



SPONSOR: Rep. Griffith & Rep. Longhurst & Rep. Heffernan &  
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Reps. Baumbach, Minor-Brown, K. Williams; Sen.  
Hansen

HOUSE OF REPRESENTATIVES  
151st GENERAL ASSEMBLY

HOUSE BILL NO. 264

AN ACT TO AMEND TITLES 10 AND 11 OF THE DELAWARE CODE RELATING TO PROTECTIVE ORDERS FOR VICTIMS OF SEXUAL VIOLENCE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend Title 10 of the Delaware Code by making deletions as shown by strike through and inserting a new Chapter 72 as shown by underline as follows:

Chapter 72. ~~Obscenity and Lewdness~~ Victims of Sexual Violence Protective Order.

§ 7201. Purpose.

Sexual violence is heinous. Perpetrators of sexual violence inflict humiliation, degradation, and terror on victims. Rape is recognized as a significantly under reported crime. Victims who do not report the crime of rape or other sexual violence nevertheless desire safety and protection from future interactions with the perpetrator of the rape or other sexual violence. The purpose of this chapter is to provide a civil remedy to a victim of a rape or other sexual violence which requires the offender to stay away from the victim.

§ 7202. Definitions.

As used in this chapter:

(1) “Non-consensual” means without consent as defined under § 761(k) of Title 11.

(2) “Non-physical contact” means telephone calls, mail, e-mail, fax, texts or other written, verbal, or digital communication.

(3) “Petitioner” means the person named in a petition seeking a sexual violence protective order, or any named victim of non-consensual sexual conduct or non-consensual sexual penetration on whose behalf the petition is brought, and who is not a member of a protected class under § 1041(2)(a) or (b) of this title.

(4) “Respondent” means the person alleged to have engaged in the conduct giving rise to the petitioner’s desire to seek a sexual violence protective order.

(5) “Sexual violence protective order” means an ex parte temporary order or final order granted under this chapter which includes a remedy specified by § 7205 or § 7206 of this chapter.

(6) “Sexual conduct” means any of the following:

a. Any intentional or knowing touching or fondling of the genitals, anus, or breasts, directly or indirectly, including through clothing.

b. Any intentional or knowing display of the genitals, anus, or breasts for the purpose of arousal or sexual gratification of the respondent.

c. Any intentional or knowing touching or fondling of the genitals, anus, or breasts, directly or indirectly, including through clothing, that the petitioner is forced to perform by the respondent or another person.

d. Any forced display of the petitioner’s genitals, anus, or breasts for the purposes of arousal or sexual gratification of the respondent or others.

e. Any intentional or knowing touching of the clothed or unclothed body of a child under the age of 12, or of age 16 if the respondent is more than 4 years older than the child, if done for the purpose of sexual gratification or arousal of the respondent or others.

f. Any coerced or forced touching or fondling by a child under the age of 12, or of age 16 if the respondent is more than 4 years older than the child, directly or indirectly, including through the clothing, of the genitals, anus, or breast of the respondent or others.

(7) “Sexual penetration” means any contact, however slight, between the sex organ or anus of one person by an object, the sex organ, mouth, or anus of another person, or any intrusion, however slight, of any part of the body of one person, or of any animal, or object into the sex organ or anus of another person, including cunnilingus, fellatio, or anal penetration. Evidence of emission of semen is not required for an act of sexual penetration.

§ 7203. Commencement of action; procedure.

1 (a) A petitioner may request a sexual violence protective order by filing an affidavit or verified petition in the  
2 Superior Court in the county where the petitioner resides, the respondent resides, or the alleged non-consensual sexual  
3 conduct or non-consensual sexual penetration occurred asking the Court to issue a protective order against the respondent.

4 (b) A petitioner seeking relief under this chapter may be any of the following:

5 (1) A person who is a victim of non-consensual sexual conduct or non-consensual sexual penetration  
6 including a single incident of non-consensual sexual conduct or non-consensual sexual penetration.

7 (2) A person who is acting on behalf of any of the following persons who is a victim of non-consensual sexual  
8 conduct or non-consensual penetration:

9 a. A minor child.

