



**DELAWARE**

**LETHAL VIOLENCE  
PROTECTIVE  
ORDER  
&  
DOMESTIC  
VIOLENCE  
PROTECTION  
FROM ABUSE  
ORDER**

**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.



## WHAT IS A LETHAL VIOLENCE PROTECTIVE ORDER?

In Delaware, a Lethal Violence Protective Order is a civil order that temporarily prohibits individuals who pose a danger of injury to self (including suicide) or others from purchasing and possessing firearms and ammunition.

## HOW ARE LVPOS DIFFERENT?

### Petitioners

Law enforcement may petition for an **Emergency LVPO**. Family members, persons with a child in common, persons in a substantive dating relationship, and law enforcement officers may petition for a **Nonemergency LVPO**.

### Protections

**LVPOs** offer one type of protection: They temporarily prohibit persons at risk of injury to self or others from purchasing or possessing firearms and ammunition for the duration of the order. LVPOs require respondents to turn over firearms and ammunition to law enforcement.

## WHAT IS A DOMESTIC VIOLENCE PROTECTION FROM ABUSE ORDER?

In Delaware, a Domestic Violence Protection from Abuse Order (PFA) is a civil order issued by a judge that provides various forms of relief from abuse, including ordering the respondent<sup>1</sup> to refrain from abuse and threatening abuse, prohibiting contact with the petitioner, and awarding temporary child custody.

## HOW ARE PFAS DIFFERENT?

### Petitioners

Family members, persons with a child in common, and persons in a substantive dating relationship may petition for a **PFA** on behalf of themselves, a minor, or an impaired adult. Additionally, the Division of Child Protective Services may petition for a PFA on behalf of a minor child and the Division of Adult Protective Services may petition for a PFA on behalf of an impaired adult.

### Protections

**PFAs** may order various forms of relief from abuse, including but not limited to ordering the respondent to stay away from the petitioner, refrain from entering the home of the petitioner or other resident (regardless of in whose name the residence is titled or leased), and refrain from purchasing or possessing firearms.

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In Delaware, LVPOs serve a different purpose than PFAs. For a more detailed description of the differences, see the comparison chart.

# EXPLORE THE DIFFERENCES

## LVPO & PFA COMPARISON CHART

### PETITIONS AND ORDERS

#### LETHAL VIOLENCE PROTECTIVE ORDER (LVPO)

#### DOMESTIC VIOLENCE PROTECTION FROM ABUSE (PFA)

#### What results from the issuance of an order?

Temporarily prohibits respondent from purchasing and possessing firearms and ammunition<sup>2</sup>

The order may prohibit the respondent from residing with another individual who owns, possesses, or controls firearms or ammunition<sup>3</sup>

The court may order relief, including but not limited to:

- Ordering the respondent to refrain from further abuse or threats of abuse
- Ordering the respondent to refrain from contacting the petitioner
- Ordering the respondent to stay away from the petitioner
- Awarding temporary child custody
- Ordering the respondent to surrender firearms and refrain from possessing firearms for the duration of the order<sup>4</sup>

#### Is the order criminal or civil?

Civil

If respondent violates the order they may be charged with a crime<sup>5</sup>

Civil

If the respondent violates the order they may be charged with a crime<sup>6</sup>

#### What types of orders are available?

Emergency LVPO

Nonemergency LVPO

Emergency (*ex parte*) PFA

Final PFA

#### Who may petition for an order?

Emergency LVPO: law enforcement<sup>7</sup>

Nonemergency LVPO: family members, persons with a child in common, persons in a substantive dating relationship, or law enforcement<sup>8</sup>

Family members, persons with a child in common, and persons in a substantive dating relationship on behalf of themselves, a minor child, or an impaired adult<sup>9</sup>

Division of Child Protective Services on behalf of a minor child<sup>10</sup>

Division of Adult Protective Services on behalf of an impaired adult<sup>11</sup>

#### May a minor be the respondent to an order?

The law does not explicitly state whether minors are eligible respondents

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|   |   |  |
|---|---|--|
| <b>Can the order be issued 24/7?</b>        | No  | No   |
| <b>Which court hears the petition?</b>      | Emergency LVPO: Justice of the Peace Court<br>Nonemergency LVPO: Superior Court <sup>12</sup>   | Family Court <sup>13</sup>   |
| <b>What is the burden of proof?</b>         | Emergency LVPO: preponderance of the evidence <sup>14</sup><br><br>Nonemergency LVPO: clear and convincing evidence <sup>15</sup>   | Emergency PFA: preponderance of the evidence <sup>16</sup><br><br>Final PFA: preponderance of evidence <sup>17</sup>   |
| <b>What must be proven?</b>                 | Emergency LVPO: respondent poses an immediate and present danger of injury to self or others by controlling, owning, purchasing, possessing, having access to, or receiving a firearm <sup>18</sup><br><br>Nonemergency LVPO: respondent poses a danger of causing physical injury to self or others by controlling, owning, purchasing, possessing, having access to, or receiving a firearm <sup>19</sup> | Emergency PFA: alleged domestic violence has occurred or respondent consents to a PFA <sup>20</sup><br><br>Final PFA: alleged domestic violence has occurred or respondent consents to PFA <sup>21</sup>   |
| <b>What factors may the court consider?</b> | Any act or threat of violence to self or others   | Abuse of a petitioner by the respondent<br><br>"Abuse" means the following:<br><br>- Intentionally or recklessly causing, attempting to cause, or placing, or attempting to place the petitioner in reasonable apprehension of physical injury or a sexual offense<br><br>- Intentionally or recklessly damaging, destroying or taking property of the petitioner<br><br>- Engaging in a course of alarming or distressing conduct in a manner which is likely to cause fear or emotional distress or to provoke a violent or disorderly response<br><br>- Trespassing on or in property of the petitioner, or on or in property from which the trespasser has been excluded by court order<br><br>- An act of child abuse<br><br>- Unlawful imprisonment, kidnapping, or interference with custody<br><br>- Any other conduct which a reasonable person under the circumstances would find threatening or harmful <sup>22</sup> |

