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HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 222

AN ACT TO AMEND TITLES 10 AND 11 OF THE DELAWARE CODE RELATING TO LETHAL VIOLENCE
PROTECTION ORDERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Chapter 50A, Title 16 of the Delaware Code by making deletions as shown by strike through
2 and insertions as shown by underline as follows:

3 Lethal Violence Protective Order

4 §5001A. Definitions.

5 As used in this part:

6 (1) "Petitioner" means:

7 a. A family member of the respondent as defined in § 901 of Title 10 or a member of the class defined in §
8 1041(2)b. of Title 10; or

9 b. A law enforcement officer as defined in §222(15) of Title 11, who files a petition alleging that the
10 respondent poses a danger of causing personal injury to self or others by having a firearm within the person's custody
11 or by controlling, owning, purchasing, possessing, or receiving a firearm.

12 (2) "Respondent" means the person, as defined in §222(21) of Title 11, who is alleged to pose a danger of causing
13 injury to self or others by having a firearm within the person's custody or by controlling, owning, purchasing, possessing,
14 or receiving a firearm.

15 (3) "Lethal violence protective order" means an order issued by the Court prohibiting and enjoining a person from
16 having a firearm within the person's custody or controlling, owning, purchasing, possessing, or receiving a firearm.

17 § 5002A. Commencement of action; procedure.

18 (a) A request for relief under this section is initiated by the filing of a verified petition by the petitioner asking the
19 Court to issue a lethal violence protective order against the respondent.

20 (b) A petition for a lethal violence protective order shall be filed in the county where the respondent resides.

(c) Forms and instructions for initiating a proceeding under this section shall be available from the Prothonotary's office. Assistance from court staff or court volunteers shall be available during business hours to assist the parties with all papers which may be filed in connection with a proceeding under this part. Any assistance or information provided by court staff or court volunteers under this part does not constitute the practice of law.

(d) All forms and instructions developed for use by the parties to a proceeding under this part shall contain simple, understandable language.

§ 5003A. Ex parte orders and emergency hearings.

(a) A petitioner may request an emergency lethal violence protective order by filing an affidavit or verified pleading, under penalty of prosecution for false written statement under §1233 of Title 11, which shall:

(1) Allege that respondent poses an immediate and present danger of causing personal injury to self or others by owning, possessing, controlling, purchasing or receiving a firearm; and

(2) Identify the location of any firearms believed that the petitioner currently owns, possesses or controls.

(b) An emergency lethal violence protective order may be issued on an ex parte basis, that is, without notice to the respondent if the Petitioner certifies in writing the efforts, if any, which have been made to give notice to the respondent or the reasons supporting the claim that notice should not be required.

(c) An emergency hearing held on an ex parte basis shall be held within 24 hours of the filing of the petition if the Court is open. If the Court is not open within 24 hours of the filing of the petition, the emergency hearing will be held on the first day that the Court is open.

(d) If the Court finds probable cause to believe that the respondent poses an immediate and present danger of causing injury to self or others by owning, possessing, controlling, purchasing or receiving a firearm, the Court shall issue an emergency lethal violence protective order.

(e) An emergency lethal violence protective order shall:

(1) State on its face that all firearms owned by the respondent or in the respondent's possession or control shall be relinquished immediately to a police officer if requested by the police officer upon personal service of the emergency lethal violence protective order. If no request is made by a police officer, the relinquishment shall occur within 24 hours of personal service to the respondent of the order at any staffed police station or a federally-licensed firearms dealer located in Delaware. If the respondent is incarcerated at the time personal service is effectuated, the 24-hour relinquishment period shall commence at the time of release from incarceration.

(2) State on its face that the respondent is prohibited from possessing, controlling, purchasing or receiving firearms under Delaware law.

51 (3) Require the respondent to fill one of the following documents within 48 hours of personal service or, if the
52 Court will not be open within 48 hours from the time of personal service, the next day that the Court is open:

53 a. A certification, under penalty of prosecution for false written statement under § 1233 of Title 11, that
54 the respondent did not own, possess, or control any firearms at the time of the order and currently does not own,
55 possess, or control any firearms.

56 b. A copy of a proof of transfer showing, for each firearm owned, possessed, or controlled by the
57 respondent at the time of the order, that the firearm was relinquished to a police officer or a federally-licensed
58 firearms dealer located in Delaware.

59 c. A certification, under penalty of prosecution for false written statement under § 1233 of Title 11, for
60 each firearm owned, possessed, or controlled by the respondent at the time of the order, that the respondent is
61 unable to obtain access to the firearm, specifying the location of the firearm and the reason why the respondent is
62 unable to obtain access.

