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**A Comparison of Selected Aspects of Civil Domestic  
Violence Orders of Protection  
Maryland and Its Neighbors**

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**October 2008**

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## **Introduction**

According to statistics on intimate partner violence released in 2007 by the Bureau of Justice Statistics, between 1993 and 2005, the rate of non-fatal intimate partner violence declined by more than half nationwide, from a rate of 5.3 incidents per 1,000 persons aged 12 or older, to a rate of 2.3 incidents per 1,000 persons aged 12 or older. Homicides involving intimates have also declined during the same period. The total number of homicides involving female intimates declined from 1,568 in 1993 to 1,181 in 2005, about a 24.0 percent reduction. For male intimate victims, the decline in homicides was even greater, with a 48.0 percent reduction as the 638 homicides in 1993 declined to 329 in 2005.

The national reductions in non-fatal violence and homicidal violence mirrored overall national trends indicating fewer violent crimes. As a result, it is not clear whether the declines in intimate partner violence resulted from the efforts to increase awareness of, and protections against, domestic violence or whether the declines occurred in spite of these efforts as violent crime has generally trended downward. In Maryland, reported domestic violence mirrored the national downward trend in calendar 2007 with the 19,931 reported incidents representing an 11.7 percent reduction compared to the 21,965 reported incidents in calendar 2006.

While some progress in the reduction of reported domestic violence is evident over the last 10 years, Congress, as recently as 2005, during consideration of the Violence Against Women Act reauthorization, still found that almost half of American women report suffering physical and/or sexual abuse by a husband or boyfriend at some point in their lives. Everyday, more than 500 women and men call the National Domestic Violence Hotline for assistance in coping with family violence. About 60 percent of those callers indicate that they had not called police or any other support services before calling the hotline.

Once a victim decides to use support services to escape an abusive situation, among the most visible of those services is what is generically referred to as a civil domestic violence order of protection (DVOP). A DVOP is issued by a court pursuant to a petition made by a person (petitioner) who believes that he or she has been a victim of domestic violence. While short-term orders may be issued without hearing from the alleged abuser (respondent), those DVOPs that are regarded as long-term, final, or even permanent, are issued only after a hearing that includes the opportunity for both the petitioner and respondent to be heard and often includes testimony from family, friends, or other witnesses.

A national study on the effectiveness of DVOPs, completed by the National Institute of Justice and the National Center for State Courts in 1998, found that abuse victims who petitioned for DVOPs believed that they did provide some protection and helped restore some sense of empowerment and well-being. The generally favorable view of abuse victims toward the

usefulness of DVOPs depended, however, on the specificity of the order, the resources allocated toward enforcement, and the existing network of community, as well as legal, support services.

In Maryland, during the 2008 legislative session, numerous bills on various aspects of DVOPs were considered. Ultimately, legislation was enacted that would authorize the entry of a permanent (that is, for the lifetime of the respondent) DVOP if the respondent had previously been convicted of and served a term of imprisonment of at least five years for specified violent crimes against the person requesting the order, including first degree assault, sexual assault, and attempted murder. Also, a law was enacted that would authorize a judge to order a law enforcement officer to use all reasonable and necessary force to return custody of a child to the person who has been granted temporary custody under a DVOP. In spite of this and other legislative enactments, Maryland has been subject to criticism by victims' rights advocates for being less aggressive in protecting the rights of domestic violence victims than other states. Balanced against the demand for broader protections for domestic violence victims is the concern about the diminution of civil liberties that occurs as the government is given more authority to question, search, and detain citizens upon suspicion of wrongdoing.

In this paper, certain aspects of laws regarding DVOPs are compared among Maryland and the neighboring jurisdictions of the District of Columbia, Delaware, New Jersey, New York, Pennsylvania, and Virginia. For purposes of this paper, "domestic violence" includes acts of intimidation; harassment; stalking; assault; sexual assault; murder or attempted murder; or putting someone who is a spouse, family or household member, intimate partner, or person with whom the alleged abuser has or had a child in reasonable fear of the abovementioned acts. The aspects selected for comparison are as follows:

- arrest policies;
- relationships covered by a DVOP;
- burden of proof required to obtain a DVOP;
- surrender of firearms; and
- duration of a DVOP.

