether the address confidentiality program should be part of such person's overall safety plan, (b) explain the address confidentiality program services and limitations, (c) explain the program participant's responsibilities, and, (d) assist the person eligible for participation with the completion of application materials or (ii) crime victim and witness assistance programs. 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 declaring to be true and correct under penalty of perjury 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, sexual violence, or stalking;

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57 b. The applicant fears further acts of violence, stalking, retribution, or intimidation from the
58 applicant's assailant, abuser, or trafficker; and

59 c. The applicant is not on active parole or probation supervision requirements under federal, state, or
60 local law.

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

63 3. The applicant's actual address to which mail can be forwarded and a telephone number where the
64 applicant can be called;

65 4. A listing of any minor children residing at the applicant's actual address, each minor child's date
66 of birth, and each minor child's relationship to the applicant; and

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

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

73 D. Upon receipt of first-class mail addressed to a program participant, the Attorney General or his
74 designee shall forward the mail to the actual address of the program participant. The actual address of a
75 program participant shall be available only to the Attorney General and to those employees involved in
76 the operation of the Address Confidentiality Program and to law-enforcement officers. A program
77 participant's actual address may be entered into the Virginia Criminal Information Network (VCIN)
78 system so that it may be made known to law-enforcement officers accessing the VCIN system for
79 law-enforcement purposes.

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

81 1. The program participant requests withdrawal from the program;

82 2. The program participant obtains a name change through an order of the court and does not
83 provide notice and a copy of the order to the Office of the Attorney General within seven days after
84 entry of the order;

85 3. The program participant changes his residence address and does not provide seven days' notice to
86 the Office of the Attorney General prior to the change of address;

87 4. The mail forwarded by the Office of the Attorney General to the address provided by the program
88 participant is returned as undeliverable;

89 5. Any information contained in the application is false;

90 6. The program participant has been placed on parole or probation while a participant in the address
91 confidentiality program; or

92 7. The applicant is required to register as a sex offender pursuant to Chapter 9 (§ 9.1-900 et seq.) of
93 Title 9.1.

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

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

99 F. A program participant may request that any state or local agency use the address designated by
100 the Office of the Attorney General as the program participant's address, except when the program
101 participant is purchasing a firearm from a dealer in firearms. The agency shall accept the address
102 designated by the Office of the Attorney General as a program participant's address, unless the agency
103 has received a written exemption from the Office of the Attorney General demonstrating to the
104 satisfaction of the Attorney General that:

105 1. The agency has a bona fide statutory basis for requiring the program participant to disclose to it
106 the actual location of the program participant; and

107 2. The disclosed confidential address of the program participant will be used only for that statutory
108 purpose and will not be disclosed or made available in any way to any other person or agency.

109 A state agency may request an exemption by providing in writing to the Office of the Attorney
110 General identification of the statute or administrative rule that demonstrates the agency's bona fide
111 requirement and authority for the use of the actual address of an individual. A request for a waiver from
112 an agency may be for an individual program participant, a class of program participants, or all program
113 participants. The denial of an agency's exemption request shall be in writing and include a statement of
114 the specific reasons for the denial. Acceptance or denial of an agency's exemption request shall
115 constitute final agency action.

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

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

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

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

§ 8.01-42.4. Civil action for trafficking in persons.

A. Any person injured by reason of (i) a violation of clause (iii), (iv), or (v) of § 18.2-48; (ii) a violation of § 18.2-348, *18.2-348.1*, 18.2-349, 18.2-355, 18.2-356, 18.2-357, 18.2-357.1, or 18.2-368; or (iii) a felony violation of § 18.2-346 may sue therefor and recover compensatory damages, punitive damages, and reasonable attorney fees and costs.

B. No action shall be commenced under this section more than seven years after the later of the date on which such person (i) was no longer subject to the conduct prohibited by clause (iii), (iv), or (v) of § 18.2-48 or § 18.2-348, *18.2-348.1*, 18.2-349, 18.2-355, 18.2-356, 18.2-357, 18.2-357.1, or 18.2-368 or under a felony violation of § 18.2-346 or (ii) attained 18 years of age.

§ 18.2-513. Definitions.

As used in this chapter, the term:

"Criminal street gang" shall be as defined in § 18.2-46.1.

"Enterprise" includes any of the following: sole proprietorship, partnership, corporation, business trust, criminal street gang; or other group of three or more individuals associated for the purpose of criminal activity.

"Proceeds" shall be as defined in § 18.2-246.2.

