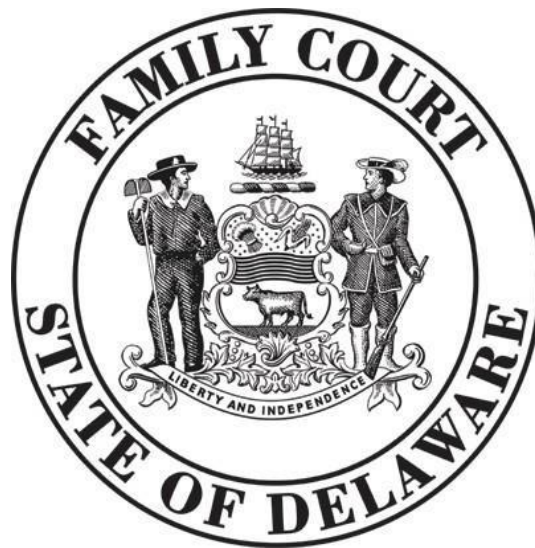


# PROTECTION FROM ABUSE (PFA) FAQ

A Guide for Protection from Abuse



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

## Who can file a Petition for Protection from Abuse?

You can file a PFA petition against any person with whom you have any of the following types of relationship:

- ✓ Spouse or former spouse
- ✓ Persons living together and holding themselves out as a couple (with or without a child in common),
- ✓ Persons living separate and apart but who have a child in common;
- ✓ Persons in a current or former dating relationship;\*
- ✓ \*This would be a person you “dated”, “went out with”, or were in a “courtship” with. You might call them your “boyfriend”, “girlfriend”, or “fiancé”, or maybe just a person you were “seeing” and spent time together in a potentially romantic way.
- ✓ Any of these family relationships:
  - Parent or child (including step- and in-law),
  - Brother or sister (including in-law),
  - Son or daughter (including in-law and where parental rights have been terminated),
  - Grandparent or grandchild; or
- ✓ Any other family member you are related to by blood, adoption or marriage but only if you reside “in one home under one head”.\*

\*For example, cousins renting separate rooms in a boarding house might not qualify. But those same cousins residing in the home of their grandparents would qualify.

In your petition you must describe the abuse your family member or intimate partner committed upon yourself, or upon your biological or adoptive child, or upon a child over which you have guardianship.\*

\*The Department of Services for Children, Youth and their Families (DSCYF) can also file a PFA petition alleging abuse of a child. The Division of Adult Protective Services (DAPS) can file a PFA petition alleging abuse of an impaired adult. DSCYF and DAPS petitions are uncommon.

# Abuse & Domestic Violence

**According to the law (10 Del. C. § 1041), ABUSE is:**

<b>A</b>	<b>Intentionally or recklessly causing or attempting to cause physical injury or a sexual offense, as defined in § 761 of Title 11;</b>
<b>B</b>	<b>Intentionally or recklessly placing or attempting to place another person in reasonable apprehension of physical injury or sexual offense to such person or another, including inflicting physical injury on any companion animal or service animal;</b>
<b>C</b>	<b>Intentionally or recklessly damaging, destroying or taking the tangible property of another person, including conduct that is directed toward any companion animal or service animal;</b>
<b>D</b>	<b>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;</b>
<b>E</b>	<b>Trespassing on or in property of another person, or on or in property from which the trespasser has been excluded by court order;</b>
<b>F</b>	<b>Child abuse, as defined in Chapter 9 of Title 16;</b>
<b>G</b>	<b>Unlawful imprisonment, kidnapping, interference with custody and coercion, as defined in Title 11; or</b>
<b>H</b>	<b>Maintaining overwhelming control over a person’s financial resources including withholding access to money or credit cards, forbidding attendance at school or employment, stealing, or defrauding of money or assets, exploiting resources for personal gain, or withholding food, clothing, necessary medications, or shelter.</b>
<b>I</b>	<b>Any other conduct which a reasonable person under the circumstances would find threatening or harmful.</b>
<b>J</b>	<p>Any of the following acts when used as a method of coercion, control, punishment, or intimidation of a person who has a close bond of affection to the companion animal:</p> <ul style="list-style-type: none"> <li>• inflicting or attempting to inflict physical injury on the companion animal.</li> <li>• engaging in conduct which is likely to cause the person to fear that the companion animal will be physically injured.</li> <li>• engaging in cruelty to the companion animal under Section 1325 of Title 11.</li> </ul>

**DOMESTIC VIOLENCE is when ABUSE happens within family and intimate partner relationships, including:**

<p><b>Spouse or former spouse;</b></p> <p><b>Persons living together as a couple;</b></p> <p><b>Persons living apart but who have a child in common;</b></p> <p><b>Persons who are or were in a dating relationship;</b></p> <p><b>Custodian (or guardian) and child;</b></p>	<p><b>Parent or child (including step- and in-law);</b></p> <p><b>Brother or sister (including in-law);</b></p> <p><b>Son or daughter (including in-law and even if parental rights have been terminated);</b></p> <p><b>Grandparent or grandchild; or</b></p> <p><b>Any persons related by blood, adoption or marriage living together as a family.</b></p>
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What's the difference between a PFA order entered **after a hearing\*** and a PFA order entered **by consent**?