While states issue what may be called preliminary, temporary, or interim protective or restraining orders *ex parte* (considering only the testimony of the petitioner) or pursuant to a hearing, the focus of this paper, unless otherwise indicated, is on those long-term DVOPs that are regarded as final or permanent and may only be issued after a hearing has occurred at which both the petitioner and the respondent receive notice and the opportunity to be heard and present testimony.

## Arrest Policies

The circumstances under which a person accused of domestic violence should be detained represents one of the most controversial areas of domestic violence policy – an area in which a victim’s right to be free from abuse runs right into an accused’s right to be free from unreasonable search, seizure, and detention. Victims’ rights advocates have argued for mandatory arrest of an alleged abuser when a credible charge of abuse has been levied because leaving the accused in the home after such a charge can be very dangerous for the person making the accusation and others in the household. On the other hand, civil libertarians have cautioned that the power of government to detain a person and remove that person from his/her home is subject to abuse and it is restraint in using the power to arrest that separates a democratic government from a police state. **Exhibit 1** shows the laws of mid-Atlantic jurisdictions governing arrest upon allegations of domestic violence.

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### Exhibit 1 Domestic Violence Arrest Laws

<u>State/Jurisdiction</u>	<u>Mandatory Arrest</u>	<u>Discretionary Arrest</u>
Delaware		X
District of Columbia	X	
<b>Maryland</b>		<b>X</b>
New Jersey	X	
New York	X	
Pennsylvania		X
Virginia	X	

Source: American Bar Association; National Institute of Justice; *District of Columbia Official Code*; *Delaware Code Annotated*; *Maryland Code Annotated*; *New Jersey Permanent Statutes*; *McKinney’s Consolidated Laws of New York*; *Purdon’s Pennsylvania Statutes and Consolidated Statutes*; *Annotated Code of Virginia*

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In the mid-Atlantic region, the states are evenly split between authorizing arrest in the discretion of law enforcement and mandating arrest by law enforcement upon a domestic abuse allegation, with the District of Columbia joining those states with mandatory arrest policies. Generally, those states with mandatory arrest policies require police to arrest an accused abuser if the officer directly witnesses evidence of physical injury or a dangerous situation, including the presence of weapons, or there is probable cause to believe that a domestic violence offense occurred. Even those jurisdictions with mandatory arrest policies also establish discretionary authority for a police officer to arrest if the officer does not directly observe evidence of physical injury or a threatening situation.

In the District of Columbia, the police are required to arrest if there is probable cause to believe that an intrafamily offense occurred that was intended to cause a reasonable fear of

imminent serious injury or death. New Jersey mandates arrest if there is probable cause that domestic violence occurred with either (1) the victim showing signs of injury; or (2) probable cause to believe that a weapon was involved. In New York, law enforcement must make an arrest if there is probable cause to believe that a felony or misdemeanor has been committed against a household member; although, in the case of a misdemeanor, a victim may request that the accused not be arrested. In Virginia, police must make an arrest if there is probable cause to believe that an assault or battery occurred against a family or household member.

Delaware authorizes police to use their discretion to arrest an alleged abuser if there are reasonable grounds to believe a person has committed a misdemeanor involving an injury or threat of injury, illegal sexual contact, or attempted sexual contact. In Maryland, a police officer may arrest an accused abuser without a warrant if (1) there is probable cause to believe that (i) the accused battered a household member, (ii) there is evidence of physical injury, and (iii) unless the person is arrested immediately, the accused may escape apprehension, cause injury or property damage, or tamper with, dispose of, or destroy evidence; and (2) a report to the police was made within 48 hours of the incident. In Pennsylvania, if police believe that the accused committed involuntary manslaughter, reckless endangerment, aggravated assault, harassment, or threats, they may arrest without a warrant even if the offense was not directly witnessed by the officer; however, the officer must have observed evidence of recent physical injury or other corroborative evidence.

## **Eligibility for DVOPs**

While the statutory language employed by mid-Atlantic jurisdictions differ, the individuals who may petition for DVOPs generally include those who claim to have suffered abuse and are spouses or former spouses of an alleged abuser; are part of the immediate family of an alleged abuser by blood, marriage, or adoption; are minors or vulnerable adults who are in the same household as the alleged abuser; are in heterosexual, intimate relationships where cohabitation takes or took place; and are having or have had a child in common with the alleged abuser, whether or not currently cohabitating. The acknowledgement by some states of same-sex intimate relationships, at least for some purposes, has raised questions about whether DVOPs may be granted to people in same-sex relationships who allege abuse.

