Protection from Abuse Case Instruction Packet

https://courts.delaware.gov/family

24-hour Domestic Violence Hotlines: New Castle County (302) 762-6110
Kent & Sussex Counties (302) 422-8058

1035IP-PFA Instruction Packet Rev 5/2018

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1. Introduction

Purpose of this Packet

This packet gives you information about obtaining a Protection from Abuse ("PFA") Court Order in Delaware and explains the steps in the process for these types of cases. Read this instruction packet very carefully. This packet does not give you legal advice. It gives you *information* about what Delaware law requires, and how the process works.

NOTE: There is a separate packet for Instructions for Filing a Child Custody Case. If you are seeking a court order for child custody, please carefully review the Custody packet. Available at https://courts.delaware.gov/forms/download.aspx?id=39268

Each case is different, and *you* must determine for yourself how the law applies to your case. You should think about finding a lawyer to help you– whether you are the one filing the case or the one responding to it. Information on finding a lawyer (in some cases even if you have little or no money) is listed below on page 8.

If you do not have a lawyer for a PFA case, you can represent yourself. This instruction packet will help guide you through the legal requirements and the process.

This **introduction is a summary of some key issues in a PFA case.** You will find more detailed explanations of these and other issues later in this packet.

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NOTE: The person asking for a PFA order is called the petitioner and the person responding (the other party) is called the respondent.

What is a Protection from Abuse Order?

A PFA order is a court order that protects a person from certain kinds of abuse. A court can order the abuser to stop the abuse and to stay away from the person who was abused and can also provide other short-term protection (the term **legal protection** or protection is used in this document to indicate the relief that the court is able to provide. Legal protections (relief) can take many forms such as no contact, support, or custody of a child) to the abused person to increase safety (explained more below). Parents and legal guardians can also ask for a PFA for a child or children.

If a protection from abuse order is issued, or if the parties agree to a consent order, a judicial officer will enter an order against the abuser that prohibits further abuse. (Judges and Commissioners are judicial officers. Most PFA cases are handled by Commissioners.) In a PFA case, the court can order the abuser to have no contact with and to stay away from the abused person for a period of time or, in some cases, indefinitely. Some orders have no expiration date and are sometimes called "lifetime" orders.

Emergency Hearings and Temporary "Ex Parte" Orders can be granted in some situations.

I. Priority Scheduling (Emergency Expedited Hearing):

A Petitioner may request an emergency hearing if there is an ***immediate and present danger of domestic violence*** to the petitioner or to a minor child of the petitioner or to an adult who is impaired. Court-ordered protection may include an order for no contact, no abuse, temporary possession of a residence or temporary child custody. NOTE: These orders stay in place only temporarily.

II. Emergency Temporary Ex Parte Order:

If the petitioner claims an emergency, then the court can grant a PFA even if the other person (the respondent) is not present or given notice (if immediate and present danger exists or if serving a copy of the PFA Petition on the Respondent would place the petitioner at risk of harm.) This is called an *ex parte* order. But the court can only do this on a temporary basis, even in an emergency case, and the petitioner must tell the court why giving notice to the respondent would place the petitioner at risk or why efforts to give notice to the respondent have been unsuccessful.

An emergency hearing held without notice to the respondent (*ex parte)* will be held the same day that the petition is filed or the next day that the Court is in session. All other emergency hearings will be scheduled for an expedited hearing within 15 calendar days after the petition is filed.

If a temporary order is granted, it will remain in effect until the date of the next PFA hearing. The respondent has a right to know that allegations of abuse have been made – and has a right to challenge those allegations in court. A temporary *ex parte* order only lasts for 15 days. By then, a full hearing must be held. (The court can extend the order for another 15 days, but it can only do that once.)

What actions can be taken if a PFA is violated?

If the PFA is violated, the Petitioner may contact the police and the violator can be arrested. Criminal contempt of a PFA carries a maximum penalty of 1 year in prison, and 3 years if the violation resulted in an

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injury or involved a deadly weapon. Criminal charges are prosecuted by the police and the Department of Justice.

The Petitioner can also file a motion for civil contempt of court. If a Commissioner finds the violator in contempt, the Commissioner can modify the order to provide more protection, extend the order, and impose a fine.

What is "abuse" under Delaware law?

Delaware law defines abuse to include physical abuse, sexual abuse, threats of abuse, or acts that would cause fear or emotional distress. Abuse can also be any conduct that a reasonable person would find threatening or harmful. A PFA can only be issued if the court finds that an act of abuse took place, or if both parties agree to an order.

What kinds of relationships qualify a person to bring a PFA claim?

PFA petitions can only be filed by persons in certain kinds of relationships. As explained in the chart below beginning on page 11, you must be in a relationship such as spouses, intimate partners and relatives.

What can you do if your relationship doesn't qualify for a PFA?

If you have been abused and do not fit into one of these relationships, you may want to consider contacting the police to obtain a criminal no-contact order and press charges against your abuser.

A PFA proceeding is not a criminal case.

A PFA case is a civil case, not a criminal case. Abuse can also lead to a criminal prosecution. If someone has abused you, you may contact the

police to pursue criminal charges and/or file for a civil PFA. However, a criminal case has different laws and different processes than a PFA civil case. As discussed below, a PFA order provides for additional protection (relief) not available through the criminal process. Yet, the criminal process provides outcomes that are not available through the PFA process such as criminal prosecution, as well as incarceration or probation of the perpetrator. You may pursue either or both avenues of protection, civil and criminal, depending on your situation and need for protection.

How to begin a PFA case:
The first step in a PFA case is for the person asking for a PFA to file a petition. The person filing the petition is called the **petitioner**. The person responding to the petition is called the **respondent**.

- ***Finding a lawyer:***
  - You can get help with finding an attorney by calling the Legal Help Link (LHL) in New Castle County at 302-478-8850 and in Kent and Sussex Counties at 1-800-773-0606. In New Castle County, Delaware Volunteer Legal Services (DVLS) provides free legal services to domestic violence victims. In Kent and Sussex Counties, Community Legal Aid Society, Inc. (CLASI) provides similar services. Individuals seeking legal assistance may call the LHL listed above.
  - Also, the Delaware State Bar Association (DSBA) sponsors a lawyer referral service. See www.dsba.org/resources/public-resources
  - If you choose not to have an attorney or cannot afford one, you have the right to represent yourself.
- ***Other Resources***

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- **Self Help Center**. There is a self-help resource center in Family Court to assist you, and where you can get information and forms for a PFA case. Family Court staff can provide some help with identifying forms that you need to fill out and file. However, Family Court staff cannot give you legal advice or fill out the form for you. It is up to you to determine what you want to do in your lawsuit and what you want to say in your petition or motion.

  Family Court:
  New Castle County 255-0300
  Kent County 672-1000
  Sussex County 855-7400

- **Domestic Violence Advocacy Programs**

  Volunteer advocates, who are *not* lawyers, are available to assist victims of domestic violence with writing and filing a PFA petition, to provide information about the process and to make referrals. They refer victims to their volunteer attorney program, to a volunteer lawyer program offered by Delaware Volunteer Legal Services, and to legal services offered by Delaware Law School, Widener University.