10 b. A vulnerable adult as defined by § 1105(c) of this title.

11 c. Any adult other than a vulnerable adult who, because of age, disability, health, or inaccessibility, is  
12 unable to file the petition.

13 (c) The petitioner need not reveal a temporary place of residence, school or employment, or the address or place  
14 where the petitioner's child or children receive child care or attend school, if it is alleged that disclosure of this information  
15 would endanger the petitioner. The petitioner may request the court keep in confidence the petitioner's current address or  
16 place of residence.

17 (d) The Prothonotary of the Superior Court shall make forms and instructions for initiating a proceeding under  
18 this chapter available to the public.

19 (e) All forms and instructions developed for use by the parties to a proceeding under this chapter must use simple,  
20 understandable language. A filing fee may not be charged for proceedings under this chapter.

21 (f) A person under the age of 18 who is 16 years of age or older may seek relief under this chapter without being  
22 required to seek relief by a guardian ad litem.

23 (g) No guardian or guardian ad litem need be appointed on behalf of a respondent to a petition under this chapter  
24 who is under the age of 18 if the respondent is 16 years of age or older.

25 (h) The Court may, if it deems advisable, appoint a guardian ad litem for either a petitioner or respondent to an  
26 action under this chapter.

27 §7204. Contents of Petition.

28 (a) A petition for a sexual violence protective order must be verified or accompanied by an affidavit and must  
29 allege:

30 (1) The occurrence of non-consensual sexual conduct or non-consensual sexual penetration perpetrated by the  
31 respondent.

32 (2) Specific statements or actions made contemporaneously with or subsequent to the sexual conduct or  
33 penetration which causes the petitioner to have a reasonable fear that the respondent will subject the petitioner to future  
34 harm prompting a need for relief.

35 (b) A petition for relief under this chapter may be filed regardless of whether or not there is a pending lawsuit,  
36 complaint, petition, or other action between the parties or whether or not criminal charges have been brought against the  
37 respondent for the acts giving rise to the petition.

38 (c) The petition must be filed within 180 days of the date upon which the respondent made the statements or  
39 engaged in the conduct which caused the petitioner to have a reasonable fear prompting a need for relief. For purposes of  
40 computing the 180-day period, the following circumstances will toll the time period:

41 (1) Any time during which the respondent is incarcerated.

42 (2) Any time during which the respondent is residing more than 100 miles from the petitioner's residence.

43 (3) Any time during which the respondent is the subject of a non-contact order relating to petitioner.

44 (d) If the petition is filed on behalf of a minor child or vulnerable adult, the Court may examine the person on  
45 whose behalf the petition is filed outside the presence of the parties for the purpose of obtaining the child's or vulnerable  
46 adult's testimony and ascertaining the truth of a matter asserted by a party to the proceeding. The Court may permit counsel  
47 to be present at the examination, and to also examine the child or vulnerable adult. The Court may permit a party who is not  
48 present for the examination to submit questions of fact for the Court to use in ascertaining the testimony of the child or  
49 vulnerable adult. The Court shall cause a record of the examination to be made and it shall be made a part of the record in  
50 the case.

51 (e) Monetary damages are not recoverable as a remedy.

52 § 7205. Ex parte orders and emergency hearings.

53 (a) A petitioner may request an emergency sexual violence protective order by filing an affidavit or verified  
54 petition which alleges all of the following:

55 (1) The occurrence of non-consensual sexual conduct or non-consensual sexual penetration perpetrated by the  
56 respondent against petitioner.

57 (2) Specific statements or actions made contemporaneously with or subsequent to the sexual conduct or  
58 penetration which causes the petitioner to have a reasonable fear that the respondent will subject the petitioner to future  
59 harm.

60 (3) The respondent poses an immediate and present danger of causing physical injury to petitioner.

61 (4) Specific facts which support a need for emergency relief.

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

63 (1) The Court must hear a request for an order under this section within 24 hours of the filing of the affidavit  
64 or verified petition.

