SPONSOR: Sen. Lockman & Rep. Gorman
Reps. Lambert, Romer

DELAWARE STATE SENATE
153rd GENERAL ASSEMBLY

SENATE BILL NO. 82
AS AMENDED BY
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO LETHAL VIOLENCE PROTECTIVE ORDERS.

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

Section 1. Amend Chapter 77, Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 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 or projectile weapon.

(2) Identifies the location of a firearm or projectile weapon 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.

(4) 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 or projectile weapon.

(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,

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or receiving a firearm or projectile weapon, the Court shall issue a lethal violence protective order requiring the respondent to relinquish to a law-enforcement agency receiving the Court's order a firearm, projectile weapon, or ammunition owned, possessed, 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 a firearm, projectile weapon, or ammunition owned, possessed, or controlled by the respondent.

(2) Allow the respondent to relinquish a firearm, projectile weapon, 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 a firearm, projectile weapon, 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 a firearm, projectile weapon, 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 a firearm, projectile weapon, or ammunition is located to immediately search for and seize a firearm, projectile weapon, or ammunition owned, possessed, or controlled by the respondent.

(5) Prohibit the respondent from residing with another individual who owns, possesses, or controls a firearm, projectile weapon, 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.

(6) Direct a law-enforcement agency having jurisdiction where the respondent resides or a firearm, projectile weapon, or ammunition is located to immediately search for and seize a firearm, projectile weapon, or ammunition owned, possessed, or controlled by the ~~respondent,~~ 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 1 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 this section shall be for a fixed period of time not to exceed ~~1 year~~ 5 years.

Section 2. Amend Chapter 77, Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 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~~ per year during the effective period of the order for a hearing to terminate the order.

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