  Domestic Violence Advocacy Programs:
  New Castle County 255-0420
  Kent County 672-1075
  Sussex County 856-5843

  24-hour Domestic Violence Hotlines:
  New Castle County 762-6110
  Kent & Sussex Counties 422-8058
  New Castle County Crisis Hotline 761-9100
  Kent & Sussex Crisis Hotline (800) 262-9800

  24-hour Child Abuse and Neglect Hotline:
  1-800-292-9582

Attorney General:
New Castle County 255-0112
Kent County 739-4211
Sussex County 856-5353

2. Who can file for a Protection from Abuse Order?

- Only people in certain "domestic" relationships can file for a PFA.
- The person claiming abuse must be in a certain kind of relationship with the alleged abuser to get a PFA.
- The law sets out what kinds of relationships qualify. Generally, these include a family type of relationship such as spouses, intimate partners co-parents or relatives. The chart below sets out more detail on these relationships.

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Qualifying Relationships. If you are in one of the relationships on the list below, you can file for a PFA:

- Married.
- Former spouses. If a couple was ever married, even for short time.
- A couple who lives together with a child of one or both of the parties. (Unmarried couples who live together are called "cohabitants" undern Delaware law.)
- People living separately from each other but who have a child together.
- People who live together and "hold themselves out as a couple." "Holding out" as a couple means the people say they are a couple and act like a couple.
- People who are in a "current or former substantive dating relationship." NOTE: You do not have to live with a person to be in a substantive dating relationship.

What counts as a "substantive dating relationship?" This will depend on the facts of the case. The court will look at a number of things to decide whether the relationship qualifies. It may depend on the length of the relationship, the type of relationship, and how often and how the people interact with each other.
NOTE: People who are just friends or do not know each other well *do not* fit this definition.
NOTE: Strangers do not fit this definition.

- Any of these family relationships qualify [10 D. C. 901(12)]
  - Parent (including step-parents or in-laws)
  - Child (including step-children and in-laws)
  - Brother or sister (including in-law)
  - Grandparent or grandchild
- In addition, any other family member you are related to in any way by blood, adoption or marriage that you live with. NOTE: This means that for relatives who are not on the list above like cousins, aunts and uncles, the relationship does not qualify for a PFA, unless you live with each other.

- ***What if the case is for abuse of a child?***

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- The parent or legal guardian of a child can file for a Protection from Abuse Order on behalf of a child. Either the parent OR the child must be in one of the relationships with the alleged abuser listed above.

- In some cases, the petitioner will want to file a PFA petition for abuse against herself or himself AND for abuse against a child, or for a child only

    - NOTE: If there has been child abuse, an alternative legal process is an emergency stay of visitation or emergency custody petition. You should consider speaking to a lawyer first before deciding about what petition to file.

- To obtain a PFA Order for a child you must prove that the child needs protection under Delaware law. That means you must prove that there has been an act of abuse against the child. (Acts of abuse are explained immediately below). You will need to present evidence of the abuse to the court. You may need to bring in the child as a witness who will explain what happened and a judge can interview the child. If child abuse is the sole allegation a party may want to consider filing a motion to stay visitation or a petition for custody, along with an affidavit for emergency hearing. Given the legal complexities of these matters a party may want to consider obtaining legal advice from an attorney first.

3. How does the PFA process work?

- **Getting help with the process**

    - The legal process can be hard to understand. If possible, it is a good idea to speak with a lawyer to obtain advice or representation.

- If you choose to represent yourself, there is help available to you. Read this instruction packet very carefully. It doesn't provide legal advice, but it gives you key information that you need so you can understand what the law requires for a PFA order, and some guidance on what you need to do and how the process works.

- Another resource is the Family Court staff who can help you with finding the right forms. Although Family Court staff can't give legal advice, they are able to provide information about how to fill out the forms. Court staff can also direct litigants to the Domestic Violence Advocacy Program in each county where advocates will be available to assist in filling out and filing a PFA petition. Victim Advocates are not lawyers, so again, it is also helpful to seek legal advice from a lawyer prior to the filing of a PFA petition or prior to the day of the scheduled hearing.

- **INTERPRETERS**:

  If you or the Respondent needs an interpreter for the hearing, check the box on the PFA petition and indicate what language is needed for either you or the Respondent. The **box is located** on the **top portion** of the PFA petition where personal information is provided (such as name and address). If you do not check the box when you file the petition, you or the Respondent may notify the court prior to the hearing that an interpreter will be needed. If the request is made at the beginning of a hearing, an interpreter will be brought in *if available*.

  To ensure that an interpreter is available, it is best request an interpreter on the petition or to advise the court several days *before* your hearing date so that the court has enough time to find an interpreter. If you do not request an interpreter prior to the day of your hearing the case may have to be rescheduled if an interpreter is not available.

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- **Where do I file the Petition?** There is a Family Court in each of Delaware's three counties, and you can file the petition in any county where you or the other party live, or where you are claiming the abuse took place. Or, if you are staying in another county due to the abuse, you can file in that county.
    - In **Kent and Sussex** Counties you may file your papers at the Resource Centers on the first floor of the Family Court buildings.
    - In **New Castle County**, you may file your papers at the Resource Center on Lower Level One of the Leonard L. Williams Justice Center or, if, you have all of the forms completed, you do NOT have any questions, you have made the necessary copies and you do NOT need any papers notarized, you may file your papers at the Central Filing and Payment Center located on the first floor of the New Castle County Courthouse. There is no staff assistance at the Central Filing and Payment Center.
    - If you file your papers by mail, the addresses for each courthouse are available on the Family Court website. The Court does NOT accept filings that are faxed or e-mailed.

- **What forms do I need to file for a PFA Petition?**

  NOTE: Forms and assistance are available at the Resource Center in the Family Court buildings in Kent and Sussex Counties, at Family Court Intake in the New Castle County Courthouse and are on the Delaware Family Court's web page available at https://www.courts.delaware.gov/family/.

  Required Forms:

  - **Petition for Order of Protection from Abuse**
    - Everyone who files for a PFA must fill out and file the PFA Petition. **Form 450**.

  Filling out and filing a Petition for a PFA (Form 450)

What information should be in the Petition?
If you believe you have been abused and want to ask the court to issue a PFA order, the first step is to file a *PFA Petition* in the Family Court. A petition explains the facts of the case and asks the court for protection (relief).

- Remember, the person filing the petition is called the petitioner. The person against whom the claim of abuse is being filed is called the respondent.
- **Explaining facts to prove abuse**. The petition must explain the facts to prove abuse under the law. The explanation of the facts must be specific and should include dates if possible.

    - **NOTE**: The explanation of facts goes into **sections 3(a) and/or 3(b) of the petition**. The court can only consider acts that are described in the petition. The court cannot consider any other acts, unless the petition is amended before trial.

    - If you are petitioning for protection for yourself or for your child, you must explain in the petition exactly what the facts are that you believe qualify as abuse of you or of your child.

