

Department of Legislative Services
 Maryland General Assembly
 2004 Session

FISCAL AND POLICY NOTE
 Revised

Senate Bill 152

(Senator Mooney, *et al.*)

Judicial Proceedings

Judiciary

Family Law - Domestic Violence - Address Confidentiality Program

This bill requires the Secretary of State to establish an “Address Confidentiality Program” for domestic violence victims. The bill establishes eligibility requirements for the program and procedures for the program’s operation, including fines for certain program violations.

Fiscal Summary

State Effect: Potential minimal increase in revenues due to the bill’s penalty provisions. General fund expenditures for the Secretary of State would increase by \$52,937 in FY 2005 for personnel and related expenditures. Future years reflect annualization and inflation.

| (in dollars) | FY 2005 | FY 2006 | FY 2007 | FY 2008 | FY 2009 |
|----------------|------------|------------|------------|------------|------------|
| GF Revenue | - | - | - | - | - |
| GF Expenditure | 52,900 | 65,500 | 69,100 | 73,000 | 77,100 |
| Net Effect | (\$52,900) | (\$65,500) | (\$69,100) | (\$73,000) | (\$77,100) |

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: This bill requires the Secretary of State to establish and administer an Address Confidentiality Program (ACP) for domestic violence victims. A program participant may be an individual, a parent, or a guardian acting on behalf of a minor who

resides with the parent or guardian, or a guardian acting on behalf of a disabled person. The purpose of the ACP is to enable State and local agencies to respond to requests for public records without disclosing the location of a domestic violence victim. The Secretary of State accepts service of process, first-class, certified, and registered mail for the participant and creates a substitute address for the participant to use. Upon request, a State or local agency must use a participant's substitute address instead of the actual address.

ACP applications must be signed, be in an approved format, and contain:

- a statement that the applicant is a domestic violence victim and the applicant fears for the applicant's safety or the safety of the applicant's child;
- evidence that the applicant is a domestic violence victim, including appropriate documentation;
- a statement that disclosure of the applicant's actual address would endanger the applicant's safety or the safety of the applicant's child;
- a designation of the Secretary of State as agent for service of process and receipt of first-class, certified, or registered mail;
- the applicant's mailing address and a phone number where the applicant may be contacted by the Secretary of State;
- the actual address that the applicant requests not be disclosed by the Secretary of State;
- information about any existing court orders or action involving the applicant and related to divorce, child support, child custody, or child visitation, and information about the court that issued any orders or has jurisdiction over any of these actions; and
- a sworn statement by the applicant regarding the truth of the applicant's information.

The Secretary of State must certify applicants as program participants. A certification is valid for four years from the date of filing unless the certification is canceled or withdrawn. A participant may withdraw a certification by filing a signed, notarized request for withdrawal with the Secretary of State.

An applicant who falsely attests to the danger of the applicant's address disclosure, or who knowingly provides false information must lose certification. The Secretary of State is required to investigate any allegations of noncompliance. If the Secretary of State finds that a violation has occurred, a civil fine not exceeding \$500 must be imposed against the applicant.

An ACP participant who obtains a legal name change must notify the Secretary of State within 30 days, and provide sufficient evidence of the name change. A participant who changes an address or phone number must notify the Secretary of State at least seven days before the change occurs. The Secretary of State must cancel the certification of a participant if the ACP participant fails to provide notification of name, address, or telephone changes as required, the participant files a withdrawal request, the participant submits false information, or the Secretary of State receives mail addressed to the participant that has been returned as undeliverable.

The Secretary of State is required to send notice of certification cancellation to the participant with the reason for cancellation. The participant may appeal a cancellation decision in accordance with procedures developed by the Secretary of State. A person who ceases to be a program participant is responsible for notifying any person that the substitute address supplied by the Secretary of State is no longer valid.

An ACP participant may request any State or local agency to use the substitute address provided by the Secretary of State as the participant's address. An agency must comply with this request unless the agency has a bona fide reason for using the participant's actual address and has received a waiver from the Secretary of State. A waiver authorizes an agency to use the actual address only for the required statutory or administrative purpose.

Each local board of elections must use a participant's actual address for all election-related purposes. A participant may not use the substitute address for voter registration purposes. However, a local board of elections may not make a participant's address available for public inspection or copying except as provided by statute.

