

Pennsylvania Domestic Violence Benchbook For Magisterial District Judges

2017-2018 Edition



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Acknowledgements

This Pennsylvania Domestic Violence Benchbook for Magisterial District Judges is the result of the collaborative efforts of many individuals who are committed to safety and justice for individuals and families troubled by domestic violence. First and foremost, special thanks are extended to the magisterial district judges who comprise the Benchbook Advisory Group. Their guidance and support made this Benchbook a reality.

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Of Special Note

The legal discussion in this Benchbook is current as of the date at the bottom of each chapter. The reader is cautioned that the complexity of domestic violence makes it the subject of continuing legislative attention and judicial review. Readers are encouraged to consult appellate opinions issued and legislation enacted after the date in the footer of each individual chapter.

Best practice suggestions, sample forms and procedures from the Advisory Group and from state and national resources are included in each chapter. These are merely suggestions. The Advisory Group encourages each local district court to develop its own policies and practices for domestic violence cases in collaboration with the other service and justice providers in the community.

This publication is designed to provide accurate and authoritative information with regard to the subject matter covered. Nothing contained in this book is to be considered as the rendering of legal advice for specific cases, and readers are responsible for obtaining such advice from their own legal counsel. This book and any forms and agreements herein are intended for educational and informational purposes only.

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Style

Words and phrases in the text and footnotes that are in **bold font** are hyperlinks in the electronic version of the Benchbook. The hyperlinks will open the document or webpage to which the link refers.

¹ See *Fonner*, 731 A.2d 160 (physical injury not required); see also **Weir v. Weir, 631 A.2d 650 (Pa. Super. 1993)** (physical menace put plaintiff in fear of bodily injury).

Clicking on the bolded text opens the case description of *Weir v. Weir*.

An interactive map and complete list of all 60 domestic violence programs located in the commonwealth can be found at: **www.pcadv.org/Find-Help/**.

Clicking on the bolded text opens the webpage at www.pcadv.org

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Summary

Magisterial district judges see domestic violence cases every day and are often the first contact with the justice system for offenders and victims. Although their judicial activities may seem limited in scope, their importance cannot be underestimated. Magisterial district judges move cases forward into the justice system and preserve defendants’ due process rights. As they do so, their actions can put offenders on notice that their behavior can have criminal consequences. This Benchbook outlines the laws relating to domestic violence offenses and the ways in which domestic violence crimes differ from non-domestic violence crimes.

Domestic violence cases can seem frustrating due to lack of victim participation. Easing victims’ fears of further violence can support their ongoing participation in the case. Laws give magisterial district judges a role to play in protecting victim safety. This Benchbook reviews laws giving rights to victims and provides referrals and resources that strengthen victim involvement.

The two main intersections between magisterial district judges and domestic violence cases are criminal bail and emergency Protection From Abuse orders. This Benchbook will outline laws regarding these two procedures and other crimes and statutes relating to domestic violence cases.

Domestic Violence Assault is Different Than Stranger Assault

Domestic violence is a **PATTERN OF ASSAULTIVE AND CONTROLLING BEHAVIORS** that can include physical, sexual, and psychological attacks, economic deprivation and coercion. Research and clinical experiences show that domestic violence occurs among all socioeconomic, racial, cultural and religious groups. Although most men do not batter, the majority of perpetrators are men and the majority of victims are women.

Domestic violence involves abuse of intimate partners and family members. Offenders are able to use their intimate familiarity with the victim’s life to coerce, control, stalk, threaten and abuse – to get their way. Victims understand the subtle threats inherent in an abuser’s actions that may look harmless to outsiders. Violence often worsens when the victim attempts to leave the abuser or the abuser’s violence becomes public knowledge.

Common attitudes and conduct of domestic violence perpetrators include persistent attempts to control the victim, minimizing and denying the violence, blaming the victim or others for the behavior, presenting a likeable image to the court, using the court system to further abuse the victim, and using the children to manipulate and control the victim. Although abuse is not the victim’s fault, their behavior can be misleading. Magisterial district judges experience this firsthand when they encounter victims who refuse to cooperate with their criminal case. Given the interpersonal relationship of perpetrator to victim in domestic violence cases, non-cooperation could be a safety strategy, a reaction to intimidation or family pressure, or could signal a belief that the justice system won’t effectively punish the offender to stop the abuse.

Domestic Violence	Stranger Violence
Violence is part of a pattern of controlling and assaultive behavior	Violence is often a one-time incident, usually random
Perpetrator is a former/current intimate partner, dating partner, or family member of victim	Perpetrator is a stranger, or acquaintance/friend of victim
Perpetrator knows and uses intimate details of victim’s life to threaten or hurt the victim	Perpetrator knows little or only knows public information about the victim
Civil protection: Protection From Abuse (PFA) order	Civil Protection: Protection From Sexual Violence (PFV) order; Protection From Intimidation (PFI) order for minor victims (under age 18)
MDJ’s role: emergency PFA order, criminal charges – bail, preliminary hearing	MDJ’s role: Emergency PFV/PFI order, criminal charges – bail, preliminary hearing
The vast majority of sexual violence, stalking, and intimate partner violence victims know the perpetrator.	Victims do not know the perpetrators.

Understanding Domestic Violence

Pennsylvania superior courts have found that the primary goal of the Protection From Abuse Act is “advance prevention of physical and sexual abuse.”¹

Domestic Violence is About Power and Control Behavior

In its “Judicial Checklist,” the judicial subcommittee of the **American Bar Association’s Commission on Domestic and Sexual Violence** assists judges in identifying and understanding domestic violence in the cases that come before them. As the “Checklist” emphasizes: **“DOMESTIC VIOLENCE IS ABOUT POWER AND CONTROL.”**² The “Checklist” also asserts:

Domestic violence is *chosen behavior* and is rarely caused by substance abuse, genetics, stress, illness, or problems in the relationship, although these factors are often used as excuses and can exacerbate violent behavior. Abusers may justify their actions by blaming the victim, but courts should not accept this as a justification.³

¹ *Id.* at 161-62 (quoting *Snyder v. Snyder*, 629 A.2d 977, 981 (Pa. Super. 1993)).

² JUDICIAL CHECKLIST (2008), ABA COMM’N ON DOMESTIC VIOLENCE, http://www.americanbar.org/content/dam/aba/migrated/domviol/publications/187815_ABA_Checklist_FINAL.authcheckdam.pdf

³ *Id.*

The Office on Violence Against Women of the U.S. Department of Justice further provides a behavioral definition of domestic violence:

[A] pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner. Domestic violence can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone.”⁴

The term “intimate partner violence” is often used interchangeably with domestic violence and acknowledges that abuse can exist in any type of personal intimate relationship, regardless of sexual orientation, marital status, or gender.

The National Institute of Justice follows the definition of the Centers for Disease Control and Prevention’s (CDC) National Center for Injury Prevention and Control. The CDC defines four main types of intimate partner violence:

- **Physical violence** is the intentional use of physical force (e.g., shoving, choking, shaking, slapping, punching, burning, or use of a weapon, restraints, or one's size and strength against another person) with the potential for causing death, disability, injury, or physical harm.
- **Sexual violence** can be divided into three categories: (1) the use of physical force to compel a person to engage in a sexual act unwillingly, whether or not the act is completed; (2) an attempted or completed sexual act involving a person who, because of illness, disability, or the influence of alcohol or other drugs, or because of intimidation or pressure, is unable to understand the nature or condition of the act, decline participation, or communicate unwillingness to engage in the act; and (3) abusive sexual contact.
- **Threats of physical or sexual violence** communicate the intent to cause death, disability, injury, or physical harm through the use of words, gestures, or weapons.
- **Psychological/emotional violence** traumatizes the victim by acts, threats of acts, or coercive tactics (e.g., humiliating the victim, controlling what the victim can and cannot do, withholding information, isolating the victim from friends and family, denying access to money or other basic resources). In most cases, emotional violence has been preceded by acts or threats of physical or sexual violence.⁵

⁴ U.S. Dept. of Justice, *Domestic Violence* webpage, <http://www.justice.gov/ovw/domestic-violence>.

⁵ Office of Justice Programs, National Institute of Justice, webpage, *Intimate Partner Violence*, <http://www.nij.gov/topics/crime/intimate-partner-violence/Pages/welcome.aspx>. See also, Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, *Understanding Intimate Partner Violence Fact Sheet 2014*, <http://www.cdc.gov/violenceprevention/pdf/ipv-factsheet.pdf>.

Predominant Aggressor

Sometimes, during an incident of domestic violence, both the victim and the offender use violence. When this occurs, it is critical to determine who is the “predominant aggressor.” A predominant aggressor, also known as the “dominant” or “primary” aggressor, is defined as the party who is the most significant or principal aggressor. When police can determine which party is the predominant aggressor, the true victim can seek protection, and offenders are held accountable. However, when both parties are arrested, so-called dual arrest, the challenge is left to the court to determine WHICH PARTY’S ABUSE IS PART OF A PATTERN OF VIOLENCE AND CONTROL. The predominant aggressor may not be the first to use violence in the incident. Victims may utilize violence to avert an attack from the abuser or in self-defense. Abusers may try to convince the police that the violence was mutual and that they are also victims.

Identifying the predominant aggressor requires being able to recognize the tactics of power and control. To determine the predominant aggressor, consider the following factors:

- Offensive and defensive injuries
- The seriousness of injuries received by each party
- Threats made by a party against the other or a family member or a pet
- Whether a party acted in self-defense or in the defense of another
- The height and weight of the parties
- Which party has the potential to seriously injure the other party
- Any history of domestic violence between the parties
- Prior convictions of assault
- Orders for protection that have been filed by a party
- Whether a party has a fearful demeanor
- Whether a party has a controlling demeanor
- Witness statements

A victim who is wrongly charged can face legal consequences in matters such as child custody, housing and immigration. Also, a person who is not identified as a victim would not be eligible for shelter or other forms of aid mandated by statute.⁶

According to a special report from the National Institutes of Justice:

In dual-arrest cases, judges should insist that prosecutors provide evidence that one of the parties was the primary or predominant aggressor and the other the victim. This may be particularly important, as advocates caution that female victims who are

⁶ Advocates for Human Rights, Determining the Predominant Aggressor webpage, http://www.stopvaw.org/determining_the_predominant_aggressor

arrested along with their abusers may nonetheless plead guilty in order to be able to return home to care for minor children. Furthermore, it appears that law enforcement finds it particularly challenging to determine the primary/predominant aggressor with same-sex couples.⁷

Domestic Violence Affects Everyone

Research and clinical experiences show that domestic violence occurs among all socioeconomic, racial, cultural, and religious groups,⁸ but its prevalence and effects may vary among these different groups. Racial and ethnic minorities are disproportionately affected by domestic violence.⁹

Four of Five Victims of Intimate Partner Violence are Female

The body of domestic violence research over time demonstrates that, in heterosexual relationships, the majority of abusers are men and the majority of victims are women.¹⁰ In the 2011 National Intimate Partner and Sexual Violence Survey, 7,000 men and 9,000 women were interviewed about their experiences with violent victimization. The survey results found that men are victims of intimate partner violence, however, women experience significantly more intimate partner violence than men.¹¹ This difference was significant for both the previous 12 months and the person’s lifetime and whether the victimization experienced was rape, physical assault, or stalking. Longitudinal studies reveal even higher female victimization rates. Between 1994 and 2010, about 4 out of 5 victims of intimate partner violence were female, according to the National Crime Victimization Survey.¹²

⁷ Andrew Klein, Practical Implications of Current Domestic Violence Research: For Law Enforcement, Prosecutors and Judges 13 (2009), available at <https://www.ncjrs.gov/pdffiles1/nij/225722.pdf>

⁸ See generally Domestic Violence: Population-Specific Approaches, VAWnet.org Special Collection of articles regarding domestic violence and various populations, http://www.vawnet.org/domestic-violence/population.php?type=web_desc_SC.

⁹ Centers for Disease Control and Prevention, *An Overview of Interpersonal Violence in the United States – 2010 Findings (2014)*, <http://www.cdc.gov/violenceprevention/pdf/ipv-nisvs-factsheet-v5-a.pdf>.

¹⁰ “Nearly 3 in 10 women and 1 in 10 men in the United States have experienced rape, physical violence, or stalking by an intimate partner and reported at least one impact related to experiencing these or other forms of violent behavior in the relationship (e.g., being fearful, concerned for safety, post traumatic stress disorder (PTSD) symptoms, need for health care, injury, contacting a crisis hotline, need for housing services, need for victim’s advocate services, need for legal services, missed at least one day of work or school).” Michele C. Black et al., *National Intimate Partner and Sexual Violence Survey 2010 Summary Report*, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 2011 at 2.

¹¹ *Id.*

¹² The NCVS collects information on nonfatal crimes reported and not reported to the police from a nationally representative sample of U.S. households. Shannon Catalano, *Intimate Partner Violence, 1993-2010*, Bureau of Justice Statistics, U.S. Dep’t of Justice, 2012; <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=4536>.

Some researchers assert that men and women are equal perpetrators of domestic violence. However, a 2009 review of domestic violence research for law enforcement, judges and prosecutors qualifies that assertion:

Although some sociological research based on self-reporting finds equal rates of male and female partner conflict (including mostly minor physical assaults), **BEHAVIOR THAT IS LIKELY TO VIOLATE MOST STATE AND FEDERAL CRIMINAL AND CIVIL (PROTECTIVE ORDER) STATUTES IS TYPICALLY PERPETRATED BY MALES.**¹³

These findings about domestic violence perpetrators and victims have implications for magisterial district judges when they encounter and assess domestic violence in criminal, civil and Emergency PFA cases.

Domestic Violence Occurs in Same-Sex Relationships

Domestic violence can occur in any intimate relationship, including same-sex relationships.¹⁴ In fact, same-sex partners reported significantly more intimate partner violence than opposite-sex partners.¹⁵

Abusive partners in lesbian, gay, bisexual, transgender and queer/questioning relationships (generally referred to as LGBTQ), use all the same tactics to gain power and control as abusive partners in heterosexual relationships — physical, sexual or emotional abuse, financial control, isolation and more. But abusive partners in LGBTQ relationships also take advantage of societal factors that can make leaving or accessing safety and justice more difficult for same-sex victims.¹⁶ LGBTQ victims may avoid reporting for fear that the abuse will be considered evidence that the victim’s sexual orientation or gender identity is unhealthy.

Additionally, criminal justice personnel and victim assistance providers often underestimate the physical danger involved in same-sex relationship abuse, or fail to recognize that a physically smaller partner may be the perpetrator.¹⁷ In order to determine who the abusive partner is,

¹³ Andrew Klein, Practical Implications of Current Domestic Violence Research: For Law Enforcement, Prosecutors and Judges 1 (2009) available at <https://www.ncjrs.gov/pdffiles1/nij/225722.pdf>. [Hereinafter Klein, Practical Applications] at Chapter 3-1, citing R. Macmillan and C. Kruttschnitt. *Patterns of Violence Against Women: Risk Factors and Consequences. Final report for National Institute of Justice*. NCJ 208346, U.S. Dep’t. of Justice, Nat’l Institute of Justice, 2004, available at <http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=208346>.

¹⁴ ABA COMM’N ON DOMESTIC VIOLENCE, *Domestic Violence Statistics*, available at http://www.americanbar.org/groups/domestic_violence/resources/statistics.html#same-sex.

¹⁵ *Id.*, citing Patricia Tjaden & Nancy Thoennes, U.S. Dep’t of Just. NCJ 181867, Extent, Nature, and Consequences of Intimate Partner Violence: Findings from the National Violence Against Women Survey, at 30 (2000), available at <https://www.ncjrs.gov/pdffiles1/nij/181867.pdf>.

¹⁶ National Center for Victims of Crime and the National Coalition of Anti-Violence Programs, *Why It Matters: Rethinking Victim Assistance for LGBTQ Victims of Hate Violence & Intimate Partner Violence* 5, 2010, available at http://www.victimsofcrime.org/docs/Reports%20and%20Studies/WhyItMatters_LGBTQreport_press.pdf?sfvrsn=0.

