

# **JOINT STATE GOVERNMENT COMMISSION**

General Assembly of the Commonwealth of Pennsylvania

## **PROTECTION FROM ABUSE ORDERS IN PENNSYLVANIA: A STAFF STUDY**

November 2016



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**REPORT**

*Protection From Abuse Orders In Pennsylvania: A Staff Study*

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The full report is also available on our website, <http://jsg.legis.state.pa.us>.

## JOINT STATE GOVERNMENT COMMISSION

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The Joint State Government Commission was created in 1937 as the primary and central non-partisan, bicameral research and policy development agency for the General Assembly of Pennsylvania.<sup>1</sup>

A fourteen-member Executive Committee comprised of the leadership of both the House of Representatives and the Senate oversees the Commission. The seven Executive Committee members from the House of Representatives are the Speaker, the Majority and Minority Leaders, the Majority and Minority Whips, and the Majority and Minority Caucus Chairs. The seven Executive Committee members from the Senate are the President Pro Tempore, the Majority and Minority Leaders, the Majority and Minority Whips, and the Majority and Minority Caucus Chairs. By statute, the Executive Committee selects a chairman of the Commission from among the members of the General Assembly. Historically, the Executive Committee has also selected a Vice-Chair or Treasurer, or both, for the Commission.

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A Commission study may involve the appointment of a legislative task force, composed of a specified number of legislators from the House of Representatives or the Senate, or both, as set forth in the enabling statute or resolution. In addition to following the progress of a particular study, the principal role of a task force is to determine whether to authorize the publication of any report resulting from the study and the introduction of any proposed legislation contained in the report. However, task force authorization does not necessarily reflect endorsement of all the findings and recommendations contained in a report.

Some studies involve an appointed advisory committee of professionals or interested parties from across the Commonwealth with expertise in a particular topic; others are managed exclusively by Commission staff with the informal involvement of representatives of those entities that can provide insight and information regarding the particular topic. When a study involves an advisory committee, the Commission seeks consensus among the members.<sup>2</sup> Although an advisory committee member may represent a particular department, agency, association, or group, such representation does not necessarily reflect the endorsement of the department, agency, association, or group of all the findings and recommendations contained in a study report.

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<sup>1</sup> Act of July 1, 1937 (P.L.2460, No.459); 46 P.S. §§ 65 – 69.

<sup>2</sup> Consensus does not necessarily reflect unanimity among the advisory committee members on each individual policy or legislative recommendation. At a minimum, it reflects the views of a substantial majority of the advisory committee, gained after lengthy review and discussion.

Over the years, nearly one thousand individuals from across the Commonwealth have served as members of the Commission's numerous advisory committees or have assisted the Commission with its studies. Members of advisory committees bring a wide range of knowledge and experience to deliberations involving a particular study. Individuals from countless backgrounds have contributed to the work of the Commission, such as attorneys, judges, professors and other educators, state and local officials, physicians and other health care professionals, business and community leaders, service providers, administrators and other professionals, law enforcement personnel, and concerned citizens. In addition, members of advisory committees donate their time to serve the public good; they are not compensated for their service as members. Consequently, the Commonwealth of Pennsylvania receives the financial benefit of such volunteerism, along with their shared expertise in developing statutory language and public policy recommendations to improve the law in Pennsylvania.

The Commission periodically reports its findings and recommendations, along with any proposed legislation, to the General Assembly. Certain studies have specific timelines for the publication of a report, as in the case of a discrete or timely topic; other studies, given their complex or considerable nature, are ongoing and involve the publication of periodic reports. Completion of a study, or a particular aspect of an ongoing study, generally results in the publication of a report setting forth background material, policy recommendations, and proposed legislation. However, the release of a report by the Commission does not necessarily reflect the endorsement by the members of the Executive Committee, or the Chair or Vice-Chair of the Commission, of all the findings, recommendations, or conclusions contained in the report. A report containing proposed legislation may also contain official comments, which may be used in determining the intent of the General Assembly.<sup>3</sup>

Since its inception, the Commission has published more than 350 reports on a sweeping range of topics, including administrative law and procedure; agriculture; athletics and sports; banks and banking; commerce and trade; the commercial code; crimes and offenses; decedents, estates, and fiduciaries; detectives and private police; domestic relations; education; elections; eminent domain; environmental resources; escheats; fish; forests, waters, and state parks; game; health and safety; historical sites and museums; insolvency and assignments; insurance; the judiciary and judicial procedure; labor; law and justice; the legislature; liquor; mechanics' liens; mental health; military affairs; mines and mining; municipalities; prisons and parole; procurement; state-licensed professions and occupations; public utilities; public welfare; real and personal property; state government; taxation and fiscal affairs; transportation; vehicles; and workers' compensation.

Following the completion of a report, subsequent action on the part of the Commission may be required, and, as necessary, the Commission will draft legislation and statutory amendments, update research, track legislation through the legislative process, attend hearings, and answer questions from legislators, legislative staff, interest groups, and constituents.

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<sup>3</sup> 1 Pa.C.S. § 1939 ("The comments or report of the commission . . . which drafted a statute may be consulted in the construction or application of the original provisions of the statute if such comments or report were published or otherwise generally available prior to the consideration of the statute by the General Assembly").



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November 15, 2016

*To the Members of the General Assembly of Pennsylvania:*

2016 House Resolution No. 735 directed staff of the Joint State Government Commission to review the Protection from Abuse Act to identify gaps in the law as well as practices and procedures in its implementation that may be subjecting victims to an unreasonable risk of additional harm. The recommendations contained herein are intended to close those gaps and redirect practices and procedures to eliminate risks to victims insofar as possible.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Glenn J. Pasewicz".

Glenn J. Pasewicz  
Executive Director



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## INTRODUCTION

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### ***“Teach your daughter to shoot - - - because a restraining order is just a piece of paper”***

Usually depicting a young woman holding a large gun, memes<sup>4</sup> like the one quoted above proliferate on social media. Their popularity tends to increase whenever an incident of domestic violence gains particular notoriety in the press. Following the shooting of a city police officer responding to a domestic incident in Chester, Pennsylvania, Police Commissioner Joseph Bail was quoted as saying “PFAs are only a piece of paper. How do you protect a woman with a piece of paper? The Legislature needs to put some teeth in the law.”<sup>5</sup> Little more than a year later, an incident in which a woman was shot and killed by her ex-boyfriend at a popular cultural venue in Central Pennsylvania provided the impetus for this study.<sup>6</sup> The woman had obtained a protection from abuse order (PFA) against the killer, who despite laws prohibiting his ownership of a firearm under those circumstances, managed to obtain a gun. In 2015, 68 women and 45 men died in domestic violence incidents, 54 percent of them the victims of shootings.<sup>7</sup> While the majority of PFA orders function as they should and do not result in violence,<sup>8</sup> sometimes when they fail people die. News stories from around Pennsylvania highlight the issue:

- “Officials detail Thursday shooting of Canonsburg officers.” A pregnant woman, who had a final order of protection from abuse against her husband, was murdered at her home by him. He then killed himself, but not before shooting and killing a police officer and wounding another who had come to the home in response to a domestic disturbance call. *The Pittsburgh Post-Gazette*, November 12, 2016.
- “Allentown man admits vicious Bethlehem attack day after PFA order.” The day after his girlfriend received a PFA order against him, the confessed attacker came to her house and severely beat another man who was at the house. *The Morning Call*, October 15, 2016.

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<sup>4</sup> “An amusing or interesting picture, video, etc., that is spread widely through the Internet.” Merriam-Webster Online Dictionary, <http://www.merriam-webster.com/dictionary/meme>.

<sup>5</sup> “Cindy Scharr, “Man killed in shootout with Chester police ID’d,” *The Pottstown Mercury*, June 3, 2014. <http://www.pottsmmerc.com/general-news/20140603/man-killed-in-shootout-with-chester-police-idd>

<sup>6</sup> “Woman’s death prompts review of protection from abuse law in Pennsylvania: State House orders examination to find PFA “blind spots” or “gaps” that may put victims at risk,” WTAE, Pittsburgh, [www.wtae.com/news/womans-death-prompts-review-of-protection-from-abuse-law-in-pennsylvania/38958650](http://www.wtae.com/news/womans-death-prompts-review-of-protection-from-abuse-law-in-pennsylvania/38958650), April 10, 2016.

<sup>7</sup> These include persons killed by current or former intimate partners, or by the former partner of a new partner.

<sup>8</sup> 32,356 temporary PFAs were issued in 2015; 5,817 of them resulted in permanent PFA orders following a hearing before a judge. “PFA Dashboard,” Administrative Office of Pennsylvania Courts, <http://www.pacourts.us/news-and-statistics/research-and-statistics/protection-from-abuse>.

- “Man charged with violating restraining order after fire destroys Washington Township house.” A man was arrested for violating a PFA order obtained by his estranged wife after he came to her home, tied her up and held a gun to her head. When she managed to escape, he set fire to her home. *The Pittsburgh Tribune-Review*, October 9, 2016.
- “Man with PFA against him found with 2 guns.” Responding to a call reporting an assault, a man was arrested for assault and for violating a PFA order that prohibited him from possessing firearms. *Lehigh Valley News*, September 29, 2016.
- “Homicide victim had PFA against estranged husband.” Less than a month after receiving a final PFA order against her husband, a woman was fatally shot at her home. *The York Daily Record*, September 13, 2016.
- “Alleged crossbow killer of new wife was under court order to avoid ex-wife, kids in Carbon County.” A man was the subject of a PFA order from his ex-wife when he allegedly killed his new wife. The man had recently lost custody of his children by his ex-wife and his former father-in-law believed that he possessed weapons in his home and was angry and dangerous. The father-in-law contacted police, who indicated that they did not have the authority to search the man’s home for weapons. The former father-in-law expressed the belief that if his former son-in-law had been relieved of all weapons at the time the PFA order was issued to his ex-wife, his new wife might not have been killed. *The Morning Call*, June 30, 2016.
- “Victims and gunman identified in ‘double murder-suicide’ in Johnstown shooting.” A PFA order was in place against a man, who shot and killed his wife and son before killing himself. *WJACTV*, June 25, 2016.
- “Woman ordered to stand trial for husband’s death in McKeesport.” Upon advice of police, a man had prepared a handwritten request on a court form for a PFA order against his wife. She shot and killed him before he could file the form. *WTAE.com*, June 5, 2016.
- “Man Accused of Violating PFA Fatally Wounded in Police-Involved Shooting.” Police were called to the scene where a man was allegedly violating a PFA order. When he saw the police, the man attempted to carjack a passerby and was shot by police. *Pittsburgh CBS Local KDKA*, March 21, 2016.
- “Police search for ‘armed and dangerous’ suspect after shooting in Reading.” Shortly after his wife obtained a PFA order against him and he was evicted from the family home, a man allegedly went to his home and shot his wife in the chest multiple times. *Berks Regional News*, November 22, 2015.
- “Murder victim filed PFA against alleged killer.” A woman had obtained a restraining order against her former boyfriend one week before he fatally shot her. *The Citizens Voice (Wilkes-Barre)*, June 4, 2015.

- “District Attorney seeks death penalty in death of Valerie Morrow.” Three hours after he was served with a PFA order obtained by his former girlfriend, a man shot and killed his ex-girlfriend, wounded her daughter and was charged with aggravated assault against the woman’s new husband. *Press Release, Office of the Delaware County District Attorney*, September 14, 2015. The incident occurred on December 15, 2014.

In recognition that protection from abuse orders can be violated with fatal consequences, 2016 House Resolution No. 735 directs the staff of the Joint State Government Commission to “take another look at the law in order to identify ‘blind spots’ or ‘gaps’ that may be subjecting victims to unreasonable risk of additional harm. The study will examine not only the letter of the law, but also the practices and procedures surrounding its implementation.”<sup>9</sup> While this study in no way recommends “teaching your daughter to shoot,” it is the hope that the recommendations contained herein will eliminate or severely restrict the opportunities for mayhem hidden in law and practice that give rise to that sentiment.

### *Acknowledgements*

During the course of this study, the Commission requested input from various stakeholders in the subject of domestic violence. Their insight and knowledge were extremely helpful in formulating this report. However, their recognition in this section should not in any way be read to be an endorsement of any specific recommendations or conclusions presented herein. The Commission gratefully acknowledges the advice and information received from the Pennsylvania Coalition Against Domestic Violence and Jennifer Storm, State Victims’ Advocate.

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<sup>9</sup> *Infra*, at page 11.



## RECOMMENDATIONS

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These recommendations include proposed revisions to the Protection from Abuse Act, the Uniform Firearms Act and the Judicial Code that can be statutorily implemented with the enactment of the proposed legislation found later in this report. Further discussion of each recommendation can be found at the page referenced at the end of the recommendation. While all of these suggestions can potentially deter a rational person, it must be recognized that a disgruntled ex who has psychologically committed him or herself to murdering their former partner, especially those who are suicidal, is not likely to be deterred by any proposal in this report. These recommendations can help reduce violent deaths, but they cannot eliminate them entirely.

### ***Recommendation #1***

Protection should be provided to victims when they are delivering a protection from abuse order to their abuser, or while the order is being served on the abuser, if they are concerned for their safety during that occurrence. This proposal would amend 23 Pa.C.S. § 6106, at page 40.

### ***Recommendation #2***

When determining whether a defendant who violated a PFA order by means of physical violence should be eligible for bail, the court should use a risk assessment tool to evaluate potential danger to the victim should the defendant be released. This proposal would amend 42 Pa.C.S. § 4137, at page 44.

### ***Recommendation #3***

The family exemption from background checks for transfers of handguns should be eliminated. This proposal would amend 18 Pa.C.S. § 6111(c), at page 39.

### ***Recommendation #4***

Courts should be allowed to issue search and seizure orders for weapons as part of their PFA orders if there is cause to believe the defendant has weapons and may use them against the victim. This proposal would amend 23 Pa.C.S. § 6108(a)(7) at page 41.

### ***Recommendation #5***

Courts should have the authority to extend or reinstate an expired PFA order when the defendant has been incarcerated and is about to be released, if the court concludes they are a continuing threat to the victim. This proposal would add 23 Pa.C.S. § 6108(e.1), at page 42.

### ***Recommendation #6***

The categories of persons who can serve as third-party safekeepers of defendant's weapons during the period a PFA order is active should be restricted. Any family members and any former housemates of the defendant should be prohibited from so serving. This proposal would amend 23 Pa.C.S. § 6108.3(i), at page 44. Alternatively, the option of third-party safekeeping could be abolished completely. That proposal would require substantial amendments to both the PFA Act and the Uniform Firearms Act.<sup>10</sup>

### ***Recommendation #7***

Efforts should be made to encourage local law enforcement to use active GPS monitoring of abusers to provide real-time notice to victims that their abusers are in their vicinity. This proposal would need further consideration by law enforcement entities and might be suited to a grant program under the Pennsylvania Commission on Crime and Delinquency.

### ***Recommendation #8***

Statutorily clarifying the roles of dating violence, teen dating violence and same sex relationships could improve interpretation of the law, but are not vital to closing any perceived gaps in the PFA Act.

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<sup>10</sup> 18 Pa.C.S. § Chapter 61 (relating to Uniform Firearms Act).

## **OBTAINING AND ENFORCING A PROTECTION FROM ABUSE ORDER**

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Prior to 1976, Pennsylvania had no specific criminal or civil law that provided protection from abuse. At its adoption, it Pennsylvania became the second state in the nation (after New York) to provide a civil remedy for domestic violence.

Family or household members who resided together could file a civil petition and obtain a court order that would direct the defendant to refrain from abusing the plaintiff or minor children, evict the defendant from the residence, and award temporary custody of minor children to the plaintiff. These orders could be obtained temporarily on an *ex parte* basis with a hearing to be held within ten days. Final orders could remain in effect for as long as one year.<sup>11</sup>

Since 1976, Pennsylvania's Protection from Abuse Act has evolved into a comprehensive statute designed to provide immediate relief in domestic abuse situations. Procedurally, it encompasses most situations. However, when an individual under a PFA order decides to violate that order, current enforcement efforts may be inadequate. This chapter will review the process of obtaining and enforcing a protection from abuse order, and identify areas where gaps in protection may arise.

### ***Definitions***

It is important to determine who the parties are in each case of domestic violence:

- The victim is a person who is physically or sexually abused by a family or household member. It also includes persons who have a significant relationship with the victim and who seek advice, counseling or assistance from a domestic violence counselor or advocate regarding abuse of the victim. (*e.g.*, the parent, child, sibling, grandparent, or close friend of the victim).
- Family or household members are spouses or persons who have been spouses, persons living as spouses or who lived as spouses, parents and children, other persons related by consanguinity or affinity, current or former sexual or intimate partners or persons who share biological parenthood.

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<sup>11</sup> Margaret Klaw and Mary Schref, "Feminist Advocacy: The Evolution of Pennsylvania's Protection From Abuse Law," *University of Pennsylvania Journal of Law and Social Change*, Vol. 1, Issue 1, 1993, pp. 21-37.

- The person against whom the petition alleging abuse is filed is identified as the defendant.
- The victim requesting a protection from abuse order is called the “plaintiff.”

Equally important is defining what constitutes abuse under the law. This is defined as one or more of the following acts between family and household members, sexual or intimate partners or persons who share biological parenthood:<sup>12</sup>

- Attempting to cause or intentionally, knowingly or recklessly causing bodily injury, serious bodily injury, rape, involuntary deviate sexual intercourse, sexual assault, statutory sexual assault, aggravated indecent assault, indecent assault or incest with or without a deadly weapon.<sup>13</sup>
- Placing another in reasonable fear of imminent serious bodily injury.
- The infliction of false imprisonment.<sup>14</sup>
- Physically or sexually abusing minor children.<sup>15</sup>
- Knowingly engaging in a course of conduct or repeatedly committing acts toward another person, including following the person, without proper authority, under circumstances which place the person in reasonable fear of bodily injury.<sup>16</sup>

### *Procedures*<sup>17</sup>

#### *Notice of Rights*

When responding to a domestic violence case, the police officer shall notify the victim of the availability of a shelter, including its telephone number, or other services in the community. This notice may be oral or written, but must include the following statement:

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<sup>12</sup> The use of the phrase “sexual or intimate partners or persons who share biological parenthood” in the definition of “abuse” is redundant, as it is already part of the definition of family or household members.” It should be deleted to clean up the language, with no intent to change the meaning.

<sup>13</sup> These offenses are all defined “offenses against the person” found in 18 Pa.C.S. (Crimes Code).

<sup>14</sup> 18 Pa.C.S § 2903 (relating to false imprisonment).

<sup>15</sup> 23 Pa.C.S. § Ch. 63 (relating to child protective services).

<sup>16</sup> This definition only applies to proceedings commenced under the PFA act, and not criminal proceedings under Pa.C.S. Title 18. For example, harassment and stalking are separate crimes under the Crimes Code. Their role in domestic violence cases is discussed at *Enhanced Criminal Penalties, infra* p. 29.

<sup>17</sup> Uniform forms for filing protection from abuse petitions can be found at Pa. Rules of Civil Procedure, 231 Pa. Code Ch. 1900.



If you are the victim of domestic violence, you have the right to go to court and file a petition requesting an order for protection from domestic abuse pursuant to 23 Pa.C.S. Ch. 61 (relating to protection from abuse) which could include the following:

- (1) An order restraining the abuser from further acts of abuse.
- (2) An order directing the abuser to leave your household.
- (3) An order preventing the abuser from entering your residence, school, business, or place of employment.
- (4) An order awarding you or the other parent temporary custody of or temporary visitation with your child or children.
- (5) An order directing the abuser to pay support to you and the minor children if the abuser has a legal obligation to do so.<sup>18</sup>

### *Petitioner*

An adult or emancipated minor may file a petition to the court of common pleas alleging abuse by the defendant. A parent, adult household member or guardian ad litem of a minor or the guardian of an incompetent person may file a petition on that individual's behalf.

