

## TEMPORARY FIREARMS PROHIBITION

### PROTECTION FROM ABUSE ORDERS

- A 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,<sup>1</sup> the relinquishment of firearms, other weapons, or ammunition pursuant to a Protection from Abuse Order must occur within **24 hours**.
- The order for relinquishment must include a list of the firearms, other weapons, or ammunition to be surrendered and be transmitted to the appropriate law enforcement agency and sheriff of the county in which the defendant resides. Defendant can relinquish firearms, other weapons, or ammunition to the sheriff, other “appropriate law enforcement agency,<sup>2</sup>” a licensed firearms dealer, a commercial armory, or an attorney with whom Defendant shares an attorney-client relationship. Neither the owner/operator of the commercial armory or the attorney can be a member of Defendant’s family or household. *23 Pa.C.S. §6108(a)(7); 23 Pa.C.S. §6108.2; 23 Pa.C.S. §6108.3*
- 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. *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.<sup>3</sup> *23 Pa.C.S. §6108.1*
- A person subject to a Protection from Abuse Order which provided for firearms relinquishment or who is otherwise prohibited from possessing a firearm by the terms of a “qualifying protection order” commits a misdemeanor of the second degree if they fail to relinquish their firearms, other weapons, or ammunition. In addition, upon conviction, they are prohibited from possessing a firearm 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(c)(10)*.

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

<sup>2</sup> 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)*

<sup>3</sup> 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.

## QUALIFYING PROTECTION ORDERS

**A. A person subject to a “qualifying protection order” is prohibited from possessing a firearm for the duration of the order. 18 Pa.C.S. §6105(c)(6); 18 U.S.C. §922(g)(8)**

**B. A qualifying domestic relations order must meet the following three criteria:**

- The court order must state the relationship of the parties. The plaintiff/protected party must be either an “intimate partner” of the defendant or the child of the defendant or intimate partner.<sup>4</sup>
- Due Process
  - Defendant must have received **ACTUAL NOTICE**, and
  - The opportunity to participate
- The order must contain one from each of the following columns:

Order Restrains:	Order Contains:
1. Defendant from harassing, stalking or threatening victim;	1. Finding that person represents a credible threat to physical safety of victim;
OR	OR
2. Defendant from engaging in other conduct that would place victim in reasonable fear of bodily injury	2. Prohibition of use, attempted use or threatened use of physical force against victim that would reasonably be expected to cause bodily injury

**C. Exception: If the prohibited person is an employee of the United States, or any department or agency thereof or any State or any department, agency, or political subdivision thereof, e.g., US military or State or local police officer, then that person is permitted under this exception to possess a firearm while on duty only. - 18 U.S.C. 925(a).**

## PERMANENT FIREARMS PROHIBITION

### MISDEMEANOR CRIME OF DOMESTIC VIOLENCE

- A person convicted of a “**misdemeanor crime of domestic violence**” is prohibited from possessing a firearm for life. *18 Pa.C.S. §6105(c)(9); 18 U.S.C. §922(g)(9).*
- A misdemeanor crime of domestic violence is:
  - An offense that is a misdemeanor under federal, state, or tribal law;
  - That has the element of use or attempted use of physical force; **AND**
  - Was committed by:
    - The current or former spouse, parent, or guardian of the victim;
    - A person with whom the victim shares a child;
    - A person who was cohabitating with or had cohabitated with the victim as a spouse, parent, or guardian; OR
    - A person who was or had been similarly situated to a spouse, parent, or guardian of the victim.
- The relationship between the perpetrator and the victim does not have to be a stated element of the crime and the degree of force necessary is that of “common law battery, i.e. “offensive touching.” *U.S. v. Castleman, 134 S.Ct. 1405 (2014).*

<sup>4</sup> 18 U.S.C. 921(a)(32) - Intimate Partner:  
 - Current or former spouse;  
 - Cohabitant or former cohabitant; or  
 - Individual with whom there is a child in common;