    - For example, "On or about September 21, 2016, Alex Smith hit me with a closed fist in my right eye causing a bruise. At the time of the abuse our children were present in the home." Or "On or about September 22, 2017, Alex Smith struck our daughter Emma with a closed fist in her arm and broke it." Or, "In the summer of 2015, Alex Smith threatened to harm my pet dog to make me do what he wanted." Use specific dates whenever possible. If you do not recall the exact date, try to list the year or timeframe, if possible.

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- **NOTE**: Acts of abuse that must be alleged and proved under Delaware law are explained on pages 33-37 of this packet.

Explaining Facts to show a qualifying relationship. The petition must also explain facts that prove the petitioner and respondent are in a family type of relationship such as spouses, intimate partners, co-parents, or relatives.

- This is done in **Part 2 of the petition** by checking off one of the boxes to select the kind of relationship you are in.

- **NOTE**: The types of domestic relationships that must be alleged and proved under Delaware law are explained in the chart in the back of the packet.

- **Do I have to reveal my address?** NO—if you believe revealing your address will endanger you or your child, you may omit your address from your petition.

- **Petitions must be "verified."** That means the Petitioner must sign the petition and swear under oath that the facts are true to the best of his or her knowledge. This must be done in the presence of a notary. There are notary servers available at the Family Court, free of charge for PFA petitions.

- **Addendum**

  - An addendum may be attached to the petition to list additional acts of abuse if the petitioner needs more space. **Form 540**.

  - **Remember,** it is important to list all acts of abuse that you want the court to consider in the PFA Petition and Addendum,

so that the court can consider your allegations on the day of the hearing.

- **Information Sheet**

  - A Petitioner *must* file a court information form for all petitions filed with the court. **Form 240**. The information sheet asks the petitioner to identify the respondent, and to provide other identifying information about the petitioner and respondent. This information can help the process server find and serve the respondent.

Situational Forms:

There are other forms that you might or might not file, depending on your situation. These include:

- **Additional Petitioners or Respondents**

  - If there are more than one Petitioner or Respondent, you will need to file this form, and provide the requested information about any such additional person(s). **Form 583.**

- **Custody Separate Statement**
  - If you are seeking temporary custody of a child, you *must* file **Form 346** with the PFA petition.
  - A Custody Separate Statement Form only needs to be filed when the petitioner is requesting a temporary custody order in the PFA petition. **Form 346.**

- **Affidavit of Parentage**
  - An Affidavit of Parentage Form must be filed when the petitioner is requesting temporary custody in the PFA petition if parentage for each child has not been decided by Family Court. **Form 154.**

- **Affidavit that a Party's Address is Unknown** If the Petitioner does not know where the Respondent lives he or she should fill out **Form 241.** (See the section on **Notice to Respondent,** pages 20).

- **Affidavit for Emergency Expedited Hearing** (Priority Scheduling**)**
  - This form is filed to request that the Court hear your case within 15 days because of an emergency. **Form 656.**

- **Affidavit for Emergency Temporary Ex Parte PFA Order**
  - This form is filed to request an immediate hearing with the Court (occurring either the same day or the following day).

  - If a Temporary Ex Parte order is granted, it will remain in effect until the date of your PFA hearing. (Remember that the Ex Parte filing doesn't provide notice to the respondent. For that reason, the Ex Parte order can only last for a temporary period of time and the respondent will receive notice after the order is entered and will have a chance to be heard by the court.) **Form 654.**

- **Certification of Firearm Unavailability**
  - This form should be used by the Respondent in a PFA if the court ordered him or her to turn in firearms and the respondent either does not own, possess or control the firearms or is unable to obtain access to them. **Form 435.**

- **Proof of Transfer of Firearms - for use by federally licensed firearms dealers.**
  - The respondent should submit this form if he or she is ordered to turn in firearms and has transferred the firearms to a federally licensed dealer. **Form 437**.
- **Filing for an Emergency Hearing & Temporary "Ex Parte"**
- **PFA Order.**

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- **Emergency Expedited Hearing. [Form 656]**

  A petitioner may request an emergency protective order by filing a PFA petition & **Form 656** alleging that there is an ***immediate and present danger of domestic violence*** to the petitioner or to a minor child of the petitioner or to an adult who is impaired. If approved, the Court will place the matter on the calendar for a hearing to be held within 15 days.

- **Emergency Temporary *Ex Parte* Order [Form 654]**

- As explained more below, a temporary emergency protective order may be issued on an emergency and temporary ***ex parte*** basis, that is, ***without notice*** to the respondent.

- An emergency hearing held on a temporary ***ex parte*** basis will be held the same day that the petition is filed or the next day that the Court is in session. All other emergency hearings will be scheduled for an expedited hearing within 15 calendar days after the petition is filed.

- If a temporary ***Ex Parte*** order is granted, it will remain in effect until the date of your PFA hearing.

- Note: Although a request for Priority Scheduling (*Emergency Hearing)* and a request for an Emergency Temporary *Ex Parte PFA Order* are both heard on an expedited basis (emergency basis), *ex parte* protection is necessary if immediate and present danger exists or if serving a copy of the PFA Petition on the Respondent would place the petitioner at risk of harm. As a result, if the petitioner believes that providing notice to the respondent would place the petitioner at additional risk of harm, the petitioner may want to request a temporary *ex parte* order If "notice" to the respondent does not cause additional

risk but there is an ***immediate and present danger of domestic violence*** to the petitioner or to a minor child of the petitioner the petitioner may want to request an emergency hearing (but not a temporary Ex Parte Order).

Serving the Petition:
Once the petition is filed, it will be served by the court on the other party (the respondent). The respondent will receive a copy of the petition, allegations of abuse, requests for protection (relief) and notice of the scheduled hearing date.

- **NOTE**: *If you are concerned that service of the petition on the other party will place you at risk of harm*, you may seek a temporary *ex parte* order prior to the court's service of the papers. But the respondent will be notified soon afterwards, after the temporary *ex parte* order is entered, that a petition has been filed. You should plan with this fact in mind and engage in safety planning. For safety planning resources contact the National Domestic Abuse Hotline at 1-800-799-SAFE (7233). [See also local resources pages 8-10 above].

Notice to Respondent: In some cases, the petitioner doesn't know where the respondent is located. Without information about the respondent's location, it is impossible for the court to find and notify the respondent of the petition and the hearing. So, the law gives the petitioner another way to give notice to the respondent. Court staff will give petitioner a document to fill out, saying that the respondent's address is unknown. (Form 241.) In that case, the Court will arrange for publication in the county where the petitioner believes the respondent resides. After notice has been published once, the court will receive an Affidavit of Publication from the newspaper. A hearing will then follow.

Responding to a Petition for a PFA

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- If someone has filed a petition alleging abuse, the respondent is required to appear in court on the required date to answer the claims made. (Reminder: "the *respondent*" is the person responding to the claims.)

