

SEXUAL VIOLENCE PROTECTIVE ORDERS

Superior Court

AGENDA

Overview of Sexual Violence Protective Orders

Legal Basis and Eligibility

Types of Proceedings

Burden of Proof and Timelines

What Relief Can be Ordered

Forms

Summary



OVERVIEW OF SVPOS

The purpose of the SVPOs is to provide a civil remedy for a victim of rape or other sexual violence which requires that the offender stay away from the petitioner.

LEGAL BASIS AND ELIGIBILITY

- HS 1 for HB 264 as amended by HA 1 of the 151st General Assembly created Chapter 72 of Title 10.
- The Petitioner is the person named in the petition as the victim of the non-consensual sexual conduct or non-consensual sexual penetration **and** who is not a member of the protected class under 10 Del. C. § 1041(2)(a) or (b).
- A petitioner who is 16 years of age or older may seek relief without a guardian ad litem.
- A petition may not be filed against a person under the age of 18.

LEGAL BASIS AND ELIGIBILITY

This civil remedy is available only for petitioners who would not qualify for a protection from abuse order because there is no family or dating relationship between the victim and perpetrator.

10 *Del. C.* § 1041(2) defines the member of a protected class in the context of domestic violence.

- 10 *Del. C.* § 1041(2)(a) refers to family as it is defined in 10 *Del. C.* § 901(12), regardless of state of residence or whether parental rights were terminated. “Family” means spouses; a couple cohabitating in a home in which there is a child of either or both; custodian and child; or any group of persons related by blood or marriage who are residing in 1 home under 1 head or where 1 is related to the other by any of the following degrees of relationship, both parties being residents of this State:

- a. Mother;
- b. Father;
- c. Mother-in-law;
- d. Father-in-law;
- e. Brother;
- f. Sister;
- g. Brother-in-law;
- h. Sister-in-law;

- i. Son;
- j. Daughter;
- k. Son-in-law;
- l. Daughter-in-law;
- m. Grandfather;
- n. Grandmother;
- o. Grandson;

- p. Granddaughter;
- q. Stepfather;
- r. Stepmother;
- s. Stepson;
- t. Stepdaughter.

LEGAL BASIS AND ELIGIBILITY

- 10 *Del. C.* § 1041(2)(b) includes former spouses, persons cohabitating together as a couple, persons living separately but with a child in common, persons in a current or former dating relationship.
- This section refers to “substantial dating relationship” which requires a judicial officer to review factors such as:
 - length of relationship,
 - type of relationship,
 - or the frequency of interaction between the parties.



LEGAL BASIS AND ELIGIBILITY

- Petition may be filed even if there is a pending lawsuit, complaint, petition, or other action between the parties. This includes whether or not criminal charges have been brought.
- Petition must be filed within 1 year of the date of the most recent statement or conduct which prompted the need for relief.
 - Tolling: the 1-year time period is tolled during the following:
 - While the respondent is incarcerated
 - While the respondent resides more than 100 miles from the petitioner's residence.
 - While the respondent is subject to a non-contact order relating to the petitioner.
- Monetary damages are not recoverable.

TWO TYPES OF PROCEEDINGS

- **Emergency Proceedings §7204** – are ex parte proceedings begun by the filing of a request for an ex parte temporary SVPO which alleges all of the following:
 - The date of the occurrence of the non-consensual sexual conduct or non-consensual sexual penetration
 - The specific statements or action made by the respondent contemporaneously with or subsequent to the sexual conduct or sexual penetration which caused the petitioner to be in reasonable fear of future harm from the respondent.
 - The respondent poses an immediate and present danger of causing physical injury to petitioner.
- **Non-Emergency Proceedings §7205** – are proceeding begun by the filing of a request for a SVPO that alleges:
 - The date of the occurrence of the non-consensual sexual conduct or non-consensual sexual penetration
 - The specific statements or action made by the respondent contemporaneously with or subsequent to the sexual conduct or sexual penetration which caused the petitioner to be in reasonable fear of future harm from the respondent.
- An Emergency Proceeding is only granted if the petitioner alleges that the respondent poses an immediate and present danger of causing physical injury to petitioner.

