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Osienski, Schwartzkopf, Sen. Delcollo

HOUSE OF REPRESENTATIVES  
149th GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 1  
FOR  
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 Part IV, Title 10 of the Delaware Code by making deletions as shown by strike through and  
2 insertions as shown by underline as follows:

3 Chapter 77. Lethal Violence Protective Order.

4 § 7701. Definitions.

5 (a) As used in this section:

6 (1) “Firearm means as defined in § 222 of Title 11.

7 (2) “Lethal violence protective order” means an order issued by the Justice of the Peace Court or Superior  
8 Court prohibiting and enjoining a person from controlling, owning, purchasing, possessing, having access to, or  
9 receiving a firearm.

10 (3) “Petitioner” means either of the following:

11 a. A family member of the respondent as defined in § 901 of Title 10 or a member of the class defined in  
12 § 1041(2)b. of Title 10.

13 b. A law enforcement officer, as defined in § 222 of Title 11, who files a petition alleging that the  
14 respondent poses a danger of causing physical injury to self or others by controlling, owning, purchasing,  
15 possessing, having access to or receiving a firearm.

16 (4) “Physical injury” means as defined in § 222 of Title 11.

17 (5) “Respondent” means the individual who is alleged to pose a danger of causing physical injury to self or  
18 others by controlling, owning, purchasing, possessing, having access to or receiving a firearm.

19 § 7702. Commencement of action; procedure.

20 (a) A petitioner may request relief under § 7703 or § 7704 of this title by filing an affidavit or verified petition.

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

22 (c) Forms and instructions for initiating a proceeding under this section must be available from the Justice of the  
23 Peace Court's office and the Superior Court Prothonotary's office. Assistance from court staff must be available during  
24 business hours to assist the parties with all papers that may be filed in connection with a proceeding under this chapter. Any  
25 assistance or information provided by court staff or court volunteers under this chapter does not constitute the practice of  
26 law.

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

29 § 7703. Emergency hearings.

30 (a) A petitioner may request an emergency lethal violence protective order by filing an affidavit or verified petition  
31 in Justice of the Peace Court that does both of the following:

32 (1) Alleges that respondent poses an immediate and present danger of causing physical injury to self or others  
33 by controlling, purchasing, owning, possessing, controlling, purchasing, having access to, or receiving a firearm.

34 (2) Identifies the location of any firearms it is believed that the petitioner currently owns, possesses, has  
35 access to, or controls.

36 (b) The following procedures govern an emergency proceeding:

37 (1) The Justice of the Peace Court shall hear a request for an order under this section within 24 hours of the  
38 filing of the affidavit or verified petition.

39 (2) The petitioner has the burden of demonstrating that probable cause exists to believe that a respondent  
40 poses an immediate and present danger of causing physical injury to self or others by owning, possessing, controlling,  
41 purchasing, having access to, or receiving a firearm.

42 (3) The respondent does not have the right to be heard or to notice that the petitioner has sought an order  
43 under this section.

44 (c) The Justice of the Peace Court may adopt additional rules governing proceedings under this section.

45 (d) If the Justice of the Peace Court finds that there is probable cause to believe that the respondent poses an  
46 immediate and present danger of causing physical injury to self or others by owning, possessing, controlling, purchasing,  
47 having access to, or receiving a firearm, the Court shall issue an emergency lethal violence protective order. The Court may  
48 do any of the following through its order:

49           (1) Require the respondent to relinquish to a law enforcement agency receiving the Court's order any firearms  
50           or ammunition owned, possessed, or controlled by the respondent.

51           (2) Prohibit the respondent from residing with another individual who owns, possesses, or controls firearms or  
52           ammunition. Nothing in this section may be construed to impair or limit the rights, under the Second Amendment to  
53           the United States Constitution or Article I, § 20 of the Delaware Constitution, of an individual who is not subject to the  
54           Court's order.

55           (3) Direct a law enforcement agency having jurisdiction where the respondent resides or the firearms or  
56           ammunition are located to immediately search for and seize any firearms or ammunition owned, possessed, or  
57           controlled by the respondent.