65 (2) The petitioner has the burden of demonstrating by a preponderance of the evidence that:

66 a. The petitioner was a victim of non-consensual sexual conduct or non-consensual sexual penetration  
67 perpetrated by the respondent.

68 b. Specific statements or actions by the respondent made contemporaneously or subsequent to engaging  
69 in non-consensual sexual conduct or penetration causes the petitioner to have a reasonable fear that respondent  
70 will harm petitioner in the future.

71 c. The respondent poses an immediate and present danger of causing physical injury to the petitioner.

72 (3) The respondent does not have the right to be heard or to notice that the petitioner has sought an emergency  
73 order.

74 (c) The Court shall issue an emergency sexual violence protective order if the Court finds by a preponderance of  
75 the evidence that:

76 (1) The petitioner has been the victim of non-consensual sexual conduct or non-consensual penetration  
77 perpetrated by the respondent.

78 (2) Facts support petitioner's reasonable fear of future harm.

79 (3) The respondent poses an immediate and present danger of causing physical injury to the petitioner.

80 (d) The emergency sexual violence protective order shall restrain the respondent from contacting, or attempting to  
81 contact the petitioner, including by non-physical contact, either directly, or indirectly through a third party. The Court may  
82 also do any of the following through its order if specific facts stated in the verified petition or affidavit warrant:

83 (1) Restrain the respondent from the petitioner's residence, workplace, school, or other institution where the  
84 petitioner may be.

85 (2) Prohibit the respondent from knowingly coming within, or knowingly remaining within, a specified  
86 distance and location.

87 (3) Order the respondent to temporarily relinquish to a police officer, or a federally-licensed firearms dealer  
88 located in Delaware, the respondent's firearms and to refrain from purchasing or receiving additional firearms for the  
89 duration of the order. Nothing in this section may be construed to impair the rights, under the Second Amendment to  
90 the United States Constitution or Article I, § 20 of the Delaware Constitution, of an individual who is not subject to the  
91 Court's order.

92 (4) Direct a law-enforcement agency having jurisdiction where the respondent resides, or the firearms or  
93 ammunition are located, to immediately search for and seize any firearms or ammunition owned, possessed, or  
94 controlled by the respondent.

95 (5) Order the respondent to undergo a drug, alcohol, or mental health assessment.

96 (6) Grant any other reasonable relief necessary or appropriate for the protection of the petitioner.

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

101           (f) If an emergency sexual violence protective order is issued, the Court must hold a full hearing in compliance  
102 with § 7206 of this title within 15 days. The Court may extend an emergency order as needed to effectuate service of the  
103 order, or where necessary to ensure the protection of the petitioner or others, but the duration of the emergency ex parte  
104 order may not exceed 45 days.

105           § 7206. Non-emergency hearings.

106           (a) A petitioner may request a sexual violence protective order by filing an affidavit or verified petition that  
107 alleges:

108                 (1) The occurrence of non-consensual sexual conduct or non-consensual sexual penetration perpetrated by the  
109 respondent against petitioner.

110                 (2) Specific statements or actions made contemporaneously with or subsequent to the sexual conduct or  
111 penetration which causes the petitioner to have a reasonable fear that respondent will harm the petitioner in the future.

112           (b) The following procedures govern a non-emergency proceeding:

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

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

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

118                 (4) The petitioner has the burden of proving by a preponderance of the evidence that:

119                         a. The petitioner was the victim of non-consensual sexual conduct or non-consensual sexual penetration  
120 perpetrated by respondent.

121                         b. The respondent made specific statements, or engaged in specified actions contemporaneously with or  
122 subsequent to the sexual conduct or penetration which causes the petitioner to have a reasonable fear that  
123 respondent will harm petitioner in the future.

124                 (5) Petitioner's prior sexual activity or reputation shall be inadmissible except as evidence related to past  
125 sexual activity with respondent if offered as evidence by the respondent that the sexual conduct in issue was  
126 consensual, or where rules of evidence otherwise require admissibility.

127                 (6) A petition for a sexual violence protective order may not be denied based on evidence that:

128                         a. The respondent was voluntarily intoxicated when any of the acts alleged occurred.

