



# Protection from Abuse Instruction Packet

<https://courts.delaware.gov/family>

1035IP – PFA Instruction Packet – Revised 10/22/2021

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

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# Introduction

- ***Purpose of this Packet***

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This packet gives you information about the Protection from Abuse (“PFA”) Court Order petitioning process 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 *legal information* about what Delaware law requires, and how the process works.

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**NOTE: Are you seeking Custody?** In some situations, you may choose to file both a PFA petition and a Custody Petition. While a PFA order may be able to address custody on a temporary basis, you may also want to file for a permanent custody order. There is a separate packet with Instructions for Filing a Child Custody Case. If you are seeking a Court Order for Child Custody, please carefully review the Custody packet available on Family Court’s website: <https://www.courts.delaware.gov/family/custody/index.aspx>

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This **introduction is a summary of some key points in a PFA case.** You will find a more detailed explanation of the PFA process throughout this packet.

- ***Understanding the Legal Terms***

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- ***Petitioner:*** A person initiating a legal action, usually in a civil case. The person who presents a petition to the Court. In a PFA proceeding, the petitioner is the person who is filing the petition and alleging that they or their child(ren) have been abused.
- ***Respondent:*** The person against whom the petition or complaint is filed. In a PFA action, the respondent is the person the petitioner alleges abused the petitioner or the petitioner’s children. The petitioner and respondent in a PFA action must be related in one of the ways identified by Delaware’s law. For a full list of relationships that qualify for PFA relief, see Page 9.
- ***Commissioner:*** A Judicial Officer with power to hear any civil case within the Court’s jurisdiction. Commissioners or Judges will preside over PFA proceedings.
- ***Abuse:*** 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.
- ***Relief:*** Legal protections that can be ordered in the PFA to deter future abuse of the petitioner and/or the petitioner’s child(ren).

- ***Ex Parte Order:*** A Temporary Emergency Order granted for the benefit of one party without notice to the other party. A full hearing with notice to both parties is held at a later date.
- ***Case Review:*** a PFA proceeding where both parties will meet with a Family Court staff person to discuss their case. All PFA cases will be scheduled for Case Review. The Case Review will take place before the Trial.
- ***Trial:*** A judicial hearing to determine issues between parties to an action through the testimony of witnesses and documentation. In a PFA trial, the petitioner will try to prove that the respondent abused the petitioner and/or the petitioner's children.
- ***PFA Order:*** Order containing relief designed to prevent one person (the PFA respondent) from abusing another (the PFA petitioner or his/her children). Relief granted may include restraining the respondent from committing domestic violence, restraining the respondent from contacting the petitioner, granting the petitioner exclusive possession of the residence, granting temporary custody of children, awarding child and/or spousal support, ordering the respondent to relinquish firearms, and ordering participation in counseling. A PFA Order can be granted by default, by consent of the parties, or after a full hearing.

## • ***Legal and Advocacy Resources***

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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 you have a case filed against you. Information on finding a lawyer (in some cases even if you have little or no money) can be found in Section 19 of this packet.

As a petitioner, you may choose to represent yourself, hire a private attorney, or seek assistance from a volunteer attorney program (See section 19). The Family Court does not provide free legal counsel to either party in a PFA case.

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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.

If you are a victim of domestic violence and need advocacy support services or want to talk with someone about your safety, advocates and hotline resources can be found in Section 19.

Court-based advocates have an office in the Family Court building (but are not court employees) and are able to help victims of intimate partner violence through the PFA process. The Domestic Violence Advocacy Program contact information can be found in Section 19.

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- ***PFA proceeding is NOT a criminal case***

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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. A PFA order provides for additional protection (relief) not available through the criminal process. The criminal process provides outcomes that are not available through the PFA process such as criminal prosecution, 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. If you file a PFA and also have a criminal case, you must appear for both the PFA and criminal hearings.