EMERGENCY PROCEEDINGS

BURDEN OF PROOF AND

TIMELINES

- Emergency Proceedings
 - Petitioner has the burden to prove the three allegations by a preponderance of the evidence (more likely than not)
 - Hearing must be held within 72 hours of the filing of the Petition. The Superior Court is making every attempt to hear these petitions the day they are filed unless they are filed too late in the day and then will be heard the next day.
 - Respondent does not have the right to be heard at or provided notice of this Hearing.
 - If the Petitioner satisfies the burden of proof a Temporary Ex Parte Emergency SVPO order will issue, and will be served on the Respondent by personal service, any form of mail, or in any manner directed by the Court, including publication. A Certified Copy of the Temporary Ex Parte Emergency SVPO Order is given to the Petitioner after the hearing.
 - The Temporary SVPO may not exceed 45 days.
 - A Hearing is scheduled within 15 days but may be extended for cause.

NON-EMERGENCY PROCEEDINGS 10

BURDEN OF PROOF AND TIMELINES

- Non-Emergency Proceedings
 - Petitioner has the burden to prove the two allegations by a preponderance of the evidence (more likely than not)
 - Hearing must be held within 15 days of the filing of the petition.
 - Respondent has the right to notice, to be heard, to present evidence and to question witnesses.
 - If the Petitioner is a minor child or a vulnerable adult, the Court may examine the petitioner outside the presence of the parties. A record of such examination will be made and become part of the record.

- Petitioner's prior sexual activity or reputation is only admissible if it relates to the respondent and the respondent offers such evidence to show that the sexual conduct was consensual.

- The Court will not consider the following in making its determination:
 - The respondent was voluntarily intoxicated when any of the acts alleged occurred.
 - The petitioner was voluntarily intoxicated.
 - The petitioner engaged in limited consensual sexual touching with the respondent.
 - The petitioner did not report the respondent's conduct to law enforcement officials.

WHAT A SVPO CAN INCLUDE

- If the Court grants a SVPO, the Court can grant all of the following:
 - Restrain respondent from the Petitioner's residence, workplace, school or other institution where the petitioner may be
 - Prohibit the respondent from knowingly coming within, or knowingly remaining within a specified distance and location.
 - Order the respondent to relinquish to a police officer, or a Delaware federally licensed firearms dealer, the respondent's firearms and refrain the respondent from purchasing or receiving additional firearms for the duration of the Order.
 - Direct law enforcement to immediately search and seize any firearms or ammunition owned, possessed or controlled by the respondent.
 - Order the respondent to undergo a drug, alcohol, or mental health assessment approved by the Sex Offender Management Board.
 - Grant any other reasonable relief necessary or appropriate for the protection of the petitioner.
- The Court MUST inform the respondent that the respondent is entitled to 1 hearing to request termination of the SVPO and provide the form to request such a hearing to the respondent.

FORMS

Found at: <https://courts.delaware.gov/forms/>

Petition

Petition for Sexual Violence Protective Order (Non-Emergency and Emergency) [CIV_SV_03_A]

Addendum Sheet (to be attached to Petition, if needed) [CIV_SV_04_A]

Motion for Appointment of a Guardian ad Litem or Attorney [CIV_SV_05_A]

Forms – Service and Hearing Notice after Emergency Temporary SVPO

Request to Reschedule a Sexual Violence Protective Order Hearing [CIV_SV_09_A]

Forms – After Hearing

Petitioner’s Written Objections to Commissioner’s Proposed Findings and Recommendation after Hearing (Denial) [CIV_SV_12_A]

Respondent’s Written Objections to Commissioner’s Proposed Findings and Recommendation after Hearing (Granted) [CIV_SV_13_A]

Forms – Request to Terminate

Respondent’s Request to Terminate Sexual Violence Protective Order [CIV_SV_18_A]