129                         b. The petitioner was voluntarily intoxicated.

130                         c. The petitioner engaged in limited consensual sexual touching with the respondent.

131 d. The petitioner did not report respondent's non-consensual sexual conduct or non-consensual sexual  
132 penetration or contemporaneous or subsequent threatening conduct to law enforcement officials.

133 (c) If the Court finds by a preponderance of the evidence that the petitioner has been the victim of non-consensual  
134 sexual conduct or non-consensual penetration perpetrated by the respondent, and that facts support petitioner's reasonable  
135 fear of future harm, the Court shall issue a sexual violence protective order restraining the respondent from contacting or  
136 attempting to contact the petitioner, including by non-physical contact, either directly or indirectly through a third party.  
137 The Court may also do any of the following through its order:

138 (1) Restrain the respondent from the petitioner's residence, workplace, school, or other institution where the  
139 petitioner may be.

140 (2) Prohibit the respondent from knowingly coming within, or knowingly remaining within, a specified  
141 distance and location.

142 (3) Order the respondent to relinquish to a police officer, or a federally-licensed firearms dealer located in  
143 Delaware, the respondent's firearms and to refrain from purchasing or receiving additional firearms for the duration of  
144 the order. Nothing in this section may be construed to impair the rights, under the Second Amendment to the United  
145 States Constitution or Article I, § 20 of the Delaware Constitution, of an individual who is not subject to the Court's  
146 order.

147 (4) Direct a law-enforcement agency having jurisdiction where the respondent resides, or the firearms or  
148 ammunition are located, to immediately search for and seize any firearms or ammunition owned, possessed, or  
149 controlled by the respondent.

150 (5) Order the respondent to undergo a drug, alcohol, or mental health assessment.

151 (6) Grant any other reasonable relief necessary or appropriate for the protection of the petitioner.

152 (d) If the Court finds that there is not a preponderance of evidence to support the issuance of a sexual violence  
153 protective order, the Court shall not issue a sexual violence protective order, and shall vacate any emergency sexual  
154 violence protective order then in effect.

155 (e) If the Court issues a sexual violence protective order under this section, the Court shall inform the respondent  
156 that the respondent is entitled to 1 hearing to request a termination of the order under § 7206 of this title, and shall provide  
157 the respondent with a form to request such a hearing.

158 (f) If a respondent is not present for a hearing under this section, the Court shall direct that any sexual violence  
159 protective order issued be served immediately upon the respondent by personal service, any form of mail, or in any manner

160 directed by the Court, including publication if other methods of service have failed or have been deemed to have been  
161 inadequate.

162 (g) The Court shall give a certified copy of the order to the petitioner and respondent after the hearing and before  
163 the petitioner and respondent leave the courthouse.

164 (h) Any party in interest aggrieved by a decision of the Court under this section may appeal the decision to the  
165 Supreme Court.

166 (i) Relief granted under this section shall be for a fixed period of time not to exceed 3 years.

167 § 7207. Termination and renewal.

168 (a) A respondent subject to a sexual violence protective order issued under § 7206 of this title, or renewed under  
169 subsection (b) of this section, may submit 1 written request at any time during the effective period of the order for a hearing  
170 to terminate the order.

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

172 (2) The respondent must prove by a preponderance of the evidence that the respondent no longer poses a  
173 danger of causing petitioner harm.

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

176 (b) A petitioner may request a renewal of a sexual violence protective order at any time within 3 months before the  
177 expiration of a sexual violence protective order issued under § 7206 of this title or this subsection.

178 (1) The Court must provide notice to all parties and a hearing before the Court may renew an order issued  
179 under § 7206 of this title or this subsection.

180 (2) The petitioner must prove by a preponderance of the evidence that the respondent continues to pose a  
181 danger of causing petitioner harm.

182 (3) If the Court finds after a hearing that the petitioner has met the burden imposed by paragraph (b)(2) of this  
183 section, the Court shall renew the sexual violence protective order.