- ***Things to know for your Safety***

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- When a Petition for a Protection from Abuse Order is filed, the respondent **will** receive a copy of the petition and allegations of abuse.
- The respondent **will** receive the Hearing Notice for the PFA Case Review and **will** be expected by the Court to participate.
- During the PFA process, the petitioner and respondent may be in the same courtroom or virtual courtroom at the same time.
- A PFA Order can be part of a safety plan, but there are often other things to consider and other actions that a victim can take to enhance their safety and the safety of their children.
- There are advocates in the community that are available to help victims decide what safety options are best for their specific situation. Additional information can be found in Section 19 of this packet.

## ***1. What is a Protection from Abuse Order?***

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A PFA Order is a Court Order intended to help protect a person from being abused. A Court can order the abuser to stop the abuse, to stay away from the person or the person's child and other things to minimize the chance the abuse will happen again. These things include exclusive use of a home, custody of children, child and household support, compensation for medical injuries and broken or stolen property, temporary possession of personal property, and participation in domestic violence prevention treatment. Protection for a child may also be requested either due to abuse committed directly against the child or due to the abuse of the child's parent or guardian and the effect of that abuse on the child.

A PFA Order issues either after a full trial or upon agreement of the parties. An order after an agreement is called a Consent Order. At a PFA trial, the Petitioner must prove to a judicial officer (usually a Commissioner) that the Respondent committed acts of abuse against the Petitioner or the Petitioner's child. Normally, a PFA order can last up to two years. If "aggravating circumstances" are also proven, the order can last for more than two years or, even, indefinitely.

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

- A person who files a PFA petition is called a petitioner.
- The person against whom the petition is filed is called the respondent.
- Only people in certain "domestic" relationships are eligible for PFA Order protection.
- The law sets out what kinds of relationships qualify. Only relationships identified in the box on the next page qualify for protection through this PFA petitioning process.

**NOTE:** If you have been abused and your relationship to the abuser does not fit into one of the categories listed below, you may want to consider contacting the police to file criminal charges. As a condition of bail, the Court may issue a Criminal No Contact Order.

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

- 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 below.



- In some cases, the petitioner will want to file a PFA petition for abuse against themselves AND for abuse against a child, or for a child only.
- 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. 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 or Commissioner may also 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 an Emergency Hearing. These matters are complicated, so a party may want to consider obtaining legal advice from an attorney first.

**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.

### **3. What is considered “abuse”?**

Abuse is defined by the PFA statute. The statute (or law) separates types of abuse into the following 8 categories:

**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.

***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.

***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.

***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.

***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.

#### ***4. What is ‘Protection’ and what can Family Court order?***

The Court has flexibility in PFA cases and can issue Orders that will help to keep victims and their children safe. The Court has discretion to provide broad relief and resources to the abused person.

**Here is a list of the types of legal relief available under Delaware law:**

### **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 their place of work, at their 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**

- 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 Code.
- 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).
- Order that the respondent to pay the costs of the legal action. This can include the money charged by the lawyers involved.

### **FIREARMS**

- Order 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

- Order the respondent not to sell or hide property that the court identifies.
  - Order treatment or counseling,
  - Tell a law-enforcement agency to search for and seize the respondent’s firearms (*in many cases, this is a required part of the Order*).
  - Require the respondent to be evaluated, undergo treatment or attend counseling.
- NOTE:** Family Court can issue an Order for something not on this list as well. The petitioner can ask for anything else that they think will protect their 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.

## 5. *What is an emergency order?*

If the petitioner believes that there is a threat of immediate and present danger and protection is needed right away, they can request an Emergency Order. The Court can grant a temporary 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**. The Court can only grant an Ex Parte Order on a temporary basis.

An emergency hearing held without notice to the respondent (*ex parte*) will be held either the same day that the petition is filed or the next day that the Court is in session.

If a temporary order is granted following the emergency hearing, it will remain in effect until the date of the next PFA proceeding. A temporary *Ex Parte* Order only lasts for 15 days. A Case Review will be scheduled before the Ex Parte Order expires, and the respondent will be given notice to participate in that proceeding. The respondent has a right to know that allegations of abuse have been made and has a right to challenge those allegations in Court.