"Racketeering activity" means to commit, attempt to commit, conspire to commit, or to solicit, coerce, or intimidate another person to commit two or more of the following offenses: Article 2.1 (§ 18.2-46.1 et seq.) of Chapter 4 of this title, § 18.2-460; a felony offense of §§ 3.2-4212, 3.2-4219, 10.1-1455, 18.2-31, 18.2-32, 18.2-32.1, 18.2-33, 18.2-35, Article 2.2 (§ 18.2-46.4 et seq.) of Chapter 4 of this title, §§ 18.2-47, 18.2-48, 18.2-48.1, 18.2-49, 18.2-51, 18.2-51.2, 18.2-52, 18.2-53, 18.2-55, 18.2-58, 18.2-59, 18.2-77, 18.2-79, 18.2-80, 18.2-89, 18.2-90, 18.2-91, 18.2-92, 18.2-93, 18.2-95, Article 4 (§ 18.2-111 et seq.) of Chapter 5 of this title, Article 1 (§ 18.2-168 et seq.) of Chapter 6 of this title, §§ 18.2-178, 18.2-186, Article 6 (§ 18.2-191 et seq.) of Chapter 6 of this title, Article 9 (§ 18.2-246.1 et seq.) of Chapter 6 of this title, § 18.2-246.13, Article 1 (§ 18.2-247 et seq.) of Chapter 7 of this title, §§ 18.2-279, 18.2-286.1, 18.2-289, 18.2-300, 18.2-308.2, 18.2-308.2:1, 18.2-328, 18.2-348, *18.2-348.1*, 18.2-355, 18.2-356, 18.2-357, 18.2-357.1, 18.2-368, 18.2-369, 18.2-374.1, Article 8 (§ 18.2-433.1 et seq.) of Chapter 9 of this title, Article 1 (§ 18.2-434 et seq.) of Chapter 10 of this title, Article 2 (§ 18.2-438 et seq.) of Chapter 10 of this title, Article 3 (§ 18.2-446 et seq.) of Chapter 10 of this title, Article 1.1 (§ 18.2-498.1 et seq.) of Chapter 12 of this title, § 3.2-6571, 18.2-516, 32.1-314, 58.1-1008.2, 58.1-1017, or 58.1-1017.1; or any substantially similar offenses under the laws of any other state, the District of Columbia, the United States or its territories.

§ 18.2-348.1. Promoting travel for prostitution; penalty.

It is unlawful for any person to knowingly sell or offer to sell travel services, as defined in § 59.1-445, for the purposes of prostitution or unlawful sexual intercourse. A violation of this section is punishable as a Class 5 felony.

§ 19.2-10.2. Administrative subpoena issued for record from provider of electronic communication service or remote computing service.

A. A provider of electronic communication service or remote computing service that is transacting or has transacted any business in the Commonwealth shall disclose a record or other information pertaining to a subscriber to or customer of such service, excluding the contents of electronic communications as required by § 19.2-70.3, to an attorney for the Commonwealth or the Attorney General pursuant to an administrative subpoena issued under this section.

1. In order to obtain such records or other information, the attorney for the Commonwealth or the Attorney General shall certify on the face of the subpoena that there is reason to believe that the records

180 or other information being sought are relevant to a legitimate law-enforcement investigation concerning
181 violations of §§ 18.2-47, 18.2-48, 18.2-49, 18.2-346, 18.2-347, 18.2-348, 18.2-348.1, 18.2-349, 18.2-355,
182 18.2-356, 18.2-357, 18.2-374.1, and 18.2-374.1:1, former § 18.2-374.1:2, and § 18.2-374.3.

183 2. Upon written certification by the attorney for the Commonwealth or the Attorney General that
184 there is a reason to believe that the victim is under the age of 18 and that notification or disclosure of
185 the existence of the subpoena will endanger the life or physical safety of an individual, or lead to flight
186 from prosecution, the destruction of or tampering with evidence, the intimidation of potential witnesses,
187 or otherwise seriously jeopardize an investigation, the subpoena shall include a provision ordering the
188 service provider not to notify or disclose the existence of the subpoena to another person, other than an
189 attorney to obtain legal advice, for a period of 30 days after the date on which the service provider
190 responds to the subpoena.

191 3. On a motion made promptly by the electronic communication service or remote computing service
192 provider, a court of competent jurisdiction may quash or modify the administrative subpoena if the
193 records or other information requested are unusually voluminous in nature or if compliance with the
194 subpoena would otherwise cause an undue burden on the service provider.

195 B. All records or other information received by an attorney for the Commonwealth or the Attorney
196 General pursuant to an administrative subpoena issued under this section shall be used only for a
197 reasonable length of time not to exceed 30 days and only for a legitimate law-enforcement purpose.
198 Upon completion of the investigation, the records or other information held by the attorney for the
199 Commonwealth or the Attorney General shall be destroyed if no prosecution is initiated. The existence
200 of such a subpoena shall be disclosed upon motion of an accused.