58           (e) The Justice of the Peace Court shall direct that an emergency lethal violence protective order issued under this  
59           section be served immediately upon the respondent by personal service, any form of mail, or in any manner directed by the  
60           Court, including publication, if other methods of service have failed or deemed to have been inadequate. The Court shall  
61           give a certified copy of the order to the petitioner after the hearing and before the petitioner leaves the courthouse.

62           (f) If the Justice of the Peace Court issues an emergency lethal violence protective order under this section, the  
63           Superior Court must hold a full hearing in compliance with § 7704 of this title within 15 days. The Justice of the Peace  
64           Court or the Superior Court may extend an emergency order as needed to effectuate service of the order or where necessary  
65           to ensure the protection of the respondent or others, but the duration of the order may not exceed 45 days.

66           § 7704. Nonemergency hearings.

67           (a) A petitioner may request a lethal violence protective order by filing an affidavit or verified petition in the  
68           Superior Court that does both of the following:

69           (1) Alleges that the respondent poses a danger of causing physical injury to self or others by controlling,  
70           owning, purchasing, possessing, having access to, or receiving a firearm.

71           (2) Identifies the location of any firearms it is believed that the petitioner currently owns, possesses, has  
72           access to, or controls.

73           (b) The following procedures govern a nonemergency proceeding:

74           (1) The respondent has the right to be heard.

75           (2) If a hearing is requested, it must be held within 15 days of the filing of an affidavit or verified petition  
76           under subsection (a) of this section, unless extended by the Court for good cause shown.

77           (3) If a hearing is held, the respondent has the right to notice of the hearing, to present evidence, and to cross-  
78           examine adverse witnesses.

79           (4) If a hearing is held, the hearing must be closed to the public and testimony and evidence must be kept  
80 confidential, unless the respondent requests the hearing be public.

81           (5) If a hearing is held, the hearing must be on the record to allow for appellate review.

82           (6) The petitioner has the burden of proving by clear and convincing evidence that the respondent poses a  
83 danger of causing physical injury to self or others by controlling, owning, purchasing, possessing, having access to, or  
84 receiving a firearm.

85           (c) The Superior Court may adopt additional rules governing proceedings under this section.

86           (d) If the Superior Court finds by clear and convincing evidence that the respondent poses a danger of causing  
87 physical injury to self or others by controlling, owning, purchasing, possessing, having access to, or receiving a firearm, the  
88 Court shall issue a lethal violence protective order. The Court may do any of the following through its order:

89           (1) Require the respondent to relinquish to a law enforcement agency receiving the Court's order any firearms  
90 or ammunition owned, possessed, or controlled by the respondent.

91           (2) Allow the respondent to voluntarily relinquish to a law enforcement agency receiving the Court's order  
92 any firearms or ammunition owned, possessed, or controlled by the respondent.

93           (3) Allow the respondent to relinquish firearms or ammunition owned, possessed, or controlled by the  
94 respondent to a designee of the respondent. A designee of the respondent must not reside with the respondent and must  
95 not be a person prohibited under § 1448 of Title 11. The designee must affirm to the Court and the Court must find that  
96 the designee of the respondent will keep firearms or ammunition owned, possessed, or controlled by the respondent out  
97 of the possession of the respondent.

98           (4) Prohibit the respondent from residing with another individual who owns, possesses, or controls firearms or  
99 ammunition. Nothing in this section may be construed to impair or limit the rights, under the Second Amendment to  
100 the United States Constitution or Article I, § 20 of the Delaware Constitution, of an individual who is not subject to the  
101 Court's order.

102           (5) Direct a law enforcement agency having jurisdiction where the respondent resides or the firearms or  
103 ammunition are located to immediately search for and seize any firearms or ammunition owned, possessed, or  
104 controlled by the respondent.

105           (e) If the Superior Court finds that there is not clear and convincing evidence to support the issuance of a lethal  
106 violence protective order, the Court shall not issue a lethal violence protective order, and shall vacate any emergency lethal  
107 violence protective order then in effect.

108           (f) If the Superior Court issues a lethal violence protective order under this section, the court shall inform the  
109 respondent that the respondent is entitled to one hearing to request a termination of the order under § 7705 of this title, and  
110 shall provide the respondent with a form to request such a hearing.