¹⁷ *Id.* at 6.

judges and law enforcement officers cannot rely on size, physical strength, or perceived masculinity or femininity.¹⁸ **THE PFA ACT COVERS SAME-SEX INTIMATE PARTNER RELATIONSHIPS.**¹⁹

A judge’s ability to understand the dynamics of domestic violence within a same-sex relationship and to identify the dominant aggressor can immensely improve a victim’s life.

Teens and Dating Abuse Provide Opportunity for Early Intervention

Intimate partner violence begins early. Nearly 70 percent of female victims and nearly 54 percent of male victims have experienced intimate partner violence before age 25.²⁰ Studies reveal that the frequency and severity of abuse between adult intimate partners increases over time when the abuse begins in adolescence.²¹

Justice system involvement in dating abuse cases, including the arrest and prosecution of juvenile offenders for behavior that rises to the level of a punishable offense, offers an important opportunity for early intervention. In addition, **MINORS IN DATING RELATIONSHIPS ARE COVERED UNDER THE PFA ACT.**²² Early justice system intervention also provides teen victims with potentially lifesaving information and connects them with essential services, such as safety planning, counseling, and other support.²³ Appropriate intervention by the justice system helps to modify the teen abuser’s behavior while sending a message about the seriousness of dating abuse, especially for first-time offenders whose behavior has not yet become entrenched.²⁴

Separation is the Most Dangerous Time for Victims and Families

For many victims of domestic violence, separating from their abusers does not stop the abuse; in fact, it can increase their danger. The period during and immediately after separation may be the most dangerous time for a victim of domestic violence, because the defendant fears losing control of his or her partner and their relationship. This period of time often coincides with judicial intervention.

¹⁸ National Council of Juvenile and Family Court Judges, 16 Synergy 10 (2013).
<http://www.ncjfcj.org/sites/default/files/Synergy16-2.pdf>.

¹⁹ See D.H. v. B.O., 734 A.2d 409 (Pa. Super. 1999).

²⁰ Centers for Disease Control and Prevention, *Frequently Asked Questions – Intimate Partner Violence in the United States – 2010 webpage*, <http://www.cdc.gov/violenceprevention/nisvs/faq.html>.

²¹ Paige Hall Smith et al., *A Longitudinal Perspective on Dating Violence Among Adolescent and College-Age Women*, 93 AM. J. PUB. HEALTH 1104 (2003); Am. Bar Ass’n, *Nat’l Teen Dating Abuse Prevention Initiative, Teen Dating Abuse Facts* (2006) (citing S.L. Feld & M.A. Strauss, *Escalation and Desistance of Wife Assault in Marriage*, 27 CRIMINOLOGY 141-161 (1989)).

²² See Varner v. Holley, 854 A.2d 520 (Pa. Super. 2004).

²³ *Id.*

²⁴ BRENDA UEKERT ET AL., U.S. DEP’T OF JUSTICE, NCJRS NO. 216612, JUVENILE DOMESTIC AND FAMILY VIOLENCE: THE EFFECTS OF COURT-BASED INTERVENTION PROGRAMS ON RECIDIVISM 9 (Dec. 2006), available at <http://www.ncjrs.gov/pdffiles1/nij/grants/216614.pdf>.

Most perpetrators do not willingly let abused parties leave their control. The essence of domestic violence is power and control and when a victim attempts to leave the relationship, the abuser intensifies efforts to maintain control of the victim.²⁵ Violence typically increases in frequency and severity, and can be lethal.²⁶ “[S]eparated females experienced the highest rate of intimate partner violence,” according to U.S. Department of Justice data.²⁷

Understanding how to swiftly and effectively manage domestic violence cases is essential for magisterial district judges. Mike Brigner, a former judge who authored the Ohio Domestic Violence Benchbook, emphasizes:

[P]rofessionally competent judicial action to promptly separate the parties, remove weapons, issue protection orders, put children in safe settings, provide adequate family support, set strict conditions of bond, and swiftly enforce any violations, may literally mean life or death during this high danger period.”²⁸

Emergency PFA orders provide magisterial district judges with the authority to stop the violence, separate the parties, notify perpetrators of consequences of further violence and start the process towards longer-term safety for the victims. The following relief is allowed in emergency PFA orders:

- Direct the defendant to refrain from abusing the plaintiff or children.
- Grant exclusive possession of the household to the plaintiff.
- Prohibit the defendant from having contact with the plaintiff and children.²⁹
- Prohibit the defendant from harassing the plaintiff’s relatives.³⁰
- Protect minor children if the judge finds, upon good cause shown, that it is necessary to protect them from abuse.³¹

The judge may make a protection order as necessary to effectuate relief.³² An emergency PFA order expires at the end of the next business day during which the court is available.³³ The PFA

²⁵ Shannan Catalano, Bureau of Justice Statistics, *Intimate Partner Violence in the U.S.: Victim Characteristics* (2007), <http://www.bjs.gov/content/pub/pdf/ipvus.pdf>. Martha A. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 65-66 (1991); citing Barbara J. Hart, *Beyond the ‘Duty to Warn’: A Therapist’s ‘Duty to Protect’ Battered Women and Children*, FEMINIST PERSPECTIVES ON WIFE ABUSE, (Kersti Yllo & Michele Bograd, eds. 1988).

²⁶ JUDICIAL CHECKLIST, *supra* note 2; Mahoney, *supra* note 25.

²⁷ Shannan Catalano, *Intimate Partner Violence, 1993–2010*, appendix Table 9: Intimate partner violence against females, by marital status, 1993–2010, Bureau of Justice Statistics, U.S. Dep’t of Justice 6 (2012), available at <http://www.bjs.gov/content/pub/pdf/ipv9310.pdf>.

²⁸ MIKE BRIGNER, THE OHIO DOMESTIC VIOLENCE BENCHBOOK, A PRACTICAL GUIDE TO COMPETENCE FOR JUDGES AND MAGISTRATES, 02 (2003), available at http://publicsafety.ohio.gov/links/ocjs_benchbook.pdf.

²⁹ PA.R.C.P.D.J. No. 1208(A); 23 PA. C.S. §§ 6110(a); 6108(1), (2), (6).

³⁰ 23 PA. C.S. §§ 6108(a)(6), 6110(a).

³¹ PA.R.C.P.D.J. No. 1208(A); 23 PA. C.S. § 6110(a)

³² PA.R.C.P.D.J. No. 1208

statute directs the trial court to make provisions for continuing the emergency PFA order to protect a plaintiff and minor children until the hearing, at which time the victim can seek a temporary PFA order.³⁴

Impact of Domestic Violence on Children

Research has shown that in 50 percent of homes where there is domestic violence, the children are being physically or sexually abused as well.³⁵ A national survey of 4,500 children found that 1 in 6 witnessed one parent assaulting another parent or parental partner.³⁶ Children may be intentionally or unintentionally injured during the abuse, or may step in between the adults to protect the victim.

The PFA Act protects children. Relief available in an emergency PFA is limited to directing the defendant to refrain from abusing the plaintiff or the plaintiff’s children, granting exclusive possession of the household to the plaintiff, and prohibiting the defendant from having contact with the plaintiff and the children.³⁷

MINOR CHILDREN MAY BE PROTECTED PARTIES ON AN EMERGENCY PFA ORDER IF THE JUDGE FINDS, UPON GOOD CAUSE SHOWN, THAT IT IS NECESSARY TO PROTECT THE MINOR CHILDREN FROM ABUSE.³⁸ The perpetrator may psychologically traumatize the children by verbally blaming them for his or her abusive behavior, threatening or actually harming pets, destroying loved objects or engaging the children in the abuse of the other parent.³⁹ Children are often used to coerce the victim into submission, or as a custody pawn or “spy.”⁴⁰

Children who witness domestic violence often have grave, long-term effects that last well into adulthood. Long-term effects include physical health problems, behavioral issues such as juvenile delinquency, or alcohol or substance abuse, and emotional difficulties in adulthood such as anxiety, depression and Post-Traumatic Stress Disorder (PTSD).⁴¹ In addition to these

³³ PA.R.C.P.D.J. No. 1210

³⁴ 23 PA. C.S. § 6110(b).

³⁵ JAFFE, P., ET AL, CHILDREN OF BATTERED WOMEN (1990).

³⁶ Finkelhor, David, et al., *Children’s Exposure to Violence, Crime, and Abuse: An Update*, Office of Juvenile Justice and Delinquency Prevention, 8 (2015), available at <http://www.ojjdp.gov/pubs/248547.pdf>, citing Finkelhor et al., *Violence, crime, and abuse exposure in a national sample of children and youth: An update*. 167 JAMA PEDIATRICS 614–621 (2013). See also, NAT’L INST. OF JUSTICE, COMPENDIUM OF RESEARCH ON CHILDREN EXPOSED TO VIOLENCE 2010-2015 (2016), available at <https://www.ncjrs.gov/pdffiles1/nij/249940.pdf>

³⁷ PA.R.C.P.D.J. No. 1208(A); 23 PA. C.S. §§ 6110(a); 6108(1), (2), (6).

³⁸ PA.R.C.P.D.J. No. 1208(A); 23 PA. C.S. § 6110(a).

³⁹ Jaffe, *supra* note 35.

⁴⁰ *Id.*

⁴¹ Futures Without Violence, *The Facts on Children and Domestic Violence (2008)*, citing Anda, Robert, et al., *Adverse Childhood Experiences Study*, Centers for Disease Control and Prevention (2003), available at <http://www.cdc.gov/NCCDPHP/ACE/index.htm>.

physical, behavioral, psychological, and cognitive effects, domestic violence will have an impact - whether positive or negative - on the type of adult they become.

The risk and impact to each child involved in a domestic violence situation varies and often creates complex issues for the court. However, it also provides an opportunity for the court to mitigate the trauma and promote resiliency and healing of the children. By understanding the impact of trauma on development, beliefs and behaviors, judges can become more effective in addressing the unique needs and challenges of traumatized children.⁴²

Long-Term Effects of Domestic Violence

Nearly 3 in 10 women and 1 in 10 men who experienced rape, physical violence or stalking by an intimate partner, reported at least one measured impact or effect.⁴³ The body’s constant state of fight or flight often creates significant short- and long-term physical and emotional effects, as well as chronic health problems. In addition, many medical disorders may become worse, because the abuser may withhold access to medications or adequate medical care.

Depression is one of the most reported outcomes of domestic violence.⁴⁴ Along with depression, domestic violence victims may also experience PTSD, which is characterized by symptoms such as flashbacks, intrusive imagery, nightmares, anxiety, emotional numbing, insomnia, hyper-vigilance, and avoidance of traumatic triggers.⁴⁵ In addition, battered women often have low self-esteem, feelings of hopelessness or emptiness, and a loss of self-worth leading to a greater risk for suicide attempts or dissociation.⁴⁶

Domestic Violence in the Legal System

Common Attitudes and Conduct of Abusers

The “ABA Judicial Checklist” emphasizes that abusers use physical, sexual, or psychological coercion to achieve and maintain power and control over family members.⁴⁷ These behaviors are chosen behaviors and are not uncontrolled anger, substance abuse, or the fault of the victim. The behaviors may occur only occasionally, but they can keep the abused partner in constant fear and subordination, as they hope to avoid further acts of abuse.

⁴² The National Child Traumatic Stress Network, *Helping Traumatized Children: Tips for Judges*, <http://www.nctsn.org/products/helping-traumatized-children-tips-judges-2009>

⁴³ Black, Michele et al., *National Intimate Partner and Sexual Violence Survey 2010 Summary Report*, *supra* note 10.

⁴⁴ Barnett, Ola, *Why Battered Women Do Not Leave, Part 1: External Inhibiting Factors Within Society*. 1 TRAUMA, VIOLENCE, AND ABUSE, 343-372 (2000).

⁴⁵ *Id.*

⁴⁶ Fischbach, R.L. & Herbert, B., *Domestic Violence and Mental Health: Correlates and Conundrums Within and Across Cultures*. 45 SOCIAL SCIENCE MEDICINE, 1161-1176 (1997).

⁴⁷ JUDICIAL CHECKLIST, *supra* note 2.

COMMON ATTITUDES AND CONDUCT OF DOMESTIC VIOLENCE PERPETRATORS:

- Consistent attempts to control alleged victim
- Minimizes violence and denies behavior
- Blames the victim, circumstances or others for behavior
- Intimidates the victim, children or others
- Justifies behavior or claims to be the victim
- Appears presentable and even likeable in court, but has a Dr. Jekyll/Mr. Hyde personality at home
- Promises “it will never happen again”
- Feels inadequate or desperate once caught
- Jealous and possessive
- Uses children to “spy” on the other parent
- Abuses drugs or alcohol⁴⁸

Understanding the Victim

The chosen behaviors of abusers have continual effects on the victim, children and others that directly affect a victim’s attitude, conduct and ability to actively participate in judicial hearings.

COMMON EFFECTS OF VIOLENCE ON VICTIMS:

- Fear of the abuser or retaliation
- Rationalizes the abuser’s behavior, or minimizes violence
- Blames self or circumstances for abuser’s behaviors
- Is isolated from family, friends, and others
- Has feelings of rage and anger
- Feels depressed, anxious, or suicidal
- Suffers from post-traumatic stress disorder (PTSD)
- Uses defensive/protective violence
- Self-medicates with alcohol and/or drugs
- Finds abuse creates obstacles to managing daily tasks
- Is unaware of legal and social options⁴⁹

The Victim as a Witness

To negotiate the coercive tactics abusive partners use to maintain power and control over them, victims behave in ways to help themselves survive.⁵⁰ It takes “an act of supreme

⁴⁸ *Id.*

⁴⁹ *Id.*

courage” for domestic violence victims to implore the legal system to address the violence and terrorism of abusers.⁵¹

The magisterial district judge’s demeanor and actions send powerful messages to perpetrators and victims. It is critical for both the abuser and the victim to see justice in action. Cases involving domestic violence entail challenging work, and magisterial district judges play a pivotal role in the lives of the victims, children and the abusers.

FOR MANY VICTIMS, LEAVING A VIOLENT HOME IS A PROCESS, NOT A SINGLE ACT. The goal of a safe separation is rarely achieved on the first try. Studies show that most victims do eventually achieve separation from their abusers.⁵² Many factors limit a victim’s ability to leave an abusive relationship and effectively participate in legal proceedings.

- The complexities of relationships between the abuser and the victim often cause the victim to deny, minimize, or excuse the violence.⁵³
- Emotional abuse inflicted by the abuser can lead to low self-esteem and self-blame for the violence.⁵⁴
- Wanting to maintain attachment to the partner, the relationship, the family, the children, and the home also can be powerful influences.⁵⁵
- Isolation from friends and family and lack of control over resources severely restrict the victim’s ability to learn about and pursue legal and other options for stopping the violence and/or leaving the relationship.⁵⁶
- Insufficient economic resources to become and remain independent from the abuser, particularly if the victim is pregnant or has children, is a key factor weighing against leaving or following through with court involved cases.⁵⁷

⁵⁰ Kate Paradine, *The Importance of Understanding Love and Other Feelings in Survivors’ Experiences of Domestic Violence*, 37 CT. REV. 40 (Spring 2000).

⁵¹ Barbara J. Hart, *Safety and Accountability: The Underpinnings of a Just Justice System* (May 1998), available at <http://www.mincava.umn.edu/documents/safety/safety.pdf>.

⁵² Klein, *Practical Applications*, *supra* note 13 at 24.

⁵³ Paradine, *supra* note 50, at 41-42.

⁵⁴ JUDICIAL CHECKLIST, *supra* note 2.

⁵⁵ Kathryn M. Bell and Amy E. Naugle, *Understanding Stay/Leave Decisions In Violent Relationships: A Behavior Analytic Approach*, BEHAVIOR AND SOCIAL ISSUES, 14, 21-45 (2005) available at <http://journals.uic.edu/ojs/index.php/bsi/article/view/119/151>. Among the many factors recognized, commitment to the relationship appears to be particularly salient for predicting a victim’s decision to stay in the relationship. See also, Paradine, *supra* note 50, at 43-44.

⁵⁶ JUDICIAL CHECKLIST, *supra* note 2.

