SPONSOR: Sen. Hoffner & Rep. Carson
Sens. Hansen, Huxtable, Lawson, Pettyjohn, Poore, Richardson, Sokola, Wilson; Reps. Cooke, Hilovsky, Ross Levin, D. Short

DELAWARE STATE SENATE
153rd GENERAL ASSEMBLY

SENATE BILL NO. 32
AS AMENDED BY
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO PRIVACY FOR CORRECTIONAL OFFICERS, AND PROBATION AND PAROLE OFFICERS.

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

Section 1. Amend Chapter 65, Part IV, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Subchapter XII. Privacy for Correctional Officers, Probation and Parole Officers.

§ 6594. Definitions.

As used in this subchapter:

(1) "Correctional officer" means any active, formerly active, or retired individual who serves or served as a correctional officer or a probation and parole officer with the Department of Correction.

(2) "Department" means the Department of Correction.

(3) "Family" means as defined in § 901 of Title 10.

(4) "Government agency" includes all agencies, authorities, boards, commissioner, departments, institutions, offices, and any other bodies of the State created by the Constitution or statute, whether in the executive, judicial, or legislative branch; all units and corporate outgrowths created by executive order of the Governor or any constitutional officer, by the Supreme Court, or by resolution of the General Assembly; and agencies, authorities, boards, commissions, departments, institutions, offices, and any other bodies politic and corporate of a unit of local government, or school district.

(5) "Home address" includes a correctional officer's permanent residence and any secondary residence affirmatively identified by the correctional officer, but does not include a correctional officer's work address.

(6) "Online privacy vendor" means a company that specializes in or offers services that continuously conduct a basic search and removal of personal information from people finding and database websites.

(7) "Person" means as defined in § 302 of Title 1.

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(8) “Personal information” means a home address, home telephone number, mobile telephone number, direct telephone number to a correctional officer’s private office, personal e-mail address, social security number, federal tax identification number, checking and savings account numbers, credit or debit card numbers, birth or marital records, property tax records, and identity of children under the age of 18.

(9) “Publicly available content” means any written, printed, or electronic document or record that provides information or that serves as a document or record maintained, controlled, or in the possession of a government agency that may be obtained by any person, from the Internet, from the government agency upon request either free of charge or for a fee, or in response to a request under the Freedom of Information Act [Chapter 100 of Title 29].

(10) “Publicly post” or “publicly display” means to intentionally communicate or otherwise make available to the general public.

(11) “Written request” means written notice signed by a correctional officer or a representative of the correctional officer’s employer requesting a government agency or person to refrain from posting or displaying publicly available content that includes the personal information of the correctional officer or of their family.

§ 6595. Applicability.

This subchapter applies to correctional officers who serve or served on or after [the effective date of this Act].

§ 6596. Public display or public posting of a correctional officer’s personal information by government agencies.

Government agencies may not publicly post or publicly display content that includes the personal information of the correctional officer or their family if the correctional officer has made a written request under § 6598 of this title that the government agency not disclose such personal information. After a government agency has received a written request, that agency shall remove the personal information from publicly available content within 72 hours. After the government agency has removed the correctional officer’s personal information from publicly available content, the agency shall not publicly post, display or otherwise release the information unless the government agency has received the correctional officer’s consent to make the personal information available to the public.

§ 6597. Public display or public posting of a correctional officer’s personal information by persons.

(a) Prohibited conduct.

(1) No person shall publicly post or publicly display the personal information of a correctional officer or their family if the correctional officer has made a written request under § 6598 of this title of that person not to publicly post or publicly display.

(2) No person shall share, solicit, sell, or trade the personal information of a correctional officer or their family with the intent to pose an imminent and serious threat to the health and safety of the correctional officer or their family.

(b) Required conduct.

(1) After a person has received a written request from a correctional officer to protect the personal information of the correctional officer or their family, that person must remove the personal information from public display within 72 hours or, in the case of a printed directory, no later than the next update to the directory.

(2) After a person has received a written request from a correctional officer, that person shall ensure that the correctional officer's personal information is not publicly displayed, including on any website or subsidiary website controlled by that person.

(c) Remedies.

(1) Equitable relief.

A correctional officer or family member whose personal information is made public as a result of a violation of this subchapter may bring an action seeking injunctive or declaratory relief in any court of competent jurisdiction. If the court grants injunctive or declaratory relief, the person responsible for the violation shall be required to pay the correctional officer's costs and reasonable attorneys' fees.

(2) Private right of action.

A correctional officer or family member whose personal information is publicly posted or publicly displayed in violation of this subsection may bring an action in any court of competent jurisdiction. A prevailing plaintiff in such action shall be awarded damages in an amount not greater than 3 times the actual damages to the plaintiff and not less than $10,000.

(3) Criminal penalties.

Public posting or display of a correctional officer's personal information after receipt of a written request may result in criminal penalties under Title 11 where the statutory elements of a crime defined under that title are met.

(d) Affirmative defense.

Nothing in this section shall be construed to limit or enlarge the protections that 47 U.S.C § 230 confers on an interactive computer service for content provided by another information content provider, as those terms are defined in 47 U.S.C. § 230.

§ 6598. Procedure for completing a written request.

(a) Requirement that a correctional officer make a written request.

No government agency or person shall be found to have violated any provision of this subchapter if the correctional officer has not submitted a written request calling for the protection of the correctional officer's personal information.

(b) Written request procedure.

(1) A correctional officer's written request is valid if any of the following occur:

a. The correctional officer sends a written request directly to a government agency or person.

b. The correctional officer files a written request with the Department for the Department to notify government agencies and persons.

(2) The Department shall develop a policy and procedure for a correctional officer to file a written request with the Department for the Department to notify government agencies and persons and shall enroll the correctional officer in the services of an online privacy vendor.

(c) In each quarter of a calendar year, the Department shall provide a list of all correctional officers who have submitted a written request to it, to the appropriate officer with ultimate supervisory authority for a government agency. The officer shall promptly provide a copy of the list to all government agencies under the officer's supervision. Receipt of the written request list compiled by the Department by a government agency shall constitute a written request to that agency for the purposes of this subchapter.

(d) A representative from the correctional officer may submit a written request on the correctional officer's behalf, provided that the correctional officer gives written consent to the representative and provided that the representative agrees to furnish a copy of that consent when a written request is made. The representative shall submit the written request as provided in subsection (b) of this section.

(e) Information to be included in the written request.

(1) A correctional officer's written request shall specify what personal information shall be maintained private.

(2) If a correctional officer wishes to identify a secondary residence as a home address as that term is defined in this subchapter, the designation shall be made in the written request.

(3) A correctional officer shall disclose the identity of the correctional officer's family and indicate that the personal information of these family members shall also be excluded to the extent that it could reasonably be expected to reveal the personal information of the correctional officer.

(f) Duration of the written request, removal for cause, renewals, revocations, and good standing clause.

(1) A correctional officer's written request is valid for 2 years, unless the correctional officer is removed for cause or fired, in which case that correctional officer's name must be immediately removed by the Department.

(2) A correctional officer may renew their written request an unlimited number of times so long as they remain employed with the Department.

(3) A correctional officer may revoke their written request by providing notice to the Department or the government agency, person, business, or association with written permission to release the private information.

(4) Any correctional officer who retires or leaves the Department in good standing is eligible to request a 2-year extension of their written request from the date of retirement or date of leave.

Section 2. This Act takes effect 180 days following its enactment into law.