111           (g) If a respondent is not present for a hearing under this section, the Superior Court shall direct that a lethal  
112 violence protective order issued be served immediately upon the respondent by personal service, any form of mail, or in any  
113 manner directed by the Court, including publication if other methods of service have failed or deemed to have failed or  
114 deemed to have been inadequate.

115           (h) The Superior Court shall give a certified copy of the order to the petitioner and respondent after the hearing  
116 and before the petitioner and respondent leave the courthouse.

117           (i) Any party in interest aggrieved by a decision of the Superior Court under this section may appeal the decision  
118 to the Supreme Court.

119           § 7705. Termination and renewal.

120           (a) A respondent subject to a lethal violence protective order issued under § 7704 of this title, or renewed under  
121 subsection (b) of this section, may submit 1 written request at any time during the effective period of the order for a hearing  
122 to terminate the order.

123           (1) The Superior Court must provide notice to all parties and a hearing before the Court may terminate the  
124 order.

125           (2) The respondent must prove by clear and convincing evidence that the respondent does not pose a danger of  
126 causing physical injury to self or others by controlling, owning, purchasing, possessing, having access to, or receiving a  
127 firearm.

128           (3) If the Superior Court finds after a hearing that the respondent has met the burden imposed by paragraph  
129 (a)(2) of this section, the Court shall terminate the order.

130           (b) A petitioner may request a renewal of a lethal violence protective order at any time within 3 months before the  
131 expiration of a lethal violence protective order issued under § 7704 of this title or this subsection.

132           (1) The Superior Court must provide notice to all parties and a hearing before the Court may renew an order  
133 issued under § 7704 of this title or this subsection.

134           (2) The petitioner must prove by clear and convincing evidence that the respondent continues to pose a danger  
135 of causing physical injury to self or others in the near future by controlling, owning, purchasing, possessing, having  
136 access to, or receiving a firearm.

137           (3) If the Superior Court finds after a hearing that the respondent has met the burden imposed by paragraph  
138 (b)(2) of this section, the Court shall renew the lethal violence protective order.

139           (4) The Superior Court is to set the duration of the renewed lethal violence protective order, up to 1 year. The  
140 order remains in effect unless terminated under subsection (a) of this section, renewed under this subsection, or expired  
141 and not renewed.

142           § 7706. Return and Disposal of Firearms.

143           If an order issued under this chapter is vacated under § 7704 (e) of this title, terminated under § 7705(a) of this  
144 title, or expired and is not renewed, the law enforcement agency shall return to the respondent any firearms or ammunition  
145 taken from the respondent under this chapter.

146           § 7707. Limitation on liability.

147           (a) Nothing in this chapter precludes a petitioner or law-enforcement officer from removing firearms under other  
148 authority or filing criminal charges when probable cause exists.

149           (b) A law enforcement officer, who in good faith does not seek a lethal violence protective order under this  
150 chapter, is immune from civil liability.

151           (c) A law enforcement agency is immune from civil or criminal liability for any damage or deterioration of  
152 firearms stored or transported under this section. This subsection does not apply if the damage or deterioration occurred as a  
153 result of recklessness, gross negligence, or intentional misconduct by the law enforcement agency or federally-licensed  
154 firearms dealer.

155           § 7708. Sanctions.

156           (a) Any person who violates a lethal violence protection order may be guilty of criminal contempt under § 1271A  
157 of Title 11.

158           (b) Any person who swears falsely, as defined by § 1224 of Title 11, in an affidavit or verified pleading under §  
159 7702, § 7703, or § 7704 of this title, a written request to terminate or renew a lethal violence protective order under § 7705  
160 of this title, or in any court hearing under § 7703, § 7704, or § 7705 may be guilty of perjury under § 1221, § 1222 or §  
161 1223 of Title 11.

162           § 7709. Rules and regulations.

163           The Supreme Court, Superior Court, Justice of the Peace Court, State Police, State Bureau of Identification, and  
164 Delaware Criminal Justice Information System Board of Managers may promulgate rules and regulations to carry out the  
165 purposes of this chapter.

166 Section 2. Amend § 1271A , Title 11 of the Delaware Code by making deletions as shown by strike through and  
167 insertions as shown by underline as follows and redesignating accordingly:

168 § 1271A Criminal contempt of a domestic violence protective order or lethal violence protective order; class A  
169 misdemeanor; class F felony.