### **Expedited Hearing**

If a petitioner believes they need relief quickly but does not believe they need an Emergency Ex Parte Order, the petitioner may request that an Emergency Expedited

Hearing be scheduled. Emergency Expedited Hearings will be held within 15 days if there is potential for immediate and irreparable harm to the petitioner or to a minor child of the petitioner or to an adult who is impaired. If the request for an Expedited Hearing is granted, the Court will schedule a Case Review within 15 days of the petition being filed and the respondent will be given notice of the filing and the case review date.

## ***6. Notifying the Respondent that a PFA has been filed***

### **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 with the allegations of abuse and relief requested, the notice of the scheduled Case Review, and the Ex Parte Order (if one was requested by the petitioner and granted by the Court).

**NOTE on SAFETY:** The Court will arrange to serve the respondent very soon after the petition has been filed. If the petitioner is concerned that taking this action will place them at risk of harm, they may seek advocacy and support around safety planning by contacting the National Domestic Abuse Hotline at 1-800-799-SAFE (7233) or by reaching out to local resources listed later in this packet.

## ***7. What Forms or Documents need to be filed?***

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 Leonard L. Williams Justice Center in New Castle County and are on the Delaware Family Court's web page: <https://www.courts.delaware.gov/family/>.

**Below is a list of required forms that anyone seeking PFA protection must file and a list of situational forms needed in certain cases.**

### **Required Forms:**

- Petition for Order of Protection from Abuse (Form 450)
- Family Court Information Sheet (Form 240)

### **Situational Forms:**

- Custody Separate Statement (Form 346)
- Affidavit of Parentage (Form 154)
- Affidavit that a Party's Address Is Unknown (Form 241)
- Affidavit for Emergency Expedited Hearing (Form 656)
- Affidavit for Emergency Temporary PFA Ex Parte Order (Form 654)



- Unsworn Declarations (Form 677)

Below is information that may be helpful when completing each of the forms.

- **Petition for Order of Protection from Abuse (Form 450)—Required**
  - A petition explains the facts of the case and asks the Court for protection (relief).
  - The petitioner is the one filing the petition. The person that the petition is filed against is the respondent.
  - A petitioner does not have to include their address or contact information on the petition if doing so endangers the petitioner or the petitioner’s child. (Section 1 of petition)
  - The petition must explain facts that prove the petitioner and respondent are in a family type relationship identified earlier in this packet. (Section 2 of petition)
  - The petition must explain the facts to prove abuse. The explanation of facts (Section 3 of petition) must be specific about the abuse that happened and should include dates if possible. **The Court can only consider acts that are described in the petition.** It is important that all acts of abuse that the petitioner wants the Court to consider are listed. The Court cannot consider any other acts, unless the petition is amended before trial.
  - **INTERPRETERS**

If either party will need an interpreter for the PFA hearing, that request should be noted on the PFA petition. A litigant may also notify the Court prior to the hearing date. The Court will need adequate notice to arrange for an interpreter at the Hearing, so please tell the Court if you need an interpreter as soon as you can.
- **Family Court Information Sheet (Form 240)—Required**
  - This form 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.
- **Affidavit for Emergency Expedited Hearing (Form 656)—Situational**
  - This form is only filed in cases where the petitioner is requesting a hearing be scheduled within 15-days AND the petitioner is *not* seeking an emergency Order.
- **Affidavit for Emergency Temporary PFA Ex Parte Order (Form 654)—Situational**
  - This form is filed to request an immediate hearing with the Court (same day or next business day).
  - If a Temporary Ex Parte Order is granted, it will remain in effect until the date of the Case Review.

- **Custody Separate Statement (Form 346)—Situational**
  - This form should be completed when a minor child is also a petitioner (alleged to have been abused by the respondent) and/or the petitioner is requesting the Court address custody on a temporary basis in a PFA Order.
- **Affidavit of Parentage (Form 154)—Situational**
  - Filed with any PFA petition involving a child unless parentage of the child has been established.
- **Affidavit that a Party’s Address Is Unknown (Form 241)—Situational**
  - Filed if the petitioner does not know where the respondent lives.
- **Unsworn Declarations (Form 677)—Situational**
  - Filed along with any other Court forms that are filed electronically and have not been verified by a notary.