## *Hearing ≠ Consent*



Petitioner must present evidence that Respondent committed abuse against the Petitioner or the Petitioner's minor child.
If abuse is not proven, the petition is dismissed and there is no PFA order.
The PFA order can be used in future hearings as evidence that abuse occurred.
The Commissioner decides the conditions to be included in the PFA order for how long it will be in effect.



No evidence needs to be presented. The Petitioner and the Respondent have agreed to the issuance of a PFA order.
A PFA order issues and the Court does not address whether or not abuse occurred.
The PFA order cannot be used as evidence of abuse in any future hearings.
The Petitioner and the Respondent agree to the conditions in PFA order and how long it will be in effect.

But, a PFA order after a hearing and a PFA order by consent are **EXACTLY the same** in these ways:

## *Hearing = Consent*



Respondent can be arrested and incarcerated for violating the order,
Respondent cannot possess firearms or ammunition, and
Petitioner and the Respondent cannot agree to revoke, modify or ignore the order but must file a motion and attend a hearing.

\*A **Default** PFA order is the same as an order after a hearing except the Respondent is not present.

# How long does a PFA order last?

## Temporary Orders

The initial duration of a **temporary ex parte order** is up to 15 days.

The order may be extended to up to 30 days if the PFA trial is rescheduled:

- To accomplish service of process on the Respondent, or
- At the request of a party for good cause.

## Permanent Orders

The “protective” provisions of a PFA order by **consent, default or after a full hearing** can last **up to 2 years and sometimes longer**. This includes:

- No further abuse;
- Stay 100 yards away from petitioner, residence and workplace;
- No contact (communication) of any kind; and
- No firearms, ammunition, or deadly weapons.

The protective provisions may be ordered for **more than 2 years** upon **consent** of the parties, or upon a finding of **aggravating circumstances** including:

**Physical Injury**  
**Use of a firearm**  
**Past DV convictions**  
**Repeated violations of prior PFAs**

**Any circumstance where there is an immediate and ongoing danger to the petitioner or any member of his/her household.**

“Ancillary” provisions in a PFA order **are limited to 1 year**. These include:

- Custody of and Visitation with children;
- Payment of Support; and
- Temporary Possession of homes and personal property.

## Extension and early termination

A PFA order of less than 2 years may be extended by the court after a hearing but can only exceed 2 years upon a finding of **aggravating circumstances**. A PFA order may be modified or rescinded by the court upon the request of either party but only after a hearing. The reconciliation of the parties has no effect on the duration, validity or enforceability of a PFA order.

THIS ABOVE INFORMATION IS A GENERAL SUMMARY OF LAWS, RULES AND PROCEDURES APPLICABLE TO PROCEEDINGS IN THE FAMILY COURT. ALL CASES ARE UNIQUE AND THE SPECIFIC APPLICATION IN YOUR CASE MAY BE DIFFERENT. This project was supported by Grant No. 2014-FJ-AX-K004 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

## What is child custody?

Child custody in Delaware refers to the parenting arrangement between two parents and a child they have together. It includes:

- Where a child resides,



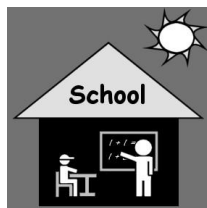
- The contact a child has with each parent,