- Respondents don't need to file an answer to the PFA Petition.
- Sometimes, both people are claiming that the other person abused them and have both filed a PFA Petition. If the respondent believes that he or she has been subjected to abuse by the petitioner, the respondent must file a separate petition and follow all the instructions described above. Otherwise, the court cannot consider any acts of abuse that may have been committed against the respondent.

- The respondent should consider obtaining legal advice or representation to respond to the allegations of the petition alleging abuse.

● Preparing for the Hearing

- **ACTS OF ABUSE CAN BE PROVED BY:**

  - **<u>WITNESSES</u>**:

    - A person under oath telling the facts to the judge in court who has first-hand knowledge of an act of abuse or observation of an injury. That person must appear at the hearing to testify, a letter or affidavit is NOT accepted by the court as proof of abuse.
    - Such as:
      - A police officer,
      - Neighbor,
      - Friend, or
      - Family member (if the family member is a child, an interview may be scheduled outside of the court, and attorneys may sometimes be present).

The specific words of the statute that deals with getting the child's version of the events are:

"The Court may examine a child outside the presence of the parties to obtaining the child's testimony and ascertaining the truth of a matter asserted by a party to the proceeding. The Court may permit counsel to be present at the examination, and to also examine the child. The Court may permit a party who is not present for the examination to submit questions of fact for the Court to use in ascertaining the testimony of the child."

- YOU CAN BRING A WITNESS TO YOUR HEARING TO TESTIFY.

- **SUBPOENAS:** It is important that all witnesses are served with a subpoena (an order to appear in court) prior to trial to ensure their appearance on the day of your hearing. If a witness is not served with a subpoena within a reasonable period of time prior to trial (5 business days prior to trial) the court may not grant a continuance for that witness to testify. Any individual, other than a party to the action, can serve a subpoena on a witness. Copies of subpoenas can be obtained from the Family Court prior to the trial. A party can also request that the court "process server" serve the subpoena prior to the hearing. The court, however, can't guarantee that the subpoena will be served prior to a hearing.

- A WITNESS CAN TESTIFY EVEN IF THEY ARE NOT SUPBOEANED.

- **OTHER EVIDENCE**:

- **Photographs**,
- **Phone messages** establishing abuse,
- **Text messages** or e-mails establishing abuse (NOTE: a party may request permission from the court prior to trial to bring their cell phone to court on the day of the trial for this purpose),
    - If you have information on an electronic device that you wish the Court to view as evidence during the hearing, you must first obtain permission from the Court to bring the electronic device into the Courthouse. Place your cell phone or other electronic device in a locker available in the parking garage at the courthouse. When you check in for your hearing or prior to the day of the hearing, you can request permission to bring in the device by completing a request form. Once you have permission, you will be accompanied through security by a Family Court Security Officer. The judicial officer will determine how the device will be stored and secured throughout the proceeding.
- **Criminal conviction** or **guilty plea** for an act alleged in the petition (the documents must be certified if they are from any court, other than the Delaware Family Court). You may obtain a certified copy of a conviction or guilty plea from the court that issued that order by asking the clerk or authorized court employee to sign and confirm its accuracy (certification). For example, if your case in in New Castle County, Delaware and the other party was convicted of an assault in the Delaware Superior Court, you may go to the *Prothonotary*'s office found in the New Castle Court Courthouse and ask the clerk to "certify" a copy of the conviction. If the conviction or guilty plea is from a different state, you will need to contact the clerk

of the court in that state for a certified copy. Some states allow you to obtain a certified copy from their web page. There is often a small fee associated with obtaining a certified copy. *See* Delaware Rule of Evidence DRE 902(4),

- **Damaged property**,
- **Medical Records** (certified according to the rules of evidence),
  - You may either subpoena the custodian of the medical records or other qualified witness to testify and bring the records to court, or
  - You may obtain "certified" copies of the medical records (if so, you do **not** need a witness). The certification for medical records must come from the custodian of the medical records or other qualified person working for the doctor or hospital and must establish the following:
    - (1) that the report (record or data in any form, of acts, events, conditions, opinions or diagnoses), was made at or near the time by a person with knowledge,
    - (2) was kept in the course of a regularly conducted business activity, and
    - (3) was the regular practice of that business activity to make the memorandum, report, record or data.
    - See DRE 803(6) & D.R.E. 902(11) or D.R.E. 902(12).
- **911 Calls**. A certified copy of the 911 call may be obtained from the 911 call center by subpoena.

- **NOTE**: It is very important that you bring with you on the day of trial **several your copies** of each item of evidence.

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- To meet the legal requirements of the admission of evidence at a hearing you should speak with an attorney. THERE ARE RULES THE COURTS FOLLOW FOR EVIDENCE TO BE ADMITTED. Simply bringing a *copy* of your evidence may not work. Evidence won't be accepted unless it satisfies the legal rules for being admitted at trial.

- **What happens if you file for an emergency hearing or Temporary Ex Parte Order?**

  - ***Emergency Hearings and Temporary "Ex Parte" Orders***

    - As explained above, a Petitioner may request an emergency hearing if there is an ***immediate and present danger of domestic violence*** to the petitioner or to a minor child of the petitioner or to an adult who is impaired.

    - If the petitioner claims an emergency, then the court can grant a PFA even if the other person (the respondent) isn't present or given notice (if notice would place the petitioner at risk of harm.) This is called an *ex parte* order. But the court can only do this on a temporary basis, even in an emergency case, and the petitioner must tell the court why giving notice to the respondent would place the Petitioner at risk or why efforts to notice the respondent have been unsuccessful.

    - An emergency hearing held without notice to the respondent (*ex parte)* will be held the same day that the petition is filed or the next day that the Court is in session. All other emergency hearings will be scheduled for an expedited hearing within 15 calendar days after the petition is filed.

    - If a temporary *Ex Parte* order is granted, it will remain in effect until the date of the next PFA hearing. The respondent has a right to know that allegations of abuse have been made – and

has a right to challenge those allegations in court. An *ex parte* order only lasts for 15 days. By then, a full hearing must be held. (The court can extend the order for another 15 days, but it can only do that once.)

- ***What happens during the scheduled hearing day in court?***

  What happens in court will depend on whether one or both parties are present on the day the trial is scheduled.

  <u>If only one party is present on the day of the hearing</u>:

  - ***If the petitioner is present but the respondent is not***. The first question is whether the respondent had notice of the hearing. "Notice" is a legal term that basically means that the person knew about the hearing, or that the Petitioner took the required steps to notify the Respondent of the hearing. (See **Notice to Respondent**, page 20).

  - If the respondent **did not have notice** that the law requires**,** then the court can't hear the case. The judicial officer will grant a "continuance," which means the hearing will be rescheduled for a later time when the respondent has received notice.

  - An exception to this is if the petitioner has filed the case on an *ex parte* basis (also explained above). If an emergency case was filed, the court may hear the case without the respondent being present (*ex parte*) and can enter a temporary order, which will remain in place until the next hearing date.