Generally, a participant's actual address and telephone number as maintained by the Secretary of State or any other State or local agency is not a public record. The Secretary of State may not disclose an ACP participant's actual address or phone number, or substitute address. However, the Secretary of State must notify the appropriate court of a participant's certification and the substitute address designated by the Secretary of State if the participant is subject to a court order or involved in a court action related to divorce, child custody, child support, or child visitation.

A person may not knowingly and intentionally obtain a participant's actual address or phone number from any agency without authorization. Additionally, if an employee of the Secretary of State obtains a participant's actual address or phone number in the course of the employee's duties and has specific knowledge that the actual address or phone number belongs to an ACP participant, then the employee may not knowingly and intentionally disclose a participant's actual address or phone number to another person unless authorized. Both violations are misdemeanors, subject to a maximum fine of \$2,500.

The Secretary of State is required to designate State and local agencies and nonprofit organizations to provide assistance to ACP applicants. The assistance may not be construed as legal advice. The Secretary of State is required to adopt regulations to carry out the bill's provisions.

Current Law: There are no provisions in State law that provide for the confidentiality of personal information because a person or someone under the person's care is a victim of domestic violence.

Personal information means information that identifies an individual, including an address, telephone number, and other identifying information. A "custodian" is an officer or employee of State or local government who is responsible for keeping the public record. With certain exceptions, a custodian may not knowingly disclose a public record of the Motor Vehicle Administration (MVA) containing personal information. A custodian must disclose personal information, however, to a federal, State, or local government, including a law enforcement agency or court, and other entities, as provided by statute. A person receiving personal information relating to MVA records may not use or redisclose the personal information for a purpose other than that for which the custodian disclosed the personal information. A person who rediscloses this personal information must keep a record regarding who the information was provided to for five years and provide it to the custodian upon request.

For the purpose of public inspection, and except upon special order of the local board, original voter registration records must be available for public inspection at all times when a local board is open and may not be removed from the office except by court order or for temporary removal solely for the purposes of data processing.

Background: According to the Maryland Network Against Domestic Violence, the U.S. Department of Justice estimates that only about 25% of domestic violence assaults are actually reported to police. The *2002 Crime Report* for Maryland reports a total of 18,904 domestic violence crimes during calendar 2002. This is a decrease of 8.6% compared to calendar 2001. However, the 2002 totals do not include reporting from Baltimore City, due to data conversion issues. In 2001, Baltimore City reported 1,492

domestic violence crimes. Assaults were the most frequently reported crime, with 17,690 occurring in calendar 2002 (not including Baltimore City).

The National Conference of State Legislatures reports that the following states have enacted address confidentiality programs: California, Florida, Illinois, Indiana, Louisiana, Maine, Massachusetts, Nevada, New Hampshire, New Jersey, New York, North Carolina, Oklahoma, Rhode Island, Vermont, Virginia, and Washington.

State Revenues: General fund revenues could increase minimally under the bill's monetary penalty provisions for those cases heard in the District Court. It is expected that the number of people accused of the proposed crimes would be minimal.

State Expenditures: General fund expenditures for the Secretary of State are expected to increase by \$52,937 in fiscal 2005, accounting for the October 1, 2004 effective date of the bill.

It is difficult to predict reliably how many people would take advantage of the ACP. This estimate reflects the cost of hiring an administrator to manage the program and provide training and outreach to social services and domestic violence organizations. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses. The bill requires resources for investigations, mail forwarding, and regulatory review. However, the Secretary of State advises that these requirements could be handled with existing resources.

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|-----------------------------------|-----------------|
| Salary and Fringe Benefits | \$46,479 |
| Other Operating Expenses | <u>6,458</u> |
| Total FY 2005 Expenditures | \$52,937 |

Future year expenditures reflect: (1) a full salary with 4.6% annual increase and 3% annual turnover; and (2) 1% increase in ongoing operating expenditures.

Additional Information

Prior Introductions: As introduced, this bill is a reintroduction of SB 523 from the 2003 session. SB 523 was passed by the Senate and referred to the Judiciary Committee, where it received an unfavorable report.

Cross File: None.

Information Source(s): Montgomery County, Worcester County, Office of the Attorney General, National Conference of State Legislatures, Department of State Police, Department of Legislative Services

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