Additionally, a person having reasonable cause to believe that a person is being abused may report the information to the local police, and shall be immune from liability unless the person acted in bad faith or with malicious purpose.<sup>19</sup>

### *Fees*

No fees are to be assessed against the victim.<sup>20</sup> This exemption from fees for victims is reiterated in the Judicial Code, which states that no fees, costs or fines associated with the filing of the criminal charges, the issuance or service of a warrant, protection order or subpoena and other generated costs shall be charged to the victim.<sup>21</sup>

When an order is granted, costs are assessed against the defendant unless there is a good causing showing to justify a waiver or the court finds that the defendant is not able to pay the costs.<sup>22</sup> A \$100 surcharge is assessed against the defendant when a PFA order is issued.

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<sup>18</sup> 18 Pa.C.S. § 2711(d).

<sup>19</sup> 23 Pa.C.S. § 6115.

<sup>20</sup> 23 Pa.C.S. § 6106(b).

<sup>21</sup> 42 Pa.C.S. § 1726.2.

<sup>22</sup> 23 Pa.C.S. § 6106(c).

The \$100 is divided as follows:

- \$25 to the Pennsylvania State Police to create and maintain a statewide PFA registry
- \$25 to the Sheriff
- \$25 to the court
- \$25 to the Department of Human Services to fund domestic violence programs.<sup>23</sup>

The court may issue an order for installment payments and the county treasurer is authorized to accept credit cards in payment of money owed under the act.<sup>24</sup>

### *Service of Process*

Generally, the victim has the ability to serve the order personally. While some victims find this empowering, as a means of “standing up” for themselves, this can put a victim in a position of danger, if the defendant reacts badly to receipt of the order. If a victim avers that service cannot be safely effected by an adult individual other than a law enforcement officer the court may order the sheriff or other designated agency or individual to serve the petition and order. The court may also order such service on its own accord. Petitions and orders are served upon the defendant, the police departments and the sheriff of the appropriate jurisdiction to enforce the order.<sup>25</sup>

### *Issuance of Orders*

Depending on the circumstances, the court can issue emergency, temporary and/or permanent protection from abuse orders, each of which must follow specific procedural rules. A domestic violence counselor or advocate may accompany the victim to any of these proceedings.<sup>26</sup>

### Emergency Orders

Emergency relief by the minor judiciary is available when the court is closed overnight and on weekends. Additionally, in counties with less than four judges, emergency relief from the minor judiciary can be sought if the court is unavailable due to duties outside the county, illness or vacation. These orders may only be granted if the hearing officer (which can be a court-appointed master for emergency relief) deems it necessary to protect the victim or minor children from abuse upon good cause shown. “Immediate and present danger of abuse” is considered good cause. The hearing is *ex parte* (*i.e.*, without advance notice to the defendant or the opportunity to appear). The relief can order the defendant to refrain from abusing the victim, prohibit contact with the victim, and vacate the family home. Such orders expire on the next business day that the court is available. Upon review, the court may then extend the emergency order until a hearing

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<sup>23</sup> 23 Pa.C.S. § 6106(d).

<sup>24</sup> 23 Pa.C.S. § 6120.

<sup>25</sup> 23 Pa.C.S. § 6106(e), (f) and (g).

<sup>26</sup> 23 Pa.C.S. § 6111.

for a temporary order can be scheduled. Essentially, an emergency order is a temporary order that is issued during non-business hours.

### Final Orders

Generally, when a petition for a protection from abuse is filed, a hearing must be held by the court of common pleas within 10 business days of the filing. Notice is given to the defendant explaining the potential ramifications of the granting of a protection from abuse order against him or her. Defendants have the right to be represented by counsel at a hearing. The court can order a protection order or the parties can come to a consent agreement, which are for a fixed period of time not to exceed three years.<sup>27</sup>

Final orders may be extended an unlimited number of times, and may be granted if the defendant commits one or more acts of abuse subsequent to the entry of the final order or engages in a pattern or practice that indicates continued risk of harm to the victim or minor child. Defendants are given notice that violation of the order can result in defendant's arrest for violation of the order or charged with contempt of court. Resuming co-residency does not nullify the order.<sup>28</sup>

### Temporary Orders

A victim may petition for a temporary order for protection from abuse that alleges immediate and present danger of abuse to the victim or minor children. The court conducts the proceeding *ex parte*. A temporary order lasts until it is modified or terminated by the court after notice and hearing. The defendant *may* be ordered to temporarily relinquish any firearms, other weapons or ammunition to the sheriff.<sup>29</sup>

The court may determine that a temporary relinquishment of weapons should be ordered, if the petition demonstrates any of the following:

- The abuse involved a firearm or other weapon.
- There is an immediate and present danger of abuse. In determining if there is an immediate and present danger, the court should consider whether the temporary order can achieve its purpose absent such a condition or whether the defendant has previously violated a PFA order.
- Whether past or present abuse to the victim or any of the victim's children resulted in injury.
- Whether the abuse occurred in public.

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<sup>27</sup> 23 Pa.C.S. §§ 6107(a), 6108(d).

<sup>28</sup> 23 Pa.C.S. § 6108(e) and (g).

<sup>29</sup> 23 Pa.C.S. § 6107(b)(1) and (2).

- Whether the abuse includes threats of abuse or suicide, killing or threatening to kill pets, an escalation of violence, stalking or obsession behavior, sexual violence, or drug or excessive alcohol use.<sup>30</sup>

If an order to temporarily relinquish firearms, other weapons and ammunition is entered, the defendant may choose to relinquish them to the sheriff or to a third-party for safekeeping.<sup>31</sup>

Tables 1 and 2 illustrate the number of temporary orders requested and their disposition over the time period 2010-2015. Table 1 reflects raw numbers and Table 2 indicates the percentage of each type of disposition of the total number of PFA orders requested per year, and provides a six-year average. On average, 87.75 percent of petitions requesting temporary protection from abuse orders are granted. Enough evidence is presented to the court that it finds justification for granting the petition most of the time. Over the years 2010-2015, an average of 17.7 percent of temporary PFA orders were converted to final orders ones. Almost one-third of all requests for temporary PFA orders are dismissed because the victim failed to appear at the hearing. Another 24 percent each either withdrew the petition before the hearing or the parties settled before the hearing.

This failure to follow up after the issuance of a temporary PFA order can result in a frustration for law enforcement officials and advocates who are attempting to protect an individual who has been abused. The city of Columbus, Georgia has allegedly been charging victims of domestic violence a fee in lieu of incarceration if they refuse to testify against their abusers. The Southern Center for Human Rights has filed a class action suit alleging violations of the 1<sup>st</sup>, 4<sup>th</sup>, and 14<sup>th</sup> amendments to the U.S. Constitution. We are not recommending that Pennsylvania attempt any such incentive to testify, but simply note that this is a problem in many jurisdictions.<sup>32</sup>

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<sup>30</sup> 23 Pa.C.S. § 6107(b)(3).

<sup>31</sup> 23 Pa.C.S. § 6107(b)(4).

<sup>32</sup> Eva Fedderly, "Class Says City Abuses Domestic Violence Victims," *Courthouse News*, October 12, 2016, [www.courthousenews.com/2016/10/12/Victim%20Fees%20complaint.pdf](http://www.courthousenews.com/2016/10/12/Victim%20Fees%20complaint.pdf).

**Table 1**  
**Protection from Abuse Orders in Pennsylvania, by Disposition**  
**2010-2015**

<b>Disposition</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
Temporary Orders Requested	40,365	41,038	41,797	38,821	36,994	37,387
Temporary Orders Granted	36,010	36,389	36,414	33,847	32,480	32,356
Temporary Orders Denied	4,355	4,649	5,383	4,974	4,514	5,031
Plaintiff Failed to Appear	10,752	11,617	12,315	11,746	10,599	10,986
Plaintiff Withdrew Petition	8,855	8,947	8,588	7,974	7,426	7,685
Stipulation or Agreement Between Parties	9,204	8,853	8,469	8,004	7,127	7,167
Final Order Granted	6,092	6,274	6,553	6,014	5,916	5,817
Final Order Denied	1,447	1,651	1,358	1,394	1,463	1,571

Source: Administrative Office of Pennsylvania Courts

**Table 2**  
**Protection from Abuse Orders in Pennsylvania, by Disposition, by Percentage**  
**2010-2015**

<b>Disposition</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>Six-Yr. Avg.</b>
Total percent granted temporary orders	89.2	88.7	87.1	87.2	87.8	86.5	87.75
Total percent plaintiffs granted temporary orders who failed to appear at hearing	29.9	31.9	33.8	34.7	32.6	34.0	32.82
Total percent plaintiffs granted temporary orders who withdrew petition before hearing	24.6	24.6	24.6	23.6	22.9	23.8	24.02
Total percent settled before hearing	25.6	24.3	23.3	25.0	21.7	22.2	23.68
Total percent of temporary orders converted to permanent after hearing	16.9	17.2	18.0	17.8	18.2	18.0	17.68

Source: Administrative Office of Pennsylvania Courts

## *Relief*

A protection from abuse order may authorize any of the following:

- Directing the defendant from abusing the victim or minor children
- Evicting the defendant from the residence or household or restoring possession of the residence or household to the victim
- Ordering the defendant to provide suitable alternative housing, if the defendant is the sole owner or lessee, with the victim's consent
- Awarding temporary custody or establishing temporary visitation rights to the minor children; specific qualifications apply
- Directing the defendant to pay financial support, such as providing health insurance coverage, paying unreimbursed medical expenses, making or continuing to make mortgage or rental payments on the residence
- Prohibiting defendant from having any contact with the victim or minor children, including entering the place of employment or business or school of the victim or minor children and from harassing the victim or the victim's relatives or minor children
- Ordering the defendant to temporarily relinquish to the sheriff the defendant's other weapons and ammunition which have been used or been threatened to be used in an incident of abuse
- Ordering the defendant to relinquish his or her firearms and prohibiting the defendant from possessing or acquiring any firearm and any firearm license
- Directing the defendant to pay the victim for reasonable losses suffered as a result of the abuse, including medical, dental, relocation and moving expenses; counseling; loss of earnings or support; costs of repair or replacement of real or personal property damaged, destroyed or taken by or at the direction of the defendant; other out-of-pocket losses for injuries sustained
- Directing the defendant to refrain from stalking or harassing the victim and other designated persons
- Granting any other appropriate relief sought by the victim<sup>33</sup>

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<sup>33</sup> 23 Pa.C.S. § 6108(a).

## *Confidentiality of Addresses*

The Domestic and Sexual Violence Victim Address Confidentiality Act established a victim address confidentiality program that allows the use of a substitute address by a victim so that they might conceal their location if they fear their abuser.<sup>34</sup> The PFA Act provides that the address of a domestic violence program may not be revealed by the court or the hearing officer. If the court concludes that the defendant poses a threat of continued danger to the victim and where the victim requests that his or her address or whereabouts not be disclosed, the court may issue an order directing law enforcement agencies, human service agencies and school districts not disclose contact or location information about the victim or a minor child.<sup>35</sup>

Communications between victims and domestic violence counselors or advocates are privileged and may not be disclosed.<sup>36</sup>

## *Gun Ownership*

Being the person against whom a protection from abuse order has been obtained can effect that person's gun ownership rights in a number of ways. Under the Pennsylvania Uniform Firearms Act, the existence of an active PFA order prohibits a person from obtaining or possessing a firearm. A person who is the subject of a PFA order commits a first degree misdemeanor if he or she intentionally or knowingly fails to relinquish firearms, other weapons or ammunition pursuant to the PFA order and the provisions of the PFA Act governing firearms relinquishment.<sup>37</sup>

Additionally, conviction for certain offenses, such as aggravated assault, stalking, kidnapping, unlawful restraint, rape, arson, criminal trespass, intimidation of witnesses or victims, and retaliation against witnesses or victims, all of which may occur in the context of a domestic violence incident, result in the loss of the right to possess, use, manufacture, control, sell or transfer firearms.<sup>38</sup> The Uniform Firearms Act also prohibits possession or ownership of a firearm as prohibited under federal law.<sup>39</sup> Federal law prohibits anyone convicted of a misdemeanor crime of domestic violence from possessing a firearm. A misdemeanor crime of violence has the element of the use or attempted use of physical force, or the threatened use of a deadly weapon and at the time the offense was committed, the defendant was a current or former spouse, parent or guardian of the victim, a person with whom the victim shared a child in common; a person who was cohabiting with or had cohabited with the victim as spouse, parent or guardian; or a person who

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<sup>34</sup> 23 Pa.C.S. § 6704(1): A victim of domestic violence who files an affidavit with the Office of Victim Advocate stating the affiant's eligibility for a protection from abuse order and further stating that the affiant fears future violent acts by the perpetrator of the abuse. The act was added to Title 23 by the act of November 30, 2004 (P.L. 1474, No.188).

<sup>35</sup> 23 Pa.C.S. § 6113.

<sup>36</sup> 23 Pa.C.S. § 6116.

<sup>37</sup> 18 Pa.C.S. § 6105(a.1)(2).

<sup>38</sup> 18 Pa.C.S. § 6105(a), (b) and (c)(6).

<sup>39</sup> 18 Pa.C.S. § 6105(c)(9).

was or had been similarly situated to a spouse, parent, or guardian of the victim.<sup>40</sup> The United States Supreme Court ruled in the summer of 2016 that its prohibition applies not only to knowing and intentional assaults, but also to reckless assaults.<sup>41</sup>

A person prohibited from owning a weapon because of a crime resulting from domestic violence but where a PFA order was not issued has a “reasonable period of time, not to exceed 60 days, in which to sell or transfer that person’s firearms to another eligible person who is not a member of the prohibited person’s household.” This 60 day period does not apply to persons subject to a PFA order, but there may be cases where a conviction for a crime results from a domestic violence incidence but no PFA order is obtained. In such a case, the person disqualified from gun ownership will have 60 days’ to dispose of his or her weapons.<sup>42</sup>

Under the PFA Act, a weapon is defined as anything readily capable of lethal use and possessed under circumstances not manifestly appropriate for lawful uses which it may have. This includes an unloaded or unassembled firearm. Other weapon has the same definition but does not include any firearm. A firearm is defined as any weapon which is designed or may be readily converted to expel any projectile by the action of an explosive or the frame or receiver of any such weapon. This would include handguns, shotguns and rifles.<sup>43</sup>

The court may order the defendant to temporarily relinquish to the sheriff the defendant’s other weapons and ammunition which have been used or been threatened to be used in an incident of abuse, as well as any license to carry firearms and a concealed carry permit. Unless cause is shown in court to order a different time, relinquishment is to occur within 24 hours of service of a temporary order or the entry of a final order. Such cause is limited to facts relating to the inability of the victim to retrieve a specific firearm within 24 hours due to its current location. If the victim cannot reasonably retrieve the items in the time allocated because of their current location, the defendant can provide the sheriff with an affidavit listing the items and their current location. The court order is to contain a list of everything to be relinquished,<sup>44</sup> and all lists of defendant’s firearms are to be kept confidential.<sup>45</sup>

The victim is required to notify the court of the defendant’s occupation if he or she has reason to believe that the defendant is:

- a licensed firearm dealer
- employed by a licensed firearm dealer or manufacturer
- employed as a writer, researcher or technician in the firearms or hunting industry
- required to carry a firearm as a condition of employment<sup>46</sup>

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<sup>40</sup> 18 U.S.C. § 922(g)(9); *Misdemeanor Crimes of Domestic Violence and Federal Firearms Prohibitions*, ATF Information 3310.3, revised September 2011, [www.atf.gov/resource-center/docs/report/misdemeanor-crimes-domestic-violence-and-federal-firearms-prohibitions/download](http://www.atf.gov/resource-center/docs/report/misdemeanor-crimes-domestic-violence-and-federal-firearms-prohibitions/download).

<sup>41</sup> *Viosine v. United States*, 579 U.S. \_\_\_\_ (2016), No.14-10154.

<sup>42</sup> 18 Pa.C.S. §6105(a)(2).

<sup>43</sup> 23 Pa.C.S. § 6102(a).

<sup>44</sup> 23 Pa.C.S. § 6108(a)(7).

<sup>45</sup> 23 Pa.C.S. §§ 6107(a)(7)(v), 6108.4, 6108.5.

<sup>46</sup> 23 Pa.C.S. §6106(a.2).



If the defendant is a licensed firearms dealer, the court may order the defendant to follow restrictions concerning the conduct of his business, which can include relinquishment of his or her dealer's license as well as firearms in his or her business inventory. The court is required to make a reasonable effort to preserve the financial assets of the defendant's business.

The defendant is given the ability to decide how his or her weapons will be relinquished.<sup>47</sup> Further, the defendant can petition for the return of his or her weapons before the expiration of the PFA order, with notice to the victim. A hearing must be held on the petition within 10 days of filing.<sup>48</sup>

Relinquishment can be accomplished by consignment sale, lawful transfer, or safekeeping. In the case of consignment sale or lawful transfer, the firearms dealer taking possession of the firearms must file an affidavit that the firearms will not be returned to the defendant or sold or transferred to a person the dealer knows is a member of the defendant's household, while the defendant is the subject of an active PFA order.<sup>49</sup>

Relinquishment can be made to the sheriff or to a third party for safekeeping. If the defendant wishes to relinquish his weapons to a third party, the defendant and the third party must go to the sheriff's office, file affidavits acknowledging their responsibilities and receive a safekeeping permit for the third party. A third party safekeeper cannot be the subject of a PFA order, nor can the defendant ever have been a subject of a PFA order issued on behalf of the third party, or otherwise be disqualified to possess firearms. The third party safekeeper must acknowledge that weapons will be stored using a locking device or in a secure location to which the defendant does not have access.<sup>50</sup>

## *Violations*

A person who violates a protection from abuse order may be arrested and charged with indirect criminal contempt. He or she has the right to bail and the right to be notified of the accusation and a reasonable time to make a defenses. However, the person charged does not have a right to a jury trial, but is entitled to counsel.<sup>51</sup>

An arrest for a violation of a PFA order may be without warrant upon probable cause and the violation does not have to occur in the presence of a police officer or sheriff.<sup>52</sup> However, the arresting officer must first observe recent physical injury to the victim or other corroborative evidence.<sup>53</sup> Subsequent to the arrest, all firearms, other weapons and ammunition, used or threatened to be used during the violation of the order or during prior incidents of abuse and any

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<sup>47</sup> 23 Pa.C.S. § 6108(a)(7)(ii).

<sup>48</sup> 23 Pa.C.S. § 6108.1.

<sup>49</sup> 23 Pa.C.S. § 6108.2.

<sup>50</sup> 23 Pa.C.S. § 6108.3.

<sup>51</sup> 42 Pa.C.S. § 4136; 23 Pa.C.S. § 6114(b)(3).

<sup>52</sup> 23 Pa.C.S. § 6113(a).

<sup>53</sup> 18 Pa.C.S. § 2711(a).

other firearms in the defendant's possession must be relinquished.<sup>54</sup> The confiscated items are delivered as soon as possible thereafter to the office of the sheriff. Preliminary arraignments for indirect criminal contempt are to be made without unnecessary delay.<sup>55</sup> A hearing is required within 10 days of filing the charges.<sup>56</sup>

A sentence for indirect criminal contempt can include a fine of not less than \$300 nor more than \$1,000 and either imprisonment for up to six months or supervised probation not to exceed six months, plus any other relief the court orders. The fine is to be divided as follows:

- \$100 to the Pennsylvania State Police to create and maintain a statewide PFA registry
- \$50 to the Sheriff
- \$50 to the court
- \$100 to the Department of Human Services to fund domestic violence programs
- Any additional money to the State Police for the PFA registry<sup>57</sup>

Upon release of a defendant incarcerated for indirect criminal contempt, all reasonable means must be used to notify the victim sufficiently in advance of the release. This includes any work release, furlough, medical leave, community service, discharge, escape and recapture. The victim must keep the local authorities advised of his or her contact information.<sup>58</sup>

Magisterial district judges may issue emergency PFA orders and may issue a warrant for the arrest of a person violating an emergency PFA order and conduct a hearing prior to the imposition of punishment. Punishment is stayed for 10 days during which time an appeal can be filed to the court of common pleas. On appeal, the person charged has the right to bail and the right to be notified of the accusation and a reasonable time to make a defense. The person charged does not have a right to a jury trial, but does have a right to counsel.<sup>59</sup>

If a defendant is arrested for violating a PFA order, all law enforcement agencies are to make reasonable efforts to notify the protected person as soon as possible.<sup>60</sup>

A victim may file a private criminal complaint against a defendant for indirect criminal contempt for non-economic violations.<sup>61</sup>

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<sup>54</sup> 23 Pa.C.S. § 6113(b) and 18 Pa.C.S. § 2711(b).