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**How long is the order in effect?**

Emergency LVPO: up to 15 days<sup>23</sup>

Emergency PFA: up to 15 days<sup>25</sup>

Nonemergency LVPO: up to 1 year<sup>24</sup>

Final PFA: up to 2 years<sup>26</sup>

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**May the order be modified, terminated, or renewed?**

The order may be terminated or renewed<sup>27</sup>

The order may be modified or terminated<sup>28</sup>

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**Are court records confidential?**

No

Yes<sup>29</sup>

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## **FIREARMS DISPOSSESSION**

### **LETHAL VIOLENCE PROTECTIVE ORDER (LVPO)**

### **DOMESTIC VIOLENCE PROTECTION FROM ABUSE (PFA)**

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**What firearms must be surrendered?**

All firearms and ammunition in the respondent's possession<sup>30</sup>

A court may order the respondent to surrender all firearms in the respondent's possession<sup>31</sup>

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**What is the process for firearm dispossession?**

The respondent will turn over to law enforcement any firearm or ammunition in their possession<sup>32</sup>

The respondent may be ordered to temporarily turn over firearms in their possession to law enforcement or a federally licensed firearms dealer

For a Nonemergency LVPO, the court may allow the respondent to voluntarily relinquish firearms or ammunition to a designee of the respondent<sup>33</sup>

The respondent may be ordered to refrain from purchasing or receiving additional firearms for the duration of the order<sup>34</sup>

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**Is a search warrant issued concurrently with an order?**

A court may order the search and seizure of firearms through the order<sup>35</sup>

A court may issue a search warrant<sup>36</sup>

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## ENDNOTES

- 1 A "respondent" is a person subject to an order.
- 2 Del. Code, Ann. tit. 10, §§ 7701(3); 7703(d); 7704(d).
- 3 Del. Code, Ann. tit. 10, §§ 7703(d)(1); 7704(d)(3).
- 4 Del. Code Ann. tit. 10, § 1045(a).
- 5 Del. Code, Ann. tit. 10, § 7708.
- 6 Del. Code, Ann. tit. 10, § 1046(i); Del. Code, Ann. tit. 11, § 4206(a).
- 7 Del. Code, Ann. tit. 10, § 7703(a).
- 8 Del. Code, Ann. tit. 10, §§ 7701(4); 7704(a).
- 9 Del. Code, Ann. tit. 10, § 1041(2), (3).
- 10 Del. Code, Ann. tit. 10, § 1041(3)(b).
- 11 Del. Code, Ann. tit. 10, § 1041(3)(c).
- 12 Del. Code, Ann. tit. 10, §§ 7703; 7704.
- 13 Del. Code, Ann. tit. 10, § 1048.
- 14 Del. Code, Ann. tit. 10, § 7703(d).
- 15 Del. Code, Ann. tit. 10, § 7704(b)(4).
- 16 Del. Code, Ann. tit. 10, § 1043(e).
- 17 Del. Code, Ann. tit. 10, § 1044 (b).
- 18 Del. Code, Ann. tit. 10, § 7703(d).
- 19 Del. Code, Ann. tit. 10, § 7704(b)(4),(d).
- 20 Del. Code, Ann. tit. 10, § 1043(e).
- 21 Del. Code, Ann. tit. 10, § 1044(b).
- 22 Del. Code, Ann. tit. 10, § 1041(1).
- 23 Del. Code, Ann. tit. 10, § 7703(f).
- 24 Del. Code Ann. tit. 10, § 7704(i).
- 25 Del. Code Ann. tit. 10, § 1043(d).
- 26 Del. Code, Ann. tit. 10, § 1045(a), (b). Ancillary provisions are limited to one year. These include, but limited to, custody and visitation, support, and temporary possession of the residence and personal property. The prohibitions against committing acts of domestic violence and contact with the petitioner may be for up to two years.
- 27 Del. Code, Ann. tit. 10, § 7705.
- 28 Del. Code, Ann. tit. 10, § 1045(c).
- 29 Del. Code Ann. tit. 10, § 1045(k).
- 30 Del. Code, Ann. tit. 10, §§ 7703(d); 7704(d).
- 31 Del. Code Ann. tit. 10, §§ 1043; 1044; 1045(a)(8).
- 32 Del. Code, Ann. tit. 10, §§ 7703(d); 7704(d).
- 33 Del. Code, Ann. tit. 10, § 7704(d)(1)-(2).
- 34 Del. Code Ann. tit. 10, § 1045(a)(8).
- 35 Del. Code, Ann. tit. 10, §§ 7703(d)(2); 7704(d)(4).
- 36 Del. Code Ann. tit. 10, § 1045(a)(11).

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## 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 April 16, 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](http://americanhealth.jhu.edu/implementERPO).