

SPONSOR: Rep. Griffith & Rep. Longhurst & Rep. Heffernan & Rep. Dorsey Walker & Sen. Poore & Sen. Gay Reps. Baumbach, Bush, Carson, Cooke, Kowalko, Minor-Brown, K. Williams; Sen. Hansen

HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 1
FOR
HOUSE BILL NO. 264
AS AMENDED BY
HOUSE AMENDMENT NO. 1

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:

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. This civil remedy is available only for petitioners who would not qualify for a protection from abuse order because there is no family or dating relationship between the victim and perpetrator and where the respondent is at least 18 years of age.

§ 7202. Definitions.

As used in this chapter:

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

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

(3) "Non-consensual" means without consent as defined under § 761(k) of Title 11.

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

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(5) "Physical injury" means, with respect to an adult petitioner, as defined in § 222 of Title 11. With respect to a minor petitioner, "physical injury" means any impairment of physical condition or pain.

(6) "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.

(7) "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.

(8) "Sexual violence protective order" means an ex parte temporary order or final order granted under this chapter which includes a remedy specified by § 7204 or § 7205 of this chapter.

(9) "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.

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

(b) A petition seeking relief under this chapter may be filed by any of the following:

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

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

a. A minor child.

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

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

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

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

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

(f) A filing fee may not be charged for proceedings under this chapter.

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

(h) An action may not be brought or maintained under this chapter against an individual who is under 18 years of age.

(i) The Court may, if it deems necessary, appoint a guardian ad litem or an attorney to represent a petitioner or respondent to an action under this chapter.

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

(k) The petition must be filed within 1 year of the date upon which the respondent made the most recent statements or engaged in conduct which caused the petitioner to have a reasonable fear prompting a need for relief. For purposes of computing the 1-year period, the following circumstances will toll the time period:

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

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

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

(l) Monetary damages are not recoverable as a remedy.

§ 7204. Emergency proceedings.

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

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

(2) Specific statements or actions made contemporaneously with or subsequent to the sexual conduct or penetration, including the date of the occurrence, which causes the petitioner to have a reasonable fear that the respondent will subject the petitioner to future harm. If these statements or actions occurred more than 1 year before the petition is filed, the petitioner must allege which tolling provisions are applicable.

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

(b) The following procedures govern an emergency proceeding:

(1) The Court must hear a request for an ex parte temporary order under this section within 72 hours of the filing of the affidavit or verified petition.

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

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

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

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

(3) The respondent does not have the right to be heard or to notice that the petitioner has sought an ex parte temporary order.

(c) The Superior Court shall issue an ex parte temporary sexual violence protective order if the Court finds by a preponderance of the evidence all of the following:

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

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

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

(d) The ex parte temporary order shall restrain the respondent from contacting, or attempting to contact the petitioner, including by non-physical contact, either directly, or indirectly through a third party. The Court may also do any of the following through its order:

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

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

(3) Order the respondent to temporarily relinquish to a police officer, or a federally-licensed firearms dealer located in Delaware, the respondent's firearms and to refrain from purchasing or receiving additional firearms for the duration of the order. 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.

(5) Order the respondent to undergo a drug, alcohol, or mental health assessment approved by the Sex Offender Management Board.

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

(e) The Court shall direct that an ex parte temporpary 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 have been deemed to be inadequate. The Court shall give a certified copy of the order to the petitioner after the hearing and before the petitioner leaves the courthouse.

(f) If an ex parte temporary sexual violence protective order is issued, the Court must hold a full hearing in compliance with § 7205 of this title within 15 days. The Court may extend an ex parte temporary order as needed to

effectuate service of the order, or where necessary to ensure the protection of the petitioner, but the duration of the ex parte temporary order may not exceed 45 days.

§ 7205. Non-emergency proceedings.

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

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

(2) Specific statements or actions made contemporaneously with or subsequent to the sexual conduct or penetration, including the date of the occurrence, which causes the petitioner to have a reasonable fear that the respondent will subject the petitioner to future harm. If these statements or actions occurred more than 1 year before the petition is filed, the petitioner must allege which tolling provisions are applicable.

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

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

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

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

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

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

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

(5) If the petition is filed on behalf of a minor child or vulnerable adult, the Court may examine the person on whose behalf the petition is filed outside the presence of the parties for the purpose of obtaining the child's or vulnerable adult's testimony and ascertaining the truth of a matter asserted by a party to the proceeding. The Court may permit counsel to be present at the examination, and to also examine the child or vulnerable adult. The Court may permit a party who is not present for the examination to submit questions of fact for the Court to use in ascertaining the testimony of the child or 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 the case.

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

(7) The Superior Court must not consider the following evidence in determining whether to grant or deny a petition:

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

b. The petitioner was voluntarily intoxicated.

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

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

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

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

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

(3) Order the respondent to relinquish to a police officer, or a federally-licensed firearms dealer located in Delaware, the respondent's firearms and to refrain from purchasing or receiving additional firearms for the duration of the order. 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.

(5) Order the respondent to undergo a drug, alcohol, or mental health assessment approved by the Sex Offender Management Board.

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

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

(e) If the Court issues a sexual violence protective order under this section, the Court shall inform the respondent that the respondent is entitled to 1 hearing to request a termination of the order under § 7207 of this title, and shall provide the respondent with a form to request such a hearing.

(f) If a respondent is not present for a hearing under this section, the Court shall direct that any sexual 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 have been deemed to have been inadequate.

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

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

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

§ 7206. Termination and renewal.

(a) A respondent subject to a sexual violence protective order issued under § 7205 of this chapter, 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 Court must provide notice to all parties and a hearing before the Court may terminate the order.

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

(3) If the 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 sexual violence protective order at any time within 3 months before the expiration of a sexual violence protective order issued under § 7205 of this title or this subsection.

(1) The Court must provide notice to all parties and a hearing before the Court may renew an order issued under § 7205 of this title or this subsection.

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

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

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

§ 7207. Return and disposal of firearms.

If an order issued under this chapter is vacated under § 7205 of this title, terminated under § 7206 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 the respondent is otherwise prohibited under § 1448 of Title 11.

§ 7209. Limitation on liability.

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

(b) A law-enforcement agency is immune from civil or criminal liability for any damage or deterioration of firearms stored or transported under this chapter. 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.

§ 7209. Sanctions.

(a) Any person who violates a sexual 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 § 7203, § 7204, or § 7205 of this title, a written request to terminate or renew a sexual violence protective order under § 7206 of this title, or in any court hearing under § 7204§ 7205, or § 7206 may be guilty of perjury under §§ 1221, 1222, or 1223 of Title 11.

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

§ 1271A. Criminal contempt of a domestic violence protective ~~order or~~ order, lethal violence protective ~~order;~~ order, or sexual 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 or sexual 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~~ order, lethal violence protective ~~order~~ order, or sexual 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~~ order, a lethal violence protective ~~order~~ order, or a sexual violence protective order if:

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

(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~~ order, lethal violence protective ~~order~~ order, or sexual violence protective order shall receive a minimum sentence of 15 days incarceration if:

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

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

(3) The defendant was convicted of criminal contempt of a domestic violence protective ~~order or~~ order, lethal violence protective ~~order~~ order, or sexual violence protective order under this section on 2 or more prior occasions. ~~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~~ furlough, or suspended custody during ~~said~~ the sentence.

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

Section 3. This Act takes effect 6 months after its enactment.