<sup>55</sup> 23 Pa.C.S. § 6113(d) and 18 Pa.C.S. § 2711(c)(1).

<sup>56</sup> 23 Pa.C.S. § 6113(h).

<sup>57</sup> 23 Pa.C.S. § 6114(b).

<sup>58</sup> 23 Pa.C.S. § 6114(c).

<sup>59</sup> 42 Pa.C.S. § 4137.

<sup>60</sup> 23 Pa.C.S. § 6105(d).

<sup>61</sup> 23 Pa.C.S. § 6113.1.

## *Civil Contempt*

A victim may file a petition for civil contempt alleging that the defendant has violated the PFA order. A sentence for civil contempt may include imprisonment until the defendant complies with the order or demonstrates the intent to do so, up to six months. The defendant does not have a right to a jury trial, but is entitled to counsel.<sup>62</sup>

## *Bail*

The court, when determining when determining if a defendant is eligible for bail, must consider whether the defendant poses a threat of danger to the victim. If the court believes this to be the case, it must require as a condition of bail that the defendant refrain from:

- the residence or household of the victim and the victim's place of employment
- committing any further criminal conduct against the victim

The victim is to receive notice that the defendant has been released on bail. Violations of these conditions can result in the revocation of any form of pretrial release, or the forfeiture of bail and the issuance of a bench warrant for the defendant's arrest or remanding him to custody or a modification of the terms of the bail. The defendant is provided a hearing on any disposition for violation of the conditions of bail.<sup>63</sup>

If a defendant has been released on bail, the bail bondsman must report any bail violations involving a protection from abuse order to local law enforcement (within 24 hours) and the district attorney (within 48 hours). Failure to report can result in civil penalties.<sup>64</sup>

## *Data Collection*

The Pennsylvania State Police maintains a statewide registry of all valid temporary and final orders of protection, court-approved consent agreements and foreign PFA orders filed with county prothonotaries. In addition to what are basically demographic data, the registry must include whether or not any or all firearms, other weapons or ammunition were ordered relinquished. All orders, amendments and revocations must be posted within 8 hours of receipt. Vacated or expired orders must be purged from the registry. Information in the registry is not subject to the right-to-know law. It may be used by the State Police to conduct criminal history background checks in compliance with Pennsylvania's Uniform Firearms Act, which prohibits gun ownership for some individuals subject to PFA orders.<sup>65</sup> The Protection From Abuse Database (PFAD) was initiated in 1997, and is an archival system that includes all PFA proceedings in Pennsylvania and is designed to complement the registry. Records in the database are available

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<sup>62</sup> 23 Pa.C.S. § 6115.

<sup>63</sup> 18 Pa.C.S. § 2711(c)(2).

<sup>64</sup> 42 Pa.C.S. § 5750.

<sup>65</sup> 23 Pa.C.S. § 6105(e).

24 hours a day/365 days a year to authorized users (including courts, legal agencies and the private bar).<sup>66</sup>

The Pennsylvania State Police also maintain the Commonwealth Law Enforcement Assistance Network (CLEAN), which is a statewide computerized information system established as a service to all criminal justice agencies –local, county, state, and federal –within the Commonwealth. The central registry of protection from abuse orders can be accessed by criminal justice agencies through CLEAN as well. CLEAN is the Commonwealth’s conduit to the FBI’s Crime Information Center (NCIC) and the International Justice and Public Safety Information Sharing Network (NIet) and PFA orders may be shared with these agencies as federal law requires. The Pennsylvania Justice Network (JNET<sup>67</sup>) can also access PFA information through CLEAN. The use of criminal justice systems and information is restricted to criminal justice agencies only.<sup>68</sup>

Each law enforcement agency is required to make an incident report to the Pennsylvania State Police for inclusion in the Federal National-Incident-Based Reporting System (NIBRS), which is used to produce the FBI’s Uniform Crime Reports. These reports require extensive information about all aspects of the incident.<sup>69</sup> Police departments in cities, boroughs, and townships, as well as the State Police are required to report similar information to the State Police regarding crimes of violence between family or household members.<sup>70</sup> These data are compiled and presented in an annual report that includes county and statewide statistical profiles.<sup>71</sup> The annual crime reports, presented by the State Police in the Pennsylvania Uniform Crime Reports, break down the incidents into very detailed information. For example, in 2014, of the 611 people murdered, two wives murdered their husbands and 19 wives were murdered by their husbands. Seven women murdered their boyfriends and 20 women were murdered by their boyfriends. Two men murdered their ex-wives, but no ex-wives murdered their ex-husbands. One murder was committed by one of the partners in a homosexual relationship. The report also shows that 10 of the murders resulted from a “lover’s triangle” argument.<sup>72</sup>

The Administrative Office of Pennsylvania Courts, a part of Pennsylvania’s Unified Judicial System, tracks protection from abuse petitions and their dispositions on a county-by-county as well as a statewide basis.<sup>73</sup>

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<sup>66</sup> <http://www.pfad.pa.gov>

<sup>67</sup> The Pennsylvania Justice Network (JNET) is a bureau within the Pennsylvania Office of Administration’s Office for Information Technology that provides a secure online environment for authorized users to access public safety and criminal justice information from various contributing municipal, county, state and federal agencies. JNET is used by nearly 38,000 law enforcement and public safety officials at the federal, state and local level in Pennsylvania. Typical users include municipal and State Police, probation, corrections, courts, Office of the Attorney General, 911 and booking centers, district attorneys, children and youth and domestic relations. [www.pajnet.pa.gov](http://www.pajnet.pa.gov)

<sup>68</sup> Pennsylvania State Police – Commonwealth Law Enforcement Assistance Network, <http://www.psp.pa.gov/law-enforcement-services/Pages/Commonwealth-Law-Enforcement-Assistance-Network.aspx>

<sup>69</sup> 23 Pa.C.S. § 6105(c).

<sup>70</sup> 23 Pa.C.S. § 6105(f).

<sup>71</sup> 23 Pa.C.S. § 6105(g).

<sup>72</sup> Pennsylvania Uniform Crime Reporting System, Annual Report, 2014, <http://www.paucrs.pa.gov/UCR/Reporting/Annual/AnnualFrames.asp?year=2014>.

<sup>73</sup> Administrative Offices of Pennsylvania Courts, <http://www.pacourts.us/news-and-statistics/research-and-statistics/protection-from-abuse>.

## **VICTIM PROTECTION AND PERPETRATOR ACCOUNTABILITY**

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Obtaining a protection from abuse order can have long-term collateral consequences for both the victim and the perpetrator. The rights of both parties frequently are in conflict and, as with all dispute resolution, protecting and restoring the condition of victim and providing for perpetrator accountability are equally important.

### *Victim Protection and Restoration*

While a protection from abuse order in most instances will provide a victim with a measure of safety and security, the existence of domestic violence in a person's background can sometimes be used as an excuse to discriminate against the victim on the grounds that they "attract trouble." Statutory protections have been enacted that attempt to prevent this kind of treatment of victims. Additionally, efforts have been made to make the process of prosecuting violations of PFA orders and other criminal conduct arising from domestic violence situations simpler for the victim to pursue.

### *Divorce*

If a husband and wife allege that their marriage is irretrievably broken and 90 days have lapsed from the commencement of the action and both parties consent to the divorce, a divorce may be granted by the court. The consent of a party is presumed where that party has been convicted of committing a personal injury crime against the other party. While courts may normally order counseling for the parties to a divorce, the court may not require counseling over the objection of a party that has a protection from abuse order against the other party, or where that party was the victim of a personal injury crime for which the other party was convicted or has entered into an Accelerated Rehabilitative Disposition program as a result of conduct for which the other party was a victim.<sup>74</sup>

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<sup>74</sup> 23 Pa.C.S. §§ 3301, 3302. These provisions were added to the Divorce Code by the act of April 21, 2016 (P.L.166, No.24).

## *Exemption from Criminal Proceedings*

Domestic violence victims can be excused from criminal prosecution for acts that might otherwise be a criminal offense if they are done under the circumstances of domestic violence. Concealment of the whereabouts of a child is a felony of the third degree, unless the concealment is a “reasonable response to domestic violence or child abuse.”<sup>75</sup>

Generally, any time an individual seeks medical treatment at a hospital or pharmacy and has suffered injuries by firearm or by a criminal act, a report is to be made immediately to law enforcement. Some domestic violence victims have the legal authority to prevent such reports from being made. This exception applies if all of the following are true: (1) the victim is an adult and has suffered bodily injury; (2) the injury was inflicted by an individual who is either the current or former spouse of the victim, a current or former sexual or intimate partner of the victim, shares biological parenthood with the victim, or is or has been living as a spouse of the victim; (3) the victim has been informed of the duty to report on behalf of the medical personnel and that the report cannot be made without the victim’s consent; (4) the victim does not consent to the report and (5) the victim has been provided with a referral to the appropriate victim service agency such as a domestic violence or sexual assault program.<sup>76</sup>

## *Financial Assistance and Protections*

### General Assistance

A person who is a victim of domestic violence and who is receiving protective services is eligible for general assistance (Welfare). Persons under this qualification may only receive general assistance for a total of nine months in that person’s lifetime.<sup>77</sup>

### Wage Attachments

No wage attachments may be issued for physical damages related to a residential lease against a victim who has obtained a protection from abuse order in a criminal proceeding against a family or household member and the court has determined that the physical damages were caused by the family or household member.<sup>78</sup>

### Insurance

It is an unfair or deceptive act or practice in the business of insurance to refuse issue, renew or reissue, or to cancel or terminate an insurance policy because the insured or applicant is a victim of abuse. Adding a surcharge, or underwriting in any way that adversely takes into account a history or status of abuse or refusing to pay an automobile or property insurance claim arising out

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<sup>75</sup> 18 Pa.C.S. § 2909.

<sup>76</sup> 18 Pa.C.S. § 5106(a.1).

<sup>77</sup> The Human Services Code, act of June 13, 1967 (P.L.31, No.21), § 432(3)(i)(G).

<sup>78</sup> 42 Pa.C.S. § 8127(f).

of abuse if the loss is caused by the intentional act of another insured are also prohibited.<sup>79</sup> When such a claim is filed, the insurer must notify the insured that it cannot refuse to pay a claim without conducting a reasonable investigation which may include contact with other insureds (such as the spouse who caused the damage) and that if the insured so requests, the insurance company will not disclose the insured's location as part of the investigation. Additionally, the insured must be given 14 days' notice if any legal action will be instituted against the person who caused the damage and that it may impose a surcharge or refuse to renew coverage as to the person who caused the damage.

This ability to penalize the abusive person cannot be imposed until six months after the payment of the claim or the policy's renewal date, whichever comes later. The insurer is also required to give the victim the national domestic violence hotline number. Payment to the victim is considered payment to all of the insureds (which is usually the victim and the abusive spouse). "Victim of abuse" in this statute means an individual who is or has been subject to abuse or an individual who seeks or has sought medical or psychological treatment for abuse, protection from abuse or shelter from abuse.

### Crime Victims Compensation

In the case of domestic abuse, to be eligible to receive a crime victim's compensation award, a crime must be committed, the person injured was a direct victim, and the crime was reported to the authorities within 72 hours, and the victim or claimant fully cooperated with all law enforcement agencies and the Office of Victims' Services. The cooperation requirement can be met by a domestic violence victim by commencing an action for protection from abuse. Generally, the determination of the amount of the award is affected by whether or not the victim, because of conduct, contributed to the infliction of the injury. This adjustment does not occur with victims of domestic violence unless the victim was the primary aggressor.<sup>80</sup>

Furthermore, the Office Victim Advocate has the power and duty to represent and advocate for the interests of individual crime victims in accordance with section 302 of the Crime Victims Act, and advocate for the interests of crime victims generally, including the victims of crimes committed by juveniles.<sup>81</sup>

### *Housing*

Pennsylvania's Municipal Code was amended in 2014 to prevent municipalities from passing ordinances that provide for the revocation of occupancy permits or rental licenses, assessing fines or providing for the eviction of victims of abuse if police or emergency assistance are called to a victim's residence or tenancy.<sup>82</sup>

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<sup>79</sup> § 5(a)(14) of the Unfair Insurance Practices Act, act of July 22, 1974 (P.L.589, No.205).

<sup>80</sup> § 707(a), (a.1) and (f) of the Crime Victims Act, act of November 24, 1998 (P.L.882, No.111).

<sup>81</sup> 18 Pa.C.S. § 9402.

<sup>82</sup> 53 Pa.C.S. § 304.

Under the Landlord-Tenant Act of 1951, “victims of domestic violence”<sup>83</sup> have additional protections during the pendency of any appeal of an action for eviction or payment of past due rent that allow the victim to remain on the property during the appeal.<sup>84</sup>

Any business that engages or contributes to a neighborhood organization that provides assistance in a variety of community support programs, including domestic violence housing assistance is eligible for a tax credit.<sup>85</sup>

### *Social Service Resources*

The Commonwealth found that it was in the interest of public health and safety that domestic violence programs and rape crisis programs receive financial assistance from the state to provide needed support services for victims and assistance in prevention through community education. A \$10 surcharge is imposed on any person who pleads guilty or nolo contendere to a crime defined in the Crimes Code or under the Controlled Substances, Drug, Device and Cosmetic Act.<sup>86</sup>

The Department of Human Services makes grants to domestic violence centers under this program, and considers the population to be served, the geographical area to be serviced, the scope of the services, the need for services and the amount of funds provided from other sources. For purposes of these grants, domestic violence is the occurrence of one or more of the following acts between family or household members either intentionally, knowingly or recklessly causing or attempting to cause bodily injury; or placing, by physical menace, another in fear of imminent serious bodily injury. Domestic violence program means a program which has as its primary purpose the provision of direct services to victims of domestic violence and their children, including, but not limited to, victim advocacy, counseling, shelter, information and referral, victim-witness, accompaniment, community education and prevention.<sup>87</sup>

Established in 1976 when Pennsylvania’s first Protection from Abuse Act<sup>88</sup> was enacted, the Pennsylvania Coalition against Domestic Violence is Pennsylvania’s pre-eminent provider of domestic violence programs. They offer assistance in every county in the Commonwealth through a network of 60 community-based domestic violence programs. Their intervention services are provided free of charge and include 24-hour hotlines, crisis centers, individual and group counseling and support, shelter, assistance in filing PFA petitions, court accompaniment, children’s programs and referrals to other community resources.<sup>89</sup>

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<sup>83</sup> Defined as “a person who has obtained a protection from abuse order against another individual or can provide other suitable evidence as the court shall direct.”

<sup>84</sup> § 513 of the act of April 6, 1951, (P.L.69, No.20).

<sup>85</sup> Tax Reform Code of 1971, act of March 4, 1971 (P.L.6, No.2) §§ 1904-A. 1905-A.

<sup>86</sup> 18 Pa.C.S. and the act of April 14, 1972 (P.L.233, No.64).

<sup>87</sup> The Administrative Code of 1929, act of April 9, 1929 (P.L.177, No.175), § 2333.

<sup>88</sup> Act of October 7, 1976 (P.L.1090, No.218) (repealed).

<sup>89</sup> www.pcadv.org.



## Domestic Violence Health Care Response Program

The Department of Human Services administers this program, designed to support the development of domestic violence medical advocacy projects in this Commonwealth which would assist in the implementation of domestic violence policies and procedures as well as provide training for health care workers to improve hospital, health center and clinic response to domestic violence victims seeking medical treatment. Medical advocacy project sites were selected to ensure representation from urban, rural and suburban areas.

Each domestic violence medical advocacy project shall:

- Actively collaborate with a local community-based domestic violence program and the hospital, health center or clinic participating in the project.
- Develop and implement uniform multidisciplinary domestic violence policies and procedures which incorporate the roles and responsibilities of all staff who provide services or interact with victims of domestic violence, including the identification of victims of domestic violence through universal screening.
- Develop and implement a multidisciplinary, comprehensive and ongoing domestic violence education and training program for hospital, health center or clinic personnel adapted to the particular hospitals, health center's or clinic's demographics, policies, staffing patterns and resources. The training program shall include, but is not limited to, identifying characteristics of domestic violence, screening patients for domestic violence, appropriately documenting in the medical record and offering referral services, including domestic violence resources available in the community.
- Provide available educational materials to inform victims of domestic violence about the services and assistance available through the domestic violence program.
- Develop formal project assessment procedures, including, but not limited to, coordinating and collecting data for the evaluation of the projects and their effectiveness in reducing the incidence of domestic violence and overall health care costs, including emergency room costs.<sup>90</sup>

## Dating Violence Education Policy

The Department of Education, through the Office for Safe Schools, is responsible for the development of a model dating violence policy to assist school district in developing policies for dating violence reporting and response. Age appropriate dating violence materials are available for schools that may be incorporated into their annual health curriculum. Training is available for guidance counselors, nurses and mental health staff at the high school level. If the school deems it appropriate, training may be offered to other staff and parents.

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<sup>90</sup> The Domestic Violence Health Care Response Act, act of December 3, 1998 (P.L.925, No.115).

Dating violence education may include: defining dating violence and recognizing dating violence warning signs; characteristics of healthy relationships; information regarding peer support and the role friends and peers have in addressing dating violence; and contact information for and the services and resources available through domestic violence centers and rape crisis centers, including detailed information concerning safety planning, availability and enforcement of protection from abuse orders and the availability of other services and assistance for students and their families.<sup>91</sup>

### Employment Opportunities Program

The Department of Human Services runs a grant program to provide employment opportunities for transitionally needy general assistance recipients who have barriers to employment, including victims of domestic violence.<sup>92</sup>

### *False Claims*

It is frequently alleged, anecdotally, that false claims of domestic violence are filed and PFA orders obtained as a tactic in divorce and custody proceedings. If these events are occurring, the law provides legal remedies. Any person who knowingly gives false information to any law enforcement officer with the intent to implicate another under the PFA Act commits an offense.<sup>93</sup> Generally, this offense is a misdemeanor of the second degree, punishable with up to two years in prison and a maximum fine of \$5,000. The PFA Act specifically states that nothing in it precludes an action for wrongful use of civil process or criminal prosecution for falsification and intimidation.<sup>94</sup>

## ***Perpetrator Accountability***

Being the person against whom a protection from abuse ordered is entered can have legal consequences in numerous areas of the titular abuser's life.

### *Child Abuse*

An individual who is charged with abuse in a protection from abuse action may also be considered to be a perpetrator of child abuse. A PFA order is considered a "founded report" of child abuse under specific circumstances. Persons who are the subject of founded report can find their employment options limited because of the disqualification of being found to be a perpetrator of child abuse.

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<sup>91</sup> The Public School Code of 1949, act of March 10, 1949 (P.L.30, No.14), § 1553.

<sup>92</sup> The Employment Opportunities Act, act of July 13, 1987 (P.L.342, No.65) § 4.

<sup>93</sup> 18 Pa.C.S. § 4906 (relating to false reports to law enforcement authorities).

<sup>94</sup> 23 Pa.C.S. § 6122.

23 Pa.C.S. § 6303. Definitions.

"Founded report." A child abuse report involving a perpetrator that is made pursuant to this chapter, if any of the following applies:

(4) A final protection from abuse order has been granted under section 6108 (relating to relief), when the child who is a subject of the report is one of the individuals protected under the protection from abuse order and:

- (i) only one individual is charged with the abuse in the protection from abuse action;
- (ii) only that individual defends against the charge;
- (iii) the adjudication involves the same factual circumstances involved in the allegation of child abuse; and
- (iv) the protection from abuse adjudication finds that the child abuse occurred.