201 C. No cause of action shall lie in any court against an electronic communication service or remote
202 computing service provider, its officers, employees, agents, or other specified persons for providing
203 information, facilities, or assistance in accordance with the terms of an administrative subpoena issued
204 under this section.

205 D. Records or other information pertaining to a subscriber to or customer of such service means
206 name, address, local and long distance telephone connection records, or records of session times and
207 durations, length of service, including start date, and types of service utilized, telephone or instrument
208 number or other subscriber number or identity, including any temporarily assigned network address, and
209 means and source of payment for such service.

210 E. Nothing in this section shall require the disclosure of information in violation of any federal law.

211 **§ 19.2-386.16. Forfeiture of motor vehicles used in commission of certain crimes.**

212 A. Any vehicle knowingly used by the owner thereof or used by another with his knowledge of and
213 during the commission of, or in an attempt to commit, a second or subsequent offense of § 18.2-346,
214 18.2-347, 18.2-348, 18.2-348.1, 18.2-349, 18.2-355, 18.2-356 or 18.2-357 or of a similar ordinance of
215 any county, city or town or knowingly used for the transportation of any stolen goods, chattels or other
216 property, when the value of such stolen goods, chattels or other property is \$500 or more, or any stolen
217 property obtained as a result of a robbery, without regard to the value of the property, shall be forfeited
218 to the Commonwealth. The vehicle shall be seized by any law-enforcement officer arresting the operator
219 of such vehicle for the criminal offense, and delivered to the sheriff of the county or city in which the
220 offense occurred. The officer shall take a receipt therefor.

221 B. Any vehicle knowingly used by the owner thereof or used by another with his knowledge of and
222 during the commission of, or in an attempt to commit, a misdemeanor violation of subsection D of
223 § 18.2-47 or a felony violation of (i) Article 3 (§ 18.2-47 et seq.) of Chapter 4 of Title 18.2 or (ii)
224 § 18.2-357 where the prostitute is a minor, shall be forfeited to the Commonwealth. The vehicle shall be
225 seized by any law-enforcement officer arresting the operator of such vehicle for the criminal offense,
226 and delivered to the sheriff of the county or city in which the offense occurred. The officer shall take a
227 receipt therefor.

228 C. Forfeiture of such vehicle shall be enforced as is provided in Chapter 22.1 (§ 19.2-386.1 et seq.).

229 **§ 19.2-386.35. Seizure of property used in connection with certain offenses.**

230 All money, equipment, motor vehicles, and other personal and real property of any kind or character
231 together with any interest or profits derived from the investment of such proceeds or other property that
232 (i) was used in connection with the commission of, or in an attempt to commit, a violation of subsection
233 B of § 18.2-47, § 18.2-48 or 18.2-59, subsection B of § 18.2-346, or § 18.2-347, 18.2-348, 18.2-348.1,
234 18.2-349, 18.2-355, 18.2-356, 18.2-357, 18.2-357.1, 40.1-29, 40.1-100.2, or 40.1-103; (ii) is traceable to
235 the proceeds of some form of activity that violates subsection B of § 18.2-47, § 18.2-48 or 18.2-59,
236 subsection B of § 18.2-346, or § 18.2-347, 18.2-348, 18.2-348.1, 18.2-349, 18.2-355, 18.2-356, 18.2-357,
237 40.1-29, 40.1-100.2, or 40.1-103; or (iii) was used to or intended to be used to promote some form of
238 activity that violates subsection B of § 18.2-47, § 18.2-48 or 18.2-59, subsection B of § 18.2-346, or
239 § 18.2-347, 18.2-348, 18.2-348.1, 18.2-349, 18.2-355, 18.2-356, 18.2-357, 40.1-29, 40.1-100.2, or
240 40.1-103 is subject to lawful seizure by a law-enforcement officer and subject to forfeiture to the
241 Commonwealth pursuant to Chapter 22.1 (§ 19.2-386.1 et seq.). Any forfeiture action under this section

shall be stayed until conviction, and property eligible for forfeiture pursuant to this section shall be forfeited only upon the entry of a final judgment of conviction for an offense listed in this section; if no such judgment is entered, all property seized pursuant to this section shall be released from seizure.

Real property shall not be subject to seizure unless the minimum prescribed punishment for the violation is a term of imprisonment of not less than five years.

All seizures and forfeitures under this section shall be governed by Chapter 22.1 (§ 19.2-386.1 et seq.), and the procedures specified therein shall apply, mutatis mutandis, to all forfeitures under this section.

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 2 of the Acts of Assembly of 2018, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.