

Civil Justice Protective Order Processes

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WHAT IS A PROTECTIVE ORDER?

Court Order requiring
the **Respondent** to **DO** or **NOT DO** certain things
in order to protect the health and safety of the Petitioner.

Scenario 1

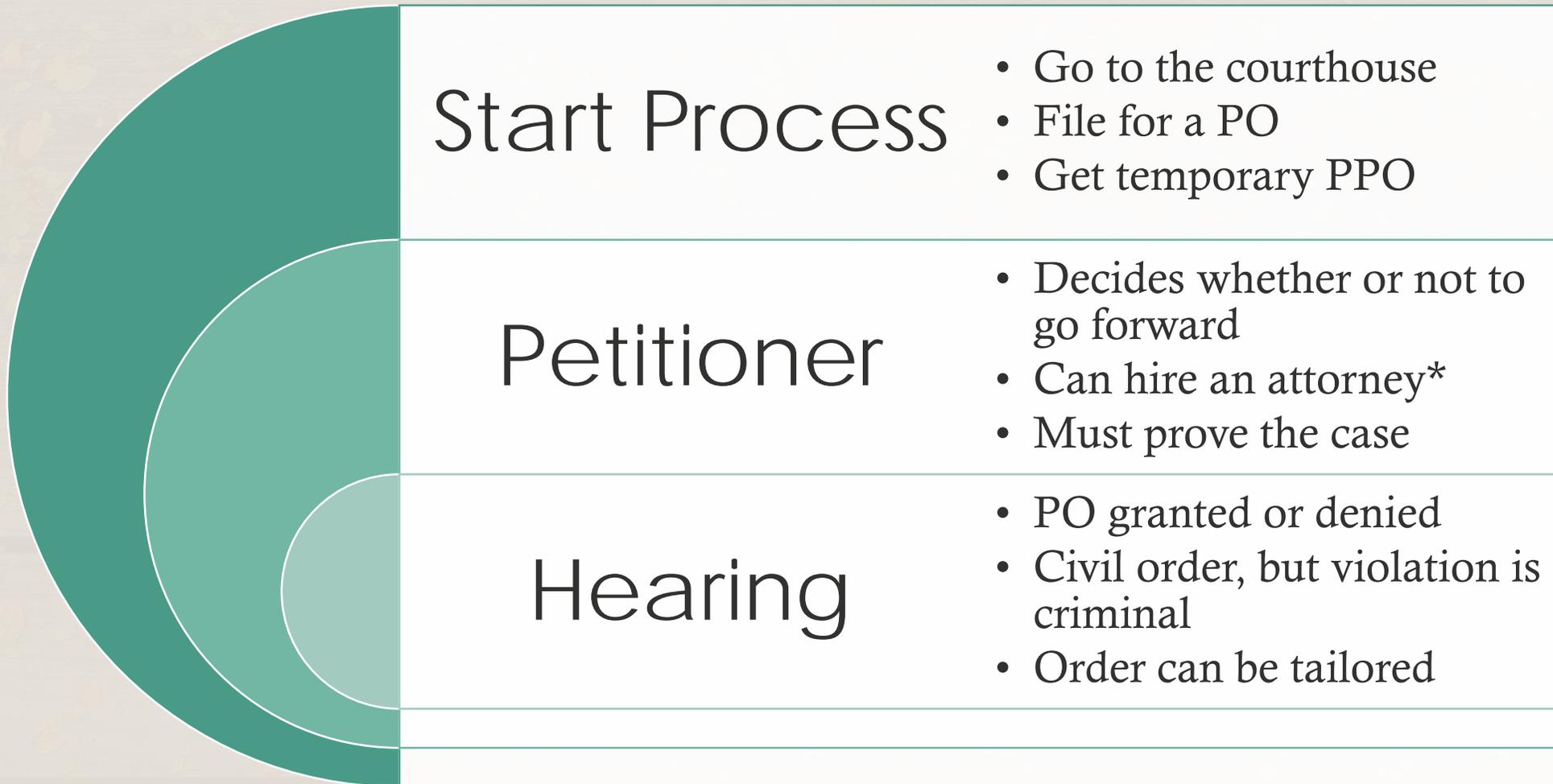
Mindy and Danny have been dating for two years and just moved in together two months ago. Last night, Danny got angry. He grabbed Mindy by the neck and told her he would kill her if she ever tried to leave him.