*Child Abduction Prevention*

Under the Uniform Child Abduction Prevention Act, abduction prevention measures may be order by the court (usually common pleas) during a “child custody proceeding,” defined as “A proceeding in which legal custody, physical custody or visitation with respect to a child is at issue. The term includes a proceeding for divorce, dissolution of marriage, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights or protection from domestic violence.”<sup>95</sup>

A petition under 23 Pa.C.S. Chapter 52 must include a statement of whether a party to the proceeding has been arrested for a crime related to domestic violence, stalking or child abuse or neglect and the date, location and disposition of the case.<sup>96</sup> Additionally, the court, in determining if there is a credible risk of abduction, shall consider any evidence that the petitioner or respondent has engaged in domestic violence, stalking or child abuse or neglect.<sup>97</sup>

*Child Custody*

In determining the custody of a child, the court is required to determine the best interest of the child by considering all relevant factors, giving weighted consideration to those factors which affect the safety of the child, including the following:

- The present and past abuse committed by a party or member of the party's household, whether there is a continued risk of harm to the child or an abused party and which party can better provide adequate physical safeguards and supervision of the child.<sup>98</sup>

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<sup>95</sup> 23 Pa.C.S. § 5202.

<sup>96</sup> 23 Pa.C.S. § 5206(5).

<sup>97</sup> 23 Pa.C.S. § 5207(a)(4).

<sup>98</sup> 23 Pa.C.S. § 5328(a)(2).

- The level of conflict between the parties and the willingness and ability of the parties to cooperate with one another. A party's effort to protect a child from abuse by another party is not evidence of unwillingness or inability to cooperate with that party.<sup>99</sup>

When counseling is ordered as part of a custody proceeding, the court may order individual counseling for the abuser but may not order the parties to attend joint counseling in situations involving abuse.<sup>100</sup>

Senate Bill 1400, Printer's No. 2201 (2016) would amend these provisions to include substantial allegations of domestic violence to the factors to be considered in determining custody. Additionally, the bill would authorize education and training programs for judges, including magisterial district judges and their personnel, and guardians ad litem, in the effects of child abuse and domestic violence on children.

House Bill 1971, Printer's No. 3136 (2016) would add a new subchapter to the child custody provisions of the Domestic Relations Code<sup>101</sup> that establishes separate procedures and considerations that must occur in a child custody proceeding that involves domestic violence. Additionally, training for judges and guardians ad litem is also provided for.

When considering whether to grant a custodial parent's proposed relocation, the court shall consider the following factors, giving weighted consideration to those factors which affect the safety of the child, including the following:

- Whether there is an established pattern of conduct of either party to promote or thwart the relationship of the child and the other party.<sup>102</sup>
- The reasons and motivation of each party for seeking or opposing the relocation.<sup>103</sup>
- The present and past abuse committed by a party or member of the party's household and whether there is a continued risk of harm to the child or an abused party.<sup>104</sup>

Failure to provide notice and an opportunity for a hearing is subject to mitigation if the court determines that such failure was caused in whole, or in part, by abuse.<sup>105</sup>

When multiple states become involved in a custody dispute, interstate conventions are applied under the Uniform Child Custody Jurisdiction and Enforcement Act. A Pennsylvania court has temporary emergency jurisdiction if the child is present in Pennsylvania and the child has been abandoned or it is necessary in an emergency to protect the child because the child or a sibling or parent of the child is subjected to or threatened with mistreatment or abuse.<sup>106</sup> In determining which state will take jurisdiction in a dispute, domestic violence is a factor to be considered:

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<sup>99</sup> 23 Pa.C.S. §5328(a)(13).

<sup>100</sup> 23 Pa.C.S. § 5333(b).

<sup>101</sup> 23 Pa.C.S. Chapter 53.

<sup>102</sup> 23 Pa.C.S. § 5337(h)(5).

<sup>103</sup> 23 Pa.C.S. § 5337(h)(8).

<sup>104</sup> 23 Pa.C.S. § 5337(h)(9).

<sup>105</sup> 23 Pa.C.S. § 5337(k).

<sup>106</sup> 23 Pa.C.S. § 5424(a).

“whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child.”<sup>107</sup>

When a local children and youth agency removes a child from their home, they are required to notify the relatives of the child of the opportunity to take physical custody of the child and become the child’s foster parent, permanent legal guardian or adoptive parent. Placement with relatives (“kinship care”) is a priority placement. These notification rights and the privilege of placement of the child are not available in situations of family or domestic violence.<sup>108</sup>

### *Enhanced Criminal Penalties*

Various crimes against the person receive greater penalties if the victim is under a protection from abuse order. These include murder in the first degree, harassment, stalking and strangulation. If a victim is murdered by the person against whom they had a protection from abuse order, that fact becomes an aggravating circumstance in determining whether the murder receives the death penalty or life imprisonment.<sup>109</sup> Any harassment violation is enhanced by one degree if the defendant has previously violated a PFA order involving the same victim, family or household member.<sup>110</sup> A first offense stalking charge if the defendant has previously been convicted of a crime of violence involving the same victim, family or household member constitutes a felony of the third degree, which carries a penalty of up to seven years in prison and up to \$15,000 in fines.<sup>111</sup> The offense of strangulation is a felony of the second degree if committed against a family or household member as defined in the PFA Act. It becomes a felony of the first degree if committed while under a PFA order that covers the victim. A second offense against a family or household member, regardless of the existence of a PFA order is also a felony of the first degree. Second degree felonies are punishable by up to 10 years’ imprisonment and a fine of up to \$25,000. Third degree felonies are punishable by up to 20 years’ imprisonment and a fine of up to \$25,000.<sup>112</sup>

Senate Bill 1392, Printer’s No. 2159 (2015) proposes an amendment to Pennsylvania’s sentencing law provide for a sentence enhancement if a person commits a crime of violence against another person when, at the time the offense is committed, the defendant was in violation of a PFA order.

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<sup>107</sup> 23 Pa.C.S. § 5427(b)(1).

<sup>108</sup> The Human Services Code, act of June 13, 1967 (P.L.31, No.21) § 1303.

<sup>109</sup> 42 Pa.C.S. § 9711(d)(18).

<sup>110</sup> 18 Pa.C.S. § 2709.

<sup>111</sup> 18 Pa.C.S. § 2709.1.

<sup>112</sup> 18 Pa.C.S. § 2718; added by the act of October 26, 2016 (P.L. \_\_, No.111).



## POTENTIAL REMEDIES

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There are several ways to reduce the occurrence of violence in PFA situations that have recently been proposed, including expedited service of orders, extensions of the duration of a PFA order, bail conditions and sentencing enhancement.

### *Delivery of Order*

Currently, there is no specific statutory deadline imposed for the delivery of a PFA order to a defendant. When the petition is filed, the sheriff or a competent adult may serve notice of the petition for the PFA order in any of the following ways:

- by handing a copy to the defendant; or
- by handing a copy:
  - at the residence of the defendant to an adult member of the family with whom the defendant resides; but if no adult member of the family is found, then to an adult person in charge of such residence; or
  - at the residence of the defendant to the clerk or manager of the hotel, inn, apartment house, boarding house or other place of lodging at which the defendant resides; or
  - at any office or usual place of business of the defendant to the defendant's agent or to the person for the time being in charge thereof; or
- pursuant to special order of court.

Service by mail of the petition is only authorized if the court orders it and personal service cannot be completed within 48 hours after the PFA petition is filed.<sup>113</sup> Under the rules of court, service of a temporary order is to be accomplished in the same manner.<sup>114</sup> Senate Bill 1143, Printer's No. 1590 (2015) amends the statute to require that service in person must occur within six hours of the issuance of the orders. Additionally, SB 1143 requires that the court or hearing officer provide a law enforcement officer, the sheriff or other designated individual to accompany the victim to the victim's residence before or while the petition and orders are being served, if the witness avers that the escort is necessary to protect his or her safety.

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<sup>113</sup> Pa. R. Civ. Proc. 231 Pa. Code § 1930.4.

<sup>114</sup> Pa. R. Civ. Proc. 231 Pa. Code § 1901.4.

## *Bail*

Pennsylvania's Justice Reinvestment Initiative is looking at ways to improve Pennsylvania's bail system, especially as it relates to protection from abuse orders.<sup>115</sup> On June 15, 2016, effective October 1, 2016, the Pennsylvania Supreme Court approved the revision of the Comment to Rule of Criminal Procedure 523 (Release Criteria) to recognize the use of risk assessment tools as one factor permitted to be considered in bail determination:

When deciding whether to release a defendant on bail and what conditions of release to impose, the bail authority must consider all the criteria provided in this rule, rather than considering, for example, only the designation of the offense or the fact that the defendant is a nonresident. Nothing in this rule prohibits the use of a retrial risk assessment tool as one of the means of evaluating the factors to be considered under paragraph (A). However, a risk assessment tool must not be the only means of reaching the bail determination.

The most widely-recognized domestic violence risk assessment tool in Pennsylvania is the Lethality Assessment Program, a collaborative effort of the Pennsylvania Coalition Against Domestic Violence, the Pennsylvania Commission on Crime and Delinquency, community-based domestic violence programs and local law enforcement agencies to try to prevent domestic violence fatalities. Since 2012, the LAP program has been implemented in 38 counties, involving 40 domestic violence programs and 167 law enforcement agencies.<sup>116</sup>

## *Weapons Forfeitures*

Pennsylvania's firearms law is generally strong in its prohibition of the purchase of firearms by a person under a protection from abuse order. A person who is under an active order generally cannot go out and obtain a weapon. The PFA registry maintained by the State Police and the state's background check system are effective in preventing a person who does not own a weapon from acquiring one after a PFA order has been issued. It is possible that a person could obtain a weapon through a straw purchase, but laws are already in place to penalize such activity. The weakest point in the firearms law is that background checks are not required for handgun transfers between spouses, a parent and child or a grandparent and a grandchild.<sup>117</sup> One could hope to safely assume that a close family member would have knowledge of a PFA order, but they may not, and lack of a background check requirement makes it harder for an individual to become

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<sup>115</sup> John E. Wetzel and Jennifer R. Storm (Pa. Secretary of the Department of Corrections and State Victim's Advocate, respectively), "For the sake of public safety, It's time to reform Pa.'s ineffective bail system," *Pennlive*, September 8, 2016, [www.pennlive.com/opinion/2016/its\\_time\\_to\\_reform\\_pas\\_ineffec.html](http://www.pennlive.com/opinion/2016/its_time_to_reform_pas_ineffec.html).

<sup>116</sup> Counties currently not participating include: Beaver, Bradford, Bucks, Cambria, Cameron, Carbon, Clarion, Clearfield, Columbia, Elk, Forest, Fulton, Jefferson, Juniata, Lackawanna, Lebanon, Lehigh, Luzerne, Mifflin, Montour, Philadelphia, Potter, Schuylkill, Snyder, Somerset, Sullivan, Susquehanna, and Warren. It should be noted that not every police department in every participating county uses the LAP program. <https://isra.hbg.psu.edu/pcadvdashboards/PCADVLethalityDashboard/tabid/2645/Default.aspx>

<sup>117</sup> 18 Pa.C.S. § 6111(c).



aware of the existence of a PFA order. A person could always acquire a weapon from a friend or relative who does not have knowledge of the PFA order, but the potential criminal liability in assisting a prohibited person is usually a sufficient deterrent.

The biggest gap in Pennsylvania's PFA Act involves the relinquishment of weapons after a PFA order has been issued. Specifically, the seizure of weapons at the time the PFA order is violated and the process of third-party safekeeping can provide opportunities for weapons to remain accessible to the defendant.

The ability to access weapons after a PFA order has been issued is a great danger to the victim. Studies have shown that abused women are five times more likely to be killed by their abuser if the abuser owns a firearm.<sup>118</sup> Pennsylvania's PFA Act authorizes, but does not require the PFA order to include an order to temporarily relinquish to the sheriff *the defendant's other weapons and ammunition which have been used or been threatened to be used in an incident of abuse against the plaintiff or the minor children and the defendant's firearms* and prohibiting the defendant from acquiring or possessing any firearm for the duration of the order and requiring the defendant to relinquish to the sheriff any firearm license or permit under the firearms law.

Police officers may make probable cause arrests for PFA order violations involving physical violence, reckless endangerment, terroristic threats or stalking without a warrant, and are directed to seize all weapons used by the defendant in the commission of the alleged offense.<sup>119</sup> Additionally, the PFA Act provides for the immediate seizure of *all firearms, other weapons and ammunition used or threatened to be used during the violation of the protection order or during prior incidents of abuse and any other firearms in the defendant's possession*.<sup>120</sup> The Pennsylvania Supreme Court has held that the arrest of an individual for violation of a PFA order that was the result of a defendant firing shots over his sleeping wife and son in their mobile home, did not justify a warrantless search of the defendant's home when at the time of the search he was in police custody and the police had secured the premises. The search was found to violate the defendant's 4<sup>th</sup> Amendment rights. The court found that exigent circumstances did not exist, and that the search of the home was not incident to the defendant's arrest, two of the few narrowly drawn exceptions to the Constitutional protection against illegal searches and seizures. Specifically, the court determined that the search was not incident to the arrest because it occurred an hour after the arrest and the defendant was arrested outside the mobile home, not inside of it.<sup>121</sup>

There are several ways that other states have attempted to address the importance of removing weapons from access by the defendant in as expeditious manner as possible and not in reliance on the defendant's compliance in producing those weapons. In New Jersey, the court in its order of relief can order the search for and seizure of any firearm or other weapon at any location where the judge has reasonable cause to believe the weapon is located. The judge shall state with specificity the reasons for and scope of the search and seizure authorized by the order.<sup>122</sup> Delaware courts may order law enforcement to search for and seize weapons, if it is shown by the victim

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<sup>118</sup> Jacquelyn C. Campbell et al., *Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study*, 93 Am. J. Pub. Health 1089, 1092 (July 2003).

<sup>119</sup> 18 Pa.C.S. § 2711(a) and (b).

<sup>120</sup> 23 Pa.C.S. § 6113(b).

<sup>121</sup> *Com. v. Wright*, 742 A.2d 661 (Pa. 1999).

<sup>122</sup> NJ Rev Stat § 2C:25-29 (16) (2013).

that the defendant has firearms in his or her possession, the victim can describe with sufficient detail the type and location of the firearms and the defendant has used or threatened to use a firearm against the victim and the victim fears that the defendant might use a firearm against them.<sup>123</sup>

The concept of third-party safekeeping is another area in which access to guns could be more strictly controlled. Specifically, the PFA Act currently prohibits a person who was formerly under a PFA order against the defendant from ever serving as a third-party safekeeper for the defendant. It also prohibits transfers to household members. However, family members of who are not members of the defendant's household and the defendant's friends can also serve in this capacity. Two issues arise with this area. The first is that the list of prohibited third-party gatekeepers could be more extensive to minimize risk that the defendant will find a "friendly" safekeeper who may not be cautious in securing the weapon.

The second area of concern is that even if the family member or friend strictly complies with the requirements of the law, it would be easier for the defendant to access one of those persons' residence, garage, or other safekeeping place than it would be to access the secured lockup at the local sheriff's office. If a defendant is found to be in indirect criminal contempt for violating a PFA order, the third party gatekeeper privilege is revoked, and the weapon must be turned over to the sheriff.<sup>124</sup> While this is a helpful process, it only takes effect after a PFA is violated.

Of the 27 states that in some form require the relinquishment of at least some weapons, about half specify to whom the relinquishment may be made. Most of them require relinquishment to law enforcement. California's Family Code does not permit third-party safekeeping. Relinquished weapons must be surrendered to local law enforcement or sold to a licensed gun dealer.<sup>125</sup> Pennsylvania is in a minority of states that authorize relinquishment to third-parties.<sup>126</sup>

### ***Duration of PFA Order***

Another way of controlling access to firearms is to extend the duration of the PFA or to extend the duration of the firearm relinquishment period beyond the time the PFA order is active. Most states provide for the duration of PFA orders that range from 180 days to as much as five years. Many also provide for extensions. PFA orders in Alabama and New Jersey are permanent. PFA orders in another 10 states can be made permanent or extended indefinitely under established circumstances. Minnesota PFA orders can be extended for up to 50 years in certain situations.<sup>127</sup>

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<sup>123</sup> Del. Code § 1045(a)(11), effective January 1, 2017.

<sup>124</sup> 23 Pa.C.S. § 6108.3(c).

<sup>125</sup> Calif. Fam. Code § 6389(c).

<sup>126</sup> Law Center to Prevent Gun Violence, *Domestic Violence and Firearms, Summary of State Laws, Section 5b*, 2016, <http://smartgunlaws.org/gun-laws/policy-areas/background-checks/domestic-violence-firearms/#state>

<sup>127</sup> Alaska, California, Georgia, Idaho, Iowa, Louisiana, Maryland, Massachusetts, Mississippi, and Montana. American Bar Association Commission on Domestic & Sexual Violence, Table of Domestic Violence Civil Protection Orders (CPOs), August 2016, [www.ambar.org/cdsv](http://www.ambar.org/cdsv). See also National Center on Protection Orders & Full Faith and Credit, Battered Women's Justice Project, "State Protection Orders Duration Matrix, Revised 2015," <http://www.bwjp.org/ncpoffc-state-protection-order-duration-matrix.pdf>

PFA orders in New Jersey bar the defendant from acquiring a firearm for the duration of the order or two years whichever is greater.<sup>128</sup> Minnesota's Domestic Abuse Act provides for tolling of PFA orders while the defendant is incarcerated. Specifically, the statute provides that the court can extend an existing PFA order or grant a new one if the original has expired if the defendant is incarcerated and is about to be released, or has recently been release from incarceration. A victim does not have to show imminent physical danger to obtain an extension or subsequent order under that statute.<sup>129</sup> Under the Texas Penal Code, a person convicted of domestic violence is prohibited from possessing a firearm for five years after the date of the person's release from confinement or community supervision following conviction of the misdemeanor.<sup>130</sup>

### ***GPS Monitoring***

Global Positioning Systems (GPS) can be an effective tool in preventing domestic violence, but care must be taken to establish and maintain the system properly. Active tracking should be used with violent offenders as it provides real-time location around the clock. In order for that to happen, however, an administrator must continually monitor the system. This can be a member of the local law enforcement agency or it can be contracted out to a third-party vendor. Exclusion zones can be established around the victim's home, work, school or other frequently visited locales, and an alert can immediately be sent to the monitor. Systems can also be used to notify the victim with a pager if the defendant enters an exclusion zone. Victims can also be tracked using GPS on an electronic device carried or worn by the victim.

Several issues should be considered: How will the monitoring be staffed? Are there adequate resources, both financial and manpower, to support the system? Are there sufficient officers to respond to immediate alerts? If victims are tracked, how is their privacy protected?<sup>131</sup>

### ***Dating Violence***

Under current law, protection from abuse orders can be obtained against someone with whom the victim shares a familial or household relationship. There has been recent legislative interest, both in Pennsylvania and in other states to extend the list of covered relationships to include dating partners, who may or may not be sexual or intimate partners.

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<sup>128</sup> NJ Rev Stat § 2C:25-29 (13)(b) (2013).

<sup>129</sup> Minn. Stat. 518B.01, §6a.

<sup>130</sup> Tex. Penal Code § 46.04(b).