⁵⁷ Eleanor Lyon, *Welfare and Domestic Violence Against Women: Lessons from Research*, VAWnet National Online Resource Center on Violence Against Women 1, (2002), http://www.vawnet.org/Assoc_Files_VAWnet/AR_Welfare2.pdf.

- Guilt about the potential consequences of seeking legal or criminal recourse against the abuser, such as breaking up the family, separating the children from their father, causing the abuser to lose his job, or go to prison⁵⁸
- Pressure from family, religious and cultural communities that focus on the victim’s behavior and elevate preservation of marriage above other considerations such as the safety of the victim
- Reluctance to subject the abuser to the perceived risk of discriminatory treatment by the criminal justice system may be a significant factor in the decision-making of women of color.⁵⁹
- Fear of retaliation and further violence is of paramount concern to a victim considering ending an abusive relationship. Victims are in heightened danger at this time.

Getting Free From Abuse is a Process – Victims May Need Help Again

Sometimes the victim returns to the abuser after seeking help from the justice system to stop the violence. For many victims, it is not realistic or even beneficial to break all ties made during a relationship, especially if the victim has children with a former partner.⁶⁰

Magisterial district judges and staff play a valuable role in keeping the doors to justice open for those domestic violence litigants who seek help on more than one occasion. Accessing the court is an important step, but not the only step, of a victim’s safety-seeking.

IF A DOMESTIC VIOLENCE VICTIM RETURNS TO SEEK THE PROTECTIONS PROVIDED BY THE PFA ACT AGAIN, IT IS A POSITIVE REFLECTION ON THE MAGISTERIAL DISTRICT JUDGE AND EMPLOYEES. Victims will return for help with recurring abuse when court personnel are sincere and helpful. If court professionals indicate through behavior that the victim’s help-seeking is unwelcome, or that a victim’s previous withdrawal of a PFA order has barred the victim from seeking further help, the victim will think that access to justice has been effectively denied.

The Role of the Magisterial District Judge in Addressing Domestic Violence

The Magisterial District Court Jurisdiction

Magisterial district judge’s jurisdiction includes the following:

⁵⁸ Paradine, *supra* note 50, at 43-44.

⁵⁹ WOMEN OF COLOR NETWORK, DOMESTIC VIOLENCE FACTSHEET, http://www.doj.state.or.us/victims/pdf/women_of_color_network_facts_domestic_violence_2006.pdf citing, Nash, Shondrah Tarrezz, THROUGH BLACK EYES: AFRICAN AMERICAN WOMEN’S CONSTRUCTION OF THEIR EXPERIENCES WITH INTIMATE MALE PARTNER VIOLENCE. 11 VIOLENCE AGAINST WOMEN 1427 (2005).

⁶⁰ Jill Davies, *Advocacy Beyond Leaving: Helping Battered Women in Contact With Current or Former Partners*, Family Violence Prevention Fund, 4 (2009).

- Summary offenses, except those arising out of the same episode or transaction involving a delinquent act for which a delinquency petition is filed
- Matters arising under the Landlord Tenant Act
- Certain civil claims under \$12,000 that do not involve a Commonwealth party
- Arraignments
- Bail determinations except in murder and involuntary manslaughter cases
- Preliminary Hearings
- Certain third-degree misdemeanors (handle guilty pleas and sentencing)⁶¹

The venue of a magisterial district judge concerning matters over which jurisdiction is conferred shall be as prescribed by general rule.⁶² The process of the magisterial district judge shall extend beyond the territorial limits of the magisterial district to the extent prescribed by general rule.

For MDJs, the most frequent proceedings involving domestic violence offenders and victims will be:

- Preliminary hearings
- Bail
- Emergency PFA orders

After an arrest, magisterial district judges are often the important first step in the overall justice system process. Effective action by a magisterial district judge can show the perpetrator and the victim that abuse is not “just a family matter” by:

- Interrupting the current act of violence
- Notifying the offender of the consequences of further violence
- Giving temporary legal protections to the victims and family
- Offering a route to longer-term legal protections for victims and their families

Effective Court Orders

Effective court orders take into account the particulars of the victim’s situation and the likelihood that the abuser will try to find ways to maintain some level of control, either directly or through the children.

⁶¹ PA.C.S. § 1515(a)(1)-(4) and (6).

⁶² *Id.* at § 1515(b).

As a basic requirement, all court orders - whether issued in civil or criminal proceedings, or in emergency PFA proceedings - should be clear and precise in their terms, because:⁶³

- Orders that are clearly written and specific are easier to understand by the parties and by law enforcement called upon to enforce them.
- Vaguely written orders that are open to interpretation by the parties leave the door open for the abuser to manipulate the victim and decrease the court’s ability to sanction violations of the order.⁶⁴
- Orders prohibiting abuse specific to the situation signal to the perpetrator that society does not condone or accept the abuser’s behavior.

In addition, the court’s demeanor can have a profound impact on the abuser by treating the abuser’s behavior as insignificant, thereby subtly condoning it, or by treating the abuse as a grave issue meriting the court’s time and attention.⁶⁵ The court’s demeanor can also have a profound impact on the victim by treating the victim with respect and taking the matter seriously.

Emergency Protection From Abuse Cases

Pennsylvania’s Protection From Abuse Act⁶⁶ provides unique procedural and substantive protections with the overriding goal of promoting safety and preventing domestic violence.⁶⁷ The Act requires courts to address domestic violence promptly and includes emergency Protection From Abuse proceedings as one of its tools.

Magisterial district judges who hear emergency PFA cases as part of their caseload can benefit from a strong working knowledge of the Act and its requirements.

Pennsylvania’s PFA Act Definition of Abuse Includes Acts Causing Injury and Fear

Physical injury is not a prerequisite for a finding of abuse under the PFA Act and the abuse does not have to rise to the level of criminality to qualify for protection under the statute.⁶⁸ The PFA Act includes five categories of abuse.⁶⁹

⁶³ See generally, Andrea Farney & Roberta Valente, *Creating Justice Through Balance: Integrating Domestic Violence Law Into Family Court Practice*, 54 JUV. & FAM. CT. J. 35, 43-35 (Fall, 2003). JUDICIAL CHECKLIST, *supra* note 2.

⁶⁴ Farney & Valente, *Id.* at 43-45; JUDICIAL CHECKLIST, *supra* note 2.

⁶⁵ Klein, *Practical Applications*, *supra* note 13 at 59.

⁶⁶ 23 PA. C.S. § 6101 *et seq.*

⁶⁷ Kelley v. Mueller, 861 A.2d 984, 993 (Pa. Super. 2004), *vacated*, 912 A.2d 202 (Pa. 2006). (The PFA Act is not meant to penalize past criminal conduct; rather the primary goal is to prevent physical and sexual abuse).

⁶⁸ *Fonner v. Fonner*, 731 A.2d 160 (Pa. Super. 1999); *R.G. v. T.D.*, 672 A.2d 341 (Pa. Super. 1996); *Miller v. Walker*, 665 A.2d 1252 (Pa. Super. 1995).

⁶⁹ 23 PA. C.S. § 6102(a).

The defendant’s actions must fall within at least one category to qualify as abuse under the statute:

- Attempting to cause or intentionally, knowingly or recklessly causing bodily injury, serious bodily injury or any of various listed crimes of rape and sexual assault
- Placing another in reasonable fear of imminent serious bodily injury⁷⁰
- Causing another to be falsely imprisoned⁷¹
- Physically or sexually abusing minor children⁷²
- Knowingly engaging in a course of conduct or repeatedly committing acts toward another person, including following that person, without proper authority, under circumstances that place that person in reasonable fear of bodily injury⁷³

Pennsylvania’s PFA Act defines abuse more broadly than those behaviors constituting a crime under Pennsylvania’s Crimes Code. In addition to criminal behavior constituting abuse,⁷⁴ other acts causing injury or fear are covered.⁷⁵

Non-Criminal or Non-PFA Abuse Contributes to the Pattern of Abuse

Magisterial district judges who are aware of all the behaviors that constitute domestic violence or stalking can fashion more appropriate orders.⁷⁶ Even though emotional abuse (e.g., name calling, verbal attacks, isolation) and economic abuse (e.g., interfering with victim’s ability to get or keep a job, refusing to provide access to family funds) are not crimes under Pennsylvania’s Criminal Code or considered abuse under the PFA Act, understanding that these behaviors are part of the abuse constellation may assist judges in making determinations.

For more information about the emergency PFA proceedings and the PFA Act, please see Chapter 4: Protection Orders. For information about evidence of abuse, see Chapter 3: Bail and Preliminary Hearings in Domestic Violence Cases.

⁷⁰ See *Fonner*, 731 A.2d 160 (physical injury not required); see also *Weir v. Weir*, 631 A.2d 650 (Pa. Super. 1993) (physical menace put plaintiff in fear of bodily injury).

⁷¹ 18 PA. C.S. § 2903.

⁷² The PFA Act definition of child abuse includes, but is not limited to, abuse covered by the Child Protective Services Law. 23 PA. C.S. § 6102(a)(4). *Viruet v. Cancel*, 727 A.2d 591 (Pa. Super. 1999); *Miller v. Walker*, 665 A.2d 1252 (Pa. Super. 1995); see also, *Chronister v. Brenneman*, 742 A.2d 190 (Pa. Super. 1999) (parents may use physical punishment to discipline children).

⁷³ *R.G.*, 672 A.2d at 341.

⁷⁴ See PA.C.S. §§ 6102(a)(1) and (3).

⁷⁵ See, e.g., PA.C.S. §§ 6102(a)(2), (4), (5).

⁷⁶ The National Council of Juvenile and Family Court Judges (NCJFCJ) recommends: “All judges must be trained in the dynamics of family violence and how to address it fairly and properly.” NCJFCJ, FAMILY VIOLENCE: IMPROVING COURT PRACTICE, RECOMMENDATIONS FROM THE NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES’ FAMILY VIOLENCE PROJECT 16 (1990), at <http://www.ncjfcj.org/resource-library/publications/family-violence-improving-court-practice> [hereinafter FAMILY VIOLENCE: IMPROVING COURT PRACTICE].

Criminal Proceedings and Bail

In criminal proceedings, magisterial district judges have effective tools available in preliminary hearings and arraignments to restrict the defendant’s access to the victim. Conditions of bail can include specific no-contact/stay away orders, and judges may consider requiring monetary bonds, electronic monitoring, house arrest, or release to an agency that will monitor the defendant and advise the victim of the defendant’s release.⁷⁷ When the defendant violates bail conditions, magisterial district judges should revoke bail.⁷⁸

For more information about promoting safety in criminal cases, please see Chapter 2: Domestic Violence Crimes, Chapter 3: Bail and Preliminary Hearings in Domestic Violence Cases.

Safety for Litigants and Staff

Prioritizing safety in district courts is critical to victims’ ability to participate in their cases. The “2016 Magisterial District Court Facility and Equipment Guidelines” includes requirements for safety of the parties, visitors and employees such as (gun/prohibited property lockers), video surveillance cameras and waiting areas that allow the separation of parties.⁷⁹

The American Bar Association’s “Domestic Violence Judicial Checklist” lists other examples of safety measures that administrators and employees can implement:

- Screening all people entering the office through metal detectors
- Providing separate space for victims to wait for hearings
- Providing security if victims and abusers must wait in the same area
- Providing courtroom security for hearings where both abuser and victim appear
- Accompanying victims to their cars after hearings
- Requiring the abuser to remain until the victim can leave the premises⁸⁰

Video conferencing for preliminary arraignments promotes victim and court personnel safety as defendants remain in secure facilities.⁸¹

For more information, see Chapter 5: Victim, Witness and Court Safety.

⁷⁷ JUDICIAL CHECKLIST, *supra* note 2.

⁷⁸ See 18 PA.C.S. § 2711(c) Probable cause arrests in domestic violence cases.

⁷⁹ ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS, MAGISTERIAL DISTRICT COURT FACILITY & EQUIPMENT GUIDELINES, 5 (2016), *available at* [http://www.co.fayette.pa.us/BidsandRFPs/Documents/District Justice Facilities Guidelines- FINAL_June.pdf](http://www.co.fayette.pa.us/BidsandRFPs/Documents/District%20Justice%20Facilities%20Guidelines-2016_FINAL_June.pdf)

⁸⁰ JUDICIAL CHECKLIST (2008), ABA COMM’N ON DOMESTIC VIOLENCE, http://www.americanbar.org/content/dam/aba/migrated/domviol/publications/187815_ABA_Checklist_FINAL.authcheckdam.pdf.

⁸¹ Administrative Office of Pennsylvania Courts, *Securing Pennsylvania’s Courts: What Has the Judiciary Done To Make Sure Pennsylvania’s Courts Are Secure?*, 2012, <http://www.pacourts.us/assets/files/setting-2236/file-1751.pdf?cb=c4ba76>

Referring Victims to Domestic Violence Programs

Since 1976, the Pennsylvania Coalition Against Domestic Violence's (PCADV) statewide network has grown from nine to 59 community-based domestic violence programs that offer a lifeline to safety in every county. These programs serve nearly 100,000 victims of domestic violence each year through intervention services that are provided free of charge and include 24-hour hotlines, crisis centers, individual and group counseling/support, shelter, assistance in filing PFA petitions, court accompaniment, children's programs, and referrals to other community resources. Services are free, confidential and provided without regard to age, sex, race, religion, physical ability, sexual orientation/identity, or economic status.

The member programs operate independently with community boards of directors and local staff. PCADV ensures the availability of effective and appropriate services to victims through training, program development, and monitoring of programs for compliance with federal and state requirements as well as the Coalition's comprehensive program standards. A private, nonprofit membership organization, PCADV is dedicated to ending domestic violence and helping battered women and their children re-establish physical, social, and economic dignity.

Domestic Violence Programs Provide Resources and Referrals

Providing referrals to the local domestic violence program can lessen burdens on court staff. Local community domestic violence programs are specially equipped to support victims to help them achieve safety and justice, and connect them to community resources. A major barrier for many domestic violence victims, who want to leave the abuser, is a lack of financial resources to live on their own.⁸² Victims often need assistance in securing economic and other resources necessary for leading an independent life. These resources might include housing, employment, health care, job skills, life skills, and counseling for them and their children. Domestic violence advocates can help with the process as victims negotiate safety in the near term and stability and eventually independence from abuse in the future. An interactive map and complete list of all 60 domestic violence programs located in the commonwealth can be found at: www.pcadv.org/Find-Help/.

Legal Advocates at Domestic Violence Programs Provide Help For Victims and Courts

When domestic violence victims need help navigating the justice system, domestic violence advocates provide:

- Options counseling and implementation⁸³

⁸² National Network to End Domestic Violence, *About Financial Abuse*, available at: <http://nnedv.org/resources/ejresources/about-financial-abuse.html>.

⁸³ Domestic violence advocates inform domestic violence victims of the array of legal options available to them and the procedures necessary for exercising these options. Domestic violence advocates provide information about legal process, but do not provide legal advice. For individuals seeking legal advice, domestic violence advocates refer individuals to the prosecutor, legal services attorneys, Civil Legal Representation (CLR) projects in those

- Safety planning⁸⁴
- Court accompaniment⁸⁵
- Case preparation⁸⁶
- Resource brokering⁸⁷
- Outreach⁸⁸

Both the Protection From Abuse⁸⁹ and the Crime Victims⁹⁰ Acts permit domestic violence advocates to accompany victims to PFA proceedings. The advocate provides legal information to help the victim understand court processes, easing the victim’s fear of going to court and enabling the victim to participate more fully.

Pro Se Litigants

An increasing number of PFA litigants are self-represented. These *pro se* litigants present special challenges to the court in its goal of providing access to justice and due process for litigants. Pennsylvania courts are required to provide simplified PFA forms and clerical assistance in **English and Spanish** to help unrepresented PFA litigants with writing and filing PFA petitions.⁹¹ Courts are also required to provide the plaintiff with written and oral referrals in

counties that have them or to the private bar, and assist victims in accessing available services from these individuals.

⁸⁴ Domestic violence advocates help victims to plan ways to keep themselves and their children safer whether or not a protection order is in effect. Victims may need to safeguard important papers, such as licenses, family passports, or bank records. A collection of toys and clothes kept elsewhere might help children if the family needs to quickly flee abuse.

