

DELAWARE CIVIL PROTECTION ORDERS

Survivors across the country seek safety through civil protection orders. Courts use these vital orders to issue stay away orders, or order an abuser pay medical bills, and even make temporary custody decisions. The remedies are important, but jurisdictions often have several types of orders and the distinctions are not always clear. This resource provides a brief overview of the different types of civil protection orders in each jurisdiction, answering vital questions such as: who can apply; and who can be restrained? The orders included in this resource are limited to those where a survivor can apply themselves, other protective measures may exist in your jurisdiction—reach out to VRLC’s TA team if you have questions!

In Delaware, there are 3 types of civil protection orders:

- Order of Protection from Abuse** is available for individuals seeking protection from abuse committed by a person with whom they have a specific relationship (such as a spouse) (10 Del. C. §§ 1041- 1046).
- Sexual Violence Protection Order** is available for individuals seeking protection from someone who committed sexual violence against them (10 Del. C. §§ 7201- 7209).
- Lethal Violence Protective Order** may be sought by a person with a specific relationship to an individual who poses a serious threat of physical harm to themselves or someone else (10 Del. C. §§ 7701 - 7709).



ORDER OF PROTECTION FROM ABUSE

<p>Who can apply?</p>	<p>Anyone against whom an act of domestic abuse was committed. <i>10 Del. C. § 1042.</i></p> <p>Abuse is any of the following actions, committed by someone with whom you have a specific relationship (see below):</p> <ol style="list-style-type: none"> 1. Causing physical injury or specified sexual violence or putting someone in fear of such harm; 2. Destroying a person’s property including legal documents; 3. Injuring a pet or service animal; 4. Engaging in conduct likely to cause fear or emotional distress or to provoke a violent or disorderly response, including conduct directed toward pets or service animals; 5. Trespassing on an individual’s property; 6. Child abuse; 7. Unlawful imprisonment, kidnapping, interference with custody, and coercion 8. Intentionally causing or attempting to cause financial dependence in an adult through overwhelming control over financial resources, stealing or defrauding money or assets for personal gain, or withholding physical necessities (such as food or medication); 9. Any other conduct which a reasonable person under the circumstances would find threatening or harmful. <p><i>Del. C. § 1041(1).</i></p>
<p>Can minors apply?</p>	<p>No, but a parent, legal guardian or child protective services can file an order on behalf of the minor. <i>10 Del. C. §§ 1041(3)(b).; 1043(a).</i></p>



ORDER OF PROTECTION FROM ABUSE

<p>Who can be restrained?</p>	<p>A protection order can be sought against:</p> <ol style="list-style-type: none"> 1. A member of your family or 2. Someone with whom you have a specific relationship. <p>Family includes any of the following regardless of residence or status of parental rights:</p> <ul style="list-style-type: none"> • Parent, stepparent, or parent-in-law; • Sibling, stepsibling, or sibling-in-law; • Child or child-in-law; • Grandparent. <p><i>10 Del. C. §§ 901.</i></p> <p>Specific relationships eligible for this order include:</p> <ul style="list-style-type: none"> • Former spouse; • Someone with whom you were “cohabitating” as a couple; • Someone with whom you have a child in common; or • Someone with whom you have or had a “substantive” dating relationship. <p><i>10 Del. C. §§ 901.</i></p>
<p>What types of relief may a court order?</p>	<p>In an order of protection from abuse, a judge may order the abuser to:</p> <ul style="list-style-type: none"> • Stay away from you; • Stay away from a pet (“companion animal”) owned or held by you, the abuser, or a minor child living in the home of you or the abuser; • Stay away from your residence, work place, school, daycare; • Stop threatening or abusing you; • Stop contacting you; • Pay child support and spousal support; • Attend counseling; • Not destroy, sell, or conceal joint property; and <p style="text-align: right;"><i>continued on next page</i></p>