<sup>131</sup> [http://nnedv.org/downloads/SafetyNet/OVW/NNEDV\\_GPSMonitoring\\_Tipsheet\\_2011.pdf](http://nnedv.org/downloads/SafetyNet/OVW/NNEDV_GPSMonitoring_Tipsheet_2011.pdf)

The Centers for Disease Control define dating violence as:

- Dating violence is a type of intimate partner violence. It occurs between two people in a close relationship. The nature of dating violence can be physical, emotional, or sexual.
- Physical—This occurs when a partner is pinched, hit, shoved, slapped, punched, or kicked.
- Psychological/Emotional—This means threatening a partner or harming his or her sense of self-worth. Examples include name calling, shaming, bullying, embarrassing on purpose, or keeping him/her away from friends and family.
- Sexual—This is forcing a partner to engage in a sex act when he or she does not or cannot consent. This can be physical or nonphysical, like threatening to spread rumors if a partner refuses to have sex.
- Stalking—This refers to a pattern of harassing or threatening tactics that are unwanted and cause fear in the victim. Dating violence can take place in person or electronically, such as repeated texting or posting sexual pictures of a partner online.<sup>132</sup>

Senate Bill 1394, Printer's No. 2184 (2015) would expanding dating violence programs currently provided under the Public School Code of 1949. Dating violence education and training would be extended to include middle-school students and information about how to apply for a protection from abuse order would be included in education and training curricula.

House Bill 1393, Printer's No. 2160 (2016) sought to add dating violence, including provisions for minors to obtain PFA orders against dating partners, to the PFA Act. A "dating partner" is defined as

A person, regardless of gender, who is or has been involved in an intimate relationship with another person, primarily characterized by the expectation of affectionate involvement, whether casual, serious or long term.

The proposal in HB 1393 would clarify that a dating relationship is an intimate relationships, regardless of whether sexual activity has occurred. Additionally, it would clarify that same sex relationships are also eligible for PFA orders.

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<sup>132</sup> U.S. Department of Health and Human Services, Centers for Disease Control, National Center for Injury Prevention and Control, Division of Violence Prevention, "Understanding Teen Dating Violence," 2016 Fact Sheet, <http://www.cdc.gov/violenceprevention/pdf/teen-dating-violence-factsheet-a.pdf>.

As of 2010, 40 states had added dating relationships to the list of relationships eligible for PFA orders. Of the 10 remaining states, Oregon is unique in its authorization of PFA orders for persons in a sexual relationship, but does not explicitly include non-sexual dating relationships. Pennsylvania permits persons in sexual and intimate partner relationships to obtain PFA orders under the statute, and the Pennsylvania Superior Court has found that those relationships include dating relationships.<sup>133</sup> Of the eight remaining states,<sup>134</sup> South Carolina specifically disallows same sex relationships.

Of the 40 states that include dating relationships, Montana and North Carolina has specifically disallowed same sex relationships.<sup>135</sup> States that statutorily permit PFA orders between same sex relationships include Hawaii, Maine, and Washington.<sup>136</sup> Case law in Pennsylvania has held that same sex relationships qualify for PFA protection as sexual or intimate relationships.<sup>137</sup>

Statutorily clarifying the roles of dating violence, teen dating violence and same sex relationships could improve interpretation of the law, but are not vital to closing any perceived gaps in the PFA Act.

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<sup>133</sup> Varner v. Holley, 854 A.2d 520 (Pa.Super. Ct. 2004).

<sup>134</sup> Alabama, Georgia, Kentucky, Ohio, South Carolina, South Dakota, Utah, and Virginia. Break the Cycle, “2010 State Law Report Cards: A National Survey on Teen Dating Violence Laws,” 2010, [www.breakthecycle.org](http://www.breakthecycle.org).

<sup>136</sup> American Bar Association Commission on Domestic & Sexual Violence, Table of Domestic Violence Civil Protection Orders (CPOs), August 2016, [www.ambar.org/cdsv](http://www.ambar.org/cdsv).

<sup>137</sup> D.H. v. B.O., 734 A.2d 409 (Pa. Super. 1999).



## PROPOSED LEGISLATION

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### AN ACT

Amending Titles 18 (Crimes and Offenses), 23 (Domestic Relations) and 42 (Judiciary and Judicial Code) of the Pennsylvania Consolidated Statutes by providing greater protections for victims of domestic abuse.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. § 6111(c) of Title 18 of the Pennsylvania Consolidated Statutes is amended to read:

§ 6111. Sale or transfer of firearms.

\* \* \*

(c) Duty of other persons.--Any person who is not a licensed importer, manufacturer or dealer and who desires to sell or transfer a firearm to another unlicensed person shall do so only upon the place of business of a licensed importer, manufacturer, dealer or county sheriff's office, the latter of whom shall follow the procedure set forth in this section as if he were the seller of the firearm. [The provisions of this section shall not apply to transfers between spouses or to transfers between a parent and child or to transfers between grandparent and grandchild.]

\* \* \*

Section 2. §§ 6106(h), 6108(a)(7)(iv), 6108.2(b)(5), 6108(g), 6108.3(b)(3)(ii) and 6108(b)(i) of Title 23 of the Pennsylvania Consolidated Statutes are amended and a new subsection 6108(e.1) added to read:

\* \* \*

§ 6106. Commencement of proceedings.

\* \* \*

(h) Assistance and advice to plaintiff.--The courts and hearing officers shall:

(1) Provide simplified forms and clerical assistance in English and Spanish to help with the writing and filing of the petition for a protection order for an individual not represented by counsel.

(2) Provide the plaintiff with written and oral referrals, in English and Spanish, to the local domestic violence program, to the local legal services office and to the county bar association's lawyer referral service.

(3) Provide a law enforcement officer, the sheriff or other designated agency or individual to accompany the plaintiff to the plaintiff's residence before or while the petition and orders are being served, if the plaintiff avers that such assistance is necessary to protect the safety of the plaintiff.

\* \* \*

§ 6108. Relief.

(a) General rule.--The court may grant any protection order or approve any consent agreement to bring about a cessation of abuse of the plaintiff or minor children. The order or agreement may include:

\* \* \*



(7) Ordering the defendant to temporarily relinquish to the sheriff the defendant's other weapons and ammunition which have been used or been threatened to be used in an incident of abuse against the plaintiff or the minor children and the defendant's firearms and prohibiting the defendant from acquiring or possessing any firearm for the duration of the order and requiring the defendant to relinquish to the sheriff any firearm license issued under section 6108.3 (relating to relinquishment to third party for safekeeping) or 18 Pa.C.S. § 6106 (relating to firearms not to be carried without a license) or 6109 (relating to licenses) the defendant may possess. A copy of the court's order shall be transmitted to the chief or head of the police force or police department of the municipality and to the sheriff of the county of which the defendant is a resident. When relinquishment is ordered, the following shall apply:

\* \* \*

(iv) Unless the defendant has complied with subparagraph (i)(B) or section 6108.2 or 6108.3, if the defendant fails to relinquish any firearm, other weapon, ammunition or firearm license within 24 hours or upon the close of the next business day due to closure of sheriffs' offices or within the time ordered by the court upon cause being shown at the hearing, the sheriff shall, at a minimum, provide immediate notice to the court, the plaintiff and appropriate law enforcement agencies. The court may issue an order directing any law enforcement agency to search for and seize firearms of the defendant upon a showing by the petitioner that the respondent has possession of a firearm, and:

(A) The defendant denies the existence of any firearms, other weapons or ammunitions;

(B) Petitioner can describe, with sufficient particularity, both the type and location of the firearms; and

(C) Respondent has used or threatened to use a firearm against the petitioner, or the petitioner expresses a fear that the respondent may use a firearm against them.

\* \* \*

(e.1) Effect of incarceration.—

(1) The court may extend the terms of an existing order or, if an order is no longer in effect, grant a new order upon a showing that:

(i) the defendant is incarcerated and about to be released or has recently been released from incarceration;

(ii) the defendant previously violated a prior or existing order for protection; and

(iii) the petitioner is reasonably in fear of physical harm from the defendant.

(2) A petitioner does not need to show that physical harm is imminent to obtain an extension or a subsequent order under this subsection.

\* \* \*

§ 6108.3. Relinquishment to third party for safekeeping.

\* \* \*

(b) Transfer to third party.—

\* \* \*

(3) (ii) A third party who will be accepting possession of firearms, other weapons and ammunition pursuant to subsection (a) shall, in the presence of the sheriff or the sheriff's designee, execute an affidavit on a form prescribed by the Pennsylvania State Police which shall include, at a minimum, the following:

(A) The caption of the case in which the protection from abuse order was issued.

(B) The name, address and date of birth of the defendant.

(C) The name, address, date of birth and the Social Security number of the third party.

(D) A list of the firearms, other weapons and ammunition which will be relinquished to the third party, including, if applicable, the manufacturer, model and serial number.

(E) An acknowledgment that no firearm, other weapon or ammunition relinquished to the third party will be returned to the defendant until the sheriff accepts return of the safekeeping permit pursuant to subsection (d).

(F) A plain-language summary of 18 Pa.C.S. §§ 6105(a.1)(5) and (c)(6), 6111(c) (relating to sale or transfer of firearms) and 6115 (relating to loans on, or lending or giving firearms prohibited).

(G) A plain-language summary of this section.

(H) An acknowledgment that the third party is not prohibited from possessing firearms, other weapons or ammunition pursuant to any Federal or State law.

(I) An acknowledgment that the third party is not subject to an active protection from abuse order.

(J) An acknowledgment that the defendant has never been the subject of a protection from abuse order issued on behalf of the third party.

(J.1) An acknowledgement that the third party is not related to the defendant by consanguinity or affinity.

(K) An acknowledgment that any firearms, other weapons and ammunition relinquished to the third party will be stored using a locking device as defined in paragraph (1) of the definition of "locking device" in 18 Pa.C.S. § 6142(f) (relating to

locking device for firearms) or in a secure location to which the defendant does not have access.

(L) A detailed description of the third party liability pursuant to this section relating to civil liability.

(M) An acknowledgment that the third party shall inform the sheriff of any change of address for the third party even days of the change of address.

\* \* \*

(i) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Safekeeping.” The secure custody of firearms, other weapons or ammunition which were ordered relinquished by an active protection from abuse order.

“Third party.” A person, other than the defendant, who:

- (1) Is not a member of the defendant's household.
- (2) Is not prohibited from possessing firearms pursuant to any Federal or State law.
- (3) Has never obtained a protection from abuse order issued against the defendant.
- (4) Is not related to the defendant by consanguinity or affinity.

Section 3. § 4137(f) of Title 42 of the Pennsylvania Consolidated Statutes is amended by adding a subsection (f) to read:

§ 4137. Contempt powers of magisterial district judges.

\* \* \*

(f) Risk assessment.—Before a magisterial district justice imposes bail as a condition of release of any person who has committed contempt specified in subsection (a)(5), a risk assessment shall be made to determine if the person poses a threat of substantial bodily injury or death to the person protected under a protection from abuse order issued pursuant to 23 Pa.C.S. Chapter 61 (relating to protection from abuse).

Section 4. Effective date.

This act shall take effect immediately.



# RELEVANT STATUTES, REGULATIONS AND RULES

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## TITLE 23, PENNSYLVANIA CONSOLIDATED STATUTES DOMESTIC RELATIONS CHAPTER 61 PROTECTION FROM ABUSE

### Sec.

- § 6101. Short title of chapter.
- § 6102. Definitions.
- § 6103. Jurisdiction.
- § 6104. Full faith and credit and foreign protection orders.
- § 6105. Responsibilities of law enforcement agencies.
- § 6106. Commencement of proceedings.
- § 6107. Hearings.
- § 6108. Relief.
  - § 6108.1. Return of relinquished firearms, other weapons and ammunition and additional relief.
  - § 6108.2. Relinquishment for consignment sale, lawful transfer or safekeeping.
  - § 6108.3. Relinquishment to third party for safekeeping.
  - § 6108.4. Registry or database of firearm ownership.
  - § 6108.5. Penalties for release of information.
- § 6109. Service of orders.
- § 6110. Emergency relief by minor judiciary.
- § 6111. Domestic violence counselor/advocate.
- § 6112. Disclosure of addresses.
- § 6113. Arrest for violation of order.
  - § 6113.1. Private criminal complaints for violation of order or agreement.
- § 6114. Contempt for violation of order or agreement.
  - § 6114.1. Civil contempt or modification for violation of an order or agreement.
- § 6115. Reporting abuse and immunity.
- § 6116. Confidentiality.
- § 6117. Procedure and other remedies.
- § 6118. Full faith and credit (Repealed).
- § 6119. Immunity.
- § 6120. Inability to pay.
- § 6121. Warrantless searches.
- § 6122. Construction.

§ 6101. Short title of chapter.

This chapter shall be known and may be cited as the Protection from Abuse Act.

§ 6102. Definitions.

(a) General rule.--The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Abuse.” The occurrence of one or more of the following acts between family or household members, sexual or intimate partners or persons who share biological parenthood:

(1) Attempting to cause or intentionally, knowingly or recklessly causing bodily injury, serious bodily injury, rape, involuntary deviate sexual intercourse, sexual assault, statutory sexual assault, aggravated indecent assault, indecent assault or incest with or without a deadly weapon.

(2) Placing another in reasonable fear of imminent serious bodily injury.

(3) The infliction of false imprisonment pursuant to 18 Pa.C.S. § 2903 (relating to false imprisonment).

(4) Physically or sexually abusing minor children, including such terms as defined in Chapter 63 (relating to child protective services).

(5) Knowingly engaging in a course of conduct or repeatedly committing acts toward another person, including following the person, without proper authority, under circumstances which place the person in reasonable fear of bodily injury. The definition of this paragraph applies only to proceedings commenced under this title and is inapplicable to any criminal prosecutions commenced under Title 18 (relating to crimes and offenses).

“Adult.” An individual who is 18 years of age or older.

“Certified copy.” A paper copy of the original order of the issuing court endorsed by the appropriate clerk of that court or an electronic copy of the original order of the issuing court endorsed with a digital signature of the judge or appropriate clerk of that court. A raised seal on the copy of the order of the issuing court shall not be required.

“Comparable court.” A foreign court that:

(1) has subject matter jurisdiction and is authorized to issue ex parte, emergency, temporary or final protection orders in that jurisdiction; and

(2) possessed jurisdiction over the parties when the protection order was issued in that jurisdiction.

“Confidential communications.” All information, whether written or spoken, transmitted between a victim and a domestic violence counselor or advocate in the course of the relationship. The term includes information received or given by the domestic violence counselor or advocate in the course of the relationship, as well as advice, reports, statistical data, memoranda or working papers, records or the like, given or made in the course of the relationship. The term also includes communications made by or to a linguistic interpreter assisting the victim, counselor or advocate in the course of the relationship.

“Domestic violence counselor/advocate.” An individual who is engaged in a domestic violence program, the primary purpose of which is the rendering of counseling or assistance to victims of domestic violence, who has undergone 40 hours of training.

“Domestic violence program.” A nonprofit organization or program whose primary purpose is to provide services to domestic violence victims which include, but are not limited to, crisis hotline;



safe homes or shelters; community education; counseling systems intervention and interface; transportation, information and referral; and victim assistance.

“Family or household members.” Spouses or persons who have been spouses, persons living as spouses or who lived as spouses, parents and children, other persons related by consanguinity or affinity, current or former sexual or intimate partners or persons who share biological parenthood.

“Firearm.” Any weapon which is designed to or may readily be converted to expel any projectile by the action of an explosive or the frame or receiver of any such weapon as defined by 18 Pa.C.S. § 6105(i) (relating to persons not to possess, use, manufacture, control, sell or transfer firearms).

“Foreign protection order.” A protection order as defined by 18 U.S.C. § 2266 (relating to definitions) issued by a comparable court of another state, the District of Columbia, Indian tribe or territory, possession or commonwealth of the United States.

“Hearing officer.” A magisterial district judge, judge of the Philadelphia Municipal Court, arraignment court magistrate appointed under 42 Pa.C.S. § 1123 (relating to jurisdiction and venue), master appointed under 42 Pa.C.S. § 1126 (relating to masters) and master for emergency relief.

“Master for emergency relief.” A member of the bar of the Commonwealth appointed under section 6110(e) (relating to emergency relief by minor judiciary).

“Minor.” An individual who is not an adult.

“Other weapon.” Anything readily capable of lethal use and possessed under circumstances not manifestly appropriate for lawful uses which it may have. The term does not include a firearm.

“Safekeeping permit.” A permit issued by a sheriff allowing a person to take possession of any firearm, other weapon or ammunition that a judge ordered a defendant to relinquish in a protection from abuse proceeding.

“Secure visitation facility.” A court-approved visitation program offered in a facility with trained professional staff operated in a manner that safeguards children and parents from abuse and abduction.

“Sheriff.”

(1) Except as provided in paragraph (2), the sheriff of the county.

(2) In a city of the first class, the chief or head of the police department.

“Victim.” A person who is physically or sexually abused by a family or household member. For purposes of section 6116 (relating to confidentiality), a victim is a person against whom abuse is committed who consults a domestic violence counselor or advocate for the purpose of securing advice, counseling or assistance. The term shall also include persons who have a significant relationship with the victim and who seek advice, counseling or assistance from a domestic violence counselor or advocate regarding abuse of the victim.

“Weapon.” Anything readily capable of lethal use and possessed under circumstances not manifestly appropriate for lawful uses which it may have. The term includes a firearm which is not loaded or lacks a magazine, clip or other components to render it immediately operable and components which can readily be assembled into a weapon as defined by 18 Pa.C.S. § 907 (relating to possessing instruments of crime).

(b) Other terms.--Terms not otherwise defined in this chapter shall have the meaning given to them in 18 Pa.C.S. (relating to crimes and offenses).

§ 6103. Jurisdiction.

(a) General rule.--The court shall have jurisdiction over all proceedings under this chapter.

(b) Effect of departure and nonresidence.--The right of the plaintiff to relief under this chapter shall not be affected by either of the following:

(1) The plaintiff's leaving the residence or household to avoid further abuse.

(2) The defendant's absence from this Commonwealth or the defendant's nonresidence in this Commonwealth, provided that the court has personal jurisdiction over the defendant in accordance with 42 Pa.C.S. § 5322 (relating to bases of personal jurisdiction over persons outside this Commonwealth).

§ 6104. Full faith and credit and foreign protection orders.

(a) General rule.--A court shall recognize and enforce a valid foreign protection order issued by a comparable court. The validity of a foreign protection order shall only be determined by a court.

(b) Affirmative defense.--Failure by a comparable court to provide reasonable notice and opportunity to be heard shall be an affirmative defense to any charge or process filed seeking enforcement of a foreign protection order. A comparable court shall have complied with that court's notice requirements and shall have given the defendant the opportunity to be heard before the foreign order was issued. In the case of ex parte orders, the comparable court shall have complied with that court's notice requirements and have given the defendant an opportunity to be heard within a reasonable period of time after the order was issued, consistent with due process.

(c) Invalid orders.--A foreign protection order issued by a comparable court against a party who has filed a petition, complaint or other written pleading for a protection order is not valid and not entitled to full faith and credit if:

(1) no cross or counter petition, complaint or other written pleading was filed seeking the protection order; or

(2) a cross or counter petition, complaint or other written pleading was filed and the court did not make a specific finding that each party was entitled to a protection order.

(d) Filing a foreign protection order.--A plaintiff may file a certified copy of a foreign protection order with the prothonotary in any county within this Commonwealth where the plaintiff believes enforcement may be necessary. The following provisions shall apply:

(1) No costs or fees associated with filing a foreign protection order shall be assigned to the plaintiff, including the cost of obtaining certified copies of the order. Costs and fees associated with filing a foreign protection order may be assessed against the defendant.

(2) Upon filing of a foreign protection order, a prothonotary shall transmit, in a manner prescribed by the Pennsylvania State Police, a copy of the order to the Pennsylvania State Police registry of protection orders.

(3) Filing of a foreign protection order shall not be a prerequisite for service and enforcement.

(e) Orders issued in another judicial district within this Commonwealth.--The filing of an order issued in another judicial district within this Commonwealth is not required for enforcement purposes.

§ 6105. Responsibilities of law enforcement agencies.

(a) General rule.--The police department of each municipal corporation, the Pennsylvania State Police and the sheriff of each county shall insure that all their officers, deputies and employees are familiar with the provisions of this chapter. Instruction concerning protection from abuse shall be made a part of the training curriculum for all trainee officers and deputies. All law enforcement agencies within this Commonwealth shall adopt a written domestic violence policy.