63 (f) If the respondent fails to file one of the documents pursuant to subsection (e)(3), the Court shall issue an Order,
64 that shall identify, as particularly as possible, the location and description of the type of firearms owned, possessed, or
65 controlled authorizing a law-enforcement officer to search for and seize the firearms in the locations described therein.

66 (g) The Court shall provide to the petitioner a copy of the documents the respondent files with the Court pursuant
67 to subsection (e)(3) of this section within 48 hours of filing or, if the Court will not be open within 48 hours of the filing,
68 the first day that the Court is thereafter open.

69 (h) A police officer, as defined in § 1911 of Title 11, or a federally-licensed firearms dealer located in Delaware
70 taking possession of firearms relinquished by a respondent pursuant to an emergency lethal violence protective order under
71 this section shall issue a proof of transfer to the respondent and to the Court which issued the emergency lethal violence
72 protective order. The proof of transfer shall list the name of the respondent; date of the transfer; and make, model, and
73 serial number of each firearm relinquished. The police agency identified in § 1911 of Title 11 or the federally-licensed
74 firearms dealer located in Delaware shall dispose of the firearm or return the firearm to the respondent only subsequent to
75 the expiration or termination of the lethal violence protective order in accordance with § 2311 of Title 11.

76 (i) No records, data, information, or reports containing the name, address, other identifying data of either the
77 respondent, petitioner, or recipient of the relinquished firearms or which contain the make, model, caliber, serial number, or
78 other identifying data of any firearm which are required, authorized, or maintained pursuant to this section, shall be subject
79 to disclosure or release pursuant to the Freedom of Information Act, Chapter 100 of Title 29.

80 (j) An emergency lethal violence protective order issued under this section shall be served immediately upon the
81 respondent by personal service, any form of mail, or in any manner directed by the Court, including publication, if other
82 methods of service have failed or deemed to have been inadequate. A copy of the order shall also be given to the petitioner
83 after the hearing, before leaving the courthouse.

84 (k) When an emergency lethal violence protective order has been issued, a full hearing in compliance with §5004A
85 shall be held within 10 days. The Court may extend an emergency order as needed, but not to exceed 30 days, to effectuate
86 service of the order or where necessary to ensure the protection of the respondent or others.

87 § 5004A. Nonemergency hearings.

88 (a) A petitioner may request a lethal violence protective order by filing an affidavit or verified pleading, under
89 penalty of prosecution for false written statement under §1233 of Title 11, alleging that the respondent poses a significant
90 danger of causing personal injury to self or others in the near future by owning, possessing, controlling, purchasing or
91 receiving a firearm. The petition shall also describe the number, types, and locations of any firearms presently believed by
92 the petitioner to be owned, possessed or controlled by the respondent.

93 (b) Upon receipt of a petition for a lethal violence protective order, the Court shall order a hearing within 30 days.

94 (c) In determining whether to issue a lethal violence protective order under this section, the Court shall consider
95 evidence of:

96 (1) A recent threat of violence or act of violence by the respondent directed toward self or others.

97 (2) A recent violation of an emergency protective order issued pursuant to 10 Del. C. § 1043 or of an
98 unexpired protective order issued pursuant 10 Del. C. § 1044.

99 (3) A pattern of violent acts or violent threats within the past 12 months, including threats of violence or acts
100 of violence by the respondent directed toward self or others.

101 (4) The unlawful and reckless use, display, or brandishing of a firearm by the respondent.

102 (5) The history of use, attempted use, or threatened use of physical force by the respondent against another
103 person.

104 (6) Any prior arrest of the respondent for a felony offense.

105 (7) Any history of a violation by the respondent of an emergency protective order issued pursuant to 10 Del.
106 C. § 1043 or of a protective order issued pursuant to 10 Del. C. § 1044.

107 (8) Evidence of the abuse of controlled substances or alcohol by the respondent.

108 (9) Evidence of recent acquisition of firearms, ammunition, or other deadly weapons.

109 (e) At the hearing, the petitioner shall have the burden of proving, by clear and convincing evidence, that the
110 respondent poses a significant danger of injury to self or others by owning, possessing, controlling, purchasing or receiving
111 a firearm.

112 (f) If the Court finds that there is clear and convincing evidence to issue a lethal violence protective order, the
113 Court shall issue a lethal violence protective order that shall be in effect for up to one year, unless terminated or renewed
114 pursuant to § 5006A of this section.