ORDER OF PROTECTION FROM ABUSE

<p>What types of relief may a court order?</p>	<ul style="list-style-type: none"> Any other relief that the judge believes is necessary “to prevent or reduce the likelihood of future domestic violence.” <p>Whether a judge orders any or all of the above depends on the facts of your case. <i>10 Del.C. § 1045(a).</i></p>
<p>How long does the order last?</p>	<p>In the case of immediate danger of abuse, an emergency ex parte order can be requested upon application for an order of protection. If the ex parte order is obtained, it lasts until the full hearing or until 30 days after the initial order, whichever comes first. <i>10 Del. C. § 1043.</i></p> <p>A long-term order of protection issued after a full hearing is typically not longer than one year, but in certain circumstances may be ordered for a fixed time not to exceed two years. Notwithstanding, the order can be longer, and can apply permanently, if a judge finds the length necessary to prevent domestic violence and aggravating circumstances exist. <i>10 Del. C. §§ 1044-1045.</i></p> <p>Aggravating circumstances include any of the following:</p> <ul style="list-style-type: none"> The abuser caused you physical injury or serious physical injury or s/he exposed any of your family or household members to such injuries; The abuser used a deadly weapon or dangerous instrument against you; There is a history of repeated violations of prior protective orders by the abuser; The abuser has been convicted of a crime against you in the past; or The abuser committed any other acts of abuse that causes the judge to believe that there is an immediate and ongoing danger to you or any member of your family or household. <p><i>10 Del. C. § 1045(f).</i></p>



ORDER OF PROTECTION FROM ABUSE

<p>Can the order be renewed?</p>	<p>Yes, a motion to extend the order may be filed before it expires. The order can be extended for a time period determined by the judge. However, for the judge to extend your order, the judge must hold a hearing and find by the preponderance of evidence that:</p> <ul style="list-style-type: none"> • Domestic violence has occurred since the original order; • A violation of the order has occurred; • There is other “good cause” to extend the order; or • Respondent consents to the extension of the order. <p><i>10 Del. C. § 1045.</i></p>
<p>Is a hearing with the respondent required?</p>	<p>An emergency ex parte order may be obtained without the abuser’s presence, but that may last no more than 30 days. <i>10 Del. C. § 1043.</i></p> <p>A hearing where the abuser has a chance to be present is required to obtain a long-term order of protection. <i>10 Del. C. § 1044.</i></p>



SEXUAL VIOLENCE PROTECTIVE ORDER

<p>Who can apply?</p>	<p>A petition seeking relief under this chapter may be filed by any of the following:</p> <ul style="list-style-type: none"> • A person who is a victim of non-consensual sexual conduct or non-consensual sexual penetration including a single incident of non-consensual sexual conduct or non-consensual sexual penetration. • A person who is acting on behalf of any of the following persons who is a victim of non-consensual sexual conduct or non-consensual penetration: A minor child; A vulnerable adult as defined by § 1105(c) of Title 11; Any adult other than a vulnerable adult who, because of age, disability, health, or inaccessibility, is unable to file the petition. <p><i>10 Del. C. § 7203.</i></p>
<p>Can minors apply?</p>	<p>A person under the age of 18 who is 16 years of age or older may seek a sexual violence protective order without an adult.</p> <p><i>10 Del. Code § 7203(g).</i></p> <p>Otherwise, a petition may be filed by an adult on a minor’s behalf.</p> <p><i>10 Del. C. § 7203 (b)(2).</i></p>
<p>Who can be restrained?</p>	<p>Anyone 18 years or older.</p> <p><i>10 Del. C. § 7203(h).</i></p>
<p>What types of relief may a court order?</p>	<p>A sexual violence protective order must restrain the respondent from contacting or attempting to contact the petitioner. The Court may also order:</p> <ul style="list-style-type: none"> • Restrain the respondent from the petitioner’s residence, workplace, school, or other institution where the petitioner may be; <p style="text-align: right;"><i>continued on next page</i></p>



SEXUAL VIOLENCE PROTECTIVE ORDER

<p>What types of relief may a court order?</p>	<ul style="list-style-type: none"> • Order the respondent to relinquish to a police officer, or a federally-licensed firearms dealer located in Delaware, the respondent’s firearms and to refrain from purchasing or receiving additional firearms for the duration of the order; • Direct a law-enforcement agency having jurisdiction where the respondent resides, or the firearms or ammunition are located, to immediately search for and seize any firearms or ammunition owned, possessed, or controlled by the respondent; • Order the respondent to undergo a drug, alcohol, or mental health assessment approved by the Sex Offender Management Board; • Grant any other reasonable relief necessary or appropriate for the protection of the petitioner. <p><i>10 Del. C. § 7205.</i></p>
<p>How long does the order last?</p>	<p>The order shall be for a fixed period of time not to exceed three years. <i>10 Del. C. § 7205(i).</i></p> <p>A temporary ex parte order may be obtained, and the court shall order a full hearing within 15 days if an emergency order is issued. The emergency order can be extended but may not exceed 45 days. <i>10 Del. C. § 7204(f).</i></p>
<p>Can the order be renewed?</p>	<p>Yes. A petitioner may request a renewal of a sexual violence protective order at any time within 3 months before the expiration of a sexual violence protective order. <i>10 Del. C. § 7206(b).</i></p> <p>To qualify for extension, a judge must find by a preponderance of the evidence that the respondent continues to pose a danger of causing petitioner harm. <i>10 Del. C. § 7206(b).</i></p>



SEXUAL VIOLENCE PROTECTIVE ORDER

Is a hearing with the respondent required?