While the applicability of DVOPs to same-sex couples is not always clearly stated in state law, **Exhibit 2** shows the apparent eligibility of same-sex couples for DVOPs in the mid-Atlantic region when allegations of abuse are made.

## Exhibit 2

### Same-sex Partner Eligibility for DVOPs

<u>State/Jurisdiction</u>	<u>Statute Qualifies Same-sex Partners for DVOP</u>	<u>Statute Disqualifies Same-sex Partners for DVOP</u>	<u>Statute Is Silent</u>
Delaware			X
District of Columbia	Yes		
<b>Maryland</b>	<b>Likely</b>		<b>X</b>
New Jersey	Yes		
New York	Yes		X
Pennsylvania	Yes		
Virginia		Likely	X

Source: American Bar Association; *District of Columbia Official Code*; *Delaware Code Annotated*; *Maryland Code Annotated*; *New Jersey Permanent Statutes*; *McKinney's Consolidated Laws of New York*; *Purdon's Pennsylvania Statutes and Consolidated Statutes*; *Annotated Code of Virginia*

In Delaware, while state law recognizes that an abuser could be a person in a current or former substantive dating relationship, or a person who is part of a cohabitating couple, the statutory definition of a domestic violence victim is limited to a person who is part of one or more of an enumerated list of relationships. Accordingly, state law does not specifically address the eligibility of same-sex couples, and case law has not clarified their status. In the District of Columbia, not only are domestic partners eligible for DVOPs, but a person in a romantic, not necessarily sexual, relationship may qualify for a DVOP. Maryland's statutory language does not specifically address the status of same-sex couples, but it does grant eligibility to those who have had a sexual relationship and have lived together for at least 90 days within one year before the filing of a DVOP petition, making it likely that a member of a same-sex couple is eligible for a DVOP. In New Jersey, common law has specifically extended DVOP eligibility to current or former household members and those in a dating relationship. Also, since civil unions for same-sex couples grant virtually all the rights of marriage, spousal eligibility for DVOPs would extend to same-sex couples united by civil unions, which are recognized there. While New York's statutory language does not specifically address same-sex relationships, eligibility is granted generally to those who have been in an intimate relationship. Pennsylvania's statutory language also does not specifically address same-sex couples, but the language that accords eligibility to those who have lived as current or former spouses and current or former sexual partners has been held by case law to include same-sex couples. Virginia's statutory language is silent on the eligibility of same-sex couples and does protect those who have been, or currently are, cohabitating. However, an amendment to the Constitution of Virginia, approved in 2006, prohibits the Commonwealth or its political subdivisions from recognizing a legal status for unmarried individuals that intends to approximate the qualities, significance, or effects of

marriage. In addition, in 1994, the Attorney General issued an opinion specifically advising that the term “cohabitate” means living together as husband and wife and specifically excludes gay, lesbian, bisexual, transgender, or roommate relationships.

Exhibit 2 also shows that Maryland, and a majority of states in proximity to Maryland, either specifically or apparently would accord eligibility for DVOPs to those who are, or have been, in intimate relationships with others of the same sex. Virginia is the only state that appears not to authorize the issuance of DVOPs to those in same-sex couples who allege abuse.

## **Burden of Proof**

Establishing eligibility for the issuance of a DVOP is only one of many steps to the actual granting of an order. Once a victim of alleged abuse is able to successfully file a petition for a DVOP, that person bears the burden of proving that abuse has occurred and that the issuance of a DVOP is necessary to put the respondent on notice that specific abusive behaviors must cease. As the proceedings to consider DVOPs are usually regarded as civil proceedings, the burden of proof allocated to the petitioner is usually preponderance of the evidence or the clear and convincing evidence standard. The least demanding burden of proof for civil cases is preponderance of the evidence, which has been described as requiring evidence sufficiently strong to establish that a fact is “more likely true than not true” or “more probable than not”; to constitute the “greater weight” of the evidence; or to amount to at least 51 percent of the evidence. The next most stringent burden is the clear and convincing evidence standard. This burden of proof requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt. To be clear and convincing, evidence should be “clear” in the sense that it is certain, plain to the understanding, and unambiguous and “convincing” in the sense that it is so reasonable and persuasive as to cause the trier of fact to believe it. The most stringent burden is beyond a reasonable doubt. The constitutional guarantee of due process requires the State to meet this standard of proof in criminal and juvenile delinquency cases.