115 (g) A lethal violence protective order shall:

116 (1) State on its face that all firearms owned by the respondent or in the respondent's possession or control
117 shall be relinquished immediately to a police officer if requested by the police officer upon personal service of the
118 lethal violence protective order. If no request is made by a police officer, the relinquishment shall occur within 24
119 hours of personal service of the order at any staffed police station or a federally-licensed firearms dealer located in
120 Delaware, unless the person is incarcerated at the time personal service is received, in which case the 24 hour
121 relinquishment period shall commence at the time of release from incarceration.

122 (2) State on its face that the respondent is prohibited from possessing, controlling, purchasing or receiving
123 firearms under Delaware law.

124 (3) Require the respondent to file, within 48 hours of personal service or, if the Court will not be open within
125 48 hours from the time of personal service, within the first 3 hours the Court is thereafter open, one of the following
126 documents:

127 a. A certification, under penalty of prosecution for false written statement under § 1233 of Title 11, that
128 the respondent did not own, possess, or control any firearms at the time of the order and currently does not own,
129 possess, or control any firearms.

130 b. A copy of a proof of transfer showing, for each firearm owned, possessed, or controlled by the
131 respondent at the time of the order, that the firearm was relinquished to a police officer or a federally-licensed
132 firearms dealer located in Delaware.

133 c. A certification, under penalty of prosecution for false written statement under § 1233 of Title 11, for
134 each firearm owned, possessed, or controlled by the respondent at the time of the order, that the respondent is
135 unable to obtain access to the firearm, specifying the location of the firearm and the reason why the respondent is
136 unable to obtain access.

137 (h) If the respondent fails to file one of the documents pursuant to subsection (g)(3), the Court shall issue an Order,
138 that shall identify, as particularly as possible, the location and description of the type of firearms owned, possessed, or
139 controlled authorizing a law-enforcement officer to search for and seize the firearms in the locations described therein.

140 (i) The Court shall provide to the petitioner a copy of the documents the respondent files with the Court pursuant
141 to subsection (g)(3) of this section within 48 hours of filing or, if the Court will not be open within 48 hours of the filing,
142 the first day that the Court is thereafter open.

143 (j) A police officer, as defined in § 1911 of Title 11, or a federally-licensed firearms dealer located in Delaware
144 taking possession of firearms relinquished by a respondent pursuant to a lethal violence protective order under this section
145 shall issue a proof of transfer to the respondent and to the Court issuing the lethal violence protective order. The proof of
146 transfer shall list the name of the respondent; date of the transfer; and make, model, and serial number of each firearm
147 relinquished. The police agency identified in § 1911 of Title 11 or the federally-licensed firearms dealer located in
148 Delaware shall dispose of the firearm or return the firearm to the respondent only subsequent to the expiration or
149 termination of the protective order in accordance with § 2311 of Title 11.

150 (k) No records, data, information, or reports containing the name, address, other identifying data of either the
151 respondent, petitioner, or recipient of the relinquished firearms or which contain the make, model, caliber, serial number, or
152 other identifying data of any firearm which are required, authorized, or maintained pursuant to this section, shall be subject
153 to disclosure or release pursuant to the Freedom of Information Act, Chapter 100 of Title 29.

154 (l) If the Court finds that there is not clear and convincing evidence to support the issuance of a lethal violence
155 protective order, the Court shall dissolve any emergency lethal violence protective order then in effect.

156 (m) When the Court issues a lethal violence protective order under this section, the court shall inform the
157 respondent that he or she is entitled to one hearing to request a termination of the order, pursuant to § 5006A of this section,
158 and shall provide the respondent with a form to request such a hearing.

159 (n) In those cases where the respondent is not present for the hearing, a lethal violence protective order issued shall
160 be served immediately upon the respondent, by personal service, any form of mail, or in any manner directed by the Court,
161 including publication, if other methods of service have failed or deemed to have been inadequate. A certified copy of the
162 order shall also be given to the petitioner after the hearing, before leaving the courthouse. If the order recites that the
163 respondent appeared in person before the Court, the necessity for further service is waived and proof of service of the order
164 is not necessary; in those cases, the respondent shall be given a copy of the order before leaving the courthouse.

165 § 5005A. Enforcement; sanctions for violation of order.

166 (a) The provisions of 10 Del. Code § 1046, relating to entry of protective orders into the Delaware Justice
167 Information System, and the enforcement of orders, shall apply to all lethal violence protective orders issued under this
168 part, except that the lethal violence protective order need not identify a person protected.