An emergency ex parte order may be obtained without the abuser’s presence, but that may not last more than 45 days.

10 Del. C. § 7204(f).

The abuser has a right to be heard at a full hearing for a long-term order that may last up to three years.

10 Del. C. § 7205.



LETHAL VIOLENCE PROTECTIVE ORDER

<p>Who can apply?</p>	<p>A petition for a non-emergency lethal violence protective order may be granted if the respondent poses a danger of causing physical injury to himself/herself or others by controlling, owning, buying, having, having access to, or receiving a firearm.</p> <p>Additionally, to file for a non-emergency lethal violence protective order the petitioner must be:</p> <ul style="list-style-type: none"> • The respondent’s family member; or • A law enforcement officer. <p><i>10 Del. C. § 7701(4).</i></p> <p>Family member is defined as:</p> <ul style="list-style-type: none"> • Parent, stepparent, or parent-in-law; • Sibling, stepsibling, or sibling-in-law; • Child or child-in-law; • Grandparent. <p><i>10 Del. C. §§ 901.</i></p>
<p>Can minors apply?</p>	<p>There is no indication that a minor can apply.</p> <p><i>10 Del. C. §§ 7701-7708.</i></p>
<p>Who can be restrained?</p>	<p>There are no listed restrictions.</p> <p><i>10 Del. C. §§ 7701-7708.</i></p>
<p>What types of relief may a court order?</p>	<p>A lethal violence protective order is an order issued by a Justice of the Peace Court or a Superior Court that keeps a person (the “respondent”) from doing any of the following with a firearm:</p> <p style="text-align: right;"><i>continued on next page</i></p>



LETHAL VIOLENCE PROTECTIVE ORDER

<p>What types of relief may a court order?</p>	<ul style="list-style-type: none"> • Controlling; • Owning; • Buying; • Having; • Having access to; or • Receiving. <p><i>10 Del. C. § 7701(3).</i></p> <p>A judge can also order that the respondent:</p> <ul style="list-style-type: none"> • Give up any firearms or ammunition s/he owns, has, or can access to law enforcement or another person (a “designee”); • Submit to a search by law enforcement looking for firearms or ammunition; and • Not live with anyone who owns, has, or has access to any firearms or ammunition. <p><i>10 Del. C. § 7704(d).</i></p>
<p>How long does the order last?</p>	<p>After a full hearing, the order shall be for a fixed period of time not to exceed one year.</p> <p><i>10 Del. C. § 7704(j).</i></p> <p>An emergency ex parte order may also be ordered, but only a member of law enforcement may apply and it may not last more than 45 days.</p> <p><i>10 Del. C. § 7703.</i></p>
<p>Can the order be renewed?</p>	<p>The petitioner who filed for the original order may request to renew a lethal violence protective order within the three months before the order expires.</p> <p style="text-align: right;"><i>continued on next page</i></p>



LETHAL VIOLENCE PROTECTIVE ORDER

<p>Can the order be renewed?</p>	<p>If the judge finds that the petitioner has proven by clear and convincing evidence that the respondent continues to pose a danger of causing physical injury to him/herself or others by owning, buying, having, or having access to a firearm, the judge may grant the renewal.</p> <p>A renewed lethal violence protective order lasts for up to one year. <i>10 Del. C. § 7705(b).</i></p>
<p>Is a hearing with the respondent required?</p>	<p>An emergency ex parte order may be ordered, but only a member of law enforcement may apply. It may not last more than 45 days. <i>10 Del. C. § 7703.</i></p> <p>The respondent has a right to be heard at a full hearing for a long-term order that may last up to one year. <i>10 Del. C. § 7704.</i></p>

HOW TO APPLY

Forms are available at the clerk's office or can be found online at <https://courts.delaware.gov/forms/list.aspx?sec=Forms&sub=Protection%20From%20Abuse>

A petition may be filed in any county where the petitioner resides, the respondent resides, the alleged domestic violence occurred, or where the petitioner is temporarily located to avoid domestic violence.

10 Del. C. §§ 1042(c).

SCAN ME!



For specific questions about how to use this guide, or if you have any other questions, VRLC is here to help!

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