- What Legal Options are available to Mindy?
- How would you have that conversation with Mindy?

CRIMINAL



CIVIL



What is required to get a PO?

1) Act of “Family Abuse” or “Act of Violence, Force or Threat” Occurred Recently

2) Order is **NECESSARY** to protect the health and safety of the Petitioner

Which Court?

Juvenile
&
Domestic
Relations

- Family Abuse=Act of Violence, Force or Threat +
- Family or Household Member

General
District
Court

- Act of Violence Force or Threat
- No Relationship Necessary

FAMILY ABUSE

- ✓ any **act** involving *violence, force, or threat*,
- ✓ that *results in bodily injury* **or** places one in *reasonable apprehension of death, sexual assault, or bodily injury*.
- INCLUDES:
 - Forceful detention
 - Stalking
 - Sexual assault, or
 - Any criminal offense that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury.
- ✓ And is committed against Family or Household Member

STALKING

§18.2-60.3

- ✓ **Pattern of Behavior**
- ✓ **Intentional**
- ✓ **Causing Fear**
 - ✓ **Fear of what?**
 - death,
 - criminal sexual assault, or
 - bodily injury to that other person or to that other person's family or household member

Minors

- Need a “**next-friend**” (usually a Parent or Legal Guardian) to file for a Protective Order
- Minors can be Respondents, but you can’t get an EPO against a minor
- Note about Mandatory Reporting --
 - Dating Violence involving minors: don’t have to report
 - Violence against a minor where the abuser is a caretaker: may have to report

THREE PROTECTIVE ORDERS

72
HRS

EMERGENCY
§16.253.4

15 DAYS

PRELIMINARY
§16.253.1

TWO-YEAR
§16.279.1

Scenario 2

Olivia and Fitz have been married for three years and they have a one year old son, Huck. A week ago, Fitz got really drunk and pushed Olivia into a wall. Stunned at what he did, he left the house and hasn't returned.

Since then, he has been constantly texting and calling Olivia, apologizing, threatening suicide, and saying that if he can't have her no one can. One night he called her 28 times in a row until she turned off her phone.

Last night, he sent a text saying that he was coming over whether she liked it or not. She called her dad, Rowan, to come over. After Rowan got there, Fitz banged on the door repeatedly. He picked a brick and looked like he was going to throw it at the window. He said, "I'm going to smash all your windows out then I'm going to burn this place to the ground."

Olivia called the police.

THERE ARE FAR, FAR BETTER
THINGS AHEAD THAN
ANY WE LEAVE BEHIND.

