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HOUSE OF REPRESENTATIVES

141st GENERAL ASSEMBLY

HOUSE BILL NO. 143

AS AMENDED BY

HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO PROTECTION OF WITNESSES.

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

Section 1. Amend Title 11 of the Delaware Code by adding a new chapter thereto as follows:

"Chapter 96. Protection of witnesses.

§ 9601. Witness relocation and services

(a) The Attorney General may provide for the health, safety, security and welfare of a witness or a potential witness for the State government in an official proceeding concerning criminal activity or other serious offense, if the Attorney General determines that an offense involving a crime of violence directed at the witness with respect to that proceeding or an offense set forth in Subchapter III of Chapter 35 of this Title directed at the witness or a potential witness is likely to be committed. The Attorney General may also provide for the health, safety, security and welfare of the immediate family of, or a person otherwise closely associated with, such witness or potential witness if the family or person may also be endangered on account of the participation of the witness in the judicial proceeding.

(1) The Attorney General shall issue guidelines defining the types of cases for which the exercise of the authority of the Attorney General as set forth in this Chapter would be appropriate.

(2) The State and its officers and employees shall not be subject to any civil liability on account of any decision to provide or not to provide services under this chapter.

(b) In connection with the provision of services under this chapter to a witness, a potential witness, or an immediate family member or close associate of a witness or potential witness, the Attorney General shall take such action as the Attorney General determines to be necessary to protect the person involved from bodily injury or otherwise to assure the health, safety, security and welfare of that person, including the psychological well-being and social adjustment of that person, for as long as, in the judgment of the Attorney General, the danger to that person exists. The Attorney General may provide some or all of the following services by regulation:

- (1) provide suitable documents to enable the person to establish a new identity or otherwise protect the person;
- (2) provide housing for the person;
- (3) provide for the transportation of household furniture and other personal property to a new residence of the person;
- (4) provide to the person a payment to meet basic living expenses, in a sum established in accordance with regulations issued by the Attorney General, for such time as the Attorney General determines to be warranted;
- (5) assist the person in obtaining employment;
- (6) provide other services necessary to assist the person in becoming self-sustaining;
- (7) disclose or refuse to disclose the identity or location of the person relocated or protected, or any other matter concerning the person or the program after weighing the danger such a disclosure would pose to the person, the detriment it would cause to the general effectiveness of the program, and the benefit it would afford to the public or to the person seeking the disclosure, except that the Attorney General shall, upon the request of law enforcement officials or pursuant to a court order, without undue delay, disclose to such officials the identity, location, criminal records, and fingerprints relating to the person relocated or protected when the Attorney General knows or the request indicates that the person is under investigation for or has been arrested for or charged with an offense that is punishable by more than one year in prison or that is a crime of violence;

- (8) exempt procurement for services, materials, and supplies, and the renovation and construction of safe sites within existing buildings from other provisions of law as may be required to maintain the security of protective witnesses and the integrity of the witness security program established pursuant to this Chapter;
- (9) authorize expenditures to provide to law enforcement protection to ensure the safety and security of the person and/or his or her dwelling and/or his or her place of business; and
- (10) authorize other expenditures and/or provide other services reasonably intended to provide for the health, safety, security and welfare of the person.

The Attorney General shall establish an accurate, efficient, and effective system of records concerning the criminal history of persons provided services under this chapter in order to provide the information described in subparagraph (b)(7).

(c) Deductions shall be made from any payment made to a person pursuant to subsection (b)(4) hereof to satisfy obligations of that person for family support payments pursuant to a State court order.

(d) Any person who, without the authorization of the Attorney General, knowingly discloses any information received from the Attorney General under subsection (b) (7) shall be fined \$5,000 or imprisoned for five years, or both. The Superior Court shall have exclusive jurisdiction of any violation of this subsection.