**Exhibit 3** shows the burden of proof allocated to a petitioner for a DVOP in the mid-Atlantic region.

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### Exhibit 3 Burden of Proof for DVOPs

<u>State/Jurisdiction</u>	<u>Preponderance of Evidence for DVOP Issuance</u>	<u>Clear and Convincing Evidence for DVOP Issuance</u>	<u>Other Burden</u>
Delaware	X		
District of Columbia			X (For good cause shown)
<b>Maryland</b>		<b>X</b>	
New Jersey	X		
New York	X		
Pennsylvania	X		
Virginia	X		

Source: *District of Columbia Official Code*; *Delaware Code Annotated*; *Maryland Code Annotated*; *New Jersey Permanent Statutes*; *McKinney's Consolidated Laws of New York*; *Purdon's Pennsylvania Statutes and Consolidated Statutes*; *Annotated Code of Virginia*

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As can be seen from Exhibit 3, most states in the mid-Atlantic region impose a burden of proof of preponderance of the evidence for the issuance of a DVOP, rather than the more stringent clear and convincing evidence standard that is imposed in Maryland. The only other jurisdiction with a standard that differs from preponderance of the evidence is the District of Columbia, where judges may issue a final protective order for good cause shown. This standard accords a great deal of discretion to the court when deciding on a DVOP. It could be argued that this standard may require even less of a burden than the preponderance standard since the petitioner could meet the burden by merely offering a good reason for the DVOP issuance. The good cause standard does not, in and of itself, require the court to weigh or compare any proffered evidence from the respondent. On the other hand, a court could certainly engage in that kind of comparison under this standard. In any event, even if that kind of comparison took place, it would still not require the substantial level of persuasive evidence needed to meet Maryland's clear and convincing evidence standard.

### Surrender of Firearms

While it is true that in calendar 2007, the incidence of domestic violence in Maryland dropped nearly 12 percent compared to the previous calendar year, at the same time, homicides attributed to domestic violence incidents totaled 30, an increase of over 13 percent compared to



the calendar 2006 total of 26 homicides. The majority of these homicide victims were women, and the weapon used in a majority of these homicides was a firearm.

Federal law (18 U.S.C. § 922(g)) prohibits anyone who is subject to a DVOP or has been convicted of a misdemeanor crime of domestic violence from possessing in any way affecting commerce, or from receiving, any firearm or ammunition that has been shipped or transported in interstate or foreign commerce. As a result, for those DVOPs that meet federal requirements, the respondent is prohibited from possessing, buying, or transporting a firearm and ammunition in all states and the District of Columbia. However, the federal law does not apply to DVOPs issued *ex parte* (which means the prohibition does not apply to those emergency, interim, or temporary DVOPs that are issued without hearing from the respondent). In addition, the federal prohibition only applies to those DVOPs that specifically prohibit the respondent from harassing, stalking, or threatening an intimate partner or a child of the partner or respondent, include a finding that the respondent represents a credible threat to the physical safety of the partner or child, and specifically prohibit the use, attempted use, or threatened use of physical force against the intimate partner or child. The DVOP provisions subject to federal law do not apply to other family or household members who could be the subject of a state-issued DVOP.

To address those domestic violence situations not covered by federal law, some states have enacted specific provisions that authorize, or even require, in specified circumstances, a court to order a respondent who is subject to a DVOP to surrender firearms once a DVOP has been issued. The surrender of firearms order also generally includes a prohibition on buying or otherwise obtaining or possessing any other firearms for the duration of the order. Some states limit application of a court-ordered surrender to only final DVOPs, while some states include temporary or preliminary orders. Also, states that have enacted surrender firearm provisions for domestic violence situations generally cover any petitioner who is eligible for a DVOP, not just the respondent's intimate partner and any children of that partner. Some states that do not have specific provisions authorizing or mandating a court to order the surrender of firearms by the respondent may have general provisions that authorize a court to order any other relief to ensure the safety of the petitioner and others who are covered by a DVOP, also referred to as catch-all provisions.