(b) Notice of services and rights.--Each law enforcement agency shall provide the abused person with oral and written notice of the availability of safe shelter and of domestic violence services in the community, including the hotline number for domestic violence services. The written notice, which shall be in English and Spanish and any additional language required by local rule of court, shall include the following statement:

“If you are the victim of domestic violence, you have the right to go to court and file a petition requesting an order for protection from domestic abuse pursuant to the Protection From Abuse Act (23 Pa.C.S. Ch. 61), which could include the following:

- (1) An order restraining the abuser from further acts of abuse.
- (2) An order directing the abuser to leave your household.
- (3) An order preventing the abuser from entering your residence, school, business or place of employment.
- (4) An order awarding you or the other parent temporary custody of or temporary visitation with your child or children.
- (5) An order directing the abuser to pay support to you and the minor children if the abuser has a legal obligation to do so.”

(c) Mandatory report.--Each law enforcement agency shall make an incident report, on a form prescribed by the Pennsylvania State Police, consistent with the report required by the Federal National Incident-Based Reporting System (NIBRS). The mandate for incident report completion shall not be operative until the Pennsylvania State Police have implemented NIBRS. The incident report may include the following:

- (1) Names, addresses and telephone numbers of the victim, the accused, any witnesses and the caller.
- (2) A second permanent address and telephone number for the victim, such as a close family member or a friend.
- (3) A statement of the relationship between the victim and the accused.
- (4) A narrative for the incident, including the date, time and whether the accused appeared intoxicated or under the influence of a controlled substance.
- (5) What, if any, weapons were used or threatened to be used.
- (6) A description of any injuries observed by the officer.
- (7) A description of any injuries described by the victim but not observed by the officer and an indication that the injury was not observed.
- (8) Documentation of any evidence that would tend to establish that a crime was committed.
- (9) An indication of whether an arrest was made and the reason for electing not to arrest, whether there was a warrantless arrest, an arrest with a warrant or no arrest.
- (10) Whether the accused actually was arrested or whether there is an outstanding arrest warrant.
- (11) The crimes with which the accused was charged.

(12) If the accused was arrested and arraigned, whether bail was set and any conditions of bail imposed.

(13) If the officer did not arrest or seek an arrest warrant even though arrest was authorized, a detailed explanation of the reasons for the officer's decision not to arrest.

(14) The names and ages of any children present in the household and their address and telephone number if children were relocated.

(15) Notation of previous incidents of which the officer is personally aware.

(16) Notation of previous incidents reported by the victim or witnesses.

(17) If an officer was injured in the incident, the nature and circumstances of the injury.

(d) Notice of arrest.--All law enforcement agencies shall make reasonable efforts to notify any adult or emancipated minor protected by an order issued under this chapter of the arrest of the defendant for violation of an order as soon as possible. Unless the person cannot be located, notice of the arrest shall be provided not more than 24 hours after preliminary arraignment.

(e) Statewide registry.--

(1) The Pennsylvania State Police shall establish a Statewide registry of protection orders and shall maintain a complete and systematic record and index of all valid temporary and final court orders of protection, court-approved consent agreements and a foreign protection order filed pursuant to section 6104(d) (relating to full faith and credit and foreign protection orders). The Statewide registry shall include, but need not be limited to, the following:

(i) The names of the plaintiff and any protected parties.

(ii) The name and address of the defendant.

(iii) The relationship between the plaintiff and defendant.

(iv) The date the order was entered.

(v) The date the order expires.

(vi) The relief granted under sections 6108(a)(1), (2), (4), (6) and (7) (relating to relief) and 6110(a) (relating to emergency relief by minor judiciary).

(vii) The judicial district in which the order was entered.

(viii) Where furnished, the Social Security number and date of birth of the defendant.

(ix) Whether or not any or all firearms, other weapons or ammunition were ordered relinquished.

(2) The prothonotary shall send, on a form prescribed by the Pennsylvania State Police, a copy of the protection order or approved consent agreement to the Statewide registry of protection orders so that it is received within 24 hours of the entry of the order. Likewise, amendments to or revocation of an order shall be transmitted by the prothonotary within 24 hours of the entry of the order for modification or revocation. The Pennsylvania State Police shall enter orders, amendments and revocations in the Statewide registry of protection orders within eight hours of receipt. Vacated or expired orders shall be purged from the registry.

(3) The registry of the Pennsylvania State Police shall be available at all times to inform courts, dispatchers and law enforcement officers of any valid protection order involving any defendant.

(4) When an order granting relief under section 6108(a)(7) has been entered by a court, such information shall be available to the Pennsylvania State Police for the purpose of conducting a criminal history records check in compliance with the applicable provisions of 18 Pa.C.S. Ch. 61 Subch. A (relating to Uniform Firearms Act).

(5) Information contained in the Statewide registry shall not be subject to access under the act of June 21, 1957 (P.L.390, No.212), referred to as the Right-to-Know Law.

(f) Information concerning crimes of violence.--Each police department in a city, borough or township and the Pennsylvania State Police shall transmit to the Pennsylvania State Police, in a manner prescribed by the Pennsylvania State Police, the information specified in subsection (c) related to crimes of violence between family or household members.

(g) Annual report.--The Pennsylvania State Police shall annually compile and analyze the incident report data received and publish a Statewide report which includes aggregate, county and department-based statistical profiles. The Pennsylvania State Police shall transmit a copy of the annual report to the Governor, the General Assembly and each domestic violence program in this Commonwealth.

(h) Enforcement of foreign protection orders.--

(1) All foreign protection orders shall have the presumption of validity in this Commonwealth, and police officers shall make arrests for violations thereof in the same manner as set for violations of protection orders issued within this Commonwealth. Until a foreign order is declared to be invalid by a court, it shall be enforced by all law enforcement personnel in this Commonwealth.

(2) A police officer shall rely upon any copy of a foreign protection order which has been presented to the officer by any source and may verify the existence of a protection order consistent with the provisions of section 6113(a) (relating to arrest for violation of order). The fact that a foreign protection order has not been filed with a prothonotary or entered into the Pennsylvania State Police registry shall not be grounds for law enforcement to refuse to enforce the order.

(i) Immunity.--The following entities shall be immune from civil liability for good faith conduct in any action arising in connection with a court's finding that the foreign order is invalid or unenforceable:

(1) Law enforcement agencies and their agents and employees.

(2) County correctional and detention facilities and their agents and employees.

(3) Prothonotaries and their agents and employees.

§ 6106. Commencement of proceedings.

(a) General rule.--An adult or an emancipated minor may seek relief under this chapter for that person or any parent, adult household member or guardian ad litem may seek relief under this chapter on behalf of minor children, or a guardian of the person of an adult who has been declared incompetent under 20 Pa.C.S. Ch. 51 Subch. B (relating to appointment of guardian) may seek relief on behalf of the incompetent adult, by filing a petition with the court alleging abuse by the defendant.

(a.1) False reports.--A person who knowingly gives false information to any law enforcement officer with the intent to implicate another under this chapter commits an offense under 18 Pa.C.S. § 4906 (relating to false reports to law enforcement authorities).

(a.2) Notification of defendant's occupation.--The plaintiff shall notify the court if the plaintiff has reason to believe that the defendant is a licensed firearms dealer, is employed by a licensed firearms dealer or manufacturer, is employed as a writer, researcher or technician in the firearms or hunting industry or is required to carry a firearm as a condition of employment.

(b) Plaintiff fees not permitted.--No plaintiff seeking relief under this chapter shall be charged any fees or costs associated with the filing, issuance, registration or service of a petition, motion, complaint, order or any other filing. Prohibited fees or costs shall include, but are not limited to, those associated with modifying, withdrawing, dismissing or certifying copies of a petition,

motion, complaint, order or any other filing, as well as any judicial surcharge or computer system fee. No plaintiff seeking relief under this chapter shall be charged any fees or costs associated with filing a motion for reconsideration or an appeal from any order or action taken pursuant to this chapter. Nothing in this subsection is intended to expand or diminish the court's authority to enter an order pursuant to Pa.R.C.P. No. 1023.1 (relating to Scope. Signing of Documents. Representations to the Court. Violation).

(c) Assessment of fees and costs against the defendant.--When an order is granted pursuant to this chapter, fees and costs shall be assessed against the defendant. The court shall waive fees and costs upon a showing of good cause or when the court makes a finding that the defendant is not able to pay the costs. Nothing in this subsection is intended to expand or diminish the court's authority to enter an order pursuant to Pa.R.C.P. No. 1023.1.

(d) Surcharge on order.--When a protection order is granted under section 6107(a) (relating to hearings), other than pursuant to an agreement of the parties, a surcharge of \$100 shall be assessed against the defendant. All moneys received from surcharges shall be distributed in the following order of priority:

(1) \$25 shall be forwarded to the Commonwealth and shall be appropriated to the Pennsylvania State Police to establish and maintain the Statewide registry of protection orders provided for in section 6105.

(2) \$50 shall be retained by the county and shall be used to carry out the provisions of this chapter as follows:

(i) \$25 shall be used by the sheriff.

(ii) \$25 shall be used by the court.

(3) \$25 shall be forwarded to the Department of Public Welfare for use for victims of domestic violence in accordance with the provisions of section 2333 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

(d.1) Limitation.--The surcharge allocated under subsection (d)(1) and (3) shall be used to supplement and not to supplant any other source of funds received for the purpose of carrying out the provisions of this chapter.

(e) Court to adopt means of service.--The court shall adopt a means of prompt and effective service in those instances where the plaintiff avers that service cannot be safely effected by an adult individual other than a law enforcement officer or where the court so orders.

(f) Service by sheriff.--If the court so orders, the sheriff or other designated agency or individual shall serve the petition and order.

(g) Service of petition and orders.--The petition and orders shall be served upon the defendant, and orders shall be served upon the police departments and sheriff with appropriate jurisdiction to enforce the orders. Orders shall be promptly served on the police and sheriff. Failure to serve shall not stay the effect of a valid order.

(g.1) Service of original process of a foreign protection order.--No plaintiff or petitioner shall be charged any costs or fees associated with the service of original process of a foreign protection order. Costs or fees associated with the service of original process of a foreign protection order may be assessed against the defendant.

(h) Assistance and advice to plaintiff.--The courts and hearing officers shall:

(1) Provide simplified forms and clerical assistance in English and Spanish to help with the writing and filing of the petition for a protection order for an individual not represented by counsel.

(2) Provide the plaintiff with written and oral referrals, in English and Spanish, to the local domestic violence program, to the local legal services office and to the county bar association's lawyer referral service.

§ 6107. Hearings.

(a) General rule.--Within ten business days of the filing of a petition under this chapter, a hearing shall be held before the court, at which the plaintiff must prove the allegation of abuse by a preponderance of the evidence. The court shall, at the time the defendant is given notice of the hearing, advise the defendant of the right to be represented by counsel, of the possibility that any firearm, other weapon or ammunition owned and any firearm license possessed may be ordered temporarily relinquished, of the options for relinquishment of a firearm pursuant to this chapter, of the possibility that Federal law may prohibit the possession of firearms, including an explanation of 18 U.S.C. § 922(g)(8) (relating to unlawful acts), and that any protection order granted by a court may be considered in any subsequent proceedings under this title. This notice shall be printed and delivered in a manner which easily attracts attention to its content and shall specify that child custody is one of the proceedings where prior protection orders may be considered.

(b) Temporary orders.--

(1) If a plaintiff petitions for temporary order for protection from abuse and alleges immediate and present danger of abuse to the plaintiff or minor children, the court shall conduct an ex parte proceeding.

(2) The court may enter such a temporary order as it deems necessary to protect the plaintiff or minor children when it finds they are in immediate and present danger of abuse. The order shall remain in effect until modified or terminated by the court after notice and hearing.

(3) In addition to any other relief, the court may, pursuant to section 6108 (relating to relief), direct that the defendant temporarily relinquish to the sheriff any firearms, other weapons or ammunition for the duration of the temporary order if the petition demonstrates any of the following:

(i) Abuse which involves a firearm or other weapon.

(ii) An immediate and present danger of abuse. In determining whether an immediate and present danger of abuse exists, the court shall consider a number of factors, including, but not limited to:

(A) Whether the temporary order of protection from abuse is not likely to achieve its purpose in the absence of such a condition.

(B) Whether the defendant has previously violated a protection from abuse order.

(C) Whether past or present abuse to the plaintiff or any of the plaintiff's minor children resulted in injury.

(D) Whether the abuse occurred in public.

(E) Whether the abuse includes:

(I) threats of abuse or suicide;

(II) killing or threatening to kill pets;

(III) an escalation of violence;

(IV) stalking or obsessive behavior;

(V) sexual violence; or

(VI) drug or excessive alcohol use.

(4) If the court orders the defendant to temporarily relinquish any firearm, other weapon or ammunition pursuant to paragraph (3), the defendant shall decide in what manner the defendant is going to relinquish any firearm, other weapon or ammunition listed in the order. Relinquishment may be to the sheriff pursuant to section 6108(a)(7) or to a third party for safekeeping pursuant to section 6108.3 (relating to relinquishment to third party for safekeeping).

(c) Continued hearings.--If a hearing under subsection (a) is continued and no temporary order is issued, the court may make ex parte temporary orders under subsection (b) as it deems necessary.

#### § 6108. Relief.

(a) General rule.--The court may grant any protection order or approve any consent agreement to bring about a cessation of abuse of the plaintiff or minor children. The order or agreement may include:

(1) Directing the defendant to refrain from abusing the plaintiff or minor children.

(2) Granting possession to the plaintiff of the residence or household to the exclusion of the defendant by evicting the defendant or restoring possession to the plaintiff if the residence or household is jointly owned or leased by the parties, is owned or leased by the entireties or is owned or leased solely by the plaintiff.

(3) If the defendant has a duty to support the plaintiff or minor children living in the residence or household and the defendant is the sole owner or lessee, granting possession to the plaintiff of the residence or household to the exclusion of the defendant by evicting the defendant or restoring possession to the plaintiff or, with the consent of the plaintiff, ordering the defendant to provide suitable alternate housing.

(4) Awarding temporary custody of or establishing temporary visitation rights with regard to minor children. In determining whether to award temporary custody or establish temporary visitation rights pursuant to this paragraph, the court shall consider any risk posed by the defendant to the children as well as risk to the plaintiff. The following shall apply:

(i) A defendant shall not be granted custody, partial custody or unsupervised visitation where it is alleged in the petition, and the court finds after a hearing under this chapter, that the defendant:

(A) abused the minor children of the parties or poses a risk of abuse toward the minor children of the parties; or

(B) has been convicted of violating 18 Pa.C.S. § 2904 (relating to interference with custody of children) within two calendar years prior to the filing of the petition for protection order or that the defendant poses a risk of violating 18 Pa.C.S. § 2904.

(ii) Where the court finds after a hearing under this chapter that the defendant has inflicted abuse upon the plaintiff or a child, the court may require supervised custodial access by a third party. The third party must agree to be accountable to the court for supervision and execute an affidavit of accountability.

(iii) Where the court finds after a hearing under this chapter that the defendant has inflicted serious abuse upon the plaintiff or a child or poses a risk of abuse toward the plaintiff or a child, the court may:

(A) award supervised visitation in a secure visitation facility; or

(B) deny the defendant custodial access to a child.

(iv) If a plaintiff petitions for a temporary order under section 6107(b) (relating to hearings) and the defendant has partial, shared or full custody of the minor children of the



parties by order of court or written agreement of the parties, the custody shall not be disturbed or changed unless the court finds that the defendant is likely to inflict abuse upon the children or to remove the children from the jurisdiction of the court prior to the hearing under section 6107(a). Where the defendant has forcibly or fraudulently removed any minor child from the care and custody of a plaintiff, the court shall order the return of the child to the plaintiff unless the child would be endangered by restoration to the plaintiff.

(v) Nothing in this paragraph shall bar either party from filing a petition for custody under Chapter 53 (relating to custody) or under the Pennsylvania Rules of Civil Procedure.

(vi) In order to prevent further abuse during periods of access to the plaintiff and child during the exercise of custodial rights, the court shall consider, and may impose on a custody award, conditions necessary to assure the safety of the plaintiff and minor children from abuse.

(5) After a hearing in accordance with section 6107(a), directing the defendant to pay financial support to those persons the defendant has a duty to support, requiring the defendant, under sections 4324 (relating to inclusion of medical support) and 4326 (relating to mandatory inclusion of child medical support), to provide health coverage for the minor child and spouse, directing the defendant to pay all of the unreimbursed medical expenses of a spouse or minor child of the defendant to the provider or to the plaintiff when he or she has paid for the medical treatment, and directing the defendant to make or continue to make rent or mortgage payments on the residence of the plaintiff to the extent that the defendant has a duty to support the plaintiff or other dependent household members. The support order shall be temporary, and any beneficiary of the order must file a complaint for support under the provisions of Chapters 43 (relating to support matters generally) and 45 (relating to reciprocal enforcement of support orders) within two weeks of the date of the issuance of the protection order. If a complaint for support is not filed, that portion of the protection order requiring the defendant to pay support is void. When there is a subsequent ruling on a complaint for support, the portion of the protection order requiring the defendant to pay support expires.

(6) Prohibiting the defendant from having any contact with the plaintiff or minor children, including, but not limited to, restraining the defendant from entering the place of employment or business or school of the plaintiff or minor children and from harassing the plaintiff or plaintiff's relatives or minor children.

(7) Ordering the defendant to temporarily relinquish to the sheriff the defendant's other weapons and ammunition which have been used or been threatened to be used in an incident of abuse against the plaintiff or the minor children and the defendant's firearms and prohibiting the defendant from acquiring or possessing any firearm for the duration of the order and requiring the defendant to relinquish to the sheriff any firearm license issued under section 6108.3 (relating to relinquishment to third party for safekeeping) or 18 Pa.C.S. § 6106 (relating to firearms not to be carried without a license) or 6109 (relating to licenses) the defendant may possess. A copy of the court's order shall be transmitted to the chief or head of the police force or police department of the municipality and to the sheriff of the county of which the defendant is a resident. When relinquishment is ordered, the following shall apply:

(i)

(A) The court's order shall require the defendant to relinquish such firearms, other weapons, ammunition and any firearm license pursuant to the provisions of this chapter within 24 hours of service of a temporary order or the entry of a final order or the close of the next business day as necessary by closure of the sheriffs' offices, except for cause

shown at the hearing, in which case the court shall specify the time for relinquishment of any or all of the defendant's firearms.

(B) A defendant subject to a temporary order requiring the relinquishment of firearms, other weapons or ammunition shall, in lieu of relinquishing specific firearms, other weapons or ammunition which cannot reasonably be retrieved within the time for relinquishment in clause (A) due to their current location, provide the sheriff with an affidavit listing the firearms, other weapons or ammunition and their current location. If the defendant, within the time for relinquishment in clause (A), fails to provide the affidavit or fails to relinquish, pursuant to this chapter, any firearms, other weapons or ammunition ordered to be relinquished which are not specified in the affidavit, the sheriff shall, at a minimum, provide immediate notice to the court, the plaintiff and appropriate law enforcement authorities. The defendant shall not possess any firearms, other weapons or ammunition specifically listed in the affidavit provided to the sheriff pursuant to this clause for the duration of the temporary order.

(C) As used in this subparagraph, the term "cause" shall be limited to facts relating to the inability of the defendant to retrieve a specific firearm within 24 hours due to the current location of the firearm.

(ii) The court's order shall contain a list of any firearm, other weapon or ammunition ordered relinquished. Upon the entry of a final order, the defendant shall inform the court in what manner the defendant is going to relinquish any firearm, other weapon or ammunition ordered relinquished. Relinquishment may occur pursuant to section 6108.2 (relating to relinquishment for consignment sale, lawful transfer or safekeeping) or 6108.3 or to the sheriff pursuant to this paragraph. Where the sheriff is designated, the sheriff shall secure custody of the defendant's firearms, other weapons or ammunition and any firearm license listed in the court's order for the duration of the order or until otherwise directed by court order. In securing custody of the defendant's relinquished firearms, the sheriff shall comply with 18 Pa.C.S. § 6105(f)(4) (relating to persons not to possess, use, manufacture, control, sell or transfer firearms). In securing custody of the defendant's other weapons and ammunition, the sheriff shall provide the defendant with a signed and dated written receipt which shall include a detailed description of the other weapon or ammunition and its condition.