(e)(1) Before providing services to any person under this chapter, the Attorney General shall, to the extent practicable, obtain information relating to the suitability of the person for inclusion in the program, including the criminal history, if any, and a psychological evaluation of, the person. A psychological evaluation shall only be required if the Attorney General intends to establish a new identity and/or a new permanent place of residence for the person. The Attorney General shall also make a written assessment in each case of the seriousness of the investigation or case in which the person's information or testimony has been or will be provided and the possible risk of danger to other persons and property which could be created by providing services to a person and shall determine whether the need for that person's testimony outweighs the risk of danger to the public. In assessing whether services should be provided to a person under this chapter, the Attorney General shall consider the person's criminal record, alternatives to

providing services under this chapter, the possibility of securing similar testimony from other sources, the need for protecting the person, the relative importance of the person's testimony, the results of psychological examinations, whether providing such services will substantially infringe upon the relationship between a child who would be relocated in connection with such services and that child's parent who would not be so relocated, and such other factors as the Attorney General considers appropriate. The Attorney General shall not provide services to any person under this chapter if the risk of danger to the public created by the provision of such services, including the potential harm to innocent victims, outweighs the need for that person's testimony. This subsection shall not be construed to authorize the disclosure of the written assessment made pursuant to this subsection.

(2) In addition to the requirements set forth in paragraph (1) of this subsection, before providing services under this chapter which are intended to establish a new identity and/or a new permanent place of residence for the person, the Attorney General shall secure a psychological evaluation of the person which shall assess the risk of danger to the public, including the potential harm to innocent victims, potentially created by the provision of such services.

(f) Before providing services to any person under this chapter, the Attorney General shall enter into a memorandum of understanding with that person. Each such memorandum of understanding shall set forth the responsibilities of that person, including:

- (1) the agreement of the person, if a witness or potential witness, to testify and provide information to all appropriate law enforcement officials concerning all appropriate proceedings;
- (2) the agreement of the person not to commit any crime;
- (3) the agreement of the person to take all necessary steps to avoid detection by others of the facts concerning the services provided to that person under this chapter;
- (4) the agreement of the person to comply with legal obligations and civil judgments against that person;
- (5) the agreement of the person to cooperate with all reasonable requests of officers and employees of the state and other law enforcement officers who are providing services under this chapter;

- (6) the agreement of the person to designate another person to act as agent for the service of process;
- (7) the agreement of the person to make a sworn statement of all outstanding legal obligations, including obligations concerning child custody and visitation;
- (8) the agreement of the person to disclose any probation or parole responsibilities, and if the person is on probation or parole under the laws of another State, to consent to supervision by the State of Delaware; and
- (9) the agreement of the person to regularly inform the appropriate program official of the activities and current address of such person. Each such memorandum of understanding shall also set forth the services which the Attorney General has determined will be provided to the person under this chapter, and the procedures to be followed in the case of a breach of the memorandum of understanding, as such procedures are established by the Attorney General. Such procedures shall include a procedure for filing and resolution of grievances of persons provided services under this chapter regarding the administration of the program. This procedure shall include the opportunity for resolution of a grievance by a person who was not involved in the case.

(g)(1) The attorney General shall enter into a separate memorandum of understanding pursuant to this subsection with each person to whom services are provided under this chapter who is eighteen years of age or older. The memorandum of understanding shall be signed by the Attorney General and the person to whom services are provided.

- (2) The Attorney General may delegate the responsibility initially to authorize services under this chapter only to the Chief Deputy Attorney General or the State Prosecutor.

(h) If the Attorney General determines that harm to the person for whom services may be provided under this chapter is imminent or that failure to provide immediate services would otherwise seriously jeopardize an ongoing investigation, the Attorney General may provide temporary services to such person under this chapter before making the written assessment and determination required by subsection (e) of this section or entering into the memorandum of understanding required by subsection (f)

of this section. In such a case the Attorney General shall make such assessment and determination and enter into such memorandum of understanding without undue delay after the services are initiated.

(i) The Attorney General may terminate the services provided under this chapter to any person who substantially breaches the memorandum of understanding entered into between the Attorney General and that person pursuant to subsection (f), or who provides false information concerning the memorandum of understanding or the circumstances pursuant to which the person was provided services under this chapter, including information with respect to the nature and circumstances concerning child custody and visitation. Before terminating such services, the Attorney General shall send notice to the person involved of the termination of the services provided under this chapter and the reasons for the termination. The decision of the Attorney General to terminate such services shall not be subject to judicial review.

