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DELAWARE STATE SENATE
145th GENERAL ASSEMBLY

SENATE BILL NO. 25

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

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

1 Section 1. Amend Title 10 of the Delaware Code by adding a new chapter 20 as follows:

2 “§ 2001. Short title.

3 This chapter shall be known and may be cited as the ‘Judicial Emergency Act.’

4 § 2002. Statement of policy.

5 (1) The State of Delaware or areas thereof could suffer future catastrophic damage through the occurrence of
6 emergencies and disasters resulting from terrorism, enemy attack, or other hostile action, or from disease, fire,
7 flood, earthquake, accident, or other natural or manmade causes resulting in the destruction of or severe damage to
8 courthouses and the ability to staff the courts. To provide for the operation of the courts during such an
9 emergency, it is necessary to enact comprehensive emergency provisions for the Judicial Branch.

10 § 2003. Definitions.

11 As used in this chapter:

12 (1) ‘Affected court facility’ means any court facility for which the Chief Justice has made a determination
13 that emergency sessions shall be conducted outside the county in which it normally operates.

14 (2) ‘Chief Justice’ means the Chief Justice of the Delaware Supreme Court or, in the absence of the Chief
15 Justice, the justice who is designated in accordance with Article IV, Section 13 of the Delaware Constitution
16 or, if applicable, by Section 1804 of this Title to function as Chief Justice.

(3) 'Emergency sessions' means any court proceeding conducted by an affected court as authorized by this Chapter and by order of the Chief Justice of the Delaware Supreme Court.

(4) 'Host county' means the county in which the Chief Justice has ordered the affected court facility to conduct emergency sessions.

(5) 'Unavailable' means either that vacancy in office exists, or that the lawful incumbent of the office is absent or unable to exercise the powers and discharge the duties of the office.

§ 2004. Authority of Chief Justice to declare a judicial emergency; contents of order; duration of order.

(a) The Chief Justice shall, in consultation with those other members of the Supreme Court who are available, have the authority, by order, to declare a judicial emergency when the Chief Justice determines that there are emergency circumstances affecting one or more court facilities or the ability to staff one or more court facilities. This determination shall be based upon emergency circumstances, including but not limited to, terrorist events, enemy attack, sabotage, or other hostile action or from disease, fire, flood, earthquake, accident, or other natural or manmade causes resulting in the destruction of or severe damage to courthouses, the ability to access courthouses, or the ability to staff courts.

(b) The order declaring a judicial emergency shall specify: (1) the court or courts and facilities affected by the order; (2) the nature of the emergency necessitating the order; (3) the time period or duration of the judicial emergency; and (4) any other information relevant to the suspension or restoration of court operations, such as relocation of the court to another county or extensions of deadlines.

(c) An order declaring the existence of a judicial emergency shall be limited to an initial duration of not more than 30 days; provided, however, that the order may be modified or extended for additional periods of 30 days each. Any modification or extension of the initial order shall require information regarding the same matters set forth in subsection (b) of this section for the issuance of the initial order.

§ 2005. Emergency sessions of court.

(a) When the Chief Justice makes the determination that a court shall conduct proceedings outside its county, the Chief Justice may order emergency sessions of court in another county. In making this determination, the Chief Justice shall make a reasonable effort to consult with the chief judge and the court administrator of the affected court, the other members of the Supreme Court, the Attorney General, and the Public Defender.

(b) Nothing in this Chapter shall preempt the authority of each court to make a temporary move within the county, or in the case of the Supreme Court, within the State, as provided for in section 1903 of this Title.

§ 2006. Venue for affected court facilities.

(a) If an affected court facility is ordered to conduct sessions in a different county, the host county shall be a proper venue for civil and criminal actions to the same extent as if the affected court were operating in its original county.

(b) Upon motion by the attorney general or a designee of the attorney general, showing that the interests of justice are served by approval of the motion, the affected court may summon jurors from the host jurisdiction.

§ 2007. Extension of deadlines.