In the mid-Atlantic region, as across the country, the inclusion of statutory provisions regarding the court-ordered surrender of firearms pursuant to *ex parte* or final DVOPs varies and is shown in **Exhibit 4**.

**Exhibit 4**  
**Firearms Surrender and Catch-all Provisions in DVOPs**  
**Court-ordered Firearm Surrender**

<u>State/ Jurisdiction</u>	<i>Authorized for Temporary and/or ex parte DVOPs</i>	<i>Mandated for Temporary and/or ex parte DVOPs</i>	<i>Authorized Final DVOPs</i>	<i>Mandated Final DVOPs</i>	<b>No Court-ordered Firearm Surrender Provision for DVOPs</b>	<b>Statutory Catch-all Provision</b>
District of Columbia					X	X
Delaware	X		X			X
<b>Maryland</b>			<b>X</b>			
New Jersey	X			X		X
New York	X	X	X	X		X
Pennsylvania	X		X			X
Virginia					X	X

Source: American Bar Association; WomensLaw.org; Cornell University; *U. S. Code Annotated*; *District of Columbia Official Code*; *Delaware Code Annotated*; *Maryland Code Annotated*; *New Jersey Permanent Statutes*; *McKinney's Consolidated Laws of New York*; *Purdon's Pennsylvania Statutes and Consolidated Statutes*; *Annotated Code of Virginia*

As can be seen in Exhibit 4, most of the jurisdictions in the mid-Atlantic region have some specific provision that either authorizes or mandates a court order for the respondent to surrender firearms and to refrain from possessing or obtaining any other firearms for the duration of whatever DVOP generated the court order, or for some other specified period.

The District of Columbia and Virginia do not have these specific statutory provisions; however, that does not mean that respondents would have unrestricted access to firearms in these jurisdictions. The District of Columbia is a federal enclave and is subject more broadly to federal jurisdiction and federal laws than a state. The federal provisions prohibiting specified respondents from possessing, buying, and transporting a firearm would apply. According to the advocacy organization, WomensLaw.org, in practice, DVOPs issued after a hearing automatically include language prohibiting the respondent from possessing, purchasing, receiving, or selling any firearm or ammunition. A petitioner in the District of Columbia may also ask the judge to order the respondent to surrender firearms even if the DVOP is not specifically subject to the federal gun ban. While Virginia does not have a specific statutory provision requiring a DVOP respondent to surrender firearms, state law does prohibit a respondent subject to an *ex parte*, temporary, or final DVOP from purchasing or transporting any firearms. If the respondent has a concealed handgun permit, then that person may not carry a

concealed firearm and must surrender the concealed handgun permit to the court. These restrictions must be observed for the duration of the DVOP.

Among the five states in this region with specific statutory language relating to the surrender of firearms upon the issuance of a DVOP, Maryland is the only state that specifically limits court authority to order surrender of firearms to the issuance of a final DVOP. In New York, if the respondent has a prior conviction for specified violent crimes, including stalking, or willfully failing to comply with a DVOP and that failure involved the infliction of serious injury, the use or threatened use of a weapon, or behavior that constitutes a violent felony, then the court *must* order the respondent to surrender any and all firearms owned or possessed. In addition, the court must suspend the firearms license of the respondent. This mandate applies to both temporary and *ex parte* DVOPs, as well as to final DVOPs. A New York court is also authorized to suspend a respondent's firearms license and order the surrender of any and all firearms owned or possessed if the court finds that there is a substantial risk the respondent may threaten to use or has used a firearm against a person who is subject to a DVOP, whether temporary, *ex parte*, or final.