§ 9602. Civil judgments

(a) If a person provided services which include the establishment of a new identity and/or new place of permanent residence under this chapter is named as a defendant in a civil cause of action arising prior to or during the period in which the services are provided, process in the civil proceeding may be served upon that person or an agent designated by that person for that purpose. The Attorney General shall make reasonable efforts to serve a copy of the process upon the person protected at the person's last known address. The Attorney General shall notify the plaintiff in the action whether such process has been served. If a judgment in such action is entered against that person, the Attorney General shall determine whether the person has made reasonable efforts to comply with the judgment. The Attorney General shall take appropriate steps to urge the person to comply with the judgment. If the Attorney General determines that the person has not made reasonable efforts to comply with the judgment, the Attorney General may, after considering the danger to the person and upon the request of the person holding the judgment, disclose the identity and location of the person to the plaintiff entitled to recovery pursuant to the judgment. Any such disclosure of the identity and location of the person shall be made upon the express condition that further disclosure by the plaintiff of such identity or location may be made only if essential to the plaintiff's efforts to recover under the judgment, and only to such additional persons as is necessary to effect the recovery.

Any such disclosure or nondisclosure by the Attorney General shall not subject the State and its officers or employees to any civil liability.

(b)(1) Any person who holds a judgment entered by a Federal or State court in his or her favor against a person provided services which include the establishment of a new identity and/or a new place of employment under this chapter may, upon a decision by the Attorney General to deny disclosure of the current identity and location of such person, bring an action against the person in the Superior Court. Such action shall be brought within one hundred and twenty days after the petitioner requested the Attorney General to disclose the identity and location of the person to whom services have been provided under this chapter. The complaint in such action shall contain statements that the petitioner holds a valid judgment of a federal or state court against a person provided services under this chapter and that the petitioner sought to enforce the judgment by requesting the Attorney General to disclose the identity and location of such person.

(2) The petitioner in an action described in paragraph (1) of this subsection shall notify the Attorney General of the action at the same time the action is brought. The Attorney General shall appear in the action and shall affirm or deny the statements in the complaint that the person against whom the judgment is allegedly held is provided services under this chapter and that the petitioner requested the Attorney General to disclose the identity and location of such person for the purpose of enforcing the judgment.

(3) Upon a determination (i) that the petitioner holds a judgment entered by a Federal or State court and (ii) that the Attorney General has declined to disclose to the petitioner the current identify and location of the person against whom the judgment was entered, the court shall appoint a guardian to act on behalf of the petitioner to enforce the judgment. The clerk of the court shall forthwith furnish the guardian with a copy of the order of appointment. The Attorney General shall disclose to the guardian the current identity and location of the person to whom services have been provided and any other information necessary to enable the guardian to carry out his or her duties under this subsection.

(4) It is the duty of the guardian to proceed with all reasonable diligence and dispatch to enforce the rights of the petitioner under the judgment. The guardian shall, however, endeavor to carry out such enforcement duties in a manner that maximizes, to the extent practicable, the safety and security of the person to whom services have been provided

under this chapter. In no event shall the **guardian** disclose the new identity or location of such person without the permission of the Attorney General, except that such disclosure may be made to a federal or state court in order to enforce the judgment. Any good faith disclosure made by the guardian in the performance of his or her duties under this subsection shall not create any civil liability against the State or any of its officers or employees, or the guardian.

(5) Upon appointment, the guardian shall have the power to perform any act with respect to the judgment which the petitioner could perform, including the initiation of judicial enforcement actions in any federal or state court or the assignment of such enforcement actions to a third party under applicable federal or state law. The Superior Court Rules of Civil Procedure shall apply in any action brought under this subsection to enforce a federal or state court judgment.