184 (4) The Court shall set the duration of the renewed sexual violence protective order, which may be up to 3  
185 years. The order remains in effect unless terminated under subsection (a) of this section, renewed under this subsection,  
186 or expired and not renewed.

187 § 7208. Return and disposal of firearms.



188 If an order issued under this chapter is vacated under § 7206 of this title, terminated under § 7207 of this title, or  
189 expired and is not renewed, the law-enforcement agency shall return to the respondent any firearms or ammunition taken  
190 from the respondent under this chapter unless possession is otherwise prohibited under § 1448 of Title 11.

191 § 7209. Limitation on liability.

192 (a) Nothing in this chapter precludes a law-enforcement officer from removing firearms under other authority or  
193 the filing of criminal charges when probable cause exists.

194 (b) A law-enforcement agency is immune from civil or criminal liability for any damage or deterioration of  
195 firearms stored or transported under this chapter. This subsection does not apply if the damage or deterioration occurred as  
196 a result of recklessness, gross negligence, or intentional misconduct by the law-enforcement agency or federally-licensed  
197 firearms dealer.

198 § 7210. Sanctions.

199 (a) Any person who violates a sexual violence protection order may be guilty of criminal contempt under § 1271A  
200 of Title 11.

201 (b) Any person who swears falsely, as defined by § 1224 of Title 11, in an affidavit or verified pleading under §  
202 7204, § 7205, or § 7206 of this title, a written request to terminate or renew a sexual violence protective order under § 7207  
203 of this title, or in any court hearing under § 7205, § 7206, or § 7207 may be guilty of perjury under §§ 1221, 1222, or 1223  
204 of Title 11.

205 Section 2. Amend § 1271A of Title 11 of the Delaware Code by making deletions as shown by strike through and  
206 insertions as shown by underline as follows:

207 § 1271A. Criminal contempt of a domestic violence protective ~~order~~ or order, lethal violence protective ~~order~~;  
208 order, or sexual violence protective order; class A misdemeanor; class F felony.

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

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

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

219 (c) A person is guilty of felony criminal contempt of a domestic violence protective ~~order or order~~, a lethal  
220 violence protective ~~order~~ order, or a sexual violence protective order if:

221 (1) Such contempt resulted in physical ~~injury; injury~~.

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

223 (d) A person found guilty of criminal contempt of a domestic violence protective ~~order or order~~, lethal violence  
224 protective ~~order~~ order, or sexual violence protective order shall receive a minimum sentence of 15 days incarceration if:

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

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

227 (3) The defendant was convicted of criminal contempt of a domestic violence protective ~~order or order~~, lethal  
228 violence protective ~~order~~ order, or sexual violence protective order under this section on 2 or more prior occasions.  
229 ~~occasions prior to this violation.~~

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

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

#### SYNOPSIS

This Act permits a person who has been the victim of non-consensual sexual conduct or non-consensual sexual penetration to apply for a sexual violence protective order if the person has a reasonable fear, based on specific conduct occurring contemporaneously or subsequent to the non-consensual sexual conduct or penetration, that the perpetrator of the sexual conduct will harm the petitioner in the future. An emergency ex parte order may be issued if a petitioner proves by a preponderance of the evidence that the respondent poses an immediate and present danger of causing physical injury to the petitioner. The protective order is a civil remedy available whether or not the respondent has been charged with a crime and whether or not the petitioner reported the respondent's conduct to law enforcement officials. The Act provides for an emergency ex parte hearing as well as a non-emergency hearing in Superior Court.

Possible remedies in addition to an order restraining the respondent from any kind of contact with the petitioner include restraining the respondent from going to, or remaining in, the places a petitioner might frequent including home, school, or work. Violation of a sexual violence protective order is punishable as criminal contempt, either as a class A misdemeanor, or Class F felony if contempt of the order results in physical injury, or involved threatened use, or use of, a deadly weapon or firearm. Petitions under the Act must be verified. If any party falsely swears in a petition or hearing under the Act, the person may be liable for a misdemeanor or felony.

The Act also makes technical corrections to existing law to make it conform to the Legislative Drafting Manual.