⁸⁵ Because court appearances may be dangerous and frightening experiences for domestic violence victims, domestic violence advocates accompany victims to court. In so doing, advocates provide emotional support to the victim, enhance victim safety, and provide back-up consultation to justice system personnel when necessary.

⁸⁶ Domestic violence advocates assist victims in gathering information to provide justice system personnel with a detailed chronology of events and circumstances. Domestic violence advocates may assist victims in identifying and securing corroborative evidence, potential witnesses, documents, and so on.

⁸⁷ The relief authorized by the PFA Act must be supplemented with community resources to fully meet the economic and support requirements of domestic violence victims. Good advocacy, according to domestic violence programs, is tailored to each individual victim of domestic violence. As such, advocacy will include the brokering of resources, such as assisting a victim in securing housing, healthcare, transportation, job training, legal services, and financial assistance.

⁸⁸ Because many victims do not know about domestic violence program services, domestic violence advocates engage in outreach activities. Outreach activities inform and educate victims and the community about domestic violence, available services, legal options and community resources.

⁸⁹ 23 PA. C.S. §6111.

⁹⁰ 18 PA. C.S. § 11.201(3).

⁹¹ 23 PA. C.S. § 6106(h)(1).

both English and Spanish⁹² to the **local domestic violence program**, to the **local legal services office** and to **the county bar association’s lawyer referral service**.⁹³

The court can provide more information for litigants by using the following tools:

Pennsylvania’s PFA Act –Information for Completing the Petition

Sample Checklist of Abusive Behaviors

The PFA Act: A Guide for Victims of Domestic Violence

For more information on what on what types of assistance by court personnel is permissible, see

**Categories of Permissible and Impermissible Assistance by Domestic Violence Advocates/
Court Personnel in PFA Matters**

To access these tools and for additional information, go to **www.pcadv.org**, under “Learn More,” select “Professional Resources” then “Judges and Court Personnel.”

⁹² More bilingual forms are available from the Unified Judicial System of Pennsylvania website at <http://www.pacourts.us/forms/for-the-judiciary>

⁹³ 23 PA. C.S. § 6106(h)(2).

Pennsylvania Domestic Violence Resources

Pennsylvania victim hotlines and domestic violence programs by county:

<http://www.pcadv.org/Find-Help/>



Or call the

National Domestic Violence Hotline 1-800-799-7233 (SAFE)

Pennsylvania Coalition Against Domestic Violence

3605 Vartan Way, Suite 101, Harrisburg, PA 17110

Administrative Office: (717) 545-6400 or (800) 932-4632

Legal: 888-23-LEGAL (Technical assistance line for members of the civil and criminal justice systems, domestic violence advocates and attorneys representing victims of domestic violence. This is not a legal helpline for victims.)

Fax: (717) 671-8149

www.pcadv.org

Notes

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Summary

In Pennsylvania, there is no specifically designated domestic violence crime. Magisterial district judges may see domestic violence incidents charged in categories such as crimes against individuals, sexual crimes, property crimes, crimes against the family and miscellaneous crimes. Such domestic violence crimes fall under Pennsylvania's Crimes Code.

Judges may also see criminal charges where the domestic violence component is not obvious, but is still a critical factor in assessing bail and the crime itself. Magisterial district judges who understand the intersection of domestic violence and crimes will be able to look for factors such as an intimate or family relationship, obvious keys to crimes involving domestic violence. It is important for a judge to recognize that a victim of domestic violence is going to react to the crime differently than a victim who does not have an intimate relationship with the perpetrator because of the dynamics of that relationship. It is also important to note that a perpetrator's coercive conduct toward a victim of domestic violence will be ongoing through the legal proceedings and will impact both the victim and their witnesses.

This knowledge will assist judges in their decisions on whether or not a prima facie case has been established. Ultimately, magisterial district judges who understand crimes in the context of domestic violence can better fulfill their role in the criminal justice system.

Crimes Against Individuals

Simple Assault

Simple assault is a crime commonly seen in domestic violence cases. In simple assault cases, a victim has been physically assaulted by their intimate partner and it is unlikely that this is the first incident. These victims may underplay the extent of their injuries, feel shame and guilt about their victimization and are often hesitant to seek protection from the police and the courts. It is important for judges to recognize this when dealing with a simple assault case involving domestic violence.

Typically, simple assault is the charge filed when bodily injury is inflicted upon a domestic violence victim. However, bodily injury is not a required prerequisite for filing charges in all subsections of the statute. The LAW ALSO PENALIZES A PERPETRATOR'S ATTEMPTS TO PLACE VICTIMS IN FEAR OF IMMINENT SERIOUS BODILY INJURY, in addition to attempts to cause bodily injury. In domestic violence cases, many perpetrators do not actually assault their victim but threaten to do so as a way of maintaining control over their victim.

Simple assault

(a) Offense defined.—A person is guilty of assault if he:

- (1) attempts to cause or intentionally, knowingly or recklessly causes bodily injury to another;
- (2) negligently causes bodily injury to another with a deadly weapon;
- (3) attempts by physical menace to put another in fear of imminent serious bodily injury

(b) Grading.—Simple assault is a misdemeanor of the second degree unless committed:

- (1) in a fight or scuffle entered into by mutual consent, in which case it is a misdemeanor of the third degree; or
- (2) against a child under 12 years of age by an adult 21 years of age or older, in which case it is a misdemeanor of the first degree.¹

Bodily injury is defined as the "impairment of physical condition or substantial pain."²

Attempt to Inflict Injury is Sufficient

Generally, in order to obtain a conviction for simple assault under section (a)(1), the Commonwealth is required to demonstrate, beyond a reasonable doubt, that a defendant intentionally inflicted "bodily injury" upon the victim.³ However, bodily injury need not be established if the charged offense involves an attempt. The Superior Court in *Commonwealth v. Klein* held that an attempt to inflict bodily injury is sufficient to support a conviction.⁴ The *Klein* court noted, "Intent may be shown by circumstances which reasonably suggest that a defendant intended to cause bodily injury."⁵ In a more recent decision, *Commonwealth v. Repko*, the Superior Court upheld a simple assault conviction under section (a)(1), where the perpetrator was carrying a shotgun, arguing with his fiancée and holding her in a headlock as she struggled to free herself.⁶ The *Repko* court concluded that the defendant had taken a substantial step toward perpetrating a bodily injury upon his fiancée.

Physical Menace – Pointing a Gun

One of the most common forms of assault charges filed in domestic violence situations involves simple assault by physical menace under section (a)(3). The elements that must be proven to convict are as follows: (1) intentionally placing another in fear of imminent serious bodily injury, (2) through the use of menacing or frightening activity.⁷

In *Commonwealth v. Reynolds*, the defendant pointed a gun at the victim.⁸ The court found that the act of POINTING A GUN AT ANOTHER PERSON CAN CONSTITUTE SIMPLE ASSAULT AS AN ATTEMPT BY PHYSICAL MENACE TO PUT ANOTHER IN FEAR OF IMMINENT SERIOUS BODILY INJURY.⁹

¹ 18 PA. C.S. § 2701.

² See 18 PA. C.S. § 2301.

³ *Commw. v. Torres*, 766 A.2d 342 (Pa. Super. 2001).

⁴ *Commw. v. Klein*, 795 A.2d 424, 428 (Pa. Super. 2002) (citing *Commw. v. Richardson*, 636 A.2d 1195, 1196 (Pa. Super. 1994).

⁵ *Id.*; see also *Commw. v. Marti*, 779 A.2d 1177 (Pa. Super. 2001); *Commw. v. Polston*, 616 A.2d 669 (Pa. Super. 1992).

⁶ *Commw. v. Repko*, 817 A.2d 549 (Pa. Super. 2003).

⁷ ***Commw. v. Reynolds*, 835 A.2d 720 (Pa. Super. 2003).**

⁸ *Id.*

⁹ *Reynolds*, 835 A.2d at 726 (citing *In re Maloney*, 636 A.2d 671, 674 (Pa. Super. 1994) (concluding that simple assault under section 2701(a)(3) was established where a driver pointed a gun at another driver and said, "Get the f*** out of here.")).

Physical Menace – Circumstantial Evidence

In *Commonwealth v. Hudgens*, the wielding of a sword coupled with threatening behavior constituted assault by physical menace.¹⁰ In cases involving physical menace, a perpetrator's intent can be proven by circumstantial evidence and may be inferred from the perpetrator's conduct under the attendant circumstances.¹¹

Aggravated Assault

Aggravated assault charges are normally filed in response to an increased level of physical violence or threat of violence above that which is criminalized under the simple assault statute. Aggravated assault also includes acts normally prohibited under simple assault, but committed against a protected class of individuals (e.g., law enforcement personnel, caseworkers, teachers) in the performance of their duties. This section will focus only on those portions of the aggravated assault statute that routinely arise in domestic violence situations.

Aggravated assault (selected provisions)

(a) Offense defined.—A person is guilty of aggravated assault if he:

(1) attempts to cause serious bodily injury to another, or causes such injury intentionally, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life;

(4) attempts to cause or intentionally or knowingly causes bodily injury to another with a deadly weapon;

(b) Grading.—Aggravated assault under subsection (a)(1) and (2) is a felony of the first degree. Aggravated assault under subsection (a)(3), (4), (5), (6) and (7) is a felony of the second degree.¹²

Attempted Aggravated Assault Must Include Intent

The recent Superior Court decision in *Commonwealth v. Gruff* provides a thorough survey of the parameters of aggravated assault and the issues involved with proving its elements.¹³ The court explained that, for aggravated assault purposes, an "attempt" is found where the accused, with the required specific intent, acts in a manner which constitutes a substantial step toward perpetrating a serious bodily injury upon another.¹⁴ The court emphasized that the attempt must be accompanied by the requisite intent.

Factors for Evaluating Intent

Under section (a)(1) of the aggravated assault statute, the intent underlying the attempt must be to cause serious bodily injury to another. In *Commonwealth v. Alexander*, the Pennsylvania Supreme Court made clear that an attempt under section (a)(1) requires a showing of some act, albeit not one causing serious bodily injury, but one that is accompanied by intent to inflict

¹⁰ Commw. v. Hudgens, 582 A.2d 1352 (Pa. Super. 1990).

¹¹ See Commw. v. Little, 614 A.2d 1146 (Pa. Super. 1992).

¹² 18 PA. C.S. § 2702.

¹³ Commw. v. Gruff, 822 A.2d 773 (Pa. Super. 2003).

¹⁴ Gruff, 822 A.2d at 776 (citing Commw. v. Galindes, 786 A.2d 1004, 1009 (Pa. Super. 2001)).

serious bodily injury.¹⁵ Where the injury actually inflicted does not constitute serious bodily injury, the charge of aggravated assault requires the intent to inflict serious bodily injury.¹⁶

In *Alexander*, the defendant punched the victim once in the head and then walked away. No serious bodily injury occurred. The court concluded that the intent to cause serious bodily injury was not inherent in that act alone and listed several **FACTORS TO CONSIDER IN DETERMINING WHETHER THE INTENT TO INFLECT SERIOUS BODILY INJURY WAS PRESENT**. Those factors included:

- evidence of a significant difference in size or strength with the victim
- the defendant's use of a weapon or implement to aid his attack
- his statements before, during or after the attack

The presence of these factors might indicate his intent to inflict further injury on the victim.¹⁷

Intent Shown, But No Injury

Aggravated assault under section (a)(1) can be found merely with proof of intent without serious bodily injury. In *Commonwealth v. Lopez*, the defendant fired eight bullets at the front door of his girlfriend's empty residence.¹⁸ The Court held that a *prima facie* case of aggravated assault could be established because the accused possessed the requisite intent to cause serious bodily injury. The law simply requires distinct evidence establishing the perpetrator's intent to cause serious bodily injury before a conviction for attempt will be sustained. Even in the case where no injury is inflicted, an attempt under (a)(1) can be established if the requisite intent is present.¹⁹

Attempts to cause only bodily injury, but done using a deadly weapon, will sustain a conviction under section (a)(4) of the statute.²⁰ Likewise, a situation where the injury only meets the criteria for bodily injury, but where the act of causing the injury is accompanied by a deadly weapon, is illegal under this section.

Infliction of Serious Bodily Injury

Section (a)(1) also includes the actual infliction of serious bodily injury upon a victim, be it intentionally, knowingly, or by recklessness that involves circumstances manifesting extreme indifference to the value of human life. In *Commonwealth v. Nichols*, the court sustained the aggravated assault conviction where, after being hit by the defendant with a bat, the victim's jaw was wired shut for six weeks.²¹ The court also found that the aggravated assault conviction

¹⁵ *Commw. v. Alexander*, 383 A.2d 887, 889 (Pa. 1978).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Commw. v. Lopez*, 654 A.2d 1150 (Pa. Super. 1995).

¹⁹ *Id.* at 1154; *see also* *Commw. v. Rosado*, 684 A.2d 605, 608 (Pa. Super. 1996).

²⁰ *Lopez*, 654 A.2d at 1153-54.

²¹ *Commw. v. Nichols*, 692 A.2d 181 (Pa. Super. 1997).

could be sustained because the defendant acted recklessly under circumstances manifesting extreme indifference to the value of human life.²²

Recklessly Endangering Another Person

Reckless endangering is a lesser-included offense of aggravated assault that proscribes reckless conduct that creates a danger of death or serious bodily injury to others. It is often charged in conjunction with aggravated assault but stands apart because neither the infliction of injuries nor the attempt to do so is necessary to support a conviction. Reckless conduct that creates the risk of death or serious bodily injury is the focus of the statute. In domestic violence cases, perpetrators often endanger the lives of their victims as a tactic of their coercive control.

Recklessly endangering another person.—

A person commits a misdemeanor of the second degree if he recklessly engages in conduct which places or may place another person in danger of death or serious bodily injury.²³

In order to establish the crime of recklessly endangering another person, prosecutors must establish all of the following:

- a *mens rea* (state of mind) of recklessness
- an *actus reus* (wrongful deed)
- causation
- the achievement of a particular result, namely danger to another person of death or serious bodily injury²⁴

The *mens rea* for recklessly endangering another person is a conscious disregard of a known risk of death or great bodily harm to another person.²⁵

Parental Discipline – Acts of Commission or Omission

Acts of commission or omission by parents toward their children may create substantial risk of death or great bodily harm so as to allow the conviction of parents for recklessly endangering another person. In *Commonwealth v. Rochon*, the court upheld a conviction where the defendant struck her 17-month-old son with a shoe after he soiled his diaper and then immersed him in water sufficiently cold to cause hypothermia.²⁶ The *Rochon* court found that the defendant's conduct recklessly endangered her son's life.²⁷ As noted earlier, the lynchpin is

RECKLESS CONDUCT THAT CREATES A RISK OF DEATH OR GREAT BODILY HARM.

²² *Id.* at 185.

²³ 18 Pa. C.S. § 2705.

²⁴ *Reynolds*, 835 A.2d at 727.

²⁵ *Commw. v. Hopkins*, 747 A.2d 910, 916 (Pa. Super. 2000).

²⁶ *Commw. v. Rochon*, 581 A.2d 239 (Pa. Super. 1990).

²⁷ *Id.*

Terroristic Threats

The terroristic threats statute seeks to prevent harm created by the psychological distress that follows from an invasion of another's sense of personal security.²⁸ The Pennsylvania terroristic threats statute provides as follows:²⁹

Terroristic threats

- (a) Offense defined.—A person commits the crime of terroristic threats if the person communicates, either directly or indirectly, a threat to:
 - (1) commit any crime of violence with intent to terrorize another;
 - (2) cause evacuation of a building, place of assembly or facility of public transportation; or
 - (3) otherwise cause serious public inconvenience, or cause terror or serious public inconvenience with reckless disregard of the risk of causing such terror or inconvenience.
- (b) Restitution.—A person convicted of violating this section shall, in addition to any other sentence imposed or restitution ordered under 42 Pa. C.S. § 9721(c) (relating to sentencing generally), be sentenced to pay restitution in an amount equal to the cost of the evacuation, including, but not limited to, fire and police response; emergency medical service or emergency preparedness response; and transportation of an individual from the building, place of assembly or facility.
- (c) Preservation of private remedies.—No judgment or order of restitution shall debar a person, by appropriate action, to recover from the offender as otherwise provided by law, provided that any civil award shall be reduced by the amount paid under the criminal judgment.
- (d) Grading.—An offense under subsection (a) constitutes a misdemeanor of the first degree unless the threat causes the occupants of the building, place of assembly or facility of public transportation to be diverted from their normal or customary operations, in which case the offense constitutes a felony of the third degree.
- (e) Definition.—As used in this section, the term "communicates" means, conveys in person or by written or electronic means, including telephone, electronic mail, Internet, facsimile, telex and similar transmissions.