Forms – Request to Extend Sexual Violence Protective Order

- Petitioner’s Request to Extend Sexual Violence Protective Order

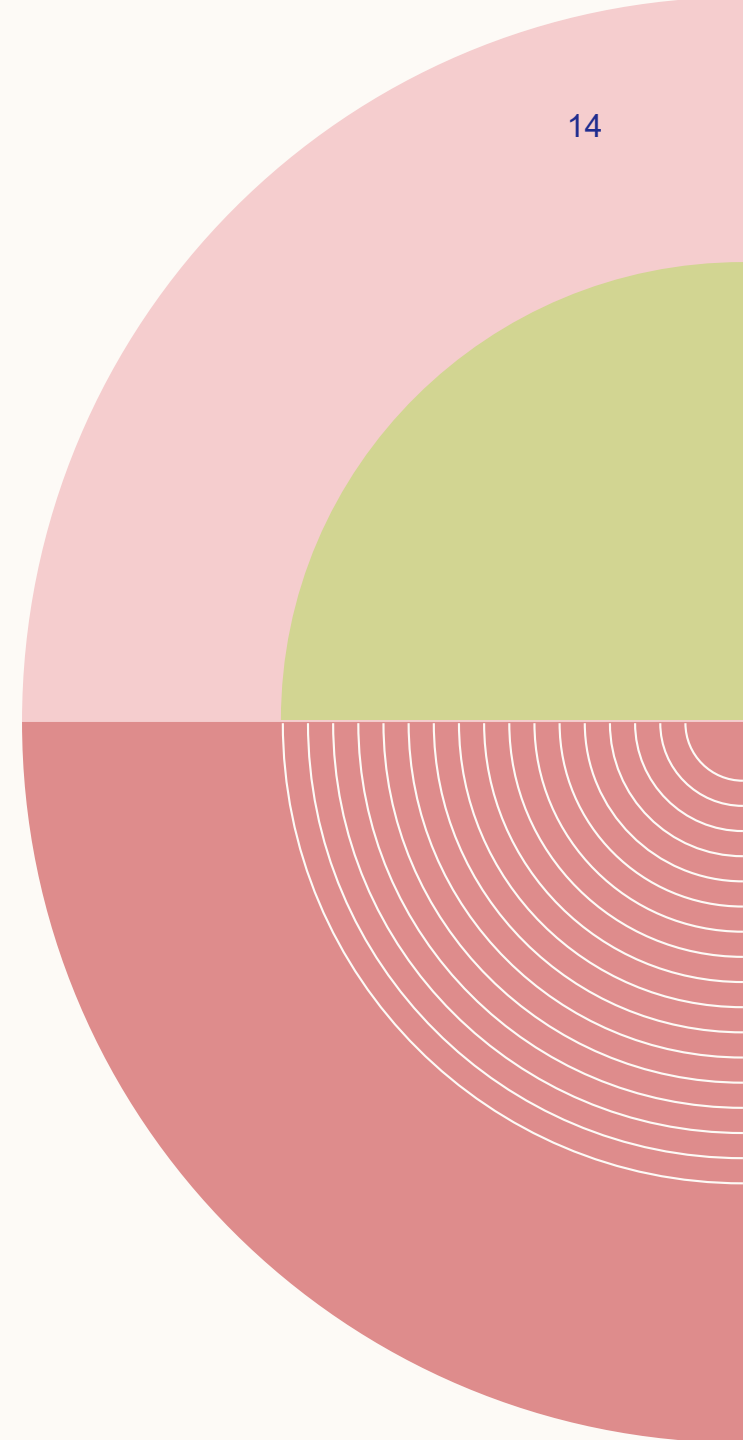
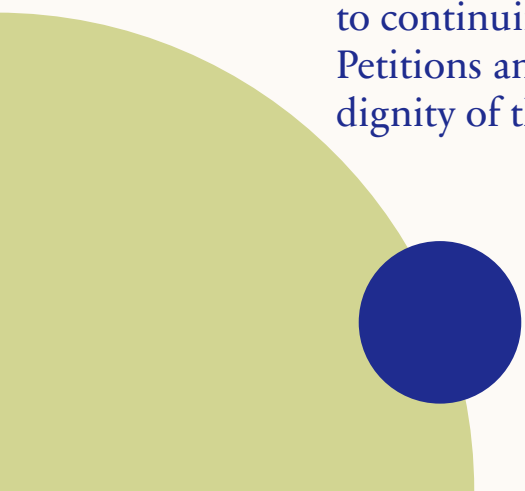
NUMBER OF PETITIONS FILED TO DATE

Total SVPO Petitions Filed Since April 2023

| | Emergency | Non-Emergency |
|--------------------------|---|---------------|
| New Castle County | 11 | 0 |
| Kent County | 1 | 0 |
| Sussex County | 3 | 0 |
| Outcomes | Granted: 10 Denied/ Dismissed: 5 (No jurisdiction, Petitioner did not show; elements not proven by a preponderance of the evidence) | |
| Statewide Filings | 15 | |

SUMMARY

Superior Court continues to work to address the everchanging Protection Order landscape. As the judicial officers handle more petitions and hearings, issues arise which require modifications to the forms. Never having handled this type of Protective Order before, the Superior Court used its best efforts to create its initial forms and orders. Now with the benefit of some limited experience, we are improving our processes and forms. The Superior Court is committed to continuing its efforts to handle Sexual Violence Protective Order Petitions and Hearings as expediently as possible while preserving the dignity of those that seek protection from the Court.



THANK YOU

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