## ***8. How/where does someone file for a PFA Order?***

- PFA petitions, along with all of the necessary forms, can be filed in person at Family Court, by email, or by USPS mail.
- **In Person at Family Court**
  - 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. If you are staying in another county because of the abuse, you can file in that county.
  - In **Kent and Sussex** Counties, you may file your completed forms at the Intake/Resource Center in the Family Court building.
    - Kent County Family Court**  
400 Court Street  
Dover, DE 19901
    - Sussex County Family Court**  
22 The Circle  
Georgetown, DE 19947
  - In **New Castle** County, you may file your forms at the Intake/Resource Center of Family Court located in the Leonard L. Williams Justice Center.
    - New Castle County Family Court**  
500 N. King Street  
Wilmington, DE 19801

- Family Court hours are Monday-Friday 8:30-4:30. Closed weekends and holidays.
- **Email**
  - FC\_PFA@delaware.gov Be sure that all forms are signed (electronic signature is acceptable).
  - If the forms are not notarized, Form 677 (Unsworn Declarations) must be included.
  - For more information on filing by email, please review the Civil Filing by Email FAQ: <https://courts.delaware.gov/family/faqs>
- **USPS mail**
  - If the forms are filed by mail, the addresses for each courthouse can be found on the Family Court website and in the section above.
  - If the forms are not notarized, Form 677 (Unsworn Declarations) must be included.

The Court does NOT accept filings that are faxed.

## ***9. What happens after a petition has been filed?***

- **Emergency Ex Parte filing**
  - If the petitioner filed Form 654, requesting an Emergency Ex Parte Order, they will see a Commissioner either the same day that they filed or the next business day. Ex Parte Petitions filed after 4:00pm will be heard the next business day.
  - In the emergency hearing, the petitioner will give testimony identifying their relationship to the respondent, what relief they are seeking on an emergency basis, and what immediate and present danger of domestic violence exists.
  - This hearing will take place without the respondent present.
  - If an emergency Ex Parte Order is issued, the Court will schedule a Case Review within 15 days.
  - The Ex Parte Order will be in effect until the Case Review.
  - A Family Court process server will serve the respondent: the petition and other forms filed by the petitioner; the Case Review Notice for the next Case Review date; and the Emergency Ex Parte Order, if one has been issued.

### **What actions can be taken if an Emergency Ex Parte is violated?**

If the Emergency Ex Parte Order 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 injury or involved a deadly weapon. Criminal charges are prosecuted by the police and the Department of Justice.

### **SAFETY**

**It is important to note that a PFA Order can be part of a safety plan and may be a deterrent to violence; however, there are additional resources**

**and support available to assist victims of domestic violence with creating safety plans specific to their circumstances. Advocates are available to help victims with safety planning, court accompaniment, legal assistance, etc. Information on local advocacy resources are listed in the back of this packet.**

- **Priority Scheduling (Emergency Expedited Hearing)**
  - If the petitioner filed Form 656 requesting an Expedited Hearing, a Commissioner will review the request and determine if a Case Review will be scheduled within 15 days.
  - If the request is granted, a Case Review will be scheduled within 15 days.
  - The Court will notify both parties of the Case Review date and time. A Family Court process server will also serve the respondent with the petition and other situational forms filed by the petitioner.
- **Standard filing**
  - If the petitioner does not request an Emergency Ex Parte Order or an Expedited Hearing, the Court will schedule the Case Review within 30 days.
  - The Court will notify both parties of the Case Review date and time. A Family Court process server will also serve the respondent with the petition and other situational forms filed by the petitioner.
- **Case Review Notices**
  - The Notice will have a date and time for the PFA Case Review.
  - Both parties are expected to participate in the Case Review. If either party, after receiving proper notice, does not appear for the Case Review, the PFA case will likely proceed without their input. If the petitioner does not appear, their PFA petition may be dismissed. If the respondent does not appear, a Default Order could be issued against them.
  - Unless otherwise noted, the Case Review will take place on Zoom. The petitioner and respondent will receive an email from Family Court with the Zoom invitation. If either party does not have video capabilities, the Zoom invitation will include a call-in option and phone number.
- **Zoom Invitation and User Guides**
  - If either party needs to update their email address or contact information with the Court, complete the online form on Family Court's website: <https://www.courts.delaware.gov/family/remotehearing.aspx>
  - For Zoom User Guides: <https://www.courts.delaware.gov/family/zoom.aspx>