(iii) The sheriff shall provide the plaintiff with the name of the person to which any firearm, other weapon or ammunition was relinquished.

(iv) Unless the defendant has complied with subparagraph (i)(B) or section 6108.2 or 6108.3, if the defendant fails to relinquish any firearm, other weapon, ammunition or firearm license within 24 hours or upon the close of the next business day due to closure of sheriffs' offices or within the time ordered by the court upon cause being shown at the hearing, the sheriff shall, at a minimum, provide immediate notice to the court, the plaintiff and appropriate law enforcement agencies.

(v) Any portion of any order or any petition or other paper which includes a list of any firearm, other weapon or ammunition ordered relinquished shall be kept in the files of the court as a permanent record thereof and withheld from public inspection except:

- (A) upon an order of the court granted upon cause shown;
- (B) as necessary, by law enforcement and court personnel; or
- (C) after redaction of information listing any firearm, other weapon or ammunition.

(vi) As used in this paragraph, the term "defendant's firearms" shall, if the defendant is a licensed firearms dealer, only include firearms in the defendant's personal firearms collection pursuant to 27 CFR § 478.125a (relating to personal firearms collection).

(7.1) If the defendant is a licensed firearms dealer, ordering the defendant to follow such restrictions as the court may require concerning the conduct of his business, which may include ordering the defendant to relinquish any Federal or State license for the sale, manufacture or importation of firearms as well as firearms in the defendant's business inventory. In restricting the defendant pursuant to this paragraph, the court shall make a reasonable effort to preserve the financial assets of the defendant's business while fulfilling the goals of this chapter.

(8) Directing the defendant to pay the plaintiff for reasonable losses suffered as a result of the abuse, including medical, dental, relocation and moving expenses; counseling; loss of earnings or support; costs of repair or replacement of real or personal property damaged, destroyed or taken by the defendant or at the direction of the defendant; and other out-of-pocket losses for injuries sustained. In addition to out-of-pocket losses, the court may direct the defendant to pay reasonable attorney fees. An award under this chapter shall not constitute a bar to litigation for civil damages for injuries sustained from the acts of abuse giving rise to the award or a finding of contempt under this chapter.

(9) Directing the defendant to refrain from stalking or harassing the plaintiff and other designated persons as defined in 18 Pa.C.S. §§ 2709 (relating to harassment) and 2709.1 (relating to stalking).

(10) Granting any other appropriate relief sought by the plaintiff.

(b) Identifying information.--Any order issued under this section shall, where furnished by either party, specify the Social Security number and date of birth of the defendant.

(c) Mutual orders of protection.--Mutual orders of protection shall not be awarded unless both parties have filed timely written petitions, complied with service requirements under section 6106 (relating to commencement of proceedings) and are eligible for protection under this chapter. The court shall make separate findings and, where issuing orders on behalf of both petitioners, enter separate orders.

(d) Duration and amendment of order or agreement.--A protection order or approved consent agreement shall be for a fixed period of time not to exceed three years. The court may amend its order or agreement at any time upon subsequent petition filed by either party.

(e) Extension of protection orders.--

(1) An extension of a protection order may be granted:

(i) Where the court finds, after a duly filed petition, notice to the defendant and a hearing, in accordance with the procedures set forth in sections 6106 and 6107, that the defendant committed one or more acts of abuse subsequent to the entry of the final order or that the defendant engaged in a pattern or practice that indicates continued risk of harm to the plaintiff or minor child.

(ii) When a contempt petition or charge has been filed with the court or with a hearing officer in Philadelphia County, but the hearing has not occurred before the expiration of the protection order, the order shall be extended, at a minimum, until the disposition of the contempt petition and may be extended for another term beyond the disposition of the contempt petition.

(2) Service of an extended order shall be made in accordance with section 6109 (relating to service of orders).

(3) There shall be no limitation on the number of extensions that may be granted.

(f) Support procedure.--The domestic relations section shall enforce any support award in a protection order where the plaintiff files a complaint for support under subsection (a)(5).

(g) Notice.--Notice shall be given to the defendant, in orders issued under this section, stating that violations of an order will subject the defendant to arrest under section 6113 (relating to arrest for violation of order) or contempt of court under section 6114 (relating to contempt for violation of order or agreement). Resumption of coresidency on the part of the plaintiff and defendant shall not nullify the provisions of the court order.

(h) Title to real property unaffected.--No order or agreement under this chapter shall in any manner affect title to any real property.

§ 6108.1. Return of relinquished firearms, other weapons and ammunition and additional relief.

(a) General rule.--Any court order requiring the relinquishment of firearms, other weapons or ammunition shall provide for the return of the relinquished firearms, other weapons or ammunition to the defendant upon expiration of the order or dismissal of a petition for a protection from abuse order. The defendant may take custody of the firearms, other weapons and ammunition provided that the defendant is otherwise eligible to lawfully possess the relinquished items. The defendant shall not be required to pay any fees, costs or charges associated with the returns, whether those fees, costs or charges are imposed by the Pennsylvania State Police, any local law enforcement agency or any other entity, including a licensed importer, licensed manufacturer or licensed dealer in order to secure return of the relinquished firearms, other weapons or ammunition.

(b) Modification of court's order providing for return of relinquished firearm, other weapon or ammunition.--

(1) The defendant may petition the court to allow for the return of firearms, other weapons and ammunition to the defendant prior to the expiration of the court's order. The petition shall be served upon the plaintiff and the plaintiff shall be a party to the proceedings regarding that petition.

(2) Any other person may petition the court to allow for the return of that other person's firearms, other weapons and ammunition prior to the expiration of the court's order. The petition shall be served upon the plaintiff, and the plaintiff shall be given notice and an opportunity to be heard regarding that petition.

(c) Modification of court's order to provide for alternative means of relinquishing firearms, other weapons or ammunition.--The defendant may petition the court for modification of the order to provide for an alternative means of relinquishment in accordance with this chapter. The petition shall be served upon the plaintiff, and the plaintiff shall have an opportunity to be heard at the hearing as provided in subsection (d). Where the court orders a modification pursuant to this subsection providing for alternative means of relinquishment, the sheriff shall proceed as directed by the court.

(d) Hearing.--Within ten business days of the filing of any petition under this section, a hearing shall be held before the court.

(e) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Other person.” Any person, except the defendant, who is the lawful owner of a firearm, other weapon or ammunition relinquished pursuant to this chapter.

“Safekeeping.” The secure custody of a firearm, other weapon or ammunition ordered relinquished by an active protection from abuse order.

§ 6108.2. Relinquishment for consignment sale, lawful transfer or safekeeping.

(a) General rule.--Notwithstanding any other provision of law, a defendant who is the subject of a final protection from abuse order, which order provides for the relinquishment of firearms, other weapons or ammunition during the period of time the order is in effect, may, within the time frame specified in the order and in lieu of relinquishment to the sheriff, relinquish to a dealer licensed pursuant to 18 Pa.C.S. § 6113 (relating to licensing of dealers) any firearms, other weapons or ammunition for consignment sale, lawful transfer or safekeeping.

(b) Affidavit.--A defendant relinquishing firearms, other weapons or ammunition to a dealer pursuant to subsection (a) shall obtain an affidavit from the dealer on a form prescribed by the Pennsylvania State Police which shall include, at a minimum, the following:

(1) The caption of the case in which the protection from abuse order was issued.

(2) The name, address, date of birth and Social Security number of the defendant.

(3) A list of the firearms, other weapons or ammunition, including, if applicable, the manufacturer, model and serial number.

(4) The name and license number of the dealer licensed pursuant to 18 Pa.C.S. § 6113 and the address of the licensed premises.

(5) An acknowledgment that the firearms, other weapons or ammunition will not be returned to the defendant or sold or transferred to a person the dealer knows is a member of the defendant's household, while the defendant is the subject of an active protection from abuse order pursuant to section 6108, which order provides for the relinquishment of the firearm, other weapon or ammunition being returned, sold or transferred.

(6) An acknowledgment that the firearms, other weapons or ammunition, if sold or transferred, will be sold or lawfully transferred in compliance with 18 Pa.C.S. Ch. 61 (relating to firearms and other dangerous articles).

(c) Failure to provide affidavit.--A defendant relinquishing firearms, other weapons or ammunition to a dealer pursuant to subsection (a) shall, within the time frame specified in the order for relinquishing firearms, other weapons or ammunition, provide to the sheriff the affidavit obtained pursuant to subsection (b) and relinquish to the sheriff any firearms, other weapons or ammunition ordered to be relinquished which are not specified in the affidavit, in an affidavit provided in accordance with section 6108(a)(7)(i)(B) (relating to relief) or in an acknowledgment of receipt from a third party provided to the sheriff pursuant to section 6108.3 (relating to relinquishment to third party for safekeeping). If the defendant fails to comply with this subsection, the sheriff shall, at a minimum, provide immediate notice to the court, the plaintiff and appropriate law enforcement agencies.

(d) Form.--The Pennsylvania State Police shall develop and make available a form to be used by dealers to accept possession of firearms, other weapons and ammunition for consignment sale, lawful transfer or safekeeping pursuant to this section.

(e) Transfer upon entry of final order.--Upon entry of a final protection from abuse order issued pursuant to section 6108, which order provides for the relinquishment of firearms, other weapons or ammunition during the period of time the order is in effect, a defendant who had relinquished firearms, other weapons or ammunition to the sheriff pursuant to a temporary order may request that the firearms, other weapons or ammunition be relinquished to a dealer for consignment sale, lawful transfer or safekeeping pursuant to this section. If the defendant can identify a licensed dealer willing to accept the firearms, other weapons or ammunition in compliance with this section, the court shall order the sheriff to transport the firearms, other weapons or ammunition to the licensed dealer at no cost to the defendant or the licensed dealer.

(f) Nondisclosure.--The affidavit obtained under subsection (c) shall not be subject to access under the act of June 21, 1957 (P.L.390, No.212), referred to as the Right-to-Know Law.

(g) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Safekeeping.” The secure custody of firearms, other weapons or ammunition ordered relinquished by an active protection from abuse order.

“Sale or lawful transfer.” Any sale or transfer to a person other than the defendant or a member of the defendant's household which is conducted in accordance with 18 Pa.C.S. Ch. 61 (relating to firearms and other dangerous articles).

### § 6108.3. Relinquishment to third party for safekeeping.

(a) General rule.--A defendant who is the subject of a protection from abuse order, which order provides for the relinquishment of firearms, other weapons or ammunition during the period of time the order is in effect, may, within the time frame specified in the order and in lieu of relinquishment to the sheriff, relinquish any firearms, other weapons or ammunition to a third party for safekeeping.

(b) Transfer to third party.--

(1) A defendant wishing to relinquish firearms, other weapons or ammunition to a third party pursuant to subsection (a) shall, within the time frame specified in the order for relinquishing firearms, other weapons and ammunition, report to the sheriff's office in the county where the order was entered along with the third party.

(2) Upon determination by the sheriff that the third party is not prohibited from possessing firearms, other weapons or ammunition pursuant to any Federal or State law and after the defendant and third party have executed the affidavits required under paragraph (3), the sheriff shall issue a safekeeping permit to the third party, which shall include, at a minimum, a list of the firearms, other weapons and ammunition which will be relinquished to the third party. The permit shall be issued at no cost to the third party or defendant. The permit shall require the third party to possess the defendant's firearms, other weapons and ammunition until the time that:

- (i) the sheriff revokes the safekeeping permit pursuant to subsection (c)(1); or
- (ii) the sheriff accepts return of the safekeeping permit pursuant to subsection (d).

(3)

(i) A defendant wishing to relinquish firearms, other weapons or ammunition to a third party pursuant to subsection (a) shall, in the presence of the sheriff or the sheriff's designee, execute an affidavit on a form prescribed by the Pennsylvania State Police which shall include, at a minimum, the following:

(A) The caption of the case in which the protection from abuse order was issued.

(B) The name, address, date of birth and the Social Security number of the defendant.

(C) The name, address and date of birth of the third party.

(D) A list of the firearms, other weapons and ammunition which will be relinquished to the third party, including, if applicable, the manufacturer, model and serial number.

(E) An acknowledgment that the defendant will not take possession of any firearm, other weapon or ammunition relinquished to the third party until the sheriff accepts return of the safekeeping permit pursuant to subsection (d).

- (F) A plain-language summary of 18 Pa.C.S. § 6105(a.1)(2) and (c)(6) (relating to persons not to possess, use, manufacture, control, sell or transfer firearms).
- (G) A plain-language summary of 18 U.S.C. § 922(g)(8) (relating to unlawful acts).
- (ii) A third party who will be accepting possession of firearms, other weapons and ammunition pursuant to subsection (a) shall, in the presence of the sheriff or the sheriff's designee, execute an affidavit on a form prescribed by the Pennsylvania State Police which shall include, at a minimum, the following:
  - (A) The caption of the case in which the protection from abuse order was issued.
  - (B) The name, address and date of birth of the defendant.
  - (C) The name, address, date of birth and the Social Security number of the third party.
  - (D) A list of the firearms, other weapons and ammunition which will be relinquished to the third party, including, if applicable, the manufacturer, model and serial number.
  - (E) An acknowledgment that no firearm, other weapon or ammunition relinquished to the third party will be returned to the defendant until the sheriff accepts return of the safekeeping permit pursuant to subsection (d).
  - (F) A plain-language summary of 18 Pa.C.S. §§ 6105(a.1)(5) and (c)(6), 6111(c) (relating to sale or transfer of firearms) and 6115 (relating to loans on, or lending or giving firearms prohibited).
  - (G) A plain-language summary of this section.
  - (H) An acknowledgment that the third party is not prohibited from possessing firearms, other weapons or ammunition pursuant to any Federal or State law.
  - (I) An acknowledgment that the third party is not subject to an active protection from abuse order.
  - (J) An acknowledgment that the defendant has never been the subject of a protection from abuse order issued on behalf of the third party.
  - (K) An acknowledgment that any firearms, other weapons and ammunition relinquished to the third party will be stored using a locking device as defined in paragraph (1) of the definition of "locking device" in 18 Pa.C.S. § 6142(f) (relating to locking device for firearms) or in a secure location to which the defendant does not have access.
  - (L) A detailed description of the third party liability pursuant to this section relating to civil liability.
  - (M) An acknowledgment that the third party shall inform the sheriff of any change of address for the third party within seven days of the change of address.
- (4) The defendant shall, within the time frame specified in the order and in lieu of relinquishment to the sheriff, relinquish the firearms, other weapons and ammunition specified in the affidavits provided to the sheriff pursuant to paragraph (3) to the third party who has been issued a safekeeping permit pursuant to paragraph (2). Upon relinquishment of the firearms to the third party, the third party shall sign an acknowledgment of receipt on a form prescribed by the Pennsylvania State Police, which shall include, at a minimum, an acknowledgment that the firearms were relinquished to the third party within the time frame specified in the order.
- (5) Within 24 hours of the issuance of the safekeeping permit issued to the third party pursuant to paragraph (2) or by close of the next business day as necessary due to the closure

of the sheriff's office, the defendant shall return the signed acknowledgment of receipt required under paragraph (4) to the sheriff in the county where the order was entered.

(6) If the defendant fails to provide the acknowledgment of receipt to the sheriff as required under paragraph (5), an affidavit prepared in accordance with section 6108(a)(7)(i)(B) (relating to relief), an affidavit under section 6108.2 (relating to relinquishment for consignment sale, lawful transfer or safekeeping) or fails to relinquish any firearms, other weapons or ammunition, the sheriff shall, at a minimum, provide immediate notice to the court, the plaintiff and appropriate law enforcement agencies.

(c) Revocation of safekeeping permit.--

(1) The sheriff shall revoke a third party's safekeeping permit and require the third party to relinquish to the sheriff any firearms, other weapons or ammunition which were relinquished to the third party by a defendant pursuant to subsection (a) upon determining or being notified that any of the following apply:

(i) A protection from abuse order has been entered against the third party.

(ii) The third party is prohibited from possessing firearms, other weapons or ammunition pursuant to any Federal or State law.

(iii) The defendant has been convicted of a violation of 18 Pa.C.S. Ch. 61 (relating to firearms and other dangerous articles) or any other offense involving the use of a firearm.

(iv) The defendant has been held in indirect criminal contempt for violating a provision of the protection from abuse order consistent with section 6108(a)(1), (2), (6), (7) or (9) (relating to relief).

(2) Upon revocation of a safekeeping permit, the sheriff shall seize the safekeeping permit and all of the defendant's firearms, other weapons and ammunition which were relinquished to the third party. If revocation of the safekeeping permit was:

(i) Required pursuant to paragraph (1)(i) or (ii), the sheriff shall notify the defendant that the firearms, other weapons and ammunition which were relinquished to the third party are in the sheriff's possession and that the defendant may report to the sheriff's office in order to relinquish the firearms, other weapons and ammunition to a subsequent third party pursuant to this section or to a licensed dealer pursuant to section 6108.2.

(ii) Required pursuant to paragraph (1)(iii) or (iv), the sheriff shall maintain possession of the firearms, other weapons and ammunition until the defendant is no longer prohibited from possessing firearms, other weapons and ammunition pursuant to any Federal or State law unless:

(A) the defendant has the firearms, other weapons and ammunition relinquished to a licensed dealer pursuant to section 6108.2; or

(B) the sheriff is directed to relinquish the firearms, other weapons and ammunition pursuant to a court order.

(d) Return of safekeeping permit.--

(1) Following expiration of a protection from abuse order, which order provided for the relinquishment of firearms, other weapons or ammunition, the defendant and the third party shall report to the sheriff's office to return the safekeeping permit. Upon a determination by the sheriff that the defendant is:

(i) Not prohibited from possessing firearms, other weapons and ammunition, the sheriff shall accept the return of the safekeeping permit, and the third party shall relinquish to the defendant all of the defendant's firearms, other weapons and ammunition which were relinquished to the third party pursuant to this section.



(ii) Prohibited from possessing a firearm, other weapon or ammunition pursuant to any Federal or State law, the sheriff shall accept return of the permit and seize from the third party all of the defendant's firearms, other weapons and ammunition which were relinquished to the third party pursuant to this section. The sheriff shall return to the defendant any firearm, other weapon or ammunition which the defendant is lawfully entitled to possess.

(2) Upon issuance of a court order pursuant to 18 Pa.C.S. §§ 6105(f)(2) or 6108.1(b) (relating to return of relinquished firearms, other weapons and ammunition and additional relief) which modifies a valid protection from abuse order by allowing the defendant to take possession of a firearm, other weapon or ammunition that had previously been ordered relinquished, the defendant and the third party shall report to the sheriff's office to return the safekeeping permit. The sheriff shall proceed as directed by the court order.

(3) If a third party wishes to relinquish the defendant's firearms, other weapons and ammunition prior to return of the safekeeping permit pursuant to paragraph (1), the sheriff shall accept return of the safekeeping permit and shall seize all of the defendant's firearms, other weapons and ammunition from the third party. The sheriff shall notify the defendant that the firearms, other weapons and ammunition which were relinquished to the third party are in the sheriff's possession and that the defendant may relinquish the firearms, other weapons and ammunition to a subsequent third party pursuant to this section or to a licensed dealer pursuant to section 6108.2.

(e) Civil liability.--A third party who intentionally or knowingly violates any of the provisions of this section shall, in addition to any other penalty prescribed in this chapter or 18 Pa.C.S. Ch. 61, be civilly liable to any person for any damages caused thereby and, in addition, shall be liable to any person for punitive damages in an amount not to exceed \$5,000, and the court shall award a prevailing plaintiff a reasonable attorney fee as part of the costs.

(f) Forms.--The Pennsylvania State Police shall develop and make available:

- (1) Forms to be used by sheriffs to issue safekeeping permits pursuant to subsection (b)(2).
- (2) Affidavit forms and receipt forms to be used by defendants and third parties as required under subsection (b)(3) and (4).