WHEN THREATS ARE MADE WITH THE INTENT TO TERRORIZE THE VICTIM, THE THREAT BECOMES CRIMINAL IN NATURE.³⁰ It is a typical tactic for domestic violence perpetrators to threaten their victims with physical violence if victims don't act as the abuser wants. Threats are often a daily occurrence and as a result, many victims may minimize the threats. It is also important to note that, if the abuser is angry when involved in the crime, that anger is no defense. The terroristic threats statute is not meant to penalize mere spur-of-the-moment threats that result from anger but are not part of overall coercive control.³¹

²⁸ *Reynolds*, 835 A.2d at 720.

²⁹ 18 PA. C.S. § 2706 (emphasis added).

³⁰ *Id.*

³¹ *Reynolds*, 835 A.2d at 730.

To establish the offense of terroristic threats, the Commonwealth must prove both of the following:

- the defendant made a threat to commit a crime of violence
- the threat was communicated with the intent to terrorize another or with reckless disregard for the risk of causing terror³²

Neither the ability to carry out the threat, nor a belief by the person threatened that it will be carried out is an essential element of the crime.³³ Further, **DIRECT COMMUNICATION OF THE THREAT BETWEEN THE DEFENDANT AND THE VICTIM IS NOT A REQUIRED ELEMENT** of the crime.³⁴ All that is necessary is that the threat somehow makes its way to the victim. In domestic violence cases perpetrators often use friends and family members to convey threats to their victims.

Kidnapping

The Pennsylvania kidnapping statute embodies the traditional notion of kidnapping (snatching a person by force) as well as a less recognized alternative – confinement by force, threat, or deception. In domestic violence-related kidnapping cases, perpetrators may use the kidnapping of children or intimate partners to thwart efforts by the partner to withdraw from the relationship. The statute reads as follows:³⁵

Kidnapping (selected provisions)

- (a) Offense defined.—A person is guilty of kidnapping if he unlawfully removes another a substantial distance under the circumstances from the place where he is found, or if he unlawfully confines another for a substantial period in a place of isolation, with any of the following intentions:
 - (1) To hold for ransom or reward, or as a shield or hostage.
 - (2) To facilitate commission of any felony or flight thereafter.
 - (3) To inflict bodily injury on or to terrorize the victim or another.
 - (4) To interfere with the performance by public officials of any governmental or political function.
- (b) Grading.—Kidnapping is a felony of the first degree. A removal or confinement is unlawful within the meaning of this section if it is accomplished by force, threat or deception, or, in the case of a person who is under the age of 14 years or an incapacitated person, if it is accomplished without the consent of a parent, guardian or other person responsible for general supervision of his welfare.

³² *Id.*

³³ *Commw. v. Fenton*, 750 A.2d 863 (Pa. Super. 2000).

³⁴ *Commw. v. Kelley*, 664 A.2d 123 (Pa. Super. 1995).

³⁵ 18 PA. C.S. § 2901 (emphasis added).

Substantial Distance is One That Isolates Victim

The court in *In re T.G.* held that a "substantial distance" is one that isolates the victim and exposes him or her to increased risk of harm.³⁶ When the movement of the victim places the victim in a completely different environmental setting, removed from the security of familiar surroundings, the statutory definition of kidnapping is met.³⁷ Hence, in *Commonwealth v. Hughes*, the removal of the victim a distance of two miles was sufficient.³⁸ In *Commonwealth v. Campbell*, abducting a four-year-old child several blocks was sufficient to support a conviction.³⁹

Kidnapping is also the forcible confinement of another in a place of isolation for a substantial period, with the intention to inflict bodily injury or terror.⁴⁰ In *In re T.G.*, the defendant took the young victim from public view, placed the victim inside the defendant's residence, closed the door, and refused entry to the victim's playmate. After 20 minutes, defendant took the victim to his front porch, but would not let the victim leave. The victim's mother was in sight, but defendant refused to release the victim until police arrived. The victim was afraid and crying. The court found that the defendant had confined the victim for a substantial period of time in a place of isolation and upheld the conviction.⁴¹

Parent May Be Convicted of Kidnapping

A PARENT MAY BE CONVICTED OF KIDNAPPING HIS OR HER OWN CHILD. In *Commonwealth v. Rivera*, the court held that a defendant's status as the victim's biological father does not preclude a conviction for kidnapping.⁴² In this case, the father had a history of abusing the mother.

After a particularly severe beating, the mother separated from the father, pressed criminal charges for the assault, and obtained a PFA limiting father's access to the parties' two-year-old child to supervised visitation. After assaulting and strangling mother, father broke into the child's daycare provider's facility and abducted the child. Afterwards, he repeatedly called mother, threatening to harm the child if she did not meet with him. Father's kidnapping conviction was affirmed by the Superior Court.⁴³

Harassment

Harassment carries the lowest two offense grades, third degree misdemeanor and summary offense. Simple assault cases involving domestic violence are often downgraded to a

³⁶ *In re T.G.*, 836 A.2d 1003 (Pa. Super. 2003).

³⁷ *Id.* at 1006.

³⁸ *Commw. v. Hughes*, 399 A.2d 694 (Pa. Super. 1979).

³⁹ *Commw. v. Campbell*, 509 A.2d 394 (Pa. Super. 1986).

⁴⁰ *Commw. v. Tolbert*, 670 A.2d 1172 (Pa. Super. 1995).

⁴¹ *In re T.G.*, 836 A.2d at 1009.

⁴² *Commw. v. Rivera*, 828 A.2d 1094 (Pa. Super. 2003).

⁴³ *Id.* at 1099-1101.

harassment charge. The most relevant portions of the statute relating to harassment involving domestic violence are as follows:⁴⁴

Harassment (selected provisions)

- (a) Offense defined.—A person commits the crime of harassment when, with intent to harass, annoy or alarm another, the person:
 - (1) strikes, shoves, kicks or otherwise subjects the other person to physical contact, or attempts or threatens to do the same;
 - (2) follows the other person in or about a public place or places;
 - (3) engages in a course of conduct or repeatedly commits acts which serve no legitimate purpose;
 - (4) communicates to or about such other person any lewd, lascivious, threatening or obscene words, language, drawings or caricatures;
 - (5) communicates repeatedly in an anonymous manner;
 - (6) communicates repeatedly at extremely inconvenient hours; or
 - (7) communicates repeatedly in a manner other than specified in paragraphs (4), (5) and (6).
- (c) Grading.—
 - (1) An offense under subsection (a)(1), (2) or (3) shall constitute a summary offense.
 - (2) (i) An offense under subsection (a)(4), (5), (6) or (7) shall constitute a misdemeanor of the third degree.
- (f) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:
 - "Communicates." Conveys a message without intent of legitimate communication or address by oral, nonverbal, written or electronic means, including telephone, electronic mail, Internet, facsimile, telex, wireless communication or similar transmission.
 - "Course of conduct." A pattern of actions composed of more than one act over a period of time, however short, evidencing a continuity of conduct. Acts indicating a course of conduct that occur in more than one jurisdiction may be used by any other jurisdiction in which an act occurred as evidence of a continuing pattern of conduct or a course of conduct.

Stalking

The majority of stalking victims are stalked by someone they know.⁴⁵ Sixty-one percent of female stalking victims and 44 percent of male stalking victims were stalked by a current or

⁴⁴ 18 PA. C.S. § 2709.

former intimate partner.⁴⁶ Given that 76 percent of female homicide victims were stalked by their intimate partner prior to their deaths,⁴⁷ It is critical for judges to take stalking cases involving domestic violence seriously as stalking can be the precursor to homicide as

The offense of stalking was expanded in 2002 to specifically address stalking through technology and to further enhance penalties for stalking of a family or household member.⁴⁸ Prior to the 2002 amendments, the crime of stalking was codified with the crime of harassment in section 2709.

Stalking (selected provisions)⁴⁹

(a) Offense defined.—A person commits the crime of stalking when the person either:

- (1) engages in a course of conduct or repeatedly commits acts toward another person, including following the person without proper authority, under circumstances which demonstrate either an intent to place such other person in reasonable fear of bodily injury or to cause substantial emotional distress to such other person; or
- (2) engages in a course of conduct or repeatedly communicates to another person under circumstances which demonstrate or communicate either an intent to place such other person in reasonable fear of bodily injury or to cause substantial emotional distress to such other person.

(c) Grading.

- (1) Except as otherwise provided for in paragraph (2), a first offense under this section shall constitute a misdemeanor of the first degree.
- (2) A second or subsequent offense under this section or a first offense under subsection (a) if the person has been previously convicted of a crime of violence involving the same victim, family or household member, including, but not limited to, a violation of section 2701 (relating to simple assault), 2702 (relating to aggravated assault), 2705 (relating to recklessly endangering another person), 2901 (relating to kidnapping), 3121 (relating to rape) or 3123 (relating to involuntary deviate sexual intercourse), an order issued under section 4954 (relating to protective orders) or an order issued under 23 Pa.C.S. § 6108 (relating to relief) shall constitute a felony of the third degree.

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

⁴⁵ *Stalking Fact Sheet*, Stalking Resource Center, available at http://www.victimsofcrime.org/docs/default-source/src/stalking-fact-sheet-2015_eng.pdf?sfvrsn=2

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ 18 PA. C.S. §§ 2709, 2709.1; see 2002 Pa. Laws 218.

⁴⁹ 18 PA. C.S. § 2709.1.

"Communicates." To convey a message without intent of legitimate communication or address by oral, nonverbal, written or electronic means, including telephone, electronic mail, Internet, facsimile, telex, wireless communication or similar transmission.

"Course of conduct." A pattern of actions composed of more than one act over a period of time, however short, evidencing a continuity of conduct. The term includes lewd, lascivious, threatening or obscene words, language, drawings, caricatures or actions, either in person or anonymously. Acts indicating a course of conduct which occur in more than one jurisdiction may be used by any other jurisdiction in which an act occurred as evidence of a continuing pattern of conduct or a course of conduct.

"Emotional distress." A temporary or permanent state of mental anguish.

"Family or household member." 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.⁵⁰

Pennsylvania's current stalking statute, section 2709.1, expands upon section 2709 (harassment).⁵¹ Before section 2709.1 was adopted in 2002, the crime of stalking fell within the harassment statute at section 2709.⁵² The prohibition on stalking remained substantially the same, with some additions. Therefore, stalking cases interpreted under section 2709 remain relevant to the interpretation of stalking under section 2709.1.

Sexual Crimes and Related Offenses

Rape

The existence of a **MARITAL RELATIONSHIP WITH A VICTIM IS IRRELEVANT** when determining whether a particular sexual offense occurred.⁵³

Rape (selected provisions)

- (a) Offense defined.—A person commits a felony of the first degree when the person engages in sexual intercourse with a complainant:
 - (1) By forcible compulsion.
 - (2) By threat of forcible compulsion that would prevent resistance by a person of reasonable resolution.
 - (3) Who is unconscious or where the person knows that the complainant is unaware that the sexual intercourse is occurring.

⁵⁰ 18 PA. C.S. § 2709.1.

⁵¹ 18 PA. C.S. §§ 2709, 2709.1.

⁵² 18 PA. C.S. §§ 2709, 2709.1; see 2002 Pa. Laws 218.

⁵³ Before 1995, men who raped their wives could not be charged with the crime of "rape." In recognition of this fact, the legislature rewrote the rape statute in 1995 to do away with the spousal exception to the crime.

- (4) Where the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance.
- (5) Who suffers from a mental disability which renders the complainant incapable of consent.
- (c) Rape of a child.—A person commits the offense of rape of a child, a felony of the first degree, when the person engages in sexual intercourse with a complainant who is less than 13 years of age.
- (d) Rape of a child with serious bodily injury.—A person commits the offense of rape of a child resulting in serious bodily injury, a felony of the first degree, when the person violates this section and the complainant is under 13 years of age and suffers serious bodily injury in the course of the offense.⁵⁴

Intercourse by Forcible Compulsion

The essence of the criminal act of rape under sections (a)(1) and (a)(2) is involuntary submission to sexual intercourse by force or the threat of force.⁵⁵ One of the requirements for rape is penetration, however slight; however, there is no requirement that penetration reach the vagina.⁵⁶ The force necessary to support a conviction for rape need only be such as to establish lack of consent and to induce a woman to submit without additional resistance.⁵⁷ A RAPE VICTIM NEED NOT ACTIVELY RESIST HER ASSAILANT IF SUCH RESISTANCE IS REASONABLY BELIEVED TO BE FUTILE OR DANGEROUS.⁵⁸

Force can also include moral, psychological, or intellectual force. The determination of whether moral, psychological, or intellectual force exists in a given case to support a conviction is to be made in light of the totality of the circumstances.

Important factors to be considered include:

- The respective ages of the victim and the defendant
- The respective mental and physical conditions of the victim and the defendant
- The atmosphere and physical setting in which the incident was alleged to have taken place
- The extent to which the defendant may have been in a position of authority, domination, or custodial control over victim
- Whether the victim was under duress⁵⁹

⁵⁴ 18 PA. C.S. § 3121.

⁵⁵ See *Commw. v. Karkaria*, 625 A.2d 1167 (Pa. 1993).

⁵⁶ *Commw. v. Poindexter*, 646 A.2d 1211 (Pa. Super. 1994).

⁵⁷ *Commw. v. Williams*, 439 A.2d 765 (Pa. Super. 1982).

⁵⁸ *Commw. v. Montgomery*, 687 A.2d 1131 (Pa. Super. 1996).

⁵⁹ *Commw. v. Ruppert*, 579 A.2d 966 (Pa. Super. 1990).

Defendant's Previous Brutalization of Victim Relevant in Rape Case

Forcible compulsion and threat of forcible compulsion may be demonstrated by the defendant's past brutality toward the victim. In *Commonwealth v. Richter*, the defendant visited his ex-wife's home to show her pictures of their son's Holy Communion.⁶⁰ During the visit, the defendant made sexual advances toward his ex-wife, which she rebuffed, telling the defendant that she did not want to have sex with him and could not, because she feared sexual intercourse would harm her unborn child. Defendant subsequently grabbed the victim from behind, pinned her against a table, pulled off her pants and raped her. Although the victim verbally resisted, she did not physically resist.

The victim testified that she did not physically resist, because she knew, based on past experiences, that the defendant was capable of hurting both her and her unborn child. She then described two previous occasions where defendant had brutally raped her. During one attack, the defendant rammed a brush covered with plumber's glue into her vagina. During the other attack, the defendant punched her in the mouth, breaking numerous teeth. Both of the prior attacks resulted in her hospitalization.

The Superior Court held that the evidence of defendant's prior brutality toward the victim was sufficient to establish forcible compulsion and/or threat of forcible compulsion. It also held that evidence of the prior rapes was relevant and admissible to show the victim's state of mind in failing to physically resist the defendant's advances.⁶¹

Rape Statute is Gender-Neutral

The rape statute is gender-neutral with regard to victims of sexual assault and encompasses sexual assaults committed by males against males.⁶²

Statutory Rape Involves a Child Younger than 13

Sexual intercourse with a child younger than 13 is automatically considered rape, is a first-degree felony and may result in a prison sentence of up to 40 years.⁶³ Sexual intercourse with a child younger than age 13 that causes serious bodily injury is a first-degree felony, which carries a maximum sentence of life imprisonment.⁶⁴

Statutory Sexual Assault Involves a Four-Year Age Difference

Intercourse between a minor of 15 years or younger with a person who is four or more years older is sufficient for a charge of statutory sexual assault.⁶⁵ However, the minor will have the ability to consent to intercourse when the parties are married. The Pennsylvania Supreme

⁶⁰ *Commw. v. Richter*, 676 A.2d 1232 (Pa. Super. 1996).