(a) The Chief Justice, in an order declaring a judicial emergency, or in an order modifying or extending a judicial emergency order, is authorized to suspend, toll, extend, or otherwise grant relief from deadlines or other time schedules or filing requirements otherwise imposed by applicable statutes, rules, regulations, or court orders for the duration of the emergency order, including, but not limited, to such deadlines as civil and criminal statutes of limitations, deadlines for appeals, and the expiration of temporary restraining orders or no contact orders that would otherwise expire.

(b) Except as specified in subsection (c) of this section, deadlines may be extended up to the duration of the emergency order but shall be for the shortest period of time necessary under the circumstances of the emergency.

(c) The time periods for bringing an arrested person before a magistrate pursuant to section 1909 of Title 11 and for bringing a prisoner before a judge pursuant to section 6907 of this Title shall not be extended to more than seven days. The time for taking a juvenile charged with a delinquent act before a court shall not be extended to more than two days.

§ 2008. Use of audiovisual devices.

During a judicial emergency, the Chief Justice is authorized to permit, by order, the use of audiovisual devices for all civil and criminal proceedings except trial by jury, whether or not such use is currently permitted by statute or court rule. Such proceedings may be conducted in the same or another county from that in which the defendant is physically located. In the order permitting the use of audiovisual devices, the Chief Justice shall state the court locations in which such usage shall be permitted, the specific proceedings for which audiovisual devices

75 shall be permitted, the duration for which their use shall be permitted, and, when such usage is not otherwise
76 authorized by statute or court rule, shall provide a justification for the compelling state interest in using such
77 devices.

78 § 2009. Other emergency powers.

79 The Chief Justice shall have the authority to take such other actions as the Chief Justice reasonably
80 believes are necessary to provide for the continued operation of the courts during a judicial emergency.

81 § 2010. Preemption of conflicting provisions.

82 The provisions of this Chapter shall preempt and supersede but not repeal any conflicting provisions of
83 this Code or any other provision of law.”

SYNOPSIS

This legislation provides for the operation of the courts in the event of an emergency due to natural or manmade causes that destroys or severely damages one or more court facilities or severely impacts the ability to staff the courts. Although 20 *Del. C.* § 3116 provides for the Governor to suspend the provisions of regulatory statutes prescribing the conduct of state business, and the orders, rules, and regulations of state agencies if strict compliance would in any way prevent, hinder or delay necessary action in coping with the emergency or disaster, it is not clear that this provision would apply to the operation of the criminal and civil courts. This legislation provides for the continuing operation of the courts during an emergency by clarifying that the Chief Justice has the authority to take necessary steps to ensure their orderly functioning during an emergency.

Specifically, this legislation:

- 1) Grants the Chief Justice the authority to declare a judicial emergency when there are emergency circumstances affecting one or more court facilities. The order declaring a judicial emergency shall be limited to an initial duration of 30 days, but may be modified or extended for additional 30 day periods.
In an order declaring a judicial emergency, the Chief Justice may also:
 - Order that a court may operate in a county other than the county in which it is normally located.
 - Extend statutes of limitations and time periods prescribed by statute as well as those time limitations prescribed by court rule or administrative directive which the Chief Justice already has the authority to extend pursuant to his authority under Art. IV, Section 13 of the Delaware Constitution.
 - Declare that specific proceedings not normally conducted by audiovisual device may be conducted in this manner. When such usage is not otherwise authorized by statute or court rule, an explanation of the compelling state interest in such usage shall be included in the order
 - Take such other actions as the Chief Justice reasonably believes necessary for the continued operation of the courts during a judicial emergency.
- 2) Provides that the host county shall be a proper venue;
- 3) Establishes that its provisions shall preempt and supersede but not repeal any conflicting provisions of this Code or any other provision of law. Thus, for example, a judicial emergency does not need to be declared by the Chief Justice for a court location to be moved from one location to another in the same county during an emergency pursuant to 10 *Del. C.* § 1903. However, if the nature of the emergency requires a move outside the county, the Chief Justice may declare a judicial emergency pursuant to this legislation and this legislation will preempt 10 *Del. C.* § 1903 which permits a move only within the county (except for the Supreme Court).

Author: Senator DeLuca