(g) Transfer upon final entry.--A defendant who has previously relinquished firearms, other weapons or ammunition to the sheriff pursuant to a temporary order shall be permitted to have the firearms, other weapons and ammunition relinquished to a third party pursuant to this section following entry of a final protection from abuse order, which order provides for the relinquishment of firearms, other weapons or ammunition during the period of time the order is in effect.

(h) Nondisclosure.--All copies of the safekeeping permit issued under subsection (b)(2) retained by the sheriff and the affidavits and forms obtained under subsection (b)(3) and (4) shall not be subject to access under the act of June 21, 1957 (P.L.390, No.212), referred to as the Right-to-Know Law.

(i) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Safekeeping.” The secure custody of firearms, other weapons or ammunition which were ordered relinquished by an active protection from abuse order.

“Third party.” A person, other than the defendant, who:

- (1) Is not a member of the defendant's household.
- (2) Is not prohibited from possessing firearms pursuant to any Federal or State law.

§ 6108.4. Registry or database of firearm ownership.

(a) Confidentiality.--Information retained to ensure compliance with this chapter and to document the return of firearms shall not be subject to access under the act of June 21, 1957 (P.L.390, No.212), referred to as the Right-to-Know Law.

(b) Construction.--Nothing in this chapter shall be construed to allow a government agency or law enforcement agency, or an agent or employee of either, or any other person or entity to create, maintain or operate a database or registry of firearm ownership within this Commonwealth. However, information may be retained to ensure compliance with this chapter and to document the return of firearms.

§ 6108.5. Penalties for release of information.

Any person who violates section 6108(a)(7)(v) (relating to relief) by releasing information with the intent and purpose of committing such violation commits a misdemeanor of the third degree.

§ 6109. Service of orders.

(a) Issuance.--A copy of an order under this chapter shall be issued to the plaintiff, the defendant and the police department with appropriate jurisdiction to enforce the order or agreement in accordance with the provisions of this chapter or as ordered by the court or hearing officer.

(b) Placement in registry.--Upon receipt of an order, the police department shall immediately place the order in a county registry of protection orders. The police department shall assure that the registry is current at all times and that orders are removed upon expiration thereof. County registries shall not be required when the Pennsylvania State Police registry provided for in section 6105(e) (relating to responsibilities of law enforcement agencies) is established and is fully operational.

§ 6110. Emergency relief by minor judiciary.

(a) General rule.--When:

(1) in counties with less than four judges, the court is unavailable:

(i) from the close of business at the end of each day to the resumption of business the next morning;

(ii) from the end of the business week to the beginning of the business week; and

(iii) during the business day by reason of duties outside the county, illness or vacation;

(2) in counties with at least four judges, the court is unavailable:

(i) from the close of business at the end of each day to the resumption of business the next morning; and

(ii) from the end of the business week to the beginning of the business week;

a petition may be filed before a hearing officer who may grant relief in accordance with section 6108(a)(1), (2) and (6) or (1) and (6) (relating to relief) if the hearing officer deems it necessary to protect the plaintiff or minor children from abuse upon good cause shown in an ex parte proceeding. Immediate and present danger of abuse to the plaintiff or minor children shall constitute good cause for the purposes of this subsection.

(b) Expiration of order.--An order issued under subsection (a) shall expire at the end of the next business day the court deems itself available. The court shall schedule hearings on protection orders entered by hearing officers under subsection (a) and shall review and continue in effect

protection orders that are necessary to protect the plaintiff or minor children from abuse until the hearing, at which time the plaintiff may seek a temporary order from the court.

(c) Certification of order to court.--An emergency order issued under this section and any documentation in support thereof shall be immediately certified to the court. The certification to the court shall have the effect of commencing proceedings under section 6106 (relating to commencement of proceedings) and invoking the other provisions of this chapter. If it is not already alleged in a petition for an emergency order, the plaintiff shall file a verified statement setting forth the abuse of defendant at least five days prior to the hearing. Service of the verified statement shall be made subject to section 6106.

(d) Instructions regarding the commencement of proceedings.--Upon issuance of an emergency order, the hearing officer shall provide the plaintiff instructions regarding the commencement of proceedings in the court of common pleas at the beginning of the next business day and regarding the procedures for initiating a contempt charge should the defendant violate the emergency order. The hearing officer shall also advise the plaintiff of the existence of programs for victims of domestic violence in the county or in nearby counties and inform the plaintiff of the availability of legal assistance without cost if the plaintiff is unable to pay for them.

(e) Master for emergency relief.--The president judge of a court of common pleas of a judicial district may, with the approval of the Administrative Office of Pennsylvania Courts, provide for the selection and appointment of a master for emergency relief on a full-time or part-time basis. The number of masters for emergency relief shall be fixed by the president judge with the approval of the Administrative Office of Pennsylvania Courts. The compensation of a master for emergency relief shall be fixed and paid by the county.

#### § 6111. Domestic violence counselor/advocate.

A domestic violence counselor/advocate may accompany a party to any legal proceeding or hearing under this chapter.

#### § 6112. Disclosure of addresses.

During the course of a proceeding under this chapter, the court or hearing officer may consider whether the plaintiff or plaintiff's family is endangered by disclosure of the permanent or temporary address of the plaintiff or minor children. Neither in the pleadings nor during proceedings or hearings under this chapter shall the court or hearing officer require disclosure of the address of a domestic violence program. Where the court concludes that the defendant poses a threat of continued danger to the plaintiff and where the plaintiff requests that his or her address, telephone number and information about whereabouts not be disclosed, the court shall enter an order directing that law enforcement agencies, human service agencies and school districts (both in which a plaintiff's child in custody of the plaintiff is or has been enrolled) shall not disclose the presence of the plaintiff or the child in the jurisdiction or district or furnish any address, telephone number or any other demographic information about the plaintiff and child except by further order of the court.

#### § 6113. Arrest for violation of order.

(a) General rule.--An arrest for violation of an order issued pursuant to this chapter or a foreign protection order may be without warrant upon probable cause whether or not the violation is committed in the presence of the police officer or sheriff in circumstances where the defendant has violated a provision of an order consistent with section 6108(a)(1), (2), (3), (4), (6), (7) or (9)

(relating to relief). The police officer or sheriff may verify the existence of a protection order by telephone, radio or other electronic communication with the appropriate police department, Pennsylvania State Police registry, protection order file or issuing authority. A police officer or sheriff shall arrest a defendant for violating an order issued under this chapter by a court within the judicial district, issued by a court in another judicial district within this Commonwealth or a foreign protection order issued by a comparable court.

(b) Seizure of firearms, other weapons and ammunition.--Subsequent to an arrest, the police officer or sheriff shall seize all firearms, other weapons and ammunition used or threatened to be used during the violation of the protection order or during prior incidents of abuse and any other firearms in the defendant's possession. As soon as it is reasonably possible, the arresting officer shall deliver the confiscated firearms, other weapons and ammunition to the office of the sheriff. The sheriff shall maintain possession of the firearms, other weapons and ammunition until the court issues an order specifying the firearms, other weapons and ammunition to be relinquished and the persons to whom the firearms, other weapons and ammunition shall be relinquished.

(c) Procedure following arrest.--Subsequent to an arrest, the defendant shall be taken by the police officer or sheriff without unnecessary delay before the court in the judicial district where the contempt is alleged to have occurred. When that court is unavailable, the police officer or sheriff shall convey the defendant to a magisterial district judge designated as appropriate by local rules of court or, in the city of Pittsburgh, to a magistrate of the Pittsburgh Magistrates Court or, in counties of the first class, to the appropriate hearing officer. For purposes of procedure relating to arraignments for arrest for violation of an order issued under this chapter, the judges of Pittsburgh Magistrates Court shall be deemed to be magisterial district judges.

(d) Preliminary arraignment.--The defendant shall be afforded a preliminary arraignment without unnecessary delay.

(e) Other emergency powers unaffected.--This section shall not be construed to in any way limit any of the other powers for emergency relief provided in this chapter.

(f) Hearing.--A hearing shall be scheduled within ten days of the filing of the charge or complaint of indirect criminal contempt. The hearing and any adjudication shall not preclude a hearing on other criminal charges underlying the contempt, nor shall a hearing or adjudication on other criminal charges preclude a hearing on a charge of indirect criminal contempt.

#### § 6113.1. Private criminal complaints for violation of order or agreement.

(a) General rule.--A plaintiff may file a private criminal complaint against a defendant, alleging indirect criminal contempt for a noneconomic violation of any provision of an order or court-approved consent agreement issued under this chapter or a foreign protection order, with the court, the office of the district attorney or the magisterial district judge in the jurisdiction or county where the violation occurred, except that, in a city of the first class, a complaint may only be filed with the family division of the court of common pleas or the office of the district attorney.

(b) Procedure service.--Procedure for filing and service of a private criminal complaint shall be provided as set forth by local rule. No fees or costs associated with the prosecution of the private criminal complaint shall be assigned to the plaintiff at any stage of the proceeding, including, but not limited to, filing, service, failure to prosecute, withdrawal or dismissal. Nothing in this subsection is intended to expand or diminish the court's authority to enter an order pursuant to Pa.R.C.P. No. 1023.1 (relating to Scope. Signing of Documents. Representations to the Court. Violation).

(c) Fees and costs.--After a finding of indirect criminal contempt, fees and costs may be assessed against the defendant. The court shall waive fees and costs imposed pursuant to this chapter upon a showing of good cause or when the court makes a finding that the defendant is not able to pay the costs associated with the indirect criminal contempt action. Nothing in this subsection is intended to expand or diminish the court's authority to enter an order pursuant to Pa.R.C.P. No. 1023.1.

§ 6114. Contempt for violation of order or agreement.

(a) General rule.--Where the police, sheriff or the plaintiff have filed charges of indirect criminal contempt against a defendant for violation of a protection order issued under this chapter, a foreign protection order or a court-approved consent agreement, the court may hold the defendant in indirect criminal contempt and punish the defendant in accordance with law.

(a.1) Jurisdiction.--A court shall have jurisdiction over indirect criminal contempt charges for violation of a protection order issued pursuant to this chapter in the county where the violation occurred and in the county where the protection order was granted. A court shall have jurisdiction over indirect criminal contempt charges for violation of a foreign protection order in the county where the violation occurred.

(a.2) Minor defendant.--Any defendant who is a minor and who is charged with indirect criminal contempt for allegedly violating a protection from abuse order shall be considered to have committed an alleged delinquent act as that term is defined in 42 Pa.C.S. § 6302 (relating to definitions) and shall be treated as provided in 42 Pa.C.S. Ch. 63 (relating to juvenile matters).

(b) Trial and punishment.--

(1) A sentence for contempt under this chapter may include:

(i)

(A) a fine of not less than \$300 nor more than \$1,000 and imprisonment up to six months; or

(B) a fine of not less than \$300 nor more than \$1,000 and supervised probation not to exceed six months; and

(ii) an order for other relief set forth in this chapter.

(2) All money received under this section shall be distributed in the following order of priority:

(i) \$100 shall be forwarded to the Commonwealth and shall be appropriated to the Pennsylvania State Police to establish and maintain the Statewide registry of protection orders provided for in section 6105 (relating to responsibilities of law enforcement agencies).

(ii) \$100 shall be retained by the county and shall be used to carry out the provisions of this chapter as follows:

(A) \$50 shall be used by the sheriff.

(B) \$50 shall be used by the court.

(iii) \$100 shall be forwarded to the Department of Public Welfare for use for victims of domestic violence in accordance with the provisions of section 2333 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

(iv) Any additional money shall be forwarded to the Commonwealth and shall be used by the Pennsylvania State Police to establish and maintain the Statewide registry of protection orders provided for in section 6105.

(3) The defendant shall not have a right to a jury trial on a charge of indirect criminal contempt. However, the defendant shall be entitled to counsel.

(4) Upon conviction for indirect criminal contempt and at the request of the plaintiff, the court shall also grant an extension of the protection order for an additional term.

(5) Upon conviction for indirect criminal contempt, the court shall notify the sheriff of the jurisdiction which issued the protection order of the conviction.

(6) The minimum fine required by subsection (b)(1) allocated pursuant to subsection (b)(2)(i) and (iii) shall be used to supplement and not to supplant any other source of funds received for the purpose of carrying out the provisions of this chapter.

(c) Notification upon release.--The appropriate releasing authority or other official as designated by local rule shall use all reasonable means to notify the victim sufficiently in advance of the release of the offender from any incarceration imposed under subsection (b). Notification shall be required for work release, furlough, medical leave, community service, discharge, escape and recapture. Notification shall include the terms and conditions imposed on any temporary release from custody. The plaintiff must keep the appropriate releasing authority or other official as designated by local rule advised of contact information; failure to do so will constitute waiver of any right to notification under this section.

(d) Multiple remedies.--Disposition of a charge of indirect criminal contempt shall not preclude the prosecution of other criminal charges associated with the incident giving rise to the contempt, nor shall disposition of other criminal charges preclude prosecution of indirect criminal contempt associated with the criminal conduct giving rise to the charges.

#### § 6114.1. Civil contempt or modification for violation of an order or agreement.

(a) General rule.--A plaintiff may file a petition for civil contempt with the issuing court alleging that the defendant has violated any provision of an order or court-approved agreement issued under this chapter or a foreign protection order.

(b) Civil contempt order.--Upon finding of a violation of a protection order or court-approved consent agreement issued under this chapter or a foreign protection order, the court, either pursuant to petition for civil contempt or on its own accord, may hold the defendant in civil contempt and constrain him in accordance with law.

(c) Sentencing.--A sentence for civil contempt under this chapter may include imprisonment until the defendant complies with provisions in the order or consent agreement or demonstrates the intent to do so, but in no case shall a term of imprisonment under this section exceed a period of six months.

(d) Jury trial and counsel.--The defendant shall not have a right to a jury trial; however, the defendant shall be entitled to counsel.

#### § 6115. Reporting abuse and immunity.

(a) Reporting.--A person having reasonable cause to believe that a person is being abused may report the information to the local police department.

(b) Contents of report.--The report should contain the name and address of the abused person, information regarding the nature and extent of the abuse and information which the reporter believes may be helpful to prevent further abuse.

(c) Immunity.--A person who makes a report shall be immune from a civil or criminal liability on account of the report unless the person acted in bad faith or with malicious purpose.

§ 6116. Confidentiality.

Unless a victim waives the privilege in a signed writing prior to testimony or disclosure, a domestic violence counselor/advocate or a coparticipant who is present during domestic violence counseling/advocacy shall not be competent nor permitted to testify or to otherwise disclose confidential communications made to or by the counselor/advocate by or to a victim. The privilege shall terminate upon the death of the victim. Neither the domestic violence counselor/advocate nor the victim shall waive the privilege of confidential communications by reporting facts of physical or sexual assault under Chapter 63 (relating to child protective services), a Federal or State mandatory reporting statute or a local mandatory reporting ordinance.

§ 6117. Procedure and other remedies.

(a) General rule.--Unless otherwise indicated in this chapter, a proceeding under this chapter shall be in accordance with applicable general rules and shall be in addition to any other available civil or criminal remedies. The plaintiff and the defendant may seek modification of an order issued under section 6108 (relating to relief) at any time during the pendency of an order. Except as otherwise indicated in this chapter, modification may be ordered after the filing of a petition for modification, service of the petition and a hearing on the petition.

(b) Remedies for bad faith.--Notwithstanding any other provision of law, upon finding that an individual commenced a proceeding under this chapter in bad faith, a court shall direct the individual to pay to the defendant actual damages and reasonable attorney fees. Failure to prove an allegation of abuse by a preponderance of the evidence shall not, by itself, result in a finding of bad faith.

§ 6118. Full faith and credit (Repealed).

§ 6119. Immunity.

(a) General rule.--Law enforcement agencies and their employees, including police officers and sheriffs, shall, except as provided in subsection (b), be immune from civil liability for actions taken in good faith to carry out their duties relating to the seizure and relinquishment of firearms, other weapons and ammunition as provided for in this chapter, except for gross negligence, intentional misconduct or reckless, willful or wanton misconduct.

(b) Exception.--Law enforcement agencies and their employees, including police officers and sheriffs, shall be liable to the lawful owner of confiscated, seized or relinquished firearms in accordance with 18 Pa.C.S. § 6105(f) (relating to persons not to possess, use, manufacture, control, sell or transfer firearms) and shall be liable to the lawful owner of confiscated, seized or relinquished other weapons or ammunition for any loss, damage or substantial decrease in the value of the other weapons or ammunition that is a direct result of a lack of reasonable care by the law enforcement agency or its employees.

§ 6120. Inability to pay.

(a) Order for installment payments.--Upon plea and proof that a person is without the financial means to pay a fine, a fee, economic relief ordered under section 6108(a)(8) (relating to relief) or a cost, a court may order payment of money owed in installments appropriate to the circumstances of the person and shall fix the amounts, times and manner of payment.

(b) Use of credit cards.--The treasurer of each county may allow the use of credit cards and bank cards in the payment of money owed under this chapter.

§ 6121. Warrantless searches.

Except as provided in section 6113 (relating to arrest for violation of order), nothing in this chapter shall authorize a warrantless search for firearms, other weapons or ammunition.

§ 6122. Construction.

Nothing in this chapter shall be construed to preclude an action for wrongful use of civil process pursuant to 42 Pa.C.S. Ch. 83 Subch. E (relating to wrongful use of civil proceedings) or criminal prosecution for a violation of 18 Pa.C.S. Ch. 49 (relating to falsification and intimidation).



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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE RESOLUTION

No. 735 Session of  
2015

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INTRODUCED BY GINGRICH, THOMAS, COHEN, GREINER, D. COSTA, JAMES,  
DEAN, ROTHMAN, ENGLISH, BAKER, MURT, WARD, KILLION, CORBIN,  
HARHART, BOBACK, STURLA, SCHLOSSBERG, PICKETT, PAYNE,  
READSHAW, DONATUCCI, KOTIK, MILNE, FARRY, CUTLER, DAVIS,  
MARSICO, V. BROWN AND GERGELY, MARCH 15, 2016

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REFERRED TO COMMITTEE ON JUDICIARY, MARCH 15, 2016

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A RESOLUTION

1 Directing the Joint State Government Commission to conduct a  
2 study on the Protection from Abuse Act and publish a report  
3 of its findings, including any recommended legislative and  
4 policy changes.

5 WHEREAS, With the passage of the first Protection From Abuse  
6 Act in 1976, Pennsylvania became the second state in the United  
7 States to enact legislation for the specific purpose of  
8 protecting victims of domestic abuse; and

9 WHEREAS, Since that time, the Protection from Abuse Act has  
10 provided crucial and even lifesaving protections to thousands of  
11 victims of abuse; and

12 WHEREAS, In order for a law's stated purposes to be  
13 accomplished, legislation must be monitored by and on behalf of  
14 those whose lives it affects; and

15 WHEREAS, The Protection from Abuse Act has undergone  
16 substantial revision in the years since its initial passage; and

17 WHEREAS, Despite the continual improvement of the act, the

1 real-world experiences of advocates, attorneys, law enforcement  
2 officers, judges, victims and family members demonstrate that  
3 further improvement in the law or its application may be  
4 possible and desirable; and

5 WHEREAS, The General Assembly is ever mindful of the need to  
6 balance precautions for the physical safety of accusers against  
7 the constitutional rights of defendants; therefore be it

8 RESOLVED, That the Joint State Government Commission  
9 undertake a study of the current Protection from Abuse Act with  
10 an emphasis on identifying any "blind spots" or "gaps" in the  
11 law or in how it is applied which, if corrected, may reduce  
12 incidences of revictimization or death while still striking an  
13 appropriate balance of rights; and be it further

14 RESOLVED, That the final report include any recommendations  
15 for changes to statutes, practices, policies, programs and  
16 procedures relating to the Protection from Abuse Act; and be it  
17 further

18 RESOLVED, That the Joint State Government Commission issue a  
19 report to the House of Representatives with its findings and  
20 recommendations no later than nine months from the adoption of  
21 this resolution.