⁶¹ *Id.* at 1235.

⁶² *Commw. v. Frank*, 640 A.2d 904 (Pa. Super. 1994).

⁶³ 18 PA. C.S. § 3121(c).

⁶⁴ 18 PA. C.S. § 3121(d), (e)(2).

⁶⁵ 18 PA. C.S. § 3122.1

Court upheld this statute's constitutionality, finding that it served the legitimate purpose of protecting minors younger than 16 from older teenage or adult sexual aggressors.⁶⁶

Involuntary Deviate Sexual Intercourse

In Pennsylvania, the crime of involuntary deviant sexual intercourse is essentially a restatement of the crime of rape with one notable exception: the definition of the sexual activity involved includes certain oral and anal sexual activities. The definition of deviate sexual intercourse is broader than merely sexual intercourse; otherwise, the language in both statutes is similar.

Involuntary deviate sexual intercourse (selected provisions)

- (a) Offense defined .—A person commits a felony of the first degree when the person engages in deviate sexual intercourse with a complainant:
 - (1) by forcible compulsion;
 - (2) by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution;
 - (3) who is unconscious or where the person knows that the complainant is unaware that the sexual intercourse is occurring;
 - (4) where the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance;
 - (5) who suffers from a mental disability which renders him or her incapable of consent;
 - (7) who is less than 16 years of age and the person is four or more years older than the complainant and the complainant and person are not married to each other.
- (b) Involuntary deviate sexual intercourse with a child.—A person commits involuntary deviate sexual intercourse with a child, a felony of the first degree, when the person engages in deviate sexual intercourse with a complainant who is less than 13 years of age.
- (c) Involuntary deviate sexual intercourse with a child with serious bodily injury.—A person commits an offense under this section with a child resulting in serious bodily injury, a felony of the first degree, when the person violates this section and the complainant is less than 13 years of age and the complainant suffers serious bodily injury in the course of the offense.
- (e) Definition.—As used in this section, the term "forcible compulsion" includes, but is not limited to, compulsion resulting in another person's death, whether the death occurred before, during or after the sexual intercourse.⁶⁷

Deviate sexual intercourse is defined in another part of the criminal code.

Deviate sexual intercourse.

⁶⁶ Commw. v. Albert, 758 A.2d 1149 (Pa. 2000).

⁶⁷ 18 PA. C.S. § 3123.

Sexual intercourse per os or per anus between human beings and any form of sexual intercourse with an animal. The term also includes penetration, however slight, of the genitals or anus of another person with a foreign object for any purpose other than good faith medical, hygienic or law enforcement procedures.⁶⁸

The crime of involuntary deviate sexual intercourse is committed when a person forces another person by actual physical compulsion or threats thereof to engage in acts of anal or oral intercourse.⁶⁹ It also occurs when an individual engages in deviate sexual intercourse with another person: (1) who is less than 13 years old;⁷⁰ or (2) when the individual engages in deviate sexual intercourse with a person who is 15 or younger while the perpetrator is four or more years older than the victim.⁷¹

To prove the "forcible compulsion" component in section (a)(1), the PROSECUTOR IS REQUIRED TO ESTABLISH, BEYOND A REASONABLE DOUBT, THAT THE DEFENDANT USED EITHER PHYSICAL FORCE, THE THREAT OF PHYSICAL FORCE, OR PSYCHOLOGICAL COERCION.⁷²

Aggravated Indecent Assault

The crime of aggravated indecent assault is distinguished from the other sexual offenses chiefly in the method of penetration employed with the victim. It is mainly used to charge digital penetration of the victim's genitals or anus.

Aggravated indecent assault (selected provisions)

- (a) Offenses defined.—Except as provided in sections 3121 (relating to rape), 3122.1 (relating to statutory sexual assault), 3123 (relating to involuntary deviate sexual intercourse) and 3124.1 (relating to sexual assault), a person who engages in penetration, however slight, of the genitals or anus of a complainant with a part of the person's body for any purpose other than good faith medical, hygienic or law enforcement procedures commits aggravated indecent assault, a felony of the second degree, if:
- (1) the person does so without the complainant's consent;
 - (2) the person does so by forcible compulsion;
 - (3) the person does so by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution;
 - (7) the complainant is less than 13 years of age; or
 - (8) the complainant is less than 16 years of age and the person is four or more years older than the complainant and the complainant and the person are not married to each other.⁷³

⁶⁸ 18 PA. C.S. § 3101.

⁶⁹ *Commw. v. Perrin*, 398 A.2d 1007 (Pa. 1979).

⁷⁰ 18 PA. C.S. § 3123(b).

⁷¹ 18 PA. C.S. § 3123(a)(7); *see also In re J.R.*, 648 A.2d 28 (Pa. Super. 1994).

⁷² *Commw. v. Brown*, 727 A.2d 541 (Pa. 1999).

Digital Penetration

The court in *Commonwealth v. Kelley* held that digital penetration is the type of conduct that falls within the parameters of aggravated indecent assault.⁷⁴

Allegations of Taint in Sexual Assault Claims by Children

“Taint” is the implantation of false memories or the distortion of actual memories through improper and suggestive interview techniques.⁷⁵ When a child accuses a family member of sexually abusing him or her, the defendant often claims that the child’s testimony was tainted by another person’s influence.⁷⁶

The party alleging taint bears the burden of:

- presenting some evidence of taint at the competency hearing, before exploration of taint is considered; and
- overcoming the child’s presumption of competency by clear and convincing evidence.⁷⁷

In *Commonwealth v. Delbridge*, the Pennsylvania Supreme Court evaluated the defendant father’s claims of taint following his aggravated indecent assault conviction for sexually abusing his two young children.⁷⁸ The Supreme Court remanded the case to trial court for an additional competency hearing when the defendant could present evidence of taint. On remand, the trial court again found the children to be competent and that the defendant failed to demonstrate the presence of taint. Accordingly, the trial court found that the defendant failed to meet his burden that his children’s allegations were compromised by taint.⁷⁹ The Supreme Court reviewed and affirmed the trial court’s decision.⁸⁰

Crimes Involving Property

Arson

According to the statute’s official comment, “this section...updates the law of arson by distinguishing between arson endangering life and arson endangering property only, with the emphasis on the degree of danger to life and property rather than on the burning as such.”⁸¹ It should be noted that it makes no difference whether or not the perpetrator has an ownership

⁷³ 18 PA. C.S. § 3125.

⁷⁴ *Commw. v. Kelley*, 801 A.2d 551 (Pa. 2002).

⁷⁵ *Commw. v. Delbridge*, 855 A.2d 27, 30 (Pa. 2003).

⁷⁶ *See, e.g., Commw. v. Hunzer*, 868 A.2d 498 (Pa. Super. 2005); *Commw. v. Alston*, 864 A.2d 569 (Pa. 2004).

⁷⁷ *Id.* at 1256.

⁷⁸ *Commw. v. Delbridge*, 859 A.2d 1254 (Pa. 2004).

⁷⁹ *Id.* at 1259.

⁸⁰ *Id.* at 1260-61.

⁸¹ 18 PA. C.S. § 3301, official cmt. (1972).

interest in the property. Perpetrators of domestic violence have used arson as part of their efforts to intimidate or retaliate against their victims.⁸²

Arson and related offenses (selected provisions)

(a) Arson endangering persons.–

(1) A person commits a felony of the first degree if he intentionally starts a fire or causes an explosion, or if he aids, counsels, pays or agrees to pay another to cause a fire or explosion, whether on his own property or on that of another, and if:

(i) he thereby recklessly places another person in danger of death or bodily injury, including but not limited to a firefighter, police officer or other person actively engaged in fighting the fire; or

(ii) he commits the act with the purpose of destroying or damaging an inhabited building or occupied structure of another.

(2) A person who commits arson endangering persons is guilty of murder of the second degree if the fire or explosion causes the death of any person, including but not limited to a firefighter, police officer or other person actively engaged in fighting the fire, and is guilty of murder of the first degree if the fire or explosion causes the death of any person and was set with the purpose of causing the death of another person.

(c) Arson endangering property.–A person commits a felony of the second degree if he intentionally starts a fire or causes an explosion, whether on his own property or that of another, or if he aids, counsels, pays or agrees to pay another to cause a fire or explosion, and if:

(1) he commits the act with intent of destroying or damaging a building or unoccupied structure of another;

(2) he thereby recklessly places an inhabited building or occupied structure of another in danger of damage or destruction; or

(3) he commits the act with intent of destroying or damaging any property, whether his own or of another, to collect insurance for such loss.

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

"Occupied structure." Any structure, vehicle or place adapted for overnight accommodation of persons or for carrying on business therein, whether or not a person is actually present. If a building or structure is divided into separately occupied units, any unit not occupied by the actor is an occupied structure of another.

⁸² See, e.g., *Commw. v. John*, 596 A.2d 834 (Pa. Super. 1991) (Husband set fire to bingo hall where estranged wife was playing bingo in retaliation for her refusal to spend the evening drinking with him); *Commw. v. Rainey*, 363 A.2d 1148 (Pa. Super. 1976) (History of domestic violence; husband threatened to burn property and kill his wife and children); *Commw. v. Terry*, 394 A.2d 446 (Pa. 1978) (Defendant argued with his estranged girlfriend and told her he was going to get her. When she refused to resume their relationship, defendant burned the house that adjoined girlfriend's house that night, and firebombed girlfriend's house two days later).

"Property of another." A building or other property, whether real or personal, in which a person other than the actor has an interest which the actor has no authority to defeat or impair, even though the actor may also have an interest in the building or property.

To convict a person of arson, the prosecution must establish beyond a reasonable doubt that there was a fire, the fire was maliciously set, and the defendant was the guilty party.⁸³ Additionally, under section (a)(1), it must be proven that the perpetrator either (1) recklessly placed another person in danger of death or bodily injury, or (2) intended to damage or destroy an inhabited building or structure.

For example, an arson defendant's malice and state of mind toward his wife was evidenced by the fact that he had threatened his son with a knife as his estranged family fled from the fire.⁸⁴

Burglary

The essence of the crime of burglary is breaking into a building or occupied structure with the intent to commit a crime therein. What makes burglary such a serious offense is not simply the act of breaking and entering, which often deprives victims of their sense of security, but the combination of entry and the intent to commit a further breach of the peace inside.

Burglary (selected provisions)

- (a) Offense defined.—A person is guilty of burglary if he enters a building or occupied structure, or separately secured or occupied portion thereof, with intent to commit a crime therein, unless the premises are at the time open to the public or the actor is licensed or privileged to enter.
- (b) Defense.—It is a defense to prosecution for burglary that the building or structure was abandoned.
- (d) Multiple convictions.—A person may not be convicted both for burglary and for the offense which it was his intent to commit after the burglarious entry or for an attempt to commit that offense, unless the additional offense constitutes a felony of the first or second degree.⁸⁵

"Burglary" is defined as unauthorized entry with intent to commit a crime after entry.⁸⁶ The intent to commit the crime cannot be assumed when there is only forced or unauthorized entry; the circumstances must also indicate felonious intent. When the crime of burglary involves domestic violence it is important for judges to determine if the perpetrator had the authority to enter the premises. Judges may need to question both the victim and the perpetrator about the details of their separation and whether or not there are any legal documents, such as a Protection From Abuse order, which orders the perpetrator to stay away from the premises.

⁸³ Commw. v. Hardcastle, 546 A.2d 1101 (Pa. 1988).

⁸⁴ Commw. v. John, 596 A.2d 834 (Pa. Super. 1991).

⁸⁵ 18 PA. C.S. § 3502.

⁸⁶ Commw. v. Alston, 651 A.2d 1092 (Pa. 1994).

Sufficient Evidence of Felonious Intent

In *Commonwealth v. Magnum*, sufficient evidence of felonious intent was presented to support the conviction of defendant for burglary where defendant broke into his former girlfriend's house through a locked garage.⁸⁷ When the defendant encountered his former girlfriend and her current boyfriend, the perpetrator pulled a knife from his coat pocket, threatened the boyfriend and told him to get out of "his" house even though the defendant was neither a current resident of the house nor its owner. When the defendant cornered his former girlfriend in the basement, he told her that "he really should f* * * her up for what she did to him."⁸⁸

Entering Own House in Violation of PFA Order

A crime is committed when a person enters a residence where that person is excluded by a PFA. In *Commonwealth v. Majeed*, the Pennsylvania Supreme Court held that an **INDIVIDUAL MAY BE CONVICTED OF BURGLARY UPON ENTERING HIS OR HER OWN HOME IN VIOLATION OF A PROTECTION FROM ABUSE ORDER**.⁸⁹ In this case, the defendant entered into a PFA agreement stipulating that he was to stay away from the home. Five days later, the defendant grabbed his stepdaughter at a nearby bus stop, kicked in the door of the home, forced the stepdaughter inside and assaulted her. The defendant was convicted of burglary and assault.

Finally, a defendant may be convicted of both burglary and the offense that he intended to commit after entry if the additional offense constitutes a felony of the first or second degree.⁹⁰ In those situations, the crimes do not merge for sentencing purposes.

Criminal Trespass

The crime of criminal trespass involves either entering or remaining in a place, while knowing that one is not licensed or privileged to do so.⁹¹ There are two distinct crimes of criminal trespass, the more serious of which is trespass in a building or occupied structure and the less serious of which is defiant trespass.⁹² Similar to the crime of burglary, in cases of criminal trespass involving domestic violence, judges will need to determine if the perpetrator had the authority to enter the premises.

Criminal trespass (selected provisions)

(a) Buildings and occupied structures.–

(1) A person commits an offense if, knowing that he is not licensed or privileged to do so, he:

⁸⁷ *Commw. v. Magnum*, 654 A.2d 1146 (Pa. Super. 1995).

⁸⁸ *Id.* at 1147-48.

⁸⁹ *Commw. v. Majeed*, 694 A.2d 336 (Pa. 1997).

⁹⁰ *Commw. v. Simpson*, 462 A.2d 821 (Pa. Super. 1983).

⁹¹ *Commw. v. Walker*, 559 A.2d 579 (Pa. Super. 1989).

⁹² *Commw. v. Cannon*, 443 A.2d 322 (Pa. Super. 1982).

- (i) enters, gains entry by subterfuge or surreptitiously remains in any building or occupied structure or separately secured or occupied portion thereof; or
 - (ii) breaks into any building or occupied structure or separately secured or occupied portion thereof.
- (3) As used in this subsection:

"Breaks into." To gain entry by force, breaking, intimidation, unauthorized opening of locks, or through an opening not designed for human access.⁹³

The purpose of the criminal trespass statute is to prevent unlawful intrusion onto real property and to prevent unlawful breaches of peace relating to realty.⁹⁴ In domestic violence situations where evidence is deficient as to the intent of a perpetrator upon entering the premises, criminal trespass is the appropriate charge.

In *Commonwealth v. Woods*, the perpetrator was charged with criminal trespass, among other crimes, when he went to his estranged wife's residence carrying a loaded gun, beat on the door to gain entry and fired the weapon.⁹⁵ The defendant appealed the criminal trespass conviction, asserting that the evidence was insufficient to show that he knew he was not licensed or privileged to enter the home. The court referred to the estrangement and the fact that the parties were living apart to uphold his conviction.

Criminal Mischief

A frequent act of intimidation following separation is the performance of acts of vandalism by the perpetrator upon property belonging to the victim. The criminal mischief statute addresses the destruction of property (real or personal) belonging to another individual.

Criminal mischief (selected provisions)

- (a) Offense defined.—A person is guilty of criminal mischief if he:
- (1) damages tangible property of another intentionally, recklessly, or by negligence in the employment of fire, explosives, or other dangerous means listed in section 3302(a) of this title (relating to causing or risking catastrophe);
 - (2) intentionally or recklessly tampers with tangible property of another so as to endanger person or property;
 - (3) intentionally or recklessly causes another to suffer pecuniary loss by deception or threat; or
 - (4) intentionally defaces or otherwise damages tangible public property or tangible property of another with graffiti by use of any aerosol spray-paint can, broad-tipped indelible marker or similar marking device; or
 - (5) intentionally damages real or personal property of another.⁹⁶

⁹³ 18 PA. C.S. § 3503.