  - If the respondent **did have notice** but failed to show up for the hearing, the court can go ahead and hear the case. The court will still have to decide whether the facts of the case allow the judicial officer to issue a PFA. An order in a case like this is called a *default judgment.*

  - **If the respondent is present but the petitioner does not appear:** The case may be dismissed. However, the Petitioner may refile and

bring the case in the future. This is called a dismissal "without prejudice" because it does not stop the case from being filed again.

- If there was a temporary *ex parte* order entered in the case on an earlier date, that order will end and no longer be in effect.

If both parties appear for the scheduled hearing:
There are several things that can happen and options to consider.

- **You can go to trial and a judicial officer will decide the case.** The trial process is described in more detail below. Each person will have to decide for themselves whether a trial is the best choice.

- **You have the option of reaching a voluntary agreement.** Another option is that the petitioner and the respondent may voluntarily agree on how to resolve the case. When this happens, the court will issue a "Consent Order." Here's how the process works:

  - Both the petitioner and the respondent will meet with an employee of the court, called a "Mediator." The mediator meets with each person separately, starting with the petitioner. The mediator will find out what the petitioner wants to have included in the PFA Order. Then the mediator talks with the respondent for the same purpose to find out if the respondent will agree to what the petitioner is asking for the order to include or if the respondent has other suggestions. Sometimes the mediator will go back and forth, maybe a few times, to see if an agreement is possible.

    NOTE: ***You do not have to reach an agreement***. It is up to you to decide whether you want to enter into an agreement. An agreement is valid only if it is entered into voluntarily and consented to by both parties. Such an agreement will be presented to the court and if the court agrees and adopts the agreement, it is called a Consent Order.

NOTE: An agreement can be limited to only certain issues. If each party voluntarily agrees to do so, the parties do not address whether abuse occurred, and the court will not make any finding of abuse in a Consent Order. Instead, the parties limit their agreement to the legal protections available in a PFA case. For example, the parties could agree that the respondent will not abuse the petitioner in the future or will stay away from the petitioner. The parties could agree who has possession of a home that the two parties had been sharing; or on financial support for the children or for the petitioner. The parties could also agree about custody of the children. This could include who the children will live with and a schedule of visitation for the other parent.

The petitioner should think about whether an agreement is a satisfactory solution. The petitioner and the other party might be able to create an order that is acceptable to both parties. Another point to consider is that reaching agreement means that there is no trial. That means the petitioner does not have to prove that an act or acts of abuse have occurred and the respondent does not have to defend against the claims of abuse and have a finding of abuse entered by the court. Instead, the court can enter an order based on your agreement (a Consent Order).

IMPORTANT NOTE: A Consent Order has the same force and effect of an order entered after a hearing. However, it is important to understand that with a Consent Order, a court will not be able to enter a finding that an act or acts of abuse have occurred. Still, abuse against a child or against the other parent is something courts must consider in determining custody of a child. A parent can and should tell a court about such abuse as a part of a custody case, even if the parties in a PFA case agree not to address the issue in a PFA Consent Order

NOTE: The Family Court judicial officers and staff can explain what is involved in agreeing to a Consent Order, but they are not

able to provide you legal advice. It is up to you to decide what to do and what your best options are.

- **What happens if petitioner and respondent reach an agreement?**

  - The mediator will write up the agreement, called a "Consent Order" and then both the petitioner and the respondent will go before a Commissioner (a judicial officer) who will make sure that the two people understand what they are agreeing to. If they do, the Commissioner reads and confirms the Consent Order on the record.

  - As explained earlier, the agreement becomes an Order of the Court. This means that it can be enforced just like any other order.

- **What happens if the case goes to trial?**

  - If the parties do not reach an agreement, the court will hear the case (a trial will occur that day). The Commissioner may allow brief opening statements or address preliminary matters (such as motions for continuance). The petitioner and the respondent will each be given a chance to tell the court what happened and the facts of their case and offer any other evidence that they may have. Witnesses may be called to explain the facts of the case that they know about.

  - The petitioner will go first and present her or his case. The petitioner will testify and present other evidence. The respondent will be able to ask questions (cross-examine) of any of the petitioner's witnesses or object to any evidence the petitioner presents during her or his case. After the petitioner is finished with her or his case, the respondent may move to dismiss the case. That motion will be granted if the court does not think the petitioner has proved that abuse took place. The respondent can also present any evidence in defense, at which time the

petitioner may cross-examine any of respondent's witnesses or object to any of respondent's evidence. The Commissioner may ask both the petitioner and the respondent questions. The court may allow brief closing statements by the parties or their attorneys.

- The Commissioner will consider the evidence and will decide whether the petitioner has proven that the abuse happened, or not.

- If "yes," then the Commissioner will enter a PFA Order, and will decide what legal protections will be in that order. If "not," then the Commissioner will dismiss the petition and no order will be entered.

- Sometimes, the court will tell the parties to return at a later date. This is called a "continuance," and the Commissioner will reschedule the case if there's a good reason to do so.

- **What should I do after an award of temporary protection in the PFA?**

  - If the court enters a PFA order with temporary protections (relief) such as custody, visitation or support, the parties should consider filing separate petitions, such as a custody or support petition, as soon as possible. This is needed because these parts of the PFA are temporary and will expire within a year (or sooner) of the entry of the PFA Order. It can sometimes take months for a hearing to be scheduled on these other petitions. So, a delay on the part of the petitioner or respondent in filing these other petitions may result in the PFA expiring before the court is able to schedule and hear the custody or support issue. If this occurs, the parties will no longer have the protection of a court order on these important matters.

- **Can I appeal the Court's decision?**

  - If you do not agree with the court's decision in the case, the order entered by a Commissioner may be appealed to a Judge of the Family Court by filing a Request for Review of a Commissioner's Order.

Appeals from Commissioner's orders must be filed with the Family Court within thirty (30) days of the order.

- **Can Orders of Protection from Abuse be changed or withdrawn?**

  - The party who wants to change an Order of Protection in some way may file, with Family Court, a form called a Motion to Modify, /Extend or Rescind Order of Protection from Abuse. **Form 456**. The Court may modify a non-consent order only if the party asking for the modification proves that there is a good reason for the change. The Court may modify a consent order if both parties agree or if the respondent has been found in contempt of the consent order.

- **What happens after the Order of Protection from Abuse expires?**

  - If you need protection, you may file a new PFA Petition or file a motion to extend a current PFA Order. To get protection that extends beyond the expiration of the PFA order, either party may file for custody, visitation, child or spousal support, or divorce and property division.

4. What Must Be Proved for a PFA?

  - The person asking for a PFA must prove to the court that the case meets the requirements of the law. This is a two-step process. First, the petition must state that the respondent committed at least one act of abuse. Note that the court can only consider acts listed in the petition. So, it is very important to list all acts of abuse because this allows the court to fully consider your case at the time of the scheduled hearing. The petition must also ask the court for legal protections (relief). This means you need to state what you want the court to do. The second step is to prove that the acts of abuse listed in the petition took place. The petitioner needs to be ready to prove the facts of the case on the day of the scheduled trial by bringing in any evidence and calling in any witnesses to be at court.

- NOTE: For more on how to get ready for the hearing day, see pages 21-25.