## ***10. Preparing for the PFA Case Review***

- If either party has not received their Zoom invitation within the 24 hours prior to the start of the scheduled Case Review, notify the Court by completing the online

form on Family Court's website:

<https://www.courts.delaware.gov/family/hearingissue.aspx>

- Additional information about the PFA process can be found on Family Court's website: <https://www.courts.delaware.gov/family/pfa/index.aspx>

## ***11. What happens at the Case Review?***

Either party may choose to have an attorney with them at the Case Review. At the Case Review, a Family Court staff person will meet with each party separately. The parties will be in two separate waiting rooms using the Zoom platform. The petitioner and respondent will not speak to or see each other during this part of the process.

### **How the Case Review proceeds will be determined by who is in attendance.**

- If only one party is in attendance, there are three possible options:
  - Continuance
    - If the party who is absent was not given proper notice to attend, the case will be rescheduled for another day.
    - If the Court has not been able to properly serve the respondent, and the case is continued, the petitioner may request that any existing Ex Parte Order be extended until the next Case Review date.
  - Default
    - If the petitioner appears but the respondent is absent and proper notice was given to the respondent, the petitioner can ask for a Default PFA Order.
    - The petitioner will have a hearing with the Commissioner that same day.
    - The Commissioner will take testimony from the petitioner and decide whether to issue a Default PFA Order.
    - A PFA Order that issues by Default is the same in every way as an Order that issues after a full contested hearing.
  - Dismissal
    - If the respondent appears but the petitioner does not and notice was given to the petitioner, the petition will be dismissed.
    - The PFA case will be over and any existing Emergency Ex Parte Order will end.
- If both parties are in attendance, there are four possible options:
  - Continuance
    - If either party believes they are not prepared to proceed with the Case Review, they will let the mediator know. A Commissioner will review the Continuance Request and determine if the Case Review is continued and any Ex Parte Order is extended.

- If the case is continued, the parties will receive a new Case Review date and an email with the Zoom invitation for the scheduled proceeding.
- Dismissal
  - If the petitioner no longer wants to pursue a PFA Order, both parties may agree to a Stipulation of Dismissal.
- Consent
  - The staff person will talk to each party separately to determine if the parties are able to reach an agreement on the issuance of PFA Order that includes specified relief.
  - The staff person may go back and forth between the parties a few times to give both parties an opportunity to negotiate an agreement.
  - If the parties are able to reach an agreement, they will go before a Commissioner on that same day for a hearing to put the consent agreement on the record. At the hearing, the petitioner and respondent will likely be able to see and hear each other, but will not likely talk with each other.
  - The Commissioner will review the conditions to be sure that both parties understand and are in agreement of the relief in the PFA Order.
  - With a Consent Order, the petitioner does not prove that abuse occurred and the respondent does not admit to or deny committing abuse. The parties are agreeing to specific relief or conditions and the Court is accepting their agreement and issuing a Consent Order.
  - A Consent Order cannot be used in any other court case to prove the respondent committed abuse.
  - A Consent Order is enforced in all the same ways as an order entered after a Trial.
- Trial
  - If the parties are not able to reach an agreement at the Case Review, the PFA case will be scheduled for a Trial.
  - Both parties will be given a Trial date and time. The Trial will not occur on the same day as the Case Review.
  - Any existing Ex Parte Order may remain in effect until the Trial date.
  - Both parties are expected to participate in the Trial. If either party does not appear for the Trial, a decision could be made in their case without their input.

## ***12. Preparing for Trial***

- At a Trial, the petitioner will try to prove by a preponderance of the evidence that abuse happened.