⁹⁴ *Commw. v. White*, 492 A.2d 32 (Pa. Super. 1985).

⁹⁵ *Commw. v. Woods*, 638 A.2d 1013 (Pa. Super. 1994).

⁹⁶ 18 PA. C.S. § 3304.

In a prosecution for malicious mischief, malicious intent toward the owner - real or constructive - of the property injured must always be proven.⁹⁷ That requirement prevents accidental destruction to property from being considered a criminal offense. Additionally, a perpetrator cannot be convicted of malicious mischief where he holds title to the property injured.⁹⁸ Hence, the destruction of property owned jointly between the perpetrator and the victim would not support a conviction.

The defendant in *Commonwealth v. Giddings* damaged the victim's door with a screwdriver attempting to gain entry, which was sufficient to support a conviction for criminal mischief.⁹⁹

Cruelty to Animals

The offense of cruelty to animals is included in this section of domestic violence-related crimes, because violence towards victims' pets is commonly used by abusers to intimidate or retaliate against victims.¹⁰⁰

Cruelty to animals (selected provisions)

- (a)(1) A person commits a misdemeanor of the second degree if he willfully and maliciously:
 - (i) Kills, maims or disfigures any domestic animal of another person or any domestic fowl of another person.
 - (ii) Administers poison to or exposes any poisonous substance with the intent to administer such poison to any domestic animal of another person or domestic fowl of another person.¹⁰¹

To sustain a conviction for domestic animal cruelty under this section, the Commonwealth must prove that the animal belonged to a person other than the perpetrator.¹⁰²

Pennsylvania's animal cruelty statute also provides that **IT IS A CRIME TO WILLFULLY AND MALICIOUSLY KILL OR DISFIGURE ANY DOG OR CAT REGARDLESS OF OWNERSHIP:**

- (a)(2.1)(i) A person commits a misdemeanor of the first degree if he willfully and maliciously:
 - (A) Kills, maims, mutilates, tortures or disfigures any dog or cat, whether belonging to himself or otherwise.

⁹⁷ *Commw. v. Shaffer*, 32 Pa. Super. 375 (1907).

⁹⁸ *Id.* at 380.

⁹⁹ *Commw. v. Giddings*, 686 A.2d 6 (Pa. Super. 1996); *but see* *Commonwealth v. Clark*, 746 A.2d 1128 (overturning *Giddings* on unrelated issue addressing the ability to appeal a conviction when a sentencing court does not impose a penalty).

¹⁰⁰ A study of women seeking shelter at a safe house showed that 71% of those having pets affirmed that their partner had threatened, hurt, or killed their companion animals. AMERICAN HUMANE ASSOC., *Facts about Animal Abuse & Domestic Violence*, <http://www.americanhumane.org/interaction/support-the-bond/fact-sheets/animal-abuse-domestic-violence.html> (last visited Nov. 7, 2014).

¹⁰¹ 18 PA. C.S. § 5511.

¹⁰² *Commw. v. Tapper*, 675 A.2d 740 (Pa. Super. 1996).

- (B) Administers poison to or exposes any poisonous substance with the intent to administer such poison to any dog or cat, whether belonging to himself or otherwise.

Crimes Against the Family

Endangering Welfare of Children

The “endangering welfare of children” statute attempts to prohibit a broad range of conduct in order to safeguard the welfare and security of children.¹⁰³ Courts have traditionally held that standards of common sense in the community should be considered when interpreting the language of this statute.¹⁰⁴

Endangering welfare of children

- (a) Offense defined.—A parent, guardian, or other person supervising the welfare of a child under 18 years of age commits an offense if he knowingly endangers the welfare of the child by violating a duty of care, protection or support.
- (b) Grading.—An offense under this section constitutes a misdemeanor of the first degree. However, where there is a course of conduct of endangering the welfare of a child, the offense constitutes a felony of the third degree.¹⁰⁵

To support a conviction for endangering the welfare of a child, the Commonwealth must establish each of the following elements:

- The accused is aware of his/her duty to protect the child.
- The accused is aware that the child is in circumstances that could threaten the child's physical or psychological welfare.
- The accused has either failed to act or has taken action so lame or meager that such actions cannot reasonably be expected to protect the child's welfare.¹⁰⁶

In this vein, the court in *Commonwealth v. Passarelli* found there was sufficient evidence to convict the father of endangering the welfare of a child.¹⁰⁷ The child had been entrusted to the father when the mother went on errands, and when the mother returned, there were injuries that occurred from either shaking or blunt impact. Because it was an isolated incident, the father's crime was graded a misdemeanor of the first degree.

Nonetheless, in situations where the abuse or neglect is ongoing, evidence of a course of conduct can support a conviction of felony endangering the welfare of a child.¹⁰⁸ The statute

¹⁰³ Commw. v. Brown, 721 A.2d 1105 (Pa. Super. 1998).

¹⁰⁴ *Id.* at 1106-07.

¹⁰⁵ 18 PA. C.S. § 4304.

¹⁰⁶ Commw. v. Wallace, 817 A.2d 485 (Pa. Super. 2002).

¹⁰⁷ Commw. v. Passarelli, 789 A.2d 708 (Pa. Super. 2001), *aff'd*, 825 A.2d 628 (Pa. 2003).

¹⁰⁸ *See* Commw. v. Popow, 844 A.2d 13 (Pa. Super. 2004).

defining the offense of third-degree felony endangerment of children is designed to punish a parent who over days, weeks, or months, abuses his children, such as repeatedly beating them or depriving them of food.¹⁰⁹

Interference With Custody of Children

Although parents can be guilty of kidnapping their children, the legislature enacted “interference with custody of children” to address the problem of individuals snatching children as part of a custody dispute. The statute also enumerates several defenses in an attempt to prevent the statute from being misused against persons with legitimate concerns for the safety and welfare of their child.

Interference with custody of children

- (a) **Offense defined.**—A person commits an offense if he knowingly or recklessly takes or entices any child under the age of 18 years from the custody of its parent, guardian or other lawful custodian, when he has no privilege to do so.
- (b) **Defenses.**—It is a defense that:
 - (1) the actor believed that his action was necessary to preserve the child from danger to its welfare; or
 - (2) the child, being at the time not less than 14 years old, was taken away at its own instigation without enticement and without purpose to commit a criminal offense with or against the child; or
 - (3) the actor is the child's parent or guardian or other lawful custodian and is not acting contrary to an order entered by a court of competent jurisdiction.¹¹⁰

In *Commonwealth v. Stewart*, the defendant's conviction for interference with custody of children and criminal conspiracy was upheld where the defendant was aware of the order awarding primary custody of child to the child's mother some time prior to the defendant's leaving the state with the child.¹¹¹

While the statute proscribing interference with child custody was enacted with a focus toward parental kidnapping, courts have extended the purview of the statute to protect children from unlawful taking by individuals who were not necessarily their parents, custodians or guardians. Moreover, the wording of the statute clearly supported the extension of its scope to actors other than parents.¹¹²

¹⁰⁹ *Id.* at 17.

¹¹⁰ 18 PA. C.S. § 2904.

¹¹¹ *Commw. v. Stewart*, 544 A.2d 1384 (Pa. Super. 1988).

¹¹² *Commw. v. McClintock*, 639 A.2d 1222 (Pa. Super. 1994).

Defenses Raised in Domestic Violence Cases

The most frequent defenses offered by perpetrators of domestic violence include self-defense, intoxication, “mutual battering” and the parental privilege of administering corporal punishment upon their children.

Self-Defense

In *Commonwealth v. Torres*, the Supreme Court reiterated that self-defense is an acceptable defense to assault charges.¹¹³ When a defendant raises a self-defense claim, the prosecution bears the burden of disproving the defense beyond a reasonable doubt.¹¹⁴

Voluntary Intoxication

Voluntary intoxication is not an acceptable defense to assault charges. The court in *Esmond v. Liscio* stated that “While voluntary intoxication might so cloud the mind as to deprive it of power of premeditation and deliberation, it would not prevent formation of general intent necessary for the commission of assault.”¹¹⁵

Mutual Battering

Domestic violence perpetrators also may attempt to raise a false “mutual battering” defense. In assault cases, the defense is typically offered under the auspices of subsection 2701(b)(1) (relating to grading of assault).

Domestic violence perpetrators sometimes claim that the victim instigated or willingly entered into the altercation, in order to shift the blame for their behavior to the victim.¹¹⁶

Corporal Punishment

Parents charged with assaulting their children may attempt to justify their assault as permissible corporal punishment. Criminal law generally recognizes that parents have the right to use corporal punishment when raising their children.¹¹⁷ However, at some point permissible corporal punishment ceases and becomes malicious abuse. Therefore, in a prosecution of a parent for assaulting a child, it is necessary to ESTABLISH THE PARTICULAR STATE OF MIND OF THE PARENT ADMINISTERING PUNISHMENT to determine whether the corporal punishment was permissible. In *Commonwealth v. Kramer*, the father beat each of his children 50 times with a stick, bruising the children in the process and causing significant pain.¹¹⁸ Testimony disclosed a history of beatings by the father. Letters written by the father from jail demonstrated his animosity toward his children.¹¹⁹ The court upheld the father’s assault conviction.¹²⁰

¹¹³ *Commw. v. Torres*, 342 (Pa. 2001).

¹¹⁴ *Torres*, 766 A.2d at 344.

¹¹⁵ *Esmond v. Liscio*, 224 A.2d 793 (Pa. Super. 1966).

¹¹⁶ *See, e.g., Commw. v. Showalter*, 231 A.2d 278, 332 A.2d 456 (1974).

¹¹⁷ *See, e.g., Commw. v. Kramer*, 371 A.2d 1008 (Pa. Super. 1977); *Guerrieri v. Tyson*, 24 A.2d 468 (Pa. Super. 1942).

¹¹⁸ *Kramer*, 371 A.2d 1008.

¹¹⁹ *Id.*

¹²⁰ *Id.*

Miscellaneous Provisions

Firearms Violation

The clear purpose of the statutory prohibition against certain persons possessing firearms is to protect the public from convicted criminals who possess firearms, regardless of whether the previous crimes were actually violent or the barrel of the firearm was a certain length.¹²¹ As of this writing, there are no reported decisions interpreting the section of the statute which prohibits gun possession while an individual is subject to a Protection From Abuse (PFA) order.

Persons not to possess, use, manufacture, control, sell or transfer firearms (selected provisions)

(a) Offense defined.—

(1) A person who has been convicted of an offense enumerated in subsection (b), within or without this Commonwealth, regardless of the length of sentence or whose conduct meets the criteria in subsection (c) shall not possess, use, control, sell, transfer or manufacture or obtain a license to possess, use, control, sell, transfer or manufacture a firearm in this Commonwealth.

(2) A person who is prohibited from possessing, using, controlling, selling, transferring or manufacturing a firearm under paragraph (1) or subsection (b) or (c) shall have a reasonable period of time, not to exceed 60 days from the date of the imposition of the disability under this subsection, 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.

(c) Other persons.—In addition to any person who has been convicted of any offense listed under subsection (b), the following persons shall be subject to the prohibition of subsection (a):

(6) A person who is the subject of an active protection from abuse order issued pursuant to 23 Pa. C.S. § 6108 (relating to relief), which order provided for the confiscation of firearms during the period of time the order is in effect. This prohibition shall terminate upon the expiration or vacation of an active protection from abuse order or portion thereof relating to the confiscation of firearms.¹²²

Promoting Justice by Recognizing Victim Rights

The goal of reducing domestic violence is well served by mandating that the domestic violence victim's voice be heard in the criminal justice system. The victim knows the abuser best. Courts are greatly assisted by the additional insight that victims can offer. Victim involvement also serves to empower some victims in their efforts to overcome the trauma of domestic violence.

¹²¹ Commw. v. Gillespie, 821 A.2d 1221 (Pa. 2003).

¹²² 18 Pa. C.S. § 6105.

Because ending domestic violence is an important goal in society and addressing domestic violence is an important goal of the criminal justice system, every effort to assist victims in seeking safety and being heard is beneficial.

Although the prime focus of the criminal justice system is upon the criminal acts of a perpetrator and the punishment for those acts, Pennsylvania’s legislature and courts have become increasingly aware of the need to give victims a voice in the system. Pennsylvania’s legislature enacted the Crime Victims Act and directed that all crime victims “be treated with dignity, respect, courtesy and sensitivity.”¹²³ Whether through victim input at bail or sentencing proceedings or whether by considering the privacy needs of victims throughout the trial process, courts can play a major role in promoting the recognition of victim’s rights. A copy of the **Crime Victims Act** is found at the end of this chapter.

The Pennsylvania Supreme Court has also recognized the valuable contributions that victims make to the administration of justice by including victim notice and involvement provisions in several Rules of Criminal Procedure.

Even in cases where the Commonwealth and the perpetrator enter into an agreement to dismiss charges, IT IS THE OBLIGATION OF THE COURT UNDER RULE 586(3) TO ENSURE THAT LOSSES SUFFERED BY THE VICTIM ARE GUARANTEED PAYMENT UNDER THE AGREEMENT.

¹²³ See 18 P.S. § 11.210(a). A copy of the **Crime Victims’ Act** is included at the end of this chapter.

Crime Victims Act – 18 P.S. § 11.101 *et seq.***Unconsolidated Pennsylvania Statutes****Crimes (Title 18)****§ 11.101. Short title**

This act shall be known and may be cited as the Crime Victims Act.

§ 11.102. Legislative intent

The General Assembly finds and declares as follows:

(1) In recognition of the civic and moral duty of victims of crime to fully and voluntarily cooperate with law enforcement and prosecutorial agencies and in further recognition of the continuing importance of victim cooperation to State and local law enforcement efforts and the general effectiveness and well-being of the criminal justice system of this Commonwealth, all victims of crime are to be treated with dignity, respect, courtesy and sensitivity.

(2) The rights extended to victims of crime in Chapter 2 are to be honored and protected by law enforcement agencies, prosecutors and judges in a manner no less vigorous than the protections afforded criminal defendants.

§ 11.103. Definitions

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Adult." Any of the following:

(1) An individual charged with a crime who is 18 years of age or older.

(2) An individual who is subject to criminal court jurisdiction following the transfer of a case to criminal proceedings.

(3) An individual who is subject to criminal court jurisdiction after having been charged with a crime excluded from the definition of "delinquent act" pursuant to 42 Pa.C.S. § 6302 "delinquent act" (2)(i), (ii), (iii) or (v) (relating to definitions).

"Board." The Pennsylvania Board of Probation and Parole.

"Claimant." The person filing a claim under Chapter 7.

"Commission." The Pennsylvania Commission on Crime and Delinquency.

"Committee." The Victims' Services Advisory Committee established in section 321.

"Crime." An act which was committed:

(1) In this Commonwealth by a person, including a juvenile, without regard to legal exemption or defense which would constitute a crime under the following:

(i) The act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act.

(ii) 18 Pa.C.S. (relating to crimes and offenses).

30 Pa.C.S. § 5502 (relating to operating watercraft under influence of alcohol or controlled substance).

30 Pa.C.S. § 5502.1 (relating to homicide by watercraft while operating under influence).

The former 75 Pa.C.S. § 3731 (relating to driving under influence of alcohol or controlled substance).

75 Pa.C.S. § 3732 (relating to homicide by vehicle).

75 Pa.C.S. § 3735 (relating to homicide by vehicle while driving under influence).

75 Pa.C.S. § 3735.1 (relating to aggravated assault by vehicle while driving under the influence).

75 Pa.C.S. § 3742 (relating to accidents involving death or personal injury).

75 Pa.C.S. Ch. 38 (relating to driving after imbibing alcohol or utilizing drugs).

(iii) The laws of the United States.

(2) Against a resident of this Commonwealth which would be a crime under paragraph (1) but for its occurrence in a location other than this Commonwealth.