New Jersey has some of the most expansive authority to remove firearms in a domestic violence situation. In a domestic violence situation, if a police officer learns or observes that a weapon is on the premises, the officer must seize the weapon, and any firearm purchaser identification card and permit. The prosecutor may initiate a forfeiture action for all these items within 45 days of the seizure and, if the prosecutor prevails, then the prosecutor obtains the title to all the firearms and the firearms identification, and license must be revoked. If the prosecutor does not initiate a forfeiture action for the firearms, then they must be returned. While the court has discretionary authority to order the surrender of firearms, firearms identification, and permits upon issuance of a temporary and/or *ex parte* order, once a final DVOP has been issued, the court *must* order the respondent to refrain from purchasing, possessing, owning, controlling, or receiving a firearm for two years or for the duration of the DVOP, whichever is greater. In addition, as part of a final DVOP, a New Jersey court may also order a search of the respondent's premises and the seizure of any firearm or any other weapon found. Delaware and Maryland are among the states that authorize police officers to seize weapons when arresting a person for alleged domestic abuse.

It should also be noted that, except for Maryland, the statutes of all of the Mid-Atlantic jurisdictions have what is referred to as a catch-all provision. This language provides broad authority for a court to order any relief deemed necessary to protect those subject to a DVOP. As a result, the District of Columbia and Virginia, which do not have statutory provisions authorizing or mandating the surrender of firearms, may still require those actions from respondents under the broad authority of their courts to order any relief not specifically provided for in statute.

## **Duration of Final Orders**

When an allegation of domestic abuse is initially made, the first priority is to ensure the safety of the alleged victim, so states provide for the issuance of orders on an emergency basis. These orders, as noted earlier, may be issued *ex parte* as the respondent may not always receive adequate notice of a protective order hearing held on an emergency basis. These orders are of relatively short duration, however, and allow for the scheduling of a more formal hearing in which the accused has notice and an opportunity to respond to the abuse allegations.

In Maryland, for example, interim protective orders are issued by District Court commissioners on an emergency basis, on weekends or evenings when the court is not in session. These orders usually expire when the court is next in session and a hearing for a temporary order can be held. Temporary orders may be issued pursuant to a hearing or *ex parte* by the circuit courts or the District Court and are intended to provide for the safety of the petitioner until a formal hearing on the abuse allegation can be held. Unless continued for good cause, the formal hearing must occur within seven days after service of the temporary order on the respondent.

Similar procedures exist in neighboring jurisdictions; orders issued on an emergency basis expire within one or two days. Preliminary or temporary orders are usually valid for anywhere from one to two weeks. Some jurisdictions allow for extension of preliminary or temporary orders for as long as a month. Because emergency or temporary orders may be issued either pursuant to a hearing or *ex parte*, these orders often provide more limited relief to the petitioners than the relief available under a final DVOP.

Final DVOPs, which are always issued after notice and a hearing, represent the formal finding by a court that the allegation of abuse is credible and protection from further abuse for the petitioner and other household members subject to the order is necessary. In the mid-Atlantic region, the maximum duration of final DVOPs can range from one year to indefinitely, as shown **Exhibit 5**.

As shown in Exhibit 5, Delaware and the District of Columbia have the shortest maximum time allowed for a final DVOP with a one-year duration and, in Delaware, an extension for up to six months upon court order after a hearing. As of October 1, 2008, Maryland law allows for the indefinite imposition of a final DVOP, but only if the respondent has been convicted of and served at least five years imprisonment for a violent crime (such as aggravated assault, sexual assault, or attempted murder) against the petitioner or others covered by the DVOP. Given these limited circumstances, it is likely that most final DVOPs issued in Maryland will continue to be subject to the time frame of one year, with the opportunity for up to a six-month extension by court order after a hearing. Most final DVOPs that are issued in Maryland are effective for one year, although courts have the discretion to limit the final DVOP to a shorter time frame.

In New York, if a court finds, on the record, that aggravating circumstances exist, a final DVOP may remain effective for a maximum of five years. Aggravating circumstances include physical injury or serious physical injury to the petitioner, the use of a dangerous instrument, a history of repeated violations of protective orders, prior convictions for crimes against the petitioner, or other behaviors that expose the petitioner or any family or household members to physical injury and indicate an immediate and ongoing danger.