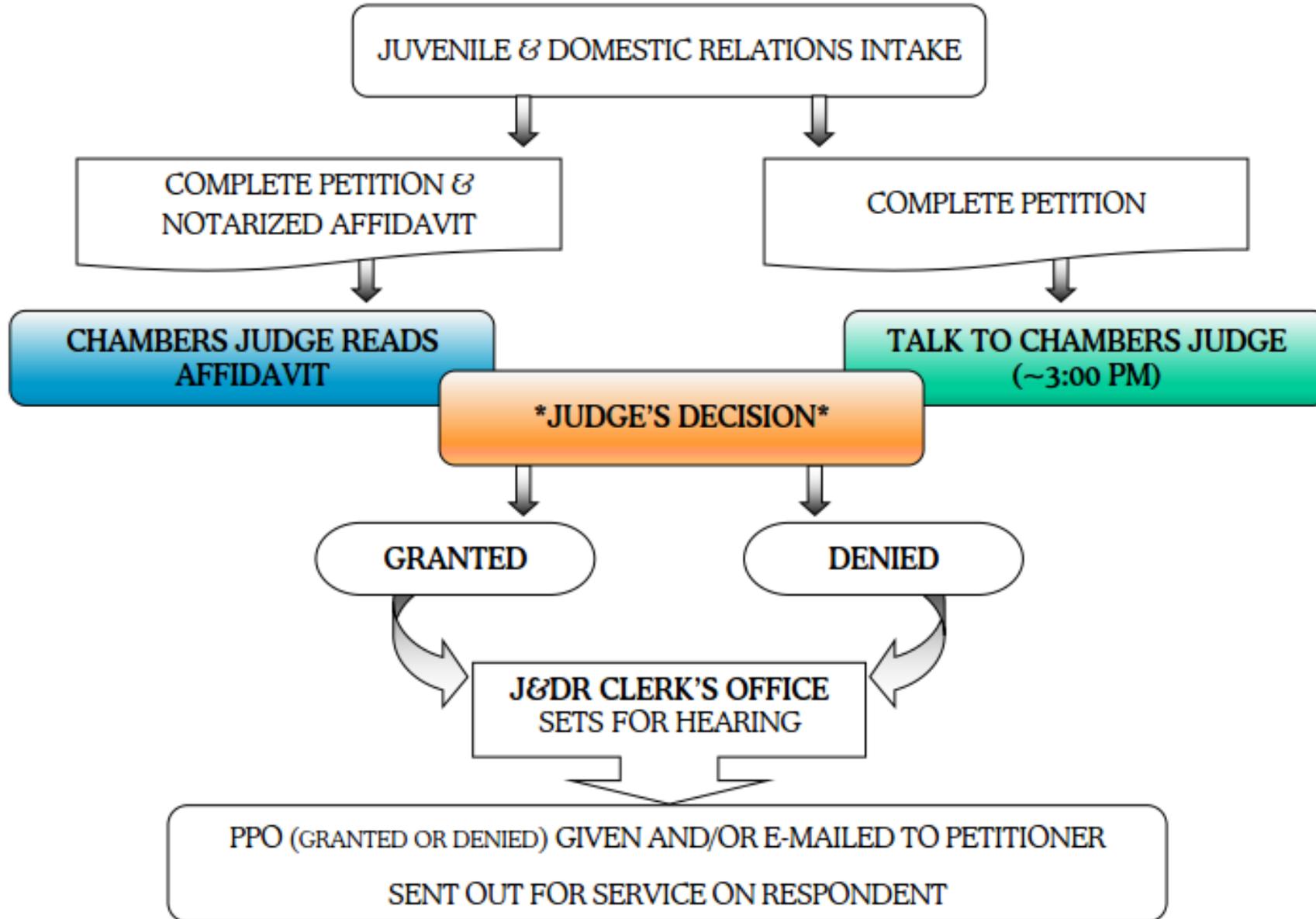
C.S. LEWIS



Emergency PO = TOURNIQUET

- Issued by magistrate, usually with officer involved
- Can be requested by officer or victim
- STANDARD: “*probable danger* of further acts of family abuse” or warrant issued
- Lasts roughly 72 hours or until courts open again
- Limited relief – contact, possession of residence

PROTECTIVE ORDER PROCESS



PPO = BAND-AID

- Issued by a judge (*filed in J&DR Intake*)
- Petitioner's sworn testimony (*written or oral*)
- **STANDARD:** family abuse recently occurred and *immediate and present danger* of family abuse
- Lasts no more than 15 days to start, but can be continued up to 6 months for service
- Can do a little more than EPO

PRELIMINARY PROTECTIVE ORDER – FAMILY ABUSE

Commonwealth of Virginia VA CODE § 16.1-253.1

Case No. _____
Hearing Date and Time: _____

Juvenile and Domestic Relations District Court

Extension of Preliminary Protective Order

PETITIONER

LAST FIRST MIDDLE

And on behalf of minor family or household members:
(list each name and date of birth)

PETITIONER'S DATE OF BIRTH

MO. DAY YR.

Other protected family or household members:
(list each name and date of birth)

v.

RESPONDENT

LAST FIRST MIDDLE

Petitioner's relationship to Respondent:

RESPONDENT IDENTIFIERS (IF KNOWN)

RACE	SEX	BORN			HT.	WT.	EYES	HAIR
		MO.	DAY	YR.	FT.	IN.		

SSN _____
DRIVER'S LICENSE NO. _____ STATE _____ EXP. _____

Distinguishing features: _____

CAUTION: Weapon Involved

THE COURT FINDS that it has jurisdiction over the parties and subject matter, and that

1. The Petitioner is a family or household member of the Respondent;
2. The Petitioner is, or has been, within a reasonable period of time, subjected to family abuse; and
3. In order to protect the health and safety of the Petitioner or any family or household member of the preliminary protective order is warranted.

Ex Parte Proceeding Only: The petition has been supported by an affidavit or sworn testimony before intake officer, and either the Petitioner is in immediate and present danger of family abuse or there is evidence to establish probable cause that family abuse has recently occurred so as to justify an *ex parte*

THE COURT ORDERS that:

The Respondent shall not commit acts of family abuse or criminal offenses that result in injury to person
 The Respondent shall have no contact of any kind with the Petitioner
 except as follows: _____

The Respondent shall have no contact of any kind with the family or household members of the Petitioner
 except as follows: _____

Additional terms of this order are set forth on page two.

FORM DC-67 (REVISED, PAGE ONE OF _____) (0/1)



It is further ORDERED as follows:

- The Petitioner is granted possession of the residence occupied by the parties to the exclusion of the Respondent. The residence is located at _____. The Respondent shall immediately leave and stay away from the residence; however, no such grant of possession shall affect title to any real or personal property.
- The Respondent shall not terminate Respondent shall restore necessary utility service(s) to the premises indicated above, specifically, _____ (UTILITY SERVICE(S)).
- The Petitioner is granted temporary exclusive possession or use of a motor vehicle jointly owned by the parties or owned by the Petitioner alone, described as follows: _____. Such grant shall not affect title to the vehicle.

Case No. _____

PRELIMINARY PROTECTIVE ORDER – FAMILY ABUSE

Commonwealth of Virginia VA CODE § 16.1-253.1

Case No. _____

Hearing Date and Time: _____

Juvenile and Domestic Relations District Court

Extension of Preliminary Protective Order

PETITIONER

LAST FIRST MIDDLE

And on behalf of minor family or household members:
(list each name and date of birth)

PETITIONER'S DATE OF BIRTH

MO. DAY YR.

Other protected family or household members:
(list each name and date of birth)

v.

RESPONDENT

LAST FIRST MIDDLE

Petitioner's relationship to Respondent:

DRIVER'S LICENSE NO. _____ STATE _____ EXP. _____

RESPONDENT'S ADDRESS _____

CAUTION: Weapon Involved

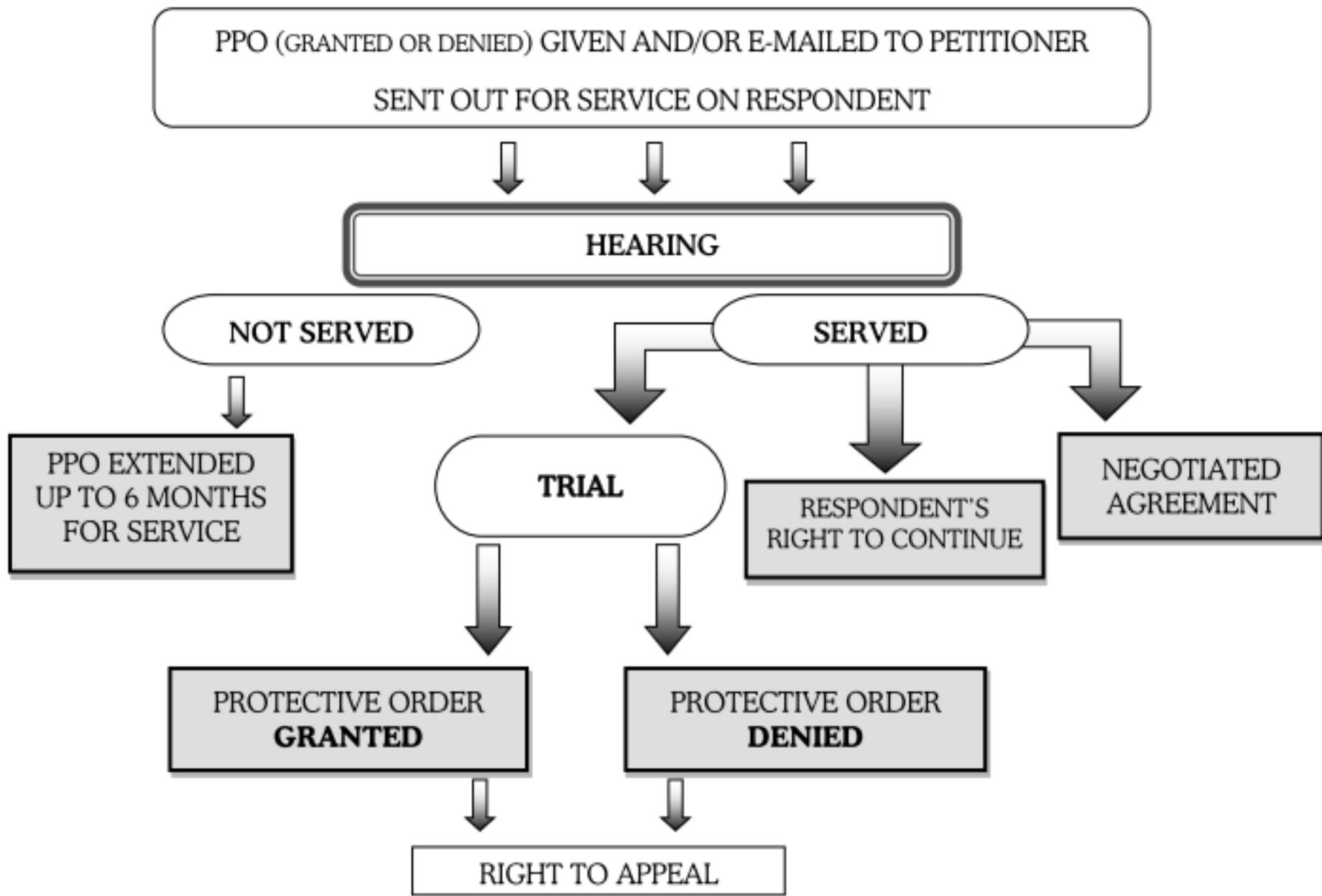
RESPONDENT IDENTIFIERS (IF KNOWN)

RACE	SEX	BORN			HT.	WT.	EYES	HAIR
		MO.	DAY	YR.	FT.	IN.		

SSN _____
DRIVER'S LICENSE NO. _____ STATE _____ EXP. _____

Distinguishing features: _____

THE COURT FINDS that it has jurisdiction over the parties and subject matter, and that



Final PO = SURGERY & STITCHES

- Issued by a judge
- Respondent **MUST** have opportunity to be heard
- **STANDARD:** preponderance of the evidence that family abuse occurred and PO is necessary to protect health and safety
- Lasts up to 2 years
- Lots of relief, tailored to individual family

PROTECTIVE ORDER – FAMILY ABUSE

Commonwealth of Virginia VA. CODE § 16.1-279.1

Case No. _____

- [] Circuit Court
[] Juvenile and Domestic Relations District Court

- [] Amended Protective Order [] Extension of Protective Order [] Conviction for Violation of Protective Order

PETITIONER and PETITIONER'S DATE OF BIRTH fields with sub-fields for LAST, FIRST, MIDDLE.

RESPONDENT and RESPONDENT IDENTIFIERS (RACE, SEX, BORN, HT., WT., HAIR, EYES, SKIN) fields.

THE COURT FINDS that it has jurisdiction over the parties and subject matter, that the Respondent was notified and an opportunity to be heard, AND that the Petitioner has proven the allegation of family abuse of the evidence, a motion to modify or extend a protective order was properly before the court, or the Respondent was convicted of a violation of a protective order pursuant to Va. Code § 16.1-253.2.

Accordingly, to protect the health and safety of the Petitioner and family or household members of the Petitioner, the court orders that:

- [] The Respondent shall not commit acts of family abuse or criminal offenses that result in injury to person or property.
[] The Respondent shall have no contact of any kind with the Petitioner [] except as follows:
[] The Respondent shall have no contact of any kind with the family or household members of the Petitioner [] except as follows:
[] Additional terms of this order are set forth on page two.

THIS ORDER SHALL REMAIN IN FULL FORCE AND EFFECT UNTIL MONTHS DAY

WARNINGS TO RESPONDENT: (See additional warnings to Respondent on page two.) Full Faith and Credit: This order shall be enforced, even without registration, by the courts of any state, Columbia, and any U.S. Territory, and may be enforced on Tribal Lands (18 U.S.C. § 2265). Federal Offenses: Crossing state, territorial, or tribal boundaries to violate this order may result in federal (18 U.S.C. § 2262). Federal law provides penalties for possessing, transporting, shipping, receiving or purchasing a firearm or ammunition while subject to a qualifying protective order and under the circumstances specified in § 922(g)(8). Only the court can change this order.

It is further ORDERED as follows:

- [] The Petitioner is granted possession of the residence occupied by the parties to the exclusion of the Respondent. The residence is located at [] The Respondent shall immediately leave and stay away from the residence; however, no such grant shall affect title to any real or personal property.
[] Until further order, being necessary for the protection of the Petitioner and family or household members of the Petitioner, [] temporary custody of [] temporary visitation with [] is as follows:
[] The Respondent shall not terminate [] Respondent shall restore necessary utility service(s) to the residence indicated above, specifically, [] (UTILITY SERVICE(S)).
[] The Petitioner is granted temporary exclusive possession or use of a motor vehicle jointly owned or owned by the Petitioner alone, described as follows: [] Such grant shall not affect the Respondent's driver's license.
[] The Respondent shall provide suitable alternative housing for the Petitioner [] and family or household members as follows: []
[] The Respondent shall pay deposit(s) to connect or restore necessary utility service(s) in the alternative as follows: [] (UTILITY SERVICE(S)).
[] The Respondent shall participate in the following treatment, counseling or other program: [] (PROGRAM NAME AND ADDRESS).
[] It is further ordered that []
[] Supplemental Sheet to Protective Order, Form DC-653, attached and incorporated by reference. Number of supplemental pages []
DATE JUDGE

ADDITIONAL WARNINGS TO RESPONDENT: Pursuant to Code of Virginia § 18.2-308.1-4, Respondent shall not purchase or transport any firearm while in possession of this order. If Respondent has a concealed handgun permit, Respondent must immediately surrender the permit to the court issuing this order. If Respondent violates the conditions of this order, Respondent may be sentenced to pay a fine. This order will be entered into the Virginia Criminal Information Network. Either party may at any time request a hearing to dissolve or modify this order; however, this order remains in full force until dissolved or modified by the court.

DEFINITIONS: "Family abuse" means any act involving violence, force, or threat that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury. "Family or household member" means (i) the person's spouse, whether or not he or she resides in the same home with the person, (ii) the person's former spouse, whether or not he or she resides in the same home with the person, (iii) the person's parents, stepparents, children, stepchildren, brothers, sisters, half-brothers, half-sisters, grandparents and grandmothers, (iv) the person's mother-in-law, father-in-law, brothers-in-law and sisters-in-law who reside in the same home with the person, (v) any individual who has a child in common with the defendant, whether or not the person and that individual have resided together at any time, or (vi) any individual who cohabits or who, within the previous twelve months, cohabited with the person, and any children of either of them residing in the same home with the person.

Case No. _____

TEMPORARY SUPPORT ORDER - PROTECTIVE ORDER – FAMILY ABUSE COMMONWEALTH OF VIRGINIA Va. Code § 16.1-279.1 A1

Case No. _____

- [] Circuit Court
[X] Juvenile and Domestic Relations District Court

PETITIONER/PLAINTIFF and RESPONDENT fields with sub-fields for LAST, FIRST, MIDDLE, DATE OF BIRTH OF PETITIONER, RESPONDENT'S ADDRESS.

Table with columns: NAME, SOC. SEC. # (Last 4 Digits only), SEX, DATE OF BIRTH, RELATIONSHIP TO RESPONDENT.

The court finds that the following dependents: []

Therefore, the court ORDERS Respondent to pay \$ [] per month for all children listed above payable \$ [] per [] beginning on [] to be paid as follows []

This temporary child support order will terminate once a separate order to pay child support has been entered pursuant to § 20-108.1.

08/09/2011 DATE JUDGE



“Act of Violence” PO in GDC can:

- Prohibit **acts** of violence, force or threat
- Prohibit **contact** with the petitioner or family or household members
- (Catch-all) Grant **other relief** necessary to prevent:
 - acts of violence, force or threat
 - criminal acts that may result in injury to person or property
 - communication or contact of any kind by the respondent.

Family Abuse PO Can:

- Prohibit **acts** of family abuse
- Prohibit **contact** with the petitioner or family or household members
- Grant the petitioner possession of the **residence**
- Stop the respondent from terminating necessary **utility service** to the residence
- Grant the petitioner possession or use of a **vehicle**, and require Respondent maintain insurance and tags
- Require the respondent to provide suitable alternative housing
- Order the respondent to participate in **treatment** programs
- Grant any other relief necessary, including temporary **custody** or visitation
- Grant possession of **pets**
- Grant temporary **child support**

All Protective Orders

- Entered into Virginia Criminal Information Network (VCIN) database immediately.
- **Firearms:**
 - Federal law does not permit a person subject to a protective order to **possess, sell, or transport** firearms.
 - Virginia law does not permit a person subject to a protective order to **sell or transport** firearms.
- Petitioner may keep her address **confidential**.
- Protective orders are afforded full faith and credit in other states.

Full Faith & Credit

18 U.S.C. §2265 and §2266 – VAWA provisions

- Applies to all POs consistent with VAWA
- Petitioner **does NOT need to register** the PO in the new jurisdiction
- If Petitioner does register the PO, Respondent is **not** notified
- Provisions enforced according to laws of issuing state

Modifying the Protective Order

- At any point during the two years, either party can file a Motion to Amend or Modify the Protective Order
- Must be personal service
- Protective order will be changed to **protect the health and safety of the petitioner**
- If Commonwealth's Attorney was involved in getting the PO, they need to agree

§ 16.1-253.2, penalties

In addition to any other penalty provided by law, any person who violates any provision of a protective order issued pursuant to §§ 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-278.14, 16.1-279.1 or subsection B of § 20-103

- Which **prohibits such person from going or remaining upon land, buildings or premises** or
- from **further acts of family abuse**, or
- Which **prohibits contacts** between the respondent and the respondent's **family or household member** as the court deems appropriate

is guilty of a **Class 1 misdemeanor**.

§ 16.1-253.2, penalties

- Enter the home of a protected party while the party is present (or lie in wait) = class 6 felony.
- In no case shall the entire term of confinement imposed be suspended.
- Multiple convictions, longer minimum jail time.
- Upon conviction, the court **SHALL** enter a new PO for up to two years from the date of conviction.

