



SPONSOR: Sen. Henry & Rep. Longhurst
Sens. Cloutier, Peterson, Townsend;
Reps. Barbieri, Baumbach, Bolden, Heffernan, Jaques,
Keeley, Kowalko, Lynn, Potter, B. Short

DELAWARE STATE SENATE
148th GENERAL ASSEMBLY

SENATE BILL NO. 83

AN ACT TO AMEND TITLE 10 AND TITLE 11 OF THE DELAWARE CODE RELATING TO DOMESTIC VIOLENCE.

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

1 Section 1. Amend § 1045, Title 10 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 1045. Relief available; duration of orders, modification and termination.

4 (a) After consideration of a petition for a protective order, the Court may grant relief as follows:

5 (8) Order the respondent to temporarily relinquish to ~~the sheriff, constable or to~~ a police officer the
6 respondent's firearms and ammunition and to refrain from purchasing or receiving additional firearms or ammunition
7 for the duration of the order;

8 (g) A protective order requiring a person to relinquish firearms and ammunition in accordance with subsection
9 (a)(8) of this section shall:

10 (1) State on its face that firearms and ammunition shall be relinquished immediately to a police officer if
11 requested by the police officer upon personal service of the protective order. If no request is made by a police officer,
12 the relinquishment shall occur within 24 hours of personal service of the order at any staffed police station, unless the
13 person is incarcerated at the time personal service is received, in which case the 24 hour relinquishment period shall
14 commence at the time of release from incarceration.

15 (2) State on its face that the respondent is prohibited from purchasing, possessing, or controlling firearms and
16 ammunition under Delaware law.

17 (3) Require the respondent to file, within 48 hours of personal service or, if the Court will not be open within
18 48 hours from the time of personal service, within the first 3 hours the Court is thereafter open, one of the following
19 documents:

20 a. A certification, under penalty of prosecution for false written statement under § 1233 of Title 11, that
21 the respondent did not own, possess, or control any firearms or ammunition at the time of the order and currently
22 does not own, possess, or control any firearms or ammunition.

23 b. A copy of a proof of transfer showing, for each firearm and any ammunition owned, possessed, or
24 controlled by the respondent at the time of the order, that the firearm or ammunition was relinquished to a police
25 officer.

26 c. A certification, under penalty of prosecution for false written statement under § 1233 of Title 11, for
27 each firearm and any ammunition owned, possessed, or controlled by the respondent at the time of the order, that
28 the respondent is unable to obtain access to the firearm or ammunition, specifying the location of the firearm or
29 ammunition and the reason why the respondent is unable to obtain access.

30 (h) The Court shall provide to the petitioner a copy of the documents the respondent files with the Court pursuant
31 to subsection (g)(3) of this section within 48 hours of filing or, if the Court will not be open within 48 hours of the filing,
32 within the first 3 hours the Court is thereafter open.

33 (i) A police officer taking possession of firearms and ammunition relinquished by a respondent pursuant to a
34 protective order under subsection (a) of this section shall issue a proof of transfer to the respondent. The proof of transfer
35 shall list the name of the respondent; date of the transfer; make, model, and serial number of each firearm relinquished; and
36 identify whether ammunition was also relinquished. The police officer shall transport the firearms and ammunition to the
37 proper law enforcement agency for storage. For purposes of this section, the term “police officer” shall be defined as in
38 § 1911 of Title 11.

39 (j) A law enforcement agency may charge the respondent a reasonable fee for the storage of any firearms and
40 ammunition relinquished pursuant to a protective order. This fee shall not exceed the actual cost incurred by the law
41 enforcement agency for the storage of the firearms and ammunition. The law enforcement agency shall dispose of the
42 firearm or ammunition or return the firearm or ammunition to the respondent only subsequent to the expiration or
43 termination of the protective order in accordance with § 2311 of Title 11.

44 (k) The forms for protective orders shall allow the petitioner to describe the number, types, and locations of any
45 firearms or ammunition presently known by the petitioner to be owned, possessed, or controlled by the respondent.