(3) Against a resident of this Commonwealth which is an act of international terrorism.

"Department." The Department of Corrections of the Commonwealth.

"Direct victim." An individual against whom a crime has been committed or attempted and who as a direct result of the criminal act or attempt suffers physical or mental injury, death or the loss of earnings under this act. The term shall not include the alleged offender. The term includes a resident of this Commonwealth against whom an act has been committed or attempted which otherwise would constitute a crime as defined in this act but for its occurrence in a location other than this Commonwealth and for which the individual would otherwise be compensated by the crime victim compensation program of the location where the act occurred but for the ineligibility of such program under the provisions of the Victims of Crime Act of 1984 (Public Law 98-473, 42 U.S.C. § 10601 et seq.).

"Dispositional proceeding." A proceeding which occurs in open common pleas court which potentially could dispose of the case. The term includes Accelerated Rehabilitative Disposition, pleas, trial and sentence.

"Diversionary program." A program which is used to divert the defendant to an alternative form of disposition under the Pennsylvania Rules of Criminal Procedure or statutory authority. The term includes dispositions authorized by Rules 160, 176 and 314 of the Pennsylvania Rules of Criminal Procedure and sections 17 and 18 of the act of April 14, 1972 (P.L. 233, No. 64), known as The Controlled Substance, Drug, Device and Cosmetic Act.

"Family." When used in reference to an individual:

- (1) anyone related to that individual within the third degree of consanguinity or affinity;
- (2) anyone maintaining a common-law relationship with that individual; or
- (3) anyone residing in the same household with that individual.

"Injury." Includes physical or mental damages incurred as a direct result of the crime and aggravation of existing injuries if additional losses can be attributed to the direct result of the crime.

"International terrorism." Activities which meet all of the following:

(1) Involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any state or that would be a criminal violation if committed within the jurisdiction of the United States or of any state.

(2) Appear to be intended:

- (i) to intimidate or coerce a civilian population;
- (ii) to influence the policy of a government by intimidation or coercion; or
- (iii) to affect the conduct of a government by assassination or kidnapping.

(3) Occur primarily outside of the territorial jurisdiction of the United States or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce or the locale in which their perpetrators operate or seek asylum.

"Intervenor." An individual who goes to the aid of another and suffers physical or mental injury or death as a direct result of acting not recklessly to prevent the commission of a crime, to lawfully apprehend a person reasonably suspected of having committed such crime or to aid the victim of such crime.

"Juvenile." An individual who is alleged or has been determined to be a "delinquent child" as defined in 42 Pa.C.S. § 6302 (relating to definitions).

"Law enforcement agency." The Pennsylvania State Police and a local law enforcement agency.

"Local correctional facility." A jail, prison or detention facility operated by a county or jointly by more than one county and used for the confinement of individuals for safe custody. The term does not include any facility used for the detention or confinement of juveniles.

"Local law enforcement agency." A police department of a city, borough, incorporated town or township.

"Loss of earnings." Includes the loss of the cash equivalent of one month's worth of Social Security, railroad retirement, pension plan, retirement plan, disability, veteran's retirement, court-ordered child support or court-ordered spousal support payments if the payments are the primary source of the victim's income and the victim is deprived of money as a direct result of a crime.

"Office." The Office of Victim Advocate established in section 302.

"Office of Victims' Services." The Office of Victims' Services in the Pennsylvania Commission on Crime and Delinquency.

"Out-of-pocket loss." The term includes the following losses which shall be reimbursed at a rate set by the Office of Victims' Services:

- (1) expenses for unreimbursed and unreimbursable expenses or indebtedness incurred for medical care, nonmedical remedial care and treatment as approved by the Office of Victims' Services or other services;
- (2) expenses for counseling, prosthetic devices, wheelchairs, canes, walkers, hearing aids, eyeglasses or other corrective lenses or dental devices reasonably necessary as a result of the crime upon which the claim is based and for which the claimant either has paid or is liable;
- (3) expenses related to the reasonable and necessary costs of cleaning the crime scene of a private residence. "Cleaning" means to remove or attempt to remove stains or blood caused by the crime or other dirt or debris caused by the processing of the crime scene;
- (4) expenses resulting from the temporary or permanent relocation of a direct victim and individuals residing in the household of the direct victim due to the incident forming the basis of the victim's claim when there is an immediate need to protect the safety and health of the victim and individuals residing in the household, as verified by a medical provider, human services provider or law enforcement;
- (5) expenses for physical examinations and materials used to obtain evidence; or
- (6) other reasonable expenses which are deemed necessary as a direct result of the criminal incident.

Except as otherwise provided, the term does not include property damage or pain and suffering.

"Personal injury crime." An act, attempt or threat to commit an act which would constitute a misdemeanor or felony under the following:

- 18 Pa.C.S. Ch. 25 (relating to criminal homicide).
- 18 Pa.C.S. Ch. 27 (relating to assault).
- 18 Pa.C.S. Ch. 29 (relating to kidnapping).
- 18 Pa.C.S. Ch. 31 (relating to sexual offenses).
- 18 Pa.C.S. § 3301 (relating to arson and related offenses).
- 18 Pa.C.S. Ch. 37 (relating to robbery).
- 18 Pa.C.S. Ch. 49 Subch. B (relating to victim and witness intimidation).
- 30 Pa.C.S. § 5502.1 (relating to homicide by watercraft while operating under influence).

The former 75 Pa.C.S. § 3731 (relating to driving under influence of alcohol or controlled substance) in cases involving bodily injury.

- 75 Pa.C.S. § 3732 (relating to homicide by vehicle).

75 Pa.C.S. § 3735 (relating to homicide by vehicle while driving under influence).

75 Pa.C.S. § 3735.1 (relating to aggravated assault by vehicle while driving under the influence).

75 Pa.C.S. § 3742 (relating to accidents involving death or personal injury).

75 Pa.C.S. Ch. 38 (relating to driving after imbibing alcohol or utilizing drugs) in cases involving bodily injury.

The term includes violations of any protective order issued as a result of an act related to domestic violence.

"Preadjudication disposition." Any of the following:

(1) Disposition of an adult without a trial. This paragraph includes accelerated rehabilitative disposition.

(2) Disposition of a juvenile prior to an adjudication of delinquency under 42 Pa.C.S. Ch. 63 (relating to juvenile matters), including informal adjustment as set forth in 42 Pa.C.S. § 6323 (relating to informal adjustment), and consent decree as set forth in 42 Pa.C.S. § 6340 (relating to consent decree).

"Prosecutor's office." The Office of Attorney General or the office of a district attorney of a county.

"Victim." The term means the following:

(1) A direct victim.

(2) A parent or legal guardian of a child who is a direct victim, except when the parent or legal guardian of the child is the alleged offender.

(3) A minor child who is a material witness to any of the following crimes and offenses under 18 Pa.C.S. (relating to crimes and offenses) committed or attempted against a member of the child's family:

Chapter 25 (relating to criminal homicide).

Section 2702 (relating to aggravated assault).

Section 3121 (relating to rape).

(4) A family member of a homicide victim, including stepbrothers or stepsisters, stepchildren, stepparents or a fiancé, one of whom is to be identified to receive communication as provided for in this act, except where the family member is the alleged offender.

"Victim advocate." The victim advocate in the Office of Victim Advocate within the Pennsylvania Board of Probation and Parole.

§ 11.201. Rights

Victims of crime have the following rights:

(1) To receive basic information concerning the services available for victims of crime.

(2) To be notified of certain significant actions and proceedings within the criminal and juvenile justice systems pertaining to their case. This paragraph includes all of the following:

(i) Access to information regarding whether the juvenile was detained or released following arrest and whether a petition alleging delinquency has been filed.

(ii) Immediate notification of a juvenile's preadjudication escape from a detention center or shelter facility and of the juvenile's subsequent apprehension.

(iii) Access to information regarding the grant or denial of bail to an adult.

(iv) Immediate notification of an adult offender's pretrial escape from a local correctional facility and of the offender's subsequent apprehension.

(3) To be accompanied at all criminal and all juvenile proceedings in accordance with 42 Pa.C.S. § 6336 (relating to conduct of hearings) by a family member, a victim advocate or other person providing assistance or support.

(4) In cases involving a personal injury crime or burglary, to submit prior comment to the prosecutor's office or juvenile probation office, as appropriate to the circumstances of the case, on the potential reduction or dropping of any charge or changing of a plea in a criminal or delinquency proceeding, or, diversion of any case, including an informal adjustment or consent decree.

(5) To have opportunity to offer prior comment on the sentencing of a defendant or the disposition of a delinquent child, to include the submission of a written and oral victim impact statement detailing the physical, psychological and economic effects of the crime on the victim and the victim's family. The written statement shall be included in any predisposition or presentence report submitted to the court. Victim-impact statements shall be considered by a court when determining the disposition of a juvenile or sentence of an adult.

(5.1) To have notice and to provide prior comment on a judicial recommendation that the defendant participate in a motivational boot camp pursuant to the act of December 19, 1990 (P.L. 1391, No. 215), known as the Motivational Boot Camp Act.

(5.2) Upon request of the victim of a personal injury crime, to have the opportunity to submit written comment or present oral testimony at a disposition review hearing, which comment or testimony shall be considered by the court when reviewing the disposition of the juvenile.

(6) To be restored, to the extent possible, to the precrime economic status through the provision of restitution, compensation and the expeditious return of property which is seized as evidence in the case when in the judgment of the prosecutor the evidence is no longer needed for prosecution of the case.

(7) In personal injury crimes where the adult is sentenced to a State correctional facility, to be:

(i) given the opportunity to provide prior comment on and to receive State postsentencing release decisions, including work release, furlough, parole, pardon or community treatment center placement;

(ii) provided immediate notice of an escape of the adult and of subsequent apprehension; and

(iii) given the opportunity to receive notice of and to provide prior comment on a recommendation sought by the Department of Corrections that the offender participate in a motivational boot camp pursuant to the Motivational Boot Camp Act.

(8) In personal injury crimes where the adult is sentenced to a local correctional facility, to:

(i) receive notice of the date of the release of the adult, including work release, furlough, parole, release from a boot camp or community treatment center placement; and

(ii) be provided with immediate notice of an escape of the adult and of subsequent apprehension.

(8.1) If, upon the request of the victim of a personal injury crime committed by a juvenile, the juvenile is ordered to residential placement, a shelter facility or a detention center, to:

(i) Receive prior notice of the date of the release of the juvenile, including temporary leave or home pass.

(ii) Be provided with:

(A) immediate notice of an escape of the juvenile, including failure to return from temporary leave or home pass; and

(B) immediate notice of reapprehension of the juvenile.

(iii) Be provided with notice of transfer of a juvenile who has been adjudicated delinquent from a placement facility that is contrary to a previous court order or placement plan approved at a disposition review hearing and to have the opportunity to express a written objection prior to the release or transfer of the juvenile.

(9) If the adult is subject to an order under 23 Pa.C.S. Ch. 61 (relating to protection from abuse) and is committed to a local correctional facility for a violation of the order or for a personal injury crime against a victim protected by the order, to receive immediate notice of the release of the adult on bail.

(10) To receive notice if an adult is committed to a mental health facility from a State correctional institution and notice of the discharge, transfer or escape of the adult from the mental health facility.

(11) To have assistance in the preparation of, submission of and follow-up on financial assistance claims to the bureau.

(12) To be notified of the details of the final disposition of the case of a juvenile consistent with 42 Pa.C.S. § 6336(f) (relating to conduct of hearings).

(13) Upon the request of the victim of a personal injury crime, to be notified of the termination of the courts' jurisdiction.

§ 11.211. Responsibilities of victims of crime under basic bill of rights

A victim shall provide a valid address and telephone number and any other required information to all agencies responsible for providing information and notice to the victim. The victim shall be responsible for providing timely notice of any changes in the status of the information. The information provided shall not be disclosed to any person other than a law enforcement agency, corrections agency or prosecutor's office without the prior written consent of the victim.

§ 11.212. Responsibilities of state and local law enforcement agencies

(a) Training. A law enforcement agency shall insure that all of its officers and employees are familiar with crime victims' compensation as provided for in Chapter 7. Instruction concerning crime victims' compensation shall be made a part of the training curriculum for all trainee officers.

(b) Notice.

(1) Law enforcement agencies shall within 48 hours of reporting give notice to the direct victim or, if appropriate, a member of the direct victim's family of the availability of crime victims' compensation. The notice required under this subsection shall be in writing and in manner and form developed by the Office of Victims' Services.

(2) Law enforcement agencies shall provide basic information on the rights and services available for crime victims. The information shall be in writing and shall be provided to the victim within 24 hours of the law enforcement agency's first contact with the victim in a manner and form to be developed by the Office of Victims' Services.

(c) Application. The written notification provided for in subsection (b)(1) shall be accompanied by one copy of the application form for crime victims' compensation. Application forms shall be supplied by the Office of Victims' Services to law enforcement agencies. A record of the date of notification shall be maintained by the law enforcement agency. The Office of Victims' Services shall maintain a mailing list of all local law enforcement agencies and provide law enforcement agencies with forms by which they can order additional claim forms. The Office of Victims' Services shall also provide updates to law enforcement agencies on changes which affect their responsibilities under this act.

(d) Deleted.

(e) Forms. The form developed by the Office of Victims' Services shall be attached to the police report and shall include a victim checkoff signifying that the information has been provided to the crime victim.

(f) Notice in personal injury crimes.

(1) In personal injury crimes, the law enforcement agency shall make reasonable efforts to notify the victim of the arrest of the suspect and of the filing or forwarding of a complaint relating to the crime as soon as possible. Unless the victim cannot be located, notice of the arrest shall be provided not more than 24 hours after the preliminary arraignment. In cases

alleging delinquency, notice of the filing or forwarding of a complaint shall be provided not more than 24 hours after the complaint has been filed or forwarded to the juvenile probation office or district attorney.

(2) In personal injury crimes, a law enforcement agency, sheriff, deputy sheriff or constable shall notify the victim of an inmate's escape from the custody of the law enforcement agency, sheriff, deputy sheriff or constable.

(g) Return of property. The appropriate law enforcement agency shall return to the victim property seized as evidence if the prosecutor's office determines that the evidence is no longer needed for prosecution.

§ 11.213. Responsibilities of prosecutor's office

(a) FORMS.— The prosecutor's office shall provide the victim of a personal injury crime with all forms developed pursuant to sections 214 and 215.

(b) PLEADING.— In a personal injury crime or burglary, the prosecutor's office shall provide notice of and offer the opportunity to submit prior comment on the potential reduction or dropping of any charge or changing of a plea, a diversion of any case, including informal adjustment and consent decree, unless such notice is provided by the juvenile probation office.

(c) SENTENCING.—The prosecutor's office shall provide notice of the opportunity to offer prior comment on the sentencing of an adult and disposition of a juvenile. This prior comment includes the submission of oral and written victim impact statements. The prosecutor's office shall assist a victim who requests assistance to prepare this comment.

(d) RELEASE.—In a personal injury crime, the prosecutor's office shall provide notice of the opportunity to submit input into State correctional release decisions, to receive notice of any release of an adult from a State or local correctional facility and to receive notice of the commitment to a mental health institution from a State or local correctional institution.

(e) DISPOSITION.—In a personal injury crime, if the prosecutor's office has advance notice of dispositional proceeding, the prosecutor shall make reasonable efforts to notify a victim of the time and place of the proceeding.

(f) NOTICE.—The prosecutor's office shall provide all of the following to the victim:

(1) Upon request of the victim, notice of the disposition and sentence of an adult, including sentence modifications.

(2) Upon request in a personal injury crime, reasonable attempts to notify the victim as soon as possible when the adult is released from incarceration at sentencing.

(3) If the prosecutor's office is prosecuting a personal injury crime, notice prior to the entry of a consent decree.

(4) Prior notice of delinquency adjudication hearings unless such hearings are scheduled by the juvenile probation office.

(5) Notification of hearings related to the transfer of a juvenile to and from criminal proceedings.

(6) Upon request in a personal injury crime, notice of the filing, hearing or disposition of appeals.

(7) Notice of the details of the final disