**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 31 TO TITLE 17 SO AS TO ESTABLISH THE “WITNESS PROTECTION ACT”, TO DEFINE NECESSARY TERMS, TO PROVIDE PROCEDURES TO IDENTIFY WITNESSES WHO MAY BE IN NEED OF PROTECTION, AND TO TASK THE ATTORNEY GENERAL IN COORDINATION WITH THE STATE LAW ENFORCEMENT DIVISION (SLED) WITH THE PROTECTION OF APPROPRIATE WITNESSES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act may be cited as the “Witness Protection Act”.

SECTION 2. Title 17 of the 1976 Code is amended by adding:

“CHAPTER 31

Witness Protection Act

Section 17‑31‑10. (A) For the purposes of this chapter, the term:

(1) ‘Witness’ means a person who is summoned, or who may be summoned, to give testimony in a criminal proceeding, and includes a member of his immediate family.

(2) ‘Witness at risk of harm’ means a witness who, as a result of cooperating in an investigation or prosecution of a serious felony offense, has been, or is reasonably likely to be, intimidated, harassed, threatened, retaliated against or subjected to physical violence.

(3) ‘Serious felony offense’ means any felony that involves the use, attempted use or threatened use of physical force against another person or results in the serious physical injury or death of another person.

(B) In an investigation or prosecution of a serious felony offense, the circuit solicitor shall review all witnesses to the offense and may identify a witness as a witness at risk of harm. Upon this identification, the circuit solicitor shall determine whether a witness at risk of harm is critical to a criminal investigation or prosecution. If the witness at risk of harm is determined to be critical to an investigation or prosecution, the circuit solicitor may:

(1) certify that the witness receives protective services; or

(2) if the circuit solicitor finds a compelling need to temporarily relocate the witness, certify that the witness receives protective services including temporary relocation services.

In determining whether a witness should receive protective services, the circuit solicitor shall give special consideration to a witness who is a child, elderly, handicapped, or otherwise more at risk of being intimidated, harassed, threatened, retaliated against or subjected to physical violence or who is a witness in a case involving organized crime, gang activities, drug trafficking, or a high degree of risk to the witness.

(C) When a witness is certified as provided in subsection (B), the circuit solicitor shall notify the Attorney General who shall coordinate with the State Law Enforcement Division (SLED) to provide appropriate protective services to the witness. The Attorney General and SLED shall coordinate the efforts of state and local agencies to provide protective services to a witness.

(D) Protective services provided to a witness may include, but are not limited to:

(1) armed protection, escort, marked or unmarked surveillance, or periodic visits or contact by law enforcement officials prior to, during, or subsequent to the official proceeding;

(2) temporary physical relocation to an alternate residence;

(3) housing expenses;

(4) transportation or storage of personal possessions;

(5) basic living expenses including, but not limited to, food, transportation, utility costs, and health care; and

(6) other services as needed and approved by the Attorney General.

(E) Protective services may be provided for the duration of the criminal case or until the risk giving rise to certification has diminished, whichever occurs first.

(F) In addition to the protective services provided pursuant to subsection (D), the Attorney General shall provide the witness with:

(1) information on the responsibilities and risks of being a witness; and

(2) the names and telephone numbers of persons to contact if the witness has questions or concerns for his safety including at least one telephone number that may be called twenty‑four hours a day.

(G) If a witness declines to receive protective services pursuant to the provisions of this chapter, the Attorney General shall request the witness to make this declaration in writing. The declaration must contain:

(1) the type of protective services offered;

(2) that the offer of protective services has been explained in detail to the witness; and

(3) a telephone number that the witness may call twenty‑four hours a day if the witness has concerns for his safety or reconsiders his decision to decline protective services.

(H) If a parent or guardian of a child who is certified as a witness at risk of harm critical to a criminal investigation or prosecution as provided in subsection (B), declines the provision of protective services pursuant to the provisions of this chapter, the Attorney General must be notified within twenty‑four hours after the decline of protective services. Upon receipt of this notice, the Attorney General shall make reasonable efforts to confer with a victim advocate providing services for the Office of Victim Assistance and shall, not later than three days after the decline of protective services, determine if the matter should be referred to the Department of Social Services for investigation as to whether the child is neglected and whether the department should provide protective services or take other action as provided by law with respect to the child.

(I) The costs of providing protective services to witnesses pursuant to this chapter must be shared by the state and local agencies providing services pursuant to the witness protection policy established by the Attorney General in coordination with SLED.

(J) Any record of a governmental agency that, in the reasonable judgment of the Attorney General or the appropriate circuit solicitor, would disclose or would reasonably result in the disclosure of the identity or location of a person receiving or considered for the receipt of protective services pursuant to this chapter or of law enforcement techniques not otherwise known to the general public that are used in protecting witnesses are confidential and not subject to disclosure pursuant to Chapter 4, Title 30, the Freedom of Information Act.

(K) The Attorney General and SLED may utilize the resources of other state agencies in order to provide protective services to witnesses pursuant to this chapter. All circuit solicitors’ offices and other agencies requesting assistance pursuant to this chapter shall comply with the provisions of the witness protection policy established by the Attorney General.

(L) The Attorney General in coordination with SLED shall implement the provisions of this chapter and may develop regulations in accordance with the requirements of this chapter.

(M) By November 15, 2018, and annually thereafter, the Attorney General shall submit a report to the General Assembly on the fiscal and operational status of the program to provide protective services to witnesses pursuant to this chapter.

Section 17‑31‑20. (A) In order to receive protective services pursuant to this chapter, the witness shall enter into a written agreement with the Attorney General. The witness protection agreement must be in writing and must specify the responsibilities of the witness that establish the conditions for the Attorney General in coordination with SLED to provide protective services. The witness shall agree to all of the following, to:

(1) testify in and provide information to all appropriate law enforcement officials concerning all appropriate proceedings;

(2) refrain from committing any crime;

(3) take all necessary steps to avoid detection by other persons of the facts concerning the protective services provided to the witness pursuant to this chapter;

(4) comply with legal obligations and civil judgments against the witness;

(5) cooperate with all reasonable requests of officers and employees of the state or local government who are providing protective services pursuant to this chapter;

(6) designate another person to act as agent for service of process;

(7) make a sworn statement of all outstanding legal obligations, including obligations concerning child custody and visitation;

(8) disclose if the witness is on probation or parole and, if so, any conditions of probation or parole;

(9) inform regularly the appropriate official of the witness’s activities and current address; and

(10) comply with any other lawful and appropriate conditions as determined by the Attorney General.

(B) The Attorney General is not liable for any condition in the witness protection agreement that cannot reasonably be met due to a witness committing a crime during participation in the program.”

SECTION 3. This act takes effect upon approval by the Governor.

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