WHAT IS A PFA ORDER?

The PFA order states the legal protections granted to the petitioner, such as no contact, no abuse, temporary custody.

- If both parties agree to a PFA order, the court can accept the agreement and enter an order called a Consent Order. If a Consent Order is issued, there is no trial and abuse is not proved in court. *The PFA Consent Order does not include a finding of abuse but is a fully enforceable court order. What will happen on the day of your hearing (how the case will proceed) is detailed in the flow chart at the front of this packet.*

- ***If a Consent Order is issued,*** such an order cannot later be used as evidence of domestic violence against the respondent in another court proceeding, such as a custody hearing or for a Visa.

- The law lists many different acts that qualify as abuse. If the petitioner proves *any one* of these acts has taken place, the court can issue a PFA.

- **Here is a list of acts that qualify as abuse under Delaware law**—10 Del. Code. § 1041

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a. *Causing, or trying to cause, physical injury or a sexual offense.*

- NOTE: this includes physical harm *or* sexual misconduct.
- NOTE: Sexual offenses include many different types of conduct, not just rape. Basically, any touching to a private part of the body that isn't consented to is a sexual offense.
- The specific words of the law are: "Intentionally or recklessly causing or attempting to cause physical injury or a sexual offense (as defined in § 761 of Title 11)."

NOTE: "Title 11" is the part of the Delaware law that defines criminal offenses. Sexual offenses in Title 11 include (but are not limited to) sexual harassment, indecent exposure, unlawful sexual contact, rape, sexual extortion and continuous sexual abuse of a child.

b. Intentionally making someone afraid of physical harm or sexual offense, even if no physical contact actually takes place.

- The specific words of the law are: "Intentionally or recklessly placing or attempting to place another person in reasonable apprehension of physical injury or sexual offense to such person or another."
- NOTE: The law doesn't require that the respondent make contact with the victim. For example: If the Respondent throws a bottle at the Petitioner, but misses, that conduct is abuse and falls under this section.

c. Purposely or very carelessly damaging, destroying, or taking someone else's property.

- The specific words of the law are: "Intentionally or recklessly damaging, destroying or taking the tangible property of another person."
- NOTE: If the alleged abuser destroys or steals things that belong to the victim, this section applies – no matter whether the objects taken or destroyed have great value. For example: If the Respondent destroys Petitioner's cell phone this conduct is abuse and falls under this section.

d. Doing things repeatedly that are likely to cause fear or emotional distress, or that are likely to cause someone to react in a violent way.

- The specific words of the law are "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."
- NOTE: Sometimes the abuser's actions can take the form of repeated harassment or stalking behaviors. For example: Repeated or harassing telephone calls or text messages, following the victim, persistent patterns of leaving or sending the victim unwanted items or presents that may range from seemingly romantic to bizarre, following or laying in wait for the victim, threatening to damage the victim's property, defaming the victim's character, or harassing the victim via the Internet by posting personal information or spreading rumors about the victim.

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e. Child abuse. This covers a wide range of actions. Some of these are physical injury, sexual abuse, and emotional abuse.

- Child abuse, as defined in Chapter 9 of Title 16." (This title in turn borrows the definition from 10 Del. Code § 901, which contains the following language): "Abuse" or "abused child" means that a person:
  - a. Causes or inflicts sexual abuse on a child; or
  - b. Has care, custody or control of a child, and causes or inflicts:
    - 1. Physical injury through unjustified force…;
    - 2. Emotional abuse;
    - 3. Torture;
    - 4. Exploitation; or
    - 5. Maltreatment or mistreatment.
  - NOTE: The abuse of a child gives the parent or legal guardian the right to seek a PFA, even if the adult is not a direct victim of the abuse. As the statute makes clear, the list of actions that qualify as child abuse covers many things, including physically or emotionally abusing a child. For example: If an alleged abuser commits a physical act of abuse, threatens or continually ridicules the child, the parent or guardian may seek a PFA on behalf of the child.

f. Trespassing on someone else's property. Even if someone owns the property, if there's a court order saying they can't be on it, they are trespassing if they don't follow the order.

- The specific words of the law are: "Trespassing on or in property of another person, or on or in property from which the trespasser has been excluded by court order."
- NOTE: The victim doesn't need to own the property. If the victim has a valid lease on the property, trespass by the alleged abuser will also qualify the victim for a protective order under this section.

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g. Imprisonment, kidnapping, or forcing the other party to do something they don't want to do ("coercion")—or interfering with custody of a child.

- The specific words of the law are: "Unlawful imprisonment, kidnapping, interference with custody and coercion, as defined in Title 11."
- Note: For example, Respondent locks Petitioner in the basement of his residence against Petitioner's will. This conduct is abuse and falls under this section. Another example: If Petitioner has the legal right to custody of a child, the Respondent may not interfere with that right – even if Respondent is also a parent or guardian. So, if Petitioner is supposed to have access to the child and the Respondent unlawfully obstructs that access, that obstruction could qualify as abuse under this section of the law.

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h. Any conduct that is threatening or harmful.

- The specific words of the law are:
- "Any other conduct which a reasonable person under the circumstances would find threatening or harmful."
- NOTE: This is a broad definition of abuse that allows for a wide range of acts to count as abuse under the law. Many times the acts of abuse will match the specific list discussed above. Even if it does not, a court can still find that abuse has taken place if it fits this "catch all" definition. For example, threatening to notify immigration authorities of an undocumented immigrant's location might be considered abusive even though it does not fall within any of the other categories.
- NOTE: This subsection may include one-time acts that are extreme or bizarre. These may warrant a protective order even though they do not fall within the other definitions of abuse. An example is the killing or threatening to kill a family pet to cause fear or alarm to a Petitioner, or that *results* in fear or alarm to the Petitioner or child.

5. What can the Court order in a PFA case?

- **A judicial officer can grant orders for many kinds of legal protections.**
    - The court has flexibility in PFA cases and can issue orders to keep people safe. The court can give any order that provides protection and resources to the abused person.
    - **Here is a list of the kinds of legal protections available under Delaware Law**: include headings: safety

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SAFETY PROTECTIONS

- Order the respondent not to commit acts of domestic violence;
- Forbid the respondent from contacting the petitioner including by email, by phone, at your place of work, at your children's school, at the supermarket;
- Order the Respondent to stay away from the Petitioner(s).

USE OF PROPERTY

- Give the petitioner the right to remain in the home, even if someone else owns it or is on the lease;
- Give the petitioner temporary use of personal property owned by either party —such as vehicles, furniture, checkbooks, or keys;

CHILD CUSTODY

- Grant temporary custody of the children to the petitioner (or to another family member).
    - NOTE: Custody means the schedule for when each parent spends time with a child or children and who makes major decisions for a child. *See custody packet for more information.*

FINANCIAL PROTECTIONS

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- Order child support or financial support for the petitioner, if the party has a legal obligation to pay support under 13 Del. Chapter 5 of Title 13 of the Delaware Code15.

