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HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 230
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO JUDICIAL PRIVACY.

WHEREAS, Delaware judicial officers perform the important and essential function of interpreting our Delaware Constitution, statutes, and laws and administering justice in a fair and impartial manner; and

WHEREAS, when carrying out their public duties, judicial officers must be able to act without fear of personal reprisal from individuals affected by the decisions they make; and

WHEREAS, in recent years, as a result of the rise in the use of social media and online access to information, judicial officers across the country have been exposed to an increasing number of personal threats in connection to their public duties; and

WHEREAS, on Sunday July 19, 2020, an assailant went to the home of Esther Salas, a judge for the United States District Court for the District of New Jersey, impersonated a package delivery driver, opened fire upon arrival, and killed Daniel Anderl, the 20-year-old son of Judge Salas, and seriously wounding Mark Anderl, her husband; and

WHEREAS, in the lessons learned in the aftermath of this recent tragedy and in response to the continuous rise of threats against judicial officers, there is an immediate need for judicial officers to protect the privacy of their personal information and the personal information of their family members.

NOW, THEREFORE:

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

Section 1. Amend Chapter 19, Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Subchapter I-A. Judicial Privacy.

§ 1921. Definitions.

As used in this subchapter:

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(1) "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.

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

(3) "Family" means as defined in § 901 of this title.

(4) "Judicial officer" includes any active, formerly active, or retired:

a. Chief Justice or Justice of the Supreme Court.

b. Chancellor, Vice Chancellor or Master of the Court of Chancery.

c. President Judge, Judge or Commissioner of the Superior Court.

d. Chief Judge, Judge or Commissioner of the Court of Common Pleas.

e. Chief Judge, Judge or Commissioner of the Family Court.

f. Chief Magistrate or Justice of the Peace of the Justice of the Peace Court.

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

(6) "Personal information" means a home address, home telephone number, mobile telephone number, direct telephone number to a judicial officer's private chambers, 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.

(7) "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.

(8) "Publicly post" or "publicly display" means to communicate to another or otherwise make available to the general public.

(9) "Written request" means written notice signed by a judicial officer or a representative of the judicial 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 judicial officer or of their family.

§ 1922. Public display or public posting of a judicial officer's personal information by government agencies.

Government agencies may not publicly post or publicly display content that includes the personal information of the judicial officer or their family if the judicial officer has made a written request under § 1924 of this subchapter 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 judicial 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 judicial officer's consent to make the personal information available to the public.

§ 1923. Public display or public posting of a judicial officer's personal information by persons.

(a) Prohibited Conduct.

(1) No person shall publicly post or publicly display the personal information of a judicial officer or their family if the judicial officer has made a written request under § 1924 of this subchapter of that person not to disclose such personal information.

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

(b) Required Conduct.

(1) After a person has received a written request from a judicial officer to protect the personal information of the judicial officer or their family, that person must remove the personal information from public display withing 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 judicial officer, that person shall ensure that the judicial officer's personal information is not publicly displayed, including on any website or subsidiary website controlled by that person.

(3) After receiving a judicial officer's written request, a person may not transfer the judicial officer's personal information to any other person through any medium.

(c) Remedies.

(1) Equitable Relief. A judicial officer or family member whose personal information is made public as a result of a violation of this Act 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 judicial officer's costs and reasonable attorney's fees.

(2) Private Right of Action. A judicial officer or family member who is aggrieved by a 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: (i) not greater than 3 times the actual damages to the plaintiff; and (ii) not less than $10,000.

(3) Criminal penalties. Public posting or display of a judicial 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.

§ 1924. Procedure for completing a written request.

(a) Requirement that a judicial officer make a written request. No government agency or person shall be found to have violated any provision of this Act if the judicial officer has not submitted a written request calling for the protection of the judicial officer's personal information.

(b) Written request procedure. A written request shall be valid if one of the following occurs:

(1) The judicial officer sends a written request directly to a government agency or person.

(2) The Administrative Office of the Courts develops a policy and procedure for a judicial officer to file the written request with the Administrative Office to notify government agencies, and a judicial officer sends a written request to the Administrative Office of the Courts.

(c) In each quarter of a calendar year, the Administrative Office of the Courts shall provide a list of all judicial 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 Administrative Office of the Courts by a government agency shall constitute a written request to that agency for the purposes of this Act.

(d) A representative from the judicial officer may submit a written request on the judicial officer's behalf, provided that the judicial 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 judicial officer's written request shall specify what personal information shall be maintained private.

(2) If a judicial officer wishes to identify a secondary residence as a home address as that term is defined in

this Act, the designation shall be made in the written request.

(3) A judicial officer shall disclose the identity of the judicial 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 judicial officer.

(f) Duration of the written request. A judicial officer's written request is valid until the judicial officer provides the government agency, person, business, or association with written permission to release the private information. A judicial officer's written request expires on death.

Section 2. This Act takes effect 1 year after its enactment into law.