- The petitioner and respondent will both have an opportunity to testify, present evidence and call witnesses.
- Unless told otherwise, both parties will appear in person at the Family Court building.. If either party is unable to attend their trial in person, they may request to participate remotely by filing Form 584—Request to Participate Remotely.

Additional information about the PFA process can be found on Family Court’s website: <https://www.courts.delaware.gov/family/pfa/index.aspx>

- **EVIDENCE**

- Evidence is something given to the Court that will assist a person in proving a fact they want the court to know about in their case. Either party may submit evidence during their trial. Evidence should be brought to the courthouse with you on your trial date.
- For more information about preparing evidence for your Family Court case, visit [https://www.courts.delaware.gov/help/proceedings/fc\\_CourtHearing.aspx](https://www.courts.delaware.gov/help/proceedings/fc_CourtHearing.aspx)
- Evidence can include but is not limited to:
  - **Testimony**
  - **Photographs**
  - **Phone messages**
  - **Text message or emails**
  - **Criminal conviction or guilty plea** for abuse by this respondent against this petitioner (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).
  - **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.
- **WITNESSES**
  - A witness is a person under oath telling facts to the Judge or Commissioner in Court, who has first-hand knowledge of an act of abuse or observation of an injury.
  - A witness must appear at the hearing to testify. A letter or affidavit is NOT accepted by the Court.
  - Either party may bring witnesses to the Trial to testify.
  - If your trial is in person but you want your witness to testify by Zoom, you may make this request of the Court by submitting Form 584—Request to Participate Remotely.
- **SUBPOENAS**
  - A subpoena is an Order to appear in Court.
  - A witness can testify even if they are not subpoenaed.
  - It is important that all witnesses are served with a subpoena prior to the Trial to ensure their appearance on the day of the Trial.
  - If a witness is not served with a subpoena within a reasonable period of time 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.

### ***13. What happens at the PFA Trial?***

- Either party may choose to have an attorney with them for the Trial.
- The Commissioner may allow brief opening statements. 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 their case. The petitioner will testify and may present other evidence. The respondent will be able to ask questions of (cross-examine) any of the petitioner’s witnesses or object to any evidence the petitioner presents. After the petitioner is finished presenting their 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.
- If the petitioner has proven that abuse occurred, the Commissioner will enter a PFA Order and decide what legal protections will be in that Order. If the petitioner has



not proven that the abuse happened, the Commissioner will dismiss the petition and no Order will be entered. Any Ex Parte Order that may be in effect will end.

- If an Order is issued, both parties will receive copies after the trial.

## **14. Understanding the PFA Order**

- The PFA Order states the legal protections granted to the petitioner, such as no contact, no abuse, temporary custody, etc., and states for how long the Order will be in effect.
- A PFA Order is fully enforceable regardless of whether the order was issued by Default, by Consent of the parties, or after a full contested hearing.

### **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. 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.
- 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, the Order from those proceedings will replace the Temporary Custody, Visitation or Support Order in the PFA.
- Some types of legal protections available in a PFA can last longer and can even be permanent.
  - 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 a list of 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’.

## ***15. What happens if a PFA Order 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 if 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 their own, asking for a Finding of Contempt of Court. See *Motion for Contempt of PFA Order Form 457*.
- If a Commissioner finds the violator in Contempt, the Commissioner can modify the Order to provide more protection, extend the Order or impose a fine.

## ***16. Can PFA Orders 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.

## ***17. What happens after the PFA expires?***

- If an existing Order is scheduled to expire and the petitioner would like the Order to be extended for a longer period of time, the petitioner can file a Motion to Extend Order of Protection from Abuse. **Form 456**.
- If abuse continues after a PFA Order has expired, a petitioner may seek protection by filing a new PFA petition and related situational forms.
- If there is relief ordered in the PFA that either party would like to have extended beyond the one year, either party may file the appropriate petition in Family Court. Such relief may include Custody, Visitation, Child or Spousal Support or Divorce and Property Division. More information about these processes can be found on Family Court's website [www.courts.delaware.gov/family](http://www.courts.delaware.gov/family)

## ***18. Can the Court's decision be appealed?***

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. **Form 455**. Appeals from Commissioner's Orders must be filed with the Family Court within thirty (30) days of the Order.

