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Reps. Baumbach, Bolden, Brady, Kowalko, Mitchell,
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HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 1
FOR
HOUSE BILL NO. 222
AS AMENDED BY
HOUSE AMENDMENT NO. 3

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:

Section 1. Amend Part IV, Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Chapter 77. Lethal Violence Protective Order.

§ 7701. Definitions.

(a) As used in this section:

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

(2) "Law-enforcement officer" means as defined in § 222 of Title 11.

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

(4) "Petitioner" means either of the following:

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

b. A law-enforcement officer who files a petition alleging that the respondent poses a danger of causing physical injury to self or others by controlling, owning, purchasing, possessing, having access to or receiving a firearm.

(5) "Physical injury" means as defined in § 222 of Title 11.

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

§ 7702. Commencement of action; procedure.

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

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

(c) Forms and instructions for initiating a proceeding under this section must be available from the Justice of the Peace Court's office and the Superior Court Prothonotary's office.

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

§ 7703. Emergency hearings.

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

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

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

(b) The following procedures govern an emergency proceeding:

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

(2) The law-enforcement officer has the burden of demonstrating by a preponderance of the evidence 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.

(3) The respondent does not have the right to be heard or to notice that the law-enforcement officer has sought an order under this section.

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

(d) If the Justice of the Peace Court finds by a preponderance of the evidence that the 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 Court shall issue an emergency lethal violence protective order requiring the respondent to relinquish to a law enforcement agency receiving the Court's order any firearms or ammunition owned, possess, or controlled by the respondent. The Court may also do any of the following through its order:

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

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

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

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

§ 7704. Nonemergency hearings.

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

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

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

(b) The following procedures govern a nonemergency proceeding:

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

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

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

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

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

(d) If the Superior Court finds by a clear and convincing evidence that the 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 Court shall issue an emergency lethal violence protective order requiring the

respondent to relinquish to a law enforcement agency receiving the Court's order any firearms or ammunition owned, possess, or controlled by the respondent. The Court may also do any of the following through its order:

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

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

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

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

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

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

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

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

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

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

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

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

(j) Relief granted under § 7704 shall be for a fixed period of time not to exceed 1 year.

§ 7705. Termination and renewal.

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

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

(2) The respondent must prove 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.

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

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

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

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

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

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

§ 7706. Return and Disposal of Firearms.

If an order issued under this chapter is vacated under § 7704 (e) of this title, terminated under § 7705(a) of this title, or expired and is not renewed, the law enforcement agency shall return to the respondent any firearms or ammunition taken from the respondent under this chapter unless otherwise prohibited under § 1448 of Title 11.

§ 7707. Limitation on liability.

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

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

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

§ 7708. Sanctions.

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

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

§ 7709. Rules and regulations.

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

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

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

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

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

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

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

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

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

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

(1) Such contempt resulted in physical injury; or

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

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

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

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

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

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

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

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

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