- Order the respondent to pay the petitioner (or another family member) money for any losses that happened because of the domestic violence. These include medical and dental expenses, the cost of counseling, the loss of any earnings from a job, the cost of repairing or replacing property that has been damaged or taken, and travel expenses (including moving).

- Ordering that the respondent to pay the costs of the legal action. This can include the money charged by the lawyers involved;

FIREARMS

- Ordering the respondent to give up any guns or other firearms (*in many cases, this is a required part of the PFA order*). *The petitioner and respondent can agree to this protection or the court can order it after a hearing.* Federal law prohibits anyone under a domestic violence protective order from buying or possessing firearms or ammunition (18 USC § 922(g)(8)). The law applies to orders (1) issued after notice to the abuser and a hearing and (2) protecting an "intimate partner" of the abuser or a child of the abuser or intimate partner (18 USC § 922(g)(8));

OTHER PROTECTIONS

- Ordering the respondent not to sell or hide property that the court identifies;

- Ordering treatment or counseling;

- Telling a law-enforcement agency to search for and seize the respondent's firearms (*in many cases, this is a required part of the order*);

- Requiring the respondent to be evaluated, undergo treatment or attend counseling.

  NOTE: a court can issue an order for something not on this list as well. The petitioner can ask for anything else that he or she thinks will protect his or her safety or the safety of a child. If the request is not in the petition, the court might not be able to consider it on the day of the hearing. So, it is very important that all requests for legal protections (relief) are included in the petition to ensure that the court may consider the request on the day of the scheduled hearing.

  VIOLENT CRIMES COMPENSATION

  A petitioner may also seek financial assistance or other resources from the Delaware Violent Crimes Compensation Board and the Victim's Compensation Assistance Program for losses suffered because of domestic violence or financial resources for counseling or other services. Available at https://attorneygeneral.delaware.gov/vcap

- **How long does the PFA order last?**

  - A PFA order can include a variety of protections. Different types of protection last for different periods of time. The length of a PFA depends on the type of legal protections granted. Court orders that require the respondent to stay away, refrain from further abuse, or relinquish firearms can remain in place for a year, two years, or even

permanently, depending on the circumstances. [See below for more information on "PFA orders lasting longer."]

- Other legal protections in a PFA order such as child custody, support, possession of a residence, or use of personal property are temporary and last no longer than one year.

- If there is a separate custody, visitation or support proceeding within the year, then the order from those proceedings will *replace* the temporary custody order in the PFA.

- Some types of legal protections available in a PFA can last longer and can even be permanent. However, only as to the stay away, no contact, no abuse & firearms restrictions:

  - If the Commissioner finds that certain facts exist -- what the law calls "**aggravating circumstances**" -- then the order can last for as long as the court determines will best protect the abused person. In these cases, orders can be made **permanent.**
    Here is the list of the things that can be considered "aggravating circumstances":

    - Physical injury, especially if it's serious, against the petitioner by the respondent;

    - The use of a deadly weapon or other dangerous instrument against the petitioner by the respondent;

    - A history of repeated violations of protective orders by the respondent;

    - Criminal convictions of the respondent for crimes against the petitioner;

- Exposing any member of the petitioner's family or household to physical injury;

- Any other act of abuse that creates "an immediate and ongoing danger."

- NOTE: It is <u>important that any factors that apply are listed in the petition</u> so that the court can consider those factors at the time of the hearing.

6. *What happens if a PFA is violated? CALL 911*

- Violating a court order can have serious consequences. A PFA is registered in Delaware's Criminal Justice Information System – which happens the day of or within a day of the hearing where it is issued. Anyone who violates a PFA Order may be arrested, if that person had notice of the PFA. That means if you have been granted a PFA order, you can call the police if you believe the order has been violated. You can also file a motion for contempt of court stating that the respondent has failed to follow the PFA order. The violator may then be taken into court, and once the violation is established, the penalties can be:
  - A finding of contempt (meaning that the PFA was not obeyed);
  - Criminal prosecution; and
  - Imprisonment, or fine, or both.
- As just explained, the Petitioner can file a motion for contempt on his or her own, asking for a finding of contempt of court. See *Motion for Contempt of PFA Order* **Form 457**.

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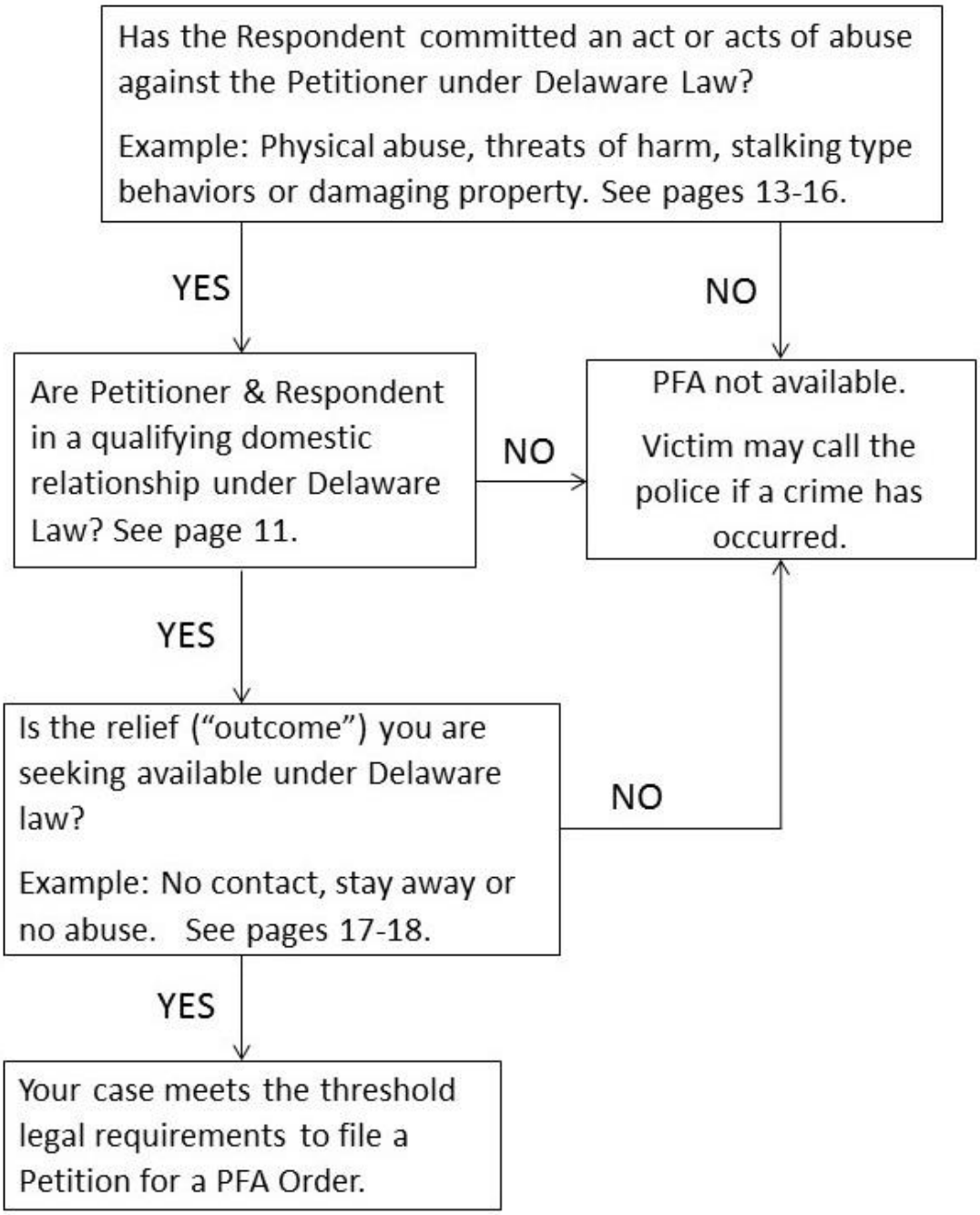
Legal Requirements for a PFA