170 (a)(1) A person is guilty of criminal contempt of a domestic violence protective order when the person knowingly  
171 violates or fails to obey any provision of a protective order issued by: the Family Court; a court of any state, territory, or  
172 Indian nation in the United States, as long as such violation or failure to obey occurred in Delaware; or a court of Canada,  
173 as long as such violation or failure to obey occurred in Delaware.

174 (2) A person is guilty of criminal contempt of a lethal violence protective order when the person knowingly  
175 violates or fails to obey any provision of a protective order issued by the Justice of the Peace Court or Superior Court,  
176 as long as such violation or failure to obey occurred in Delaware.

177 (b) Criminal contempt of a domestic violence protective order or lethal violence protective order is a class A  
178 misdemeanor, unless any of the elements set forth in subsection (c) of this section are met, in which case the offense shall  
179 be a class F felony.

180 (c) A person is guilty of felony criminal contempt of a domestic violence protective order or a lethal violence  
181 protective order if:

182 (1) Such contempt resulted in physical injury; ~~or~~

183 (2) Such contempt involved the use or threatened use of a deadly weapon or firearm.

184 (d) A person found guilty of criminal contempt of a domestic violence protective order or lethal violence  
185 protective order shall receive a minimum sentence of 15 days incarceration if:

186 (1) Such contempt resulted in physical injury; or

187 (2) Such contempt involved the use or threatened use of a deadly weapon or firearm; or

188 (3) The defendant was convicted of criminal contempt of a domestic violence protective order or lethal  
189 violence protective order under this section on 2 or more occasions prior to this violation.

190 (e) The minimum sentence shall not be subject to suspension and no person subject to the minimum sentence shall  
191 be eligible for probation, parole, furlough or suspended custody during said sentence.

192 (f) The Superior Court has exclusive jurisdiction over offenses under paragraph (a)(2) of this section.

193 Section 3. Amend § 1448, Title 11 of the Delaware Code by making deletions as shown by strike through and  
194 insertions as shown by underline as follows and redesignating accordingly:

195 § 1448. Possession and purchase of deadly weapons by persons prohibited; penalties.

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

198 (10) Any person who is subject to a lethal violence protection order, issued under § 7704 of Title 10, but only  
199 for so long as that order remains in effect or is not vacated or otherwise terminated under Chapter 77 of Title 10;

200 Section 4. Effective Date. This Act takes effect 6 months after its enactment into law.

#### SYNOPSIS

This Substitute Act incorporates House Bill No. 222, and also makes the following changes to House Bill No. 222:

(1) Creates a new Chapter of Title 10, which permits a family member or a law enforcement officer to obtain a lethal violence protective order.

(2) Permits a family member or law enforcement officer to obtain an emergency lethal violence protective order in Justice of the Peace Court if the Court finds probable cause to believe that a respondent poses an immediate and present danger of causing physical injury to self or others by owning, possessing, controlling, purchasing, having access to, or receiving a firearm. The order requires the relinquishment of firearms to law enforcement and may prohibit the individual from residing with others who possess firearms, and grant permission to law enforcement to search for and seize firearms. If an emergency order is issued, the Superior Court must hold a full hearing within 15 days.

(3) Makes clear that the Justice of the Peace Court and the Superior Court may, as part of an lethal violence protective order, order an individual not to reside with a individual who owns, possesses, or controls firearms. However, the Courts may not impair or limit the right to keep and bear arms of an individual who is not subject to an order.

(4) Permits a respondent to request termination of the order in Superior Court wherein the respondent has the burden of proving by clear and convincing evidence that the respondent does not pose a danger of causing physical injury to self or others by controlling, owning, purchasing, possessing, having access to, or receiving a firearm.

(5) Creates sanctions for a person who provides false information in the affidavit or verified pleading in order to obtain a lethal violence protective order.

(6) Creates sanctions for a person who violates a lethal violence protective order by adding lethal violence protective order to Section 1271A of Title 11, making a violation of the order Criminal contempt.

(7) Changes the effective date of this Act to 6 months after its enactment.