### Exhibit 5 Duration of Final DVOPs

<u>State/Jurisdiction</u>	<u>DVOP Maximum Duration</u>	<u>Extension Allowed</u>	<u>Court May Shorten Duration</u>
Delaware	One year	Yes; up to 6 months	Yes
District of Columbia	One year	Yes (time limit unspecified)	Yes
<b>Maryland</b>	<b>One year or indefinite<sup>(1)</sup></b>	<b>Yes; up to 6 months after a hearing</b>	<b>Yes</b>
New Jersey	Indefinite unless court imposes time limit	N/A	Yes
New York	Two years or Five years <sup>(2)</sup>	N/A	Yes
Pennsylvania	Three years	Yes; if court finds continued danger (time limit unspecified)	Yes
Virginia	Two years	No; unless otherwise authorized by law	Yes

(1) If respondent was convicted of and imprisoned for at least five years for specified violent crimes.

(2) If court finds aggravating circumstances or a violation of a DVOP.

Source: American Bar Association; WomensLaw.org; *District of Columbia Official Code*; *Delaware Code Annotated*; *Maryland Code Annotated*; *New Jersey Permanent Statutes*; *McKinney's Consolidated Laws of New York*; *Purdon's Pennsylvania Statutes and Consolidated Statutes*; *Annotated Code of Virginia*

## Conclusion

For the selected aspects of DVOPs addressed in this paper, there are areas where Maryland provides at least as much protection to domestic violence petitioners as other neighboring jurisdiction, and other areas where Maryland does not provide as much protection as its neighbors. With regard to arrest, half of the states reviewed, including Maryland, left the decision to arrest upon a domestic violence charge to the discretion of law enforcement. As

noted above, even those states (New Jersey, New York, and Virginia) that mandate arrest, narrowly prescribe the situations where arrest is mandated and authorize law enforcement discretion for other situations not covered by the mandate. With regard to allowing access to DVOPs to members of same-sex couples, Maryland law is in line with the laws of all of the other states compared, except Virginia, in appearing to allow members of same-sex couples who allege abuse to petition for a protective order. With regard to the burden of proof that must be met for issuance of a DVOP, Maryland is the outlier, as it is the only state among the jurisdictions compared that imposes the burden of clear and convincing evidence.

The District of Columbia appears to have the lightest burden, as a DVOP may be issued for good cause shown. The other states reviewed, require a preponderance of the evidence. With regard to ordering the surrender of firearms, most of the mid-Atlantic states reviewed have enacted statutory provisions for firearms surrender pursuant to a DVOP that either authorize or mandate the surrender of firearms upon the issuance of a temporary, as well as final DVOP.

Maryland is the only state that limits court authority to order the surrender of firearms to the issuance of a final DVOP. However, Maryland joins Delaware, New Jersey, and the District of Columbia in authorizing the seizure of weapons when an alleged abuser is arrested. Maryland is the only state without a statutory catch-all provision that allows courts to order whatever actions deemed appropriate to enforce a DVOP. The District of Columbia and Virginia do not appear to have statutory provisions authorizing or mandating the surrender of firearms, although both these jurisdictions have statutory catch-all provisions. Maryland joins the District of Columbia and Delaware with final DVOPs of the shortest duration, that is, a maximum of one year. However, Maryland is the only one of these states that allows for indefinite duration for respondents deemed especially violent. New Jersey is the only state among those compared that automatically issues final DVOPs of indefinite duration, unless the court specifically includes a time limit.

The issuance of DVOPs is part of a very complex process that attempts to stem the tragedy of family abuse that is all too often a part of the fabric of American family life. In addition to the aspects compared in this paper, there are many other factors that affect access to, eligibility for, and the effectiveness of DVOPs. The consequences of the issuance of a DVOP are significant, as a respondent could be subject to arrest and detention for violating the order, prohibited from living in the family home, prohibited from contact with family members, subject to loss of child custody and visitation, as well as other restrictions. These measures are more than justified for the person who perpetrates abuse, but draconian for those who are unjustly accused. That said, victims' rights and family advocates continue to press lawmakers and policy makers for better access to and enforcement of DVOPs so that the petitioners who are trying to escape family violence can begin to feel safe enough to restructure their lives.

## Sources

The following resources were consulted for the information contained in this paper:

*United States Code Annotated*  
*District of Columbia Official Code*  
*Delaware Code Annotated*  
*Maryland Code Annotated*  
*New Jersey Statutes Annotated*  
*McKinney's Consolidated Laws of New York Annotated*  
*Purdon's Pennsylvania Statutes and Consolidated Statutes Annotated*  
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