

ACT 79 FACT SHEET

Firearms Relinquishment

- Any final Protection from Abuse Order entered into after a hearing before the court **MUST** order that the defendant is subject to firearms, other weapons, or ammunition relinquishment. *23 Pa.C.S. §6108(a.1)(1)*
- A final Protection from Abuse Order entered pursuant to a Consent Agreement between the parties **MAY** order that the defendant is subject to firearms, other weapons, or ammunition relinquishment. *23 Pa.C.S. §6108(a.1)(2)*
- The court **MAY** order the defendant to relinquish firearms as part of a temporary order if the petition demonstrates (1) abuse involving a firearm **OR** (2) an immediate and present danger of abuse. *23 Pa.C.S. §6107(b)*
- Except for cause shown,¹ an individual subject to firearms relinquishment pursuant to a Protection from Abuse Order **MUST** relinquish their firearms, other weapons, or ammunition within **24 hours** to the sheriff, other appropriate law enforcement agency,² a licensed firearms dealer, a commercial armory, **OR** an attorney with whom the defendant shares a lawyer-client relationship. Neither the owner/operator of the commercial armory nor the attorney can be a family or household member of the defendant. The order for relinquishment shall include a list of the firearms, other weapons, or ammunition to be surrendered and shall be transmitted to the appropriate law enforcement agency and sheriff of the county in which the defendant resides. *23 Pa.C.S. §6108(a)(7); 23 Pa.C.S. §6108.2; 23 Pa.C.S. §6108.3*
- Except for cause shown,³ an individual convicted of a “misdemeanor crime of domestic violence⁴” **MUST** relinquish their firearms within **24 hours** to an appropriate law enforcement agency, **OR** a licensed firearms dealer. The order for relinquishment shall include a list of the firearms to be surrendered and shall be transmitted to the appropriate law enforcement agency and sheriff of the county in which the defendant resides. *18 Pa.C.S. §6105.2*
- If the defendant fails to relinquish their firearms, etc. or provide an affidavit of relinquishment to the sheriff or the appropriate law enforcement agency, the sheriff or appropriate law enforcement agency shall immediately notify the necessary parties, including the court and the plaintiff, of the failure to relinquish. *18 Pa.C.S. §6105.2 and 23 Pa.C.S. §6108(a)(7)*
- Failure to relinquish firearms, etc. pursuant to a Protection from Abuse Order or conviction for a misdemeanor crime of domestic violence is a misdemeanor of the second degree. Upon conviction of failing to relinquish pursuant to a Protection From Abuse Order, that individual shall be prohibited from owning or

¹ The defendant is unable to access or retrieve their firearms within 24 hours. *23 Pa.C.S. §6108(a)(7)(i)(C)*

² Appropriate law enforcement agency: “The duly constituted municipal enforcement agency that regularly provides primary police services to a political subdivision, or, in the absence of any such municipal law enforcement agency, the Pennsylvania State police installation that regularly provides primary police services to the political subdivision.” *23 Pa.C.S. §6102(a)*

³ The defendant is unable to access or retrieve their firearms within 24 hours. *18 Pa.C.S. §6105.2((b)(3)*

⁴ For the definition of a misdemeanor crime of domestic violence, see *18 U.S.C. §921(a)(33)*

possessing firearms for **five years** from the date of conviction, release from imprisonment, or release from supervision, whichever comes later. *18 Pa.C.S. §6105(a.1)(2); 18 Pa.C.S. §6105.2(h); 18 Pa.C.S. §6105(c)(10)*

- If the defendant relinquished firearms belonging to a third party pursuant to a Protection from Abuse Order, said third party can file a petition for the firearms' return. The third party must provide proof of ownership and a sworn affidavit.⁵ *23 Pa.C.S. §6108(i); 23 Pa.C.S. §6108.1(b)*
- Once the PFA Order expires or is dismissed, the defendant can request the return of their firearms, other weapons, or ammunition. However, the defendant **MUST** provide notice of the request to the plaintiff and meet certain conditions.⁶ *23 Pa.C.S. §6108.1*

Other Important Provisions

- At any time during the period between the filing of the petition and granting of an order or approving a consent agreement, the court **SHALL**, upon notice by the plaintiff that they believe their safety is at risk, direct the Pennsylvania State Police, the municipal police, or the sheriff to accompany the plaintiff to the plaintiff's residence to retrieve personal belongings or to accompany the plaintiff while the petition or order is served upon the defendant. *23 Pa.C.S. §6106(a.3)*
- The court **MAY** grant an extension of the PFA if the plaintiff files for an extension and the defendant is or was incarcerated and will be released from custody in the next 90 days or has been released from custody in the last 90 days. The plaintiff does not need to show that the defendant committed one or more acts of abuse subsequent to the entry of the order or that the defendant indicated a pattern or practice that indicates a risk of harm to the plaintiff or minor children. *23 Pa.C.S. §6108(e)*
- The court **MAY** order the sealing of records related to a PFA Order if the order was entered pursuant to a consent agreement. The defendant must provide notice of the request to the plaintiff and the prosecutor, and certain conditions must be proven by clear and convincing evidence.⁷ *23 Pa.C.S. §6108.7*
- The court **MUST** notify the defendant of the right to a continuance if a hearing is scheduled to take place within three business days after the defendant is served. *23 Pa.C.S. §6107(c)(2)(3).*

⁵ *23 Pa.C.S. §6108(i)(2)* - The Affidavit must affirm:

- the third party who is the lawful owner will not intentionally or knowingly return to the defendant the firearm or allow the defendant to access the firearm;
- the third party who is the lawful owner understands that returning the firearm to the defendant or allowing the defendant to access the firearm is a misdemeanor of the second degree; and
- If the third party who is the lawful owner is a family or household member of the defendant, any firearm returned must be stored in a gun safe to which the defendant does not have access or stored in a location outside the home to which the defendant does not have access.

⁶ *23 Pa.C.S. §6108.1(a.1)* - Conditions of Return:

- the firearms, other weapons, or ammunition must not be evidence of a crime;
- the defendant must not be otherwise prohibited from possessing or owning firearms under federal or state law;
- the defendant must have been cleared by the Pennsylvania State Police Instant Check System or the National Instant Check System.

⁷ *23 Pa.C.S. §6108.7(a)* - Conditions for Seal:

- the consent agreement for the PFA is the only such consent agreement to which the defendant has ever been subject, and that the defendant did not violate the order or consent agreement while it was in effect;
- A period of at least ten years has elapsed since the expiration of the consent agreement;
- The individual has not been subject to another final protection from abuse order; AND
- The individual has not been convicted of certain offenses where the victim is a family or household member.