- Each parent's access to information, and

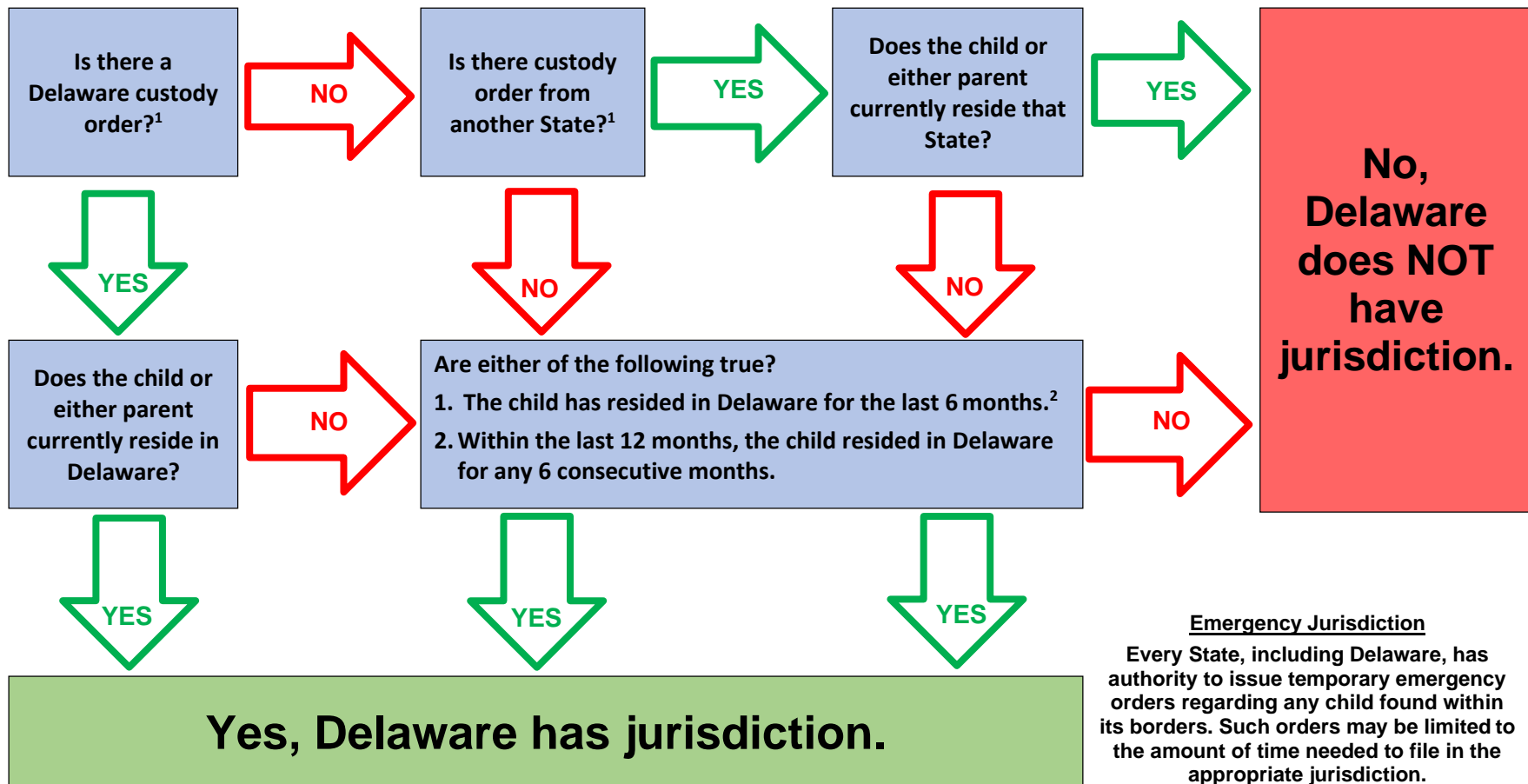


- The role of each parent in making important decisions in a child's life.



## Is Delaware the correct State in which to file my Petition for Child Custody?

(Uniform Child Custody Jurisdiction and Enforcement Act - UCCJEA)



1. This means the most recent final or permanent custody order.

2. Or, if the child is less than 6 months old, since birth.

# Best Interests Factors

When determining custody, the Judge must consider what is in the **BEST INTERESTS** of the child. A child's best interests are determined by consideration of the following:

- |   |  |
|---|--|
|    | <b>1 Both parents' wishes</b>  |
|    | <b>2 The child's wishes</b>  |
|    | <b>3 The child's relationships with parents, grandparents, siblings, stepparents and other residents of the households</b> |
|    | <b>4 The child's adjustment to his or her home, school and community</b>   |
|    | <b>5 The mental and physical health of all individuals involved</b>  |
|   | <b>6 Both parents' past and present compliance with their parental rights and responsibilities</b>                         |
|  | <b>7 Evidence of domestic violence</b>   |
|  | <b>8 The criminal history of both parents and any other resident of the households</b>                                     |

The Court may also consider:

<b>Parents' ability to communicate</b> <b>Parents' work schedules</b> <b>Proximity of home, school and daycare</b> <b>Child's previous contact with parents</b>	<b>Drug and alcohol history</b> <b>Number and age of siblings</b> <b>Prior parental interaction</b> <b>Housing arrangements</b>
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