



DELAWARE

LETHAL VIOLENCE PROTECTIVE ORDERS

&

EMERGENCY DETENTION, PROVISIONAL HOSPITALIZATION, AND INVOLUNTARY INPATIENT COMMITMENT

HOW DO THEY DIFFER?



**Bloomberg American
Health Initiative**

Information on this website does not constitute legal advice. Every factual situation is unique; if you want legal advice specific to your particular circumstances, please consult knowledgeable counsel.



Lethal Violence Protective Orders (LVPOs) temporarily remove firearms from individuals at risk of harming themselves (including suicide) or others. Criteria for an LVPO focus on dangerous behaviors, not mental illness diagnoses.

Involuntary inpatient commitment may include firearm prohibition or removal in certain situations but is primarily concerned with ensuring that a person with a suspected or diagnosed mental health disorder receives appropriate treatment.

WHAT IS A LETHAL VIOLENCE PROTECTIVE ORDER?

In Delaware, an **LVPO** is a civil order that temporarily prohibits individuals who pose a danger of injuring themselves (including suicide) or others from purchasing and possessing firearms and ammunition.¹

Mental illness diagnosis

Delaware's LVPO law does not require the petitioner to demonstrate that the respondent has a suspected or diagnosed mental disorder. Dangerous behaviors are the main criteria for an LVPO. An LVPO petitioner must establish that a person presents a danger of injury to themselves (including suicide) or others.²

Firearm prohibition

LVPOs prohibit respondents from purchasing or possessing firearms and ammunition for the duration of the order and require respondents to surrender their firearms and ammunition to law enforcement upon execution of the order.³

WHAT IS AN EMERGENCY DETENTION? PROVISIONAL HOSPITALIZATION? INVOLUNTARY INPATIENT COMMITMENT?

In Delaware, an **emergency detention** occurs when a person, believed to have a mental condition⁴ and acting in manner that appears to be dangerous to self or others, is taken into custody and admitted to a treatment facility for observation, assessment, and treatment.⁵

A **provisional hospitalization** is the admission of an individual to a hospital for up to 48-hours pursuant to a psychiatrist's certification issued after the completion of an emergency detention.⁶

Involuntary inpatient commitment is the hospitalization and treatment of an individual who because of a mental illness presents a danger to themselves or others. Involuntary inpatient commitment is available when there is no less restrictive intervention to inpatient treatment and the individual is unwilling to be admitted voluntarily.⁷

Mental illness diagnosis

An individual may be taken into custody for an emergency detention and further detained pursuant to a provisional hospitalization if the individual appears to have a mental condition and as a result presents a danger to self or others.⁸ An individual must have a mental condition to be involuntarily committed.⁹ Additionally, the court conducting the involuntary inpatient commitment hearing must find that "[b]ased upon manifest indications, the individual is: dangerous to self; or dangerous to others[.]" there is no less restrictive alternative, and the individual has declined voluntary inpatient treatment.¹⁰

Firearm prohibition

An individual who has been involuntarily committed is prohibited from purchasing or possessing firearms or ammunition and must relinquish any firearms or ammunition in their ownership or possession.¹¹ An individual may petition for relief from the firearm prohibition from the Relief from Disabilities Board. The individual must have a certificate from a doctor or psychiatrist stating the individual is no longer suffering from a mental disorder that would interfere with their ability to handle a firearm, among other records and documents to petition the Board.¹² Delaware does not prohibit firearm purchase and possession for persons taken into custody for an emergency detention or provisionally hospitalized.

DELAWARE LVPO VS. COURT ORDERED MENTAL HEALTH TREATMENT: HOW DO THEY DIFFER?

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ENDNOTES

1 Del. Code, Ann. tit. 10, § 7701(3).

2 Del. Code, Ann. tit. 10, §§ 7703(d); 7704(b)(4), (d).

3 Del. Code, Ann. tit. 10, §§ 7703(d); 7704(d).

4 "Mental condition" means a current, substantial disturbance of thought, mood, perception or orientation which significantly impairs judgment, capacity to control behavior, or capacity to recognize reality. Unless it results in the severity of impairment described herein, "mental condition" does not mean simple alcohol intoxication, transitory reaction to drug ingestion, dementia due to various nontraumatic etiologies or other general medical conditions, Alzheimer's disease, or intellectual disability. The term "mental condition" is not limited to "psychosis" or "active psychosis," but shall include all conditions that result in the severity of impairment described herein. Del. Code, Ann. tit. 16, § 5001(13).

5 Del. Code, Ann. tit. 16, § 5004.

6 Del. Code, Ann. tit. 16, § 5005.

7 Del. Code, Ann. tit. 16, §§ 5002; 5011.

8 Del. Code, Ann. tit. 16, §§ 5004; 5005.

9 Del. Code, Ann. tit. 16, § 5011(e)(1).

10 Del. Code, Ann. tit. 16, § 5011(e).

11 Del. Code, Ann. tit. 16, § 5009(f); Del. Code, Ann. tit. 11, § 1448(a)(2).

12 Del. Code, Ann. tit. 11, § 1448A(i)(2). See also <https://dshs.delaware.gov/disabilities.shtml>.

ABOUT THIS PROJECT

In 2013, following the Sandy Hook massacre, the Consortium for Risk-Based Firearm Policy published evidence-based recommendations to address all forms of gun violence. Among the recommendations was a call for states to pass a new policy called Extreme Risk Protection Orders. As of September 1, 2020, seven years since the Consortium released its report, 19 states and the District of Columbia have passed new ERPO laws. Dozens more states have introduced ERPO bills.

With many laws in place, and several additional states poised to enact ERPO laws, there is a need for information, technical assistance, and support for implementing ERPO laws. This project was created to address that need. Please visit the central resource for ERPO implementers at americanhealth.jhu.edu/implementERPO.