### **What if the petition was dismissed because the petitioner did not appear?**

The petitioner can request to have their PFA petition reopened by filing a Motion to Reopen (**Form 191**) with the Court. The petitioner must send a copy of the Motion to Reopen to the respondent. The petitioner should describe exactly why they did not attend the hearing on the scheduled date and time. If there was an emergency or some other good reason that prevented them from attending, documents should be attached to the Motion to Reopen that show why they were not able to attend the hearing. For instance, if there was a medical emergency that required the petitioner to go to the emergency room just before or at the time of the Case Review, Hearing, or Trial, a copy of the hospital's emergency room medical record showing the medical treatment provided and the date and time of admission and discharge should be attached to the Motion. In this example, for privacy reasons, they could blot out the medical treatment provided on the copy sent to the respondent. Typically, the Court will decide whether to reopen the case after it has given the respondent an opportunity to respond to the Motion.

## ***19. Resources for support and advocacy***

## **Finding a lawyer:**

- If you would like assistance finding an attorney, or to see if you qualify for free legal assistance, you can complete a referral with Delaware's Legal Help Link: <https://delegalhelplink.org>
- Also, the Delaware State Bar Association (DSBA) sponsors a lawyer referral service. See [www.dsba.org/resources/public-resources](http://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.

## **Self Help Center:**

There is a self-help resource center at each Family Court location to assist you. Here 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 forms 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 also has a Call Center that can provide information.

### **Family Court:**

New Castle County	302-255-0300
Kent County	302-672-1000
Sussex County	302-855-7400

## **Domestic Violence Advocacy Program:**

Advocates, who are *not* lawyers, are available to assist victims of domestic violence with writing and filing a PFA petition, provide information about the process, connect them with available community resources and accompany victims to their PFA proceedings. They may refer victims to their volunteer attorney program or to the volunteer lawyer programs offered by Delaware Volunteer Legal Services and Community Legal Aid Society Inc.

### **Domestic Violence Advocacy Programs:**

New Castle County	302-255-0420
Kent County	302-672-1075
Sussex County	302-856-5843

## **24 Hour Hotlines**

### **24-hour Domestic Violence Hotlines:**

New Castle County	302-762-6110
Kent & Sussex Counties	302-422-8058

### **24-hour crisis support lines**

New Castle County Crisis Hotline 302-761-9100  
Kent & Sussex Crisis Hotline 800- 262-9800

### **24-hour Child Abuse and Neglect Hotline:**

1-800-292-9582

### **Attorney General:**

New Castle County 302-255-0112  
Kent County 302-739-4211  
Sussex County 302-856-5353

## ***20. Information for respondents***

- **Responding to a Petition for a PFA**
  - 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 may choose to represent themselves or to hire an attorney. The Court does not provide representation to either party in PFA cases.
  - Respondents do not 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.
  - The respondent will have an opportunity to present evidence in defense of the claims of abuse being alleged against them.
  
- **Service of the PFA petition, other related forms and PFA Orders**
  - Once a PFA petition is filed, it will be served by the Court on the other party (the respondent). In some cases, the petitioner does not 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 Case Review or Trial (or court proceeding). The law gives the petitioner another way to give notice to the respondent. Court staff will give the petitioner a document to fill out saying that the respondent’s address is unknown. 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 Case Review will then follow.

- **Firearms**

- In most cases it is a crime under State and/or Federal law for a person against whom a PFA Order has been issued to possess firearms, deadly weapons or ammunition for the duration of the Order.
- If the Court has reason to believe that a respondent is in possession of firearms at the time that the PFA Order is issued, the Order will include specific language directing the respondent to relinquish firearms to a local police agency.

**Certification of Firearm Unavailability (Form 435)**

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.

**Proof of Transfer of Firearms - for use by federally licensed firearms dealers. (Form 437)**

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.

## Scheduling a Protection from Abuse Case Review