(6) The cost of any action brought under this subsection with respect to a judgment, including any enforcement action described herein, and the compensation to be allowed to a guardian appointed in any such action shall be fixed by the court and shall be apportioned among the parties as follows: (i) the petitioner shall be assessed the amount the petitioner would have paid to collect on the judgment in an action not arising under the provisions of this subsection and; and (ii) the protected person shall be assessed the costs which are normally charged to debtors in similar actions and any other costs which are incurred as a result of an action brought under this subsection. In the event that the costs and compensation to the guardian are not met by the petitioner or by the protected person, the court may, in its discretion, enter judgment against the state for costs and fees reasonably incurred as a result of the action brought under this subsection.

(7) No officer or employee of the Department of Justice shall in any way impede the efforts of a guardian appointed under this subsection to enforce the judgment with respect to which the guardian was appointed.

(c) The provisions of this section shall not apply to a court order to which § 9603 of this title applies.

§ 9603. Child custody arrangement.

(a) The Attorney General may not relocate any child in connection with services provided to a person under this chapter if it appears that a person other than that protected person has legal custody of that child.

(b) Before services which include the establishment of a new identity and/or new place of permanent residence are provided under this chapter to any person (i) who is a parent of a child of whom that person has custody, and (ii) who has obligations to another parent of that child with respect to custody or visitation of that child under a court order, the Attorney General shall obtain and examine a copy of such order for the purpose of assuring that compliance with the order can be achieved. If compliance with a visitation order cannot be achieved, the Attorney General may provide services under this chapter to the person only if the parent being relocated initiates legal action to modify the existing court order under subsection (e)(1) of this section. The parent being relocated must agree in writing before being provided such services to abide by any ensuing court orders issued as a result of an action to modify.

(c) With respect to any person provided services which include the establishment of a new identity and/or new place of permanent residence under this chapter (i) who is the parent of a child who is relocated in connection with such services and (ii) who has obligations to another parent of that child with respect to custody or visitation of that child under a State court order, the Attorney General shall, as soon as practicable after the person and child are so relocated, notify in writing the child's parent who is not so relocated that a child has been provided services under this chapter. The notification shall also include statements that the rights of the parent not so relocated to visitation or custody, or both, under the court order shall not be infringed by the relocation of the child and the Department of Justice responsibility with respect thereto. The Department of Justice will pay all reasonable costs of transportation and security incurred in insuring that visitation can occur at a secure location, but in no event shall it be obligated to pay such costs for visitation in excess of thirty days a year. Additional visitation may be paid for, in the discretion of the Attorney General, by the Department of Justice in extraordinary circumstances. In the event that the unrelocated parent pays visitation costs, the Department of Justice may, in the discretion of the Attorney General, extend security arrangements associated with such visitation.

(d)(1) With respect to any person provided services which include the establishment of a new identity and/or new place of permanent residence under this chapter (i) who is the parent of a child

who is relocated in connection with such services and (ii) who has obligations to another parent of that child with respect to custody or visitation of that child under a court order, an action to modify that court order may be brought by any party to the court order in the Family Court in the county in which the child's parent resides who has not been relocated in connection with such services.

(2) With respect to actions brought under paragraph (1) of this subsection, the Family Court shall establish a procedure to provide a reasonable opportunity for the parties to the court order to mediate their dispute with respect to the order. The court shall provide a mediator for this purpose. If the dispute is mediated, the court shall issue an order in accordance with the resolution of the dispute.

(3) If, within sixty days after an action is brought under paragraph (1) hereof to modify a court order, the dispute has not been mediated, any party to the court order may request arbitration of the dispute. In the case of such a request, the court shall appoint a commissioner to act as arbitrator, who shall be experienced in domestic relations matters. The court and the commissioner shall, in determining the dispute, give substantial deference to the need for maintaining parent-child relationships, and any order issued by the court shall be in the best interests of the child. In actions to modify a court order brought under this subsection, the court and the commissioner shall apply the law of the State in which the court order was issued. The costs to the state of carrying out a court order may be considered in an action brought under this subsection to modify that court order but shall not outweigh the relative interests of the parties themselves and the child.