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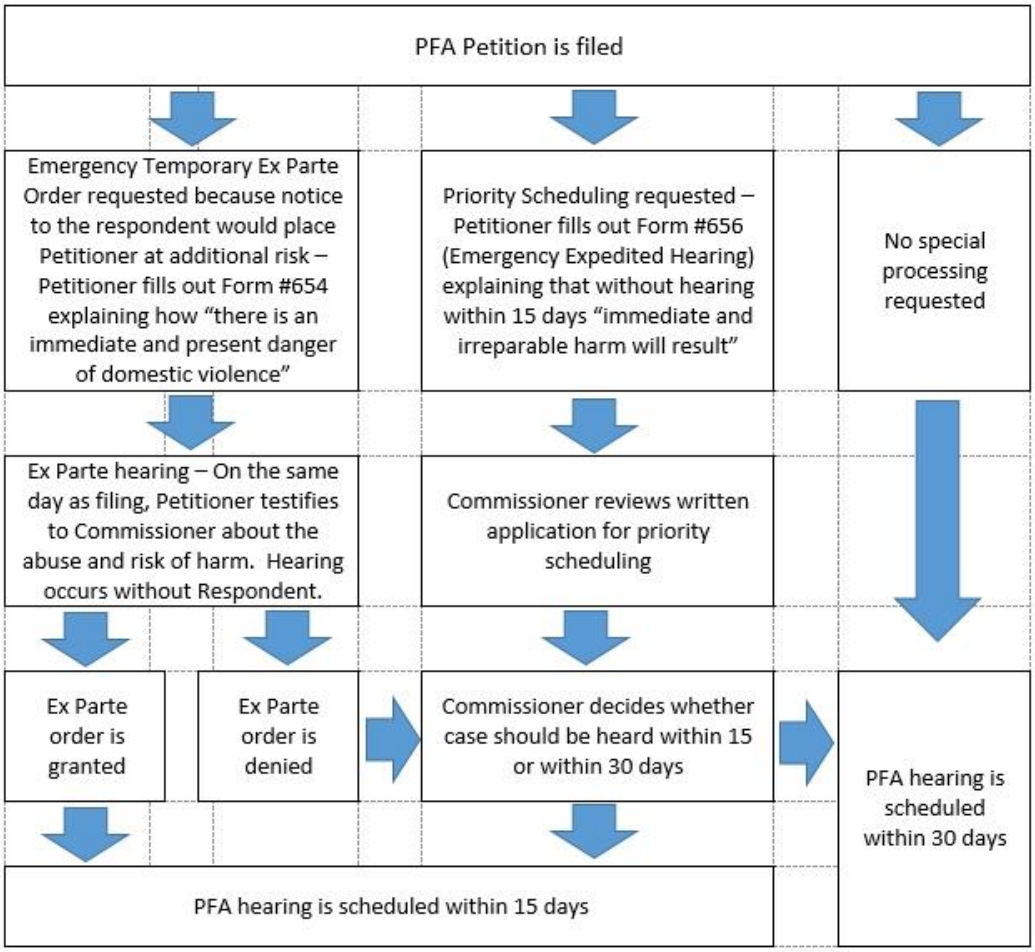
Scheduling a Protection from Abuse Hearing



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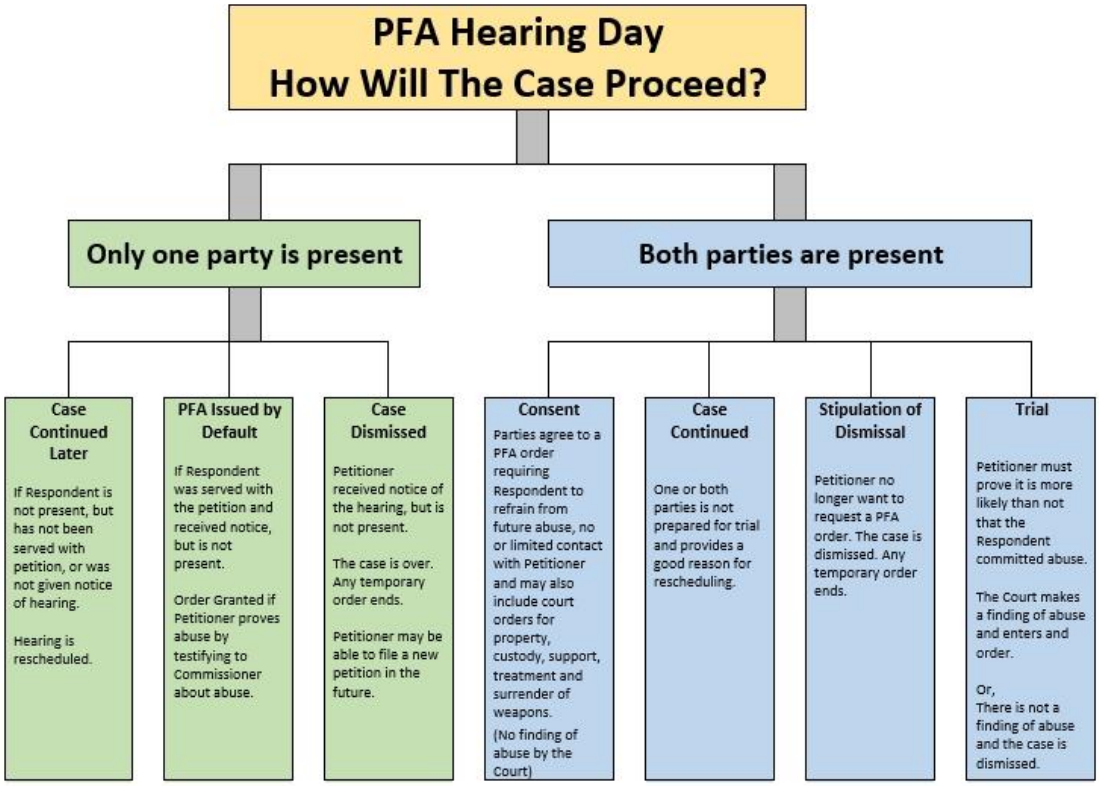

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