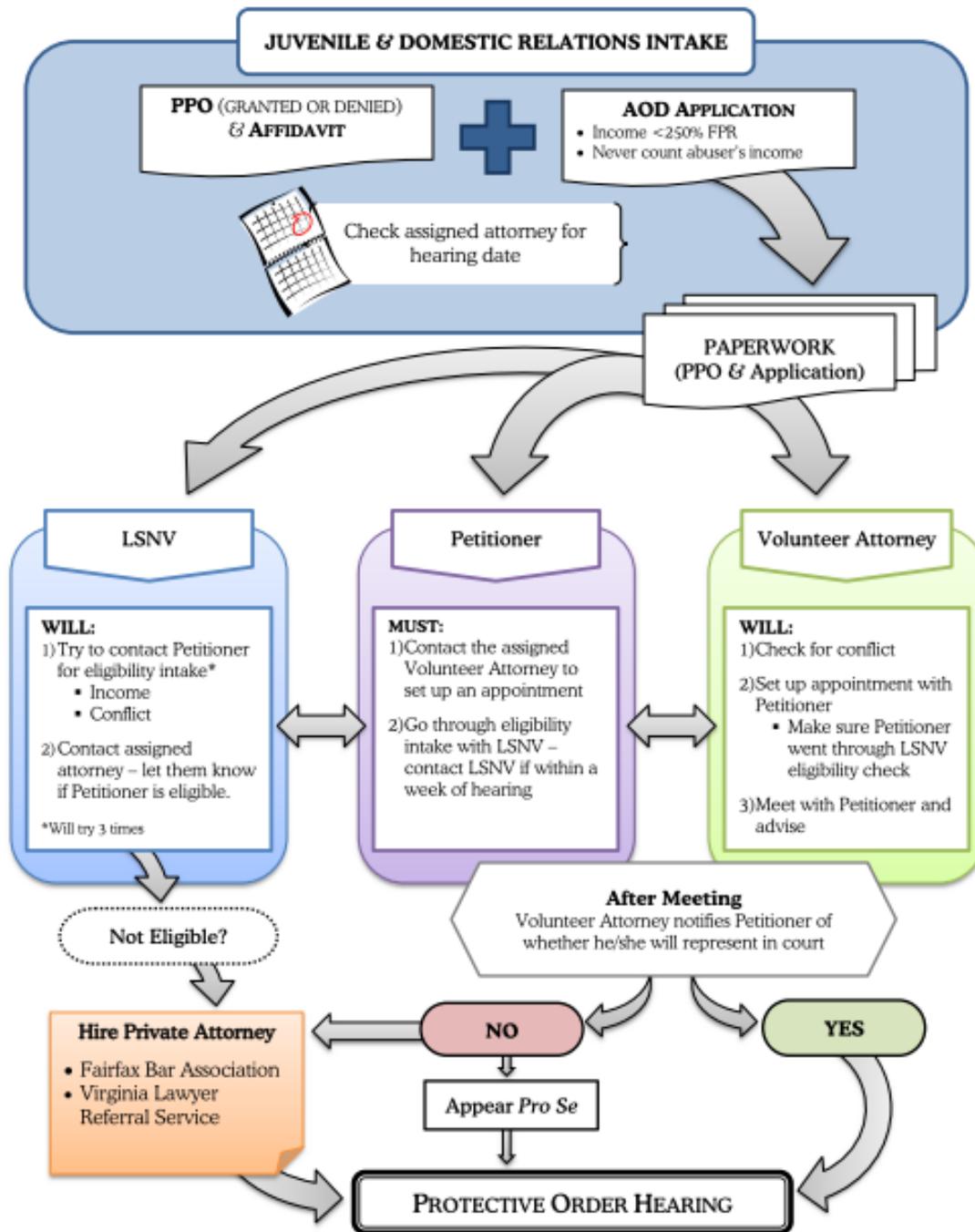
Extending a Protective Order

- Protective orders may also be renewed for periods **up to two years**.
- **Prior to the expiration** of the protective order, the petitioner may file a **written motion** requesting a **hearing** to extend the order.
 - Try to file at least 6 weeks before expiration
- Extensions are authorized to **protect the health and safety of the petitioner**.

Advocate of the Day (DVAC)

- Community-based advocates from DVAC
- Scheduled rotation in the J&DR Intake offices
- Provide safety planning, counseling, and emotional support; help navigate the system

FAIRFAX ATTORNEY OF THE DAY PROGRAM



Attorney of the Day Program

- Uses volunteer lawyers and staff attorneys from LSNV
- Always FREE to the client
- Clients must be low-income (limited exceptions)
- Immigration status doesn't matter for DV victims
- CONTACT: (703) 778-6800 / dvprobonoffx@lsnv.org

Other Legal Help Available

- **FAIRFAX BAR ASSOCIATION**

- (703) 246-3780

- Online application @ www.fairfaxbar.org

- **MODEST MEANS**

- Applicants screened by LSNV intake (703) 778-6800

- If eligible, given a code, then call FFX Bar

Violation of a Family Abuse PO

Virginia Code § 16.1-279.1:D states:

*“Except as otherwise provided in § 16.1-253.2, a violation of a protective order issued under this section shall constitute **contempt of court.***

CONTACT INFORMATION

If you have any questions, please contact LSNV:

dvprobonoffx@lsnv.org

Nora Mahoney, Family Law Practice Group Chair:
(703) 504-9149, nmahoney@lsnv.org

General LSNV Intake: (703) 778-6800