(4) Until a court order is modified under this subsection, all parties to that court order shall comply with their obligations under that court order subject to the limitations set forth in this section.

(5) With respect to any person provided services which include the establishment of a new identity and/or new place of permanent residence under this chapter who is the parent of a child who is relocated in connection with such services, the parent not relocated in connection with such services may bring an action in the Family Court for violation by that protected person of a court order with respect to custody or visitation of that child. If the court finds that such a violation has occurred, the court may hold the person to whom services have been provided in contempt.

Once held in contempt, the person to whom such services have been provided shall have a maximum of sixty days, in the discretion of the Attorney General, to comply with the court order. If

the person fails to comply with the order within the time specified by the Attorney General, the Attorney General shall disclose the new identity and address of the protected person to the other parent and terminate any financial assistance to such person unless otherwise directed by the court.

(6) The State shall pay litigation costs, including reasonable attorney's fees, incurred by a parent who prevails in enforcing a custody or visitation order, but shall retain the right to recover such costs from the person to whom services have been provided under this chapter.

(e) (1) In any case in which the Attorney General determines that, as a result of the relocation of a person and a child of whom that person is a parent in connection with the provision of services under this chapter, the implementation of a court order with respect to custody or visitation of that child would be substantially impossible, the Attorney General may bring, on behalf of the person provided services under this chapter, an action to modify the court order. Such action may be brought in the county in which the parent resides who would not be or was not relocated in connection with the services provided under this chapter. In an action brought under this paragraph, if the Attorney General establishes, by clear and convincing evidence, that implementation of the court order involved would be substantially impossible, the court may modify the court order but shall, subject to appropriate security considerations, provide an alternative as substantially equivalent to the original rights of the nonrelocating parent as feasible under the circumstances.

(2) With respect to any state court order in effect to which this section applies, if the parent who is not relocated in connection with the services provided under this chapter intentionally violates a reasonable security requirement imposed by the Attorney General with respect to the implementation of that court order, the Attorney General may bring an action in the county in which that parent resides to modify the court order. The court may modify the court order if the court finds such an intentional violation. The procedures for mediation and arbitration provided herein shall not apply to actions for modification brought under this subsection.

(f) In any case in which a person provided services which include the establishment of a new identity and/or new place of permanent residence under this chapter is the parent of a child of whom that person has custody and has obligations to another parent of that child concerning custody and visitation of that child which are not imposed by court order, that person, or the parent not relocated in connection with such

services may bring an action in the county in which the parent not relocated resides to obtain an order providing for custody or visitation, or both, of that child. In any such action, all the provisions of subsection (d) of this section shall apply.

(g) In any case in which an action under this section involves court orders from different States with respect to custody or visitation of the same child, the court shall resolve any conflicts by applying the rules of conflict of laws of the state in which the court is sitting.

(h)(1) Subject to paragraph (2), the costs of any action described in subsection (d), (e), or (f) of this section shall be paid by the State.

(2) The Attorney General shall insure that any state court order in effect to which this section applies is carried out. The Department of Justice shall pay all costs and fees described in subsections (c) and (d) of this section.

(i) As used in this section, the term "parent" includes any person who stands in the place of a parent by law.

§ 9604. Cooperation of other state agencies and governments; reimbursement of expenses

Each state agency shall cooperate with the Attorney General in carrying out the provisions of this chapter and may provide, on a reimbursable basis, such personnel and services as the Attorney General may request in carrying out those provisions.

§ 9605. Additional authority of Attorney General

The Attorney General may enter into such contracts or other agreements as may be necessary to carry out this chapter. Any such contract or agreement which would result in the State being obligated to make outlays may be entered into only to the extent and in such amount as may be provided in advance in an appropriation Act.

§9606. Source of funding.

All expenses incurred by the Attorney General to provide any service pursuant to this Chapter shall be paid from the Special Law Enforcement Assistance Fund established by §4110 of this Title."

Section 2. Amend §4114, Title 11 of the Delaware Code, by adding a new subparagraph thereto as follows:

"(5) To provide any service to a witness or potential witness pursuant to Chapter 96 of this Title."