169 (b) It shall be unlawful for a petitioner to file for a lethal violence protective order knowing the information in the
170 petition to be false pursuant to §1233 of Title 11 which is class A misdemeanor.

171 § 5006A. Termination and renewal.

172 (a) A person subject to a lethal violence protective order issued under this section may submit one written request
173 at any time during the effective period of the order for a hearing to terminate the order.

174 (1) The respondent shall have the burden of proving by clear and convincing evidence that the respondent
175 does not pose a significant danger of causing personal injury to self or others by owning, possessing, controlling,
176 purchasing or receiving a firearm

177 (2) If the Court finds after the hearing that the respondent has met his or her burden, the Court shall terminate
178 the order.

179 (b) A petitioner may request a renewal of a lethal violence protective order at any time within the three months
180 before the expiration of a lethal violence protective order.

181 (1) The Court may, after notice and a hearing, renew a lethal violence protective order issued under this part if
182 the petitioner proves, by clear and convincing evidence, that the respondent continues to pose a significant danger of
183 causing personal injury to self or others in the near future by owning, possessing, controlling, purchasing or receiving a
184 firearm.

185 (2) In determining whether to renew a lethal violence protective order issued under this part, the Court shall
186 consider evidence of the facts identified in §5004A(c) and any other evidence of an increased risk for violence,
187 including evidence of any of the facts identified in § 5004A(c).

188 (3) At the hearing, the petitioner shall have the burden of proving, by clear and convincing evidence, that the
189 respondent continues to pose a significant danger of causing personal injury to self or others in the near future by
190 owning, possessing, controlling, purchasing or receiving a firearm.

191 (4) If the renewal petition is supported by clear and convincing evidence, the Court shall renew the lethal
192 violence protective order for up to one year.

193 (5) The renewal of a lethal violence protective order issued pursuant to this section shall have a duration of up
194 to one year, subject to termination by further order of the Court at a hearing held pursuant to paragraph (a) of this
195 section, or further renewal pursuant to this section.

196 § 5007A. A Return and Disposal of Firearms.

197 If an order issued pursuant to this part is terminated or expires and is not renewed, the law enforcement agency or
198 the federally-licensed firearms dealer located in Delaware shall dispose of the firearm or return the firearm to the
199 respondent only subsequent to the expiration or termination of the protective order in accordance with § 2311 of Title 11

200 § 5008A. Nonpreclusion of remedies; limitation on liability.

201 (a) Nothing in this part shall preclude a petitioner or law-enforcement officer from removing weapons pursuant to
202 other authority, or filing criminal charges when probable cause exists.

203 (b) There shall be no civil liability for any law enforcement officer who, in good faith, does not seek a lethal
204 violence protection order.

205 (c) A law enforcement agency and/or federally-licensed firearms dealer shall be immune from civil or criminal
206 liability for any damage or deterioration of firearms stored or transported pursuant to this section. This subsection shall not
207 apply if the damage or deterioration occurred as a result of recklessness, gross negligence, or intentional misconduct by the
208 law enforcement agency or federally-licensed firearms dealer.

209 § 5009A. Jurisdiction.

210 The Superior Court shall have jurisdiction of proceedings under this part.

211 Section 2. Amend Section 1448, Title 11 of the Delaware Code by making deletions as shown by strike through
212 and insertions as shown by underline as follows and redesignating accordingly:

213 § 1448. Possession and purchase of deadly weapons by persons prohibited; penalties.

214 (a) Except as otherwise provided herein, the following persons are prohibited from purchasing, owning, possessing
215 or controlling a deadly weapon or ammunition for a firearm within the State:

216 (10) Any person who is subject to a lethal violence protection order, other than an ex parte order, but only for
217 so long as that order remains in effect or is not vacated or otherwise terminated;

218 Section 3. This Act shall take effect one year from the date of its enactment.

SYNOPSIS

 This Act would allow the Superior Court to issue a lethal violence protection order where a family member or a law enforcement officer can show that the respondent poses a danger to self or others by owning, possessing, controlling, purchasing or receiving a firearm. The order would require respondent to refrain from exercising custody or control over firearms during the order's duration. The order would also authorize law enforcement to search for and seize firearms in respondent's possession provided petitioner can describe the type and location of said firearm with sufficient particularity. Such an order may be issued at an emergency, ex parte hearing, but a full hearing must then be held within ten days. The burden of proof at the full hearing is clear and convincing evidence. The protective order may last up to one year, and may be renewed upon petition, or terminated early if the respondent can show by clear and convincing evidence that such person is no longer a significant danger to self or others.