46 (l) Whenever law enforcement determines probable cause exists to believe that the respondent has failed to
47 relinquish a firearm or ammunition in violation of a protective order granting the relief specified in subsection (a)(8) of this
48 section or gave false information regarding the respondent’s access to firearms and ammunition which the respondent

49 claimed to be unable to access, and law enforcement can describe, with sufficient particularity, the type and location of the
50 firearm or ammunition, they shall seek a search warrant within 48 hours of such determination, when possible.

51 Section 2. Amend § 1448, Title 11 of the Delaware Code by making deletions as shown by strike through and
52 insertions as shown by underline as follows:

53 § 1448. Possession and purchase of deadly weapons by persons prohibited; penalties.

54 (a) Except as otherwise provided herein, the following persons are prohibited from purchasing, owning,
55 possessing or controlling a deadly weapon or ammunition for a firearm within the State:

56 (6) Any person who is subject to a Family Court protection from abuse order (~~other than an ex parte order~~),
57 but only for so long as that order remains in effect or is not vacated or otherwise terminated, except that this paragraph
58 shall not apply to a contested order issued solely upon § 1041(1)d., e., or h. of Title 10, or any combination thereof.
59 Such prohibition is effective immediately upon entry of the protection from abuse order as to purchasing or otherwise
60 obtaining a firearm or ammunition and is effective as to owning, possessing, or controlling any deadly weapon 24
61 hours after personal service of the protection from abuse order upon the person;

62 (7) Any person who has been convicted in any court of any misdemeanor crime of domestic violence. For
63 purposes of this paragraph, the term "misdemeanor crime of domestic violence" means any misdemeanor offense that:

64 a. Was committed by a member of the victim's family, as "family" is defined in § 901(12) of Title 10
65 (regardless, however, of the state of residence of the parties); by a former spouse of the victim; by a person who
66 ~~cohabitated~~ cohabited with the victim at the time of or within 5 years prior to the offense; ~~or~~ by a person with a
67 child in common with the victim; or by a person with whom the victim had a substantive dating relationship, as
68 defined in § 1041(2)b. of Title 10, at the time of or within 5 years prior to the offense; and

69 b. Is an offense as defined under § 601, § 602, § 603, § 611, § 614, § 621, § 625, § 628A, § 763, § 765,
70 § 766, § 767, § 781, § 785 or § 791 of this title, or any similar offense when committed or prosecuted in another
71 jurisdiction; or

72 Section 3. Amend Chapter 39, Title 11 of the Delaware Code by making deletions as shown by strike through and
73 insertions as shown by underline as follows:

74 § 3907. Indication on record of misdemeanor crime of domestic violence.

75 At the time a person is convicted of an offense as defined under § 601, § 602, § 603, § 611, § 614, § 621, § 625,
76 § 628A, § 763, § 765, § 766, § 767, § 781, § 785 or § 791 of Title 11, the court shall indicate on the record of conviction
77 whether the offense was a "misdemeanor crime of domestic violence" as defined in § 1448(a)(7) of this title.

78 Section 4. This Act takes effect on January 1, 2017.

SYNOPSIS

This Act makes several changes to Title 10 and Title 11 of the Delaware Code relating to domestic violence.

First, this Act amends § 1045, Title 10 relating domestic violence protective orders to clarify the procedures related to the disposition of firearms in the possession of a respondent.

Second, this Act amends § 1448(a)(6), Title 11 to provide that any person who is prohibited from purchasing, owning, possessing, or controlling a deadly weapon because the person is subject to a Family Court protection from abuse order is so prohibited immediately upon the entry of the protection from abuse order from purchasing or otherwise obtaining, and within 24 hours of personal service of the order, from owning, possessing, or controlling any deadly weapon.

Third, this Act expands the definition of the term “misdemeanor crime of domestic violence” in § 1448(a)(7), Title 11 to include substantive dating relationships and people who have cohabited at the time of the offense or within 5 years prior to the offense.

Finally, this Act amends Chapter 39, Title 11 to require that the court indicate on the record of conviction of certain, specified offenses whether the offense was a “misdemeanor crime of domestic violence.”

This Act takes effect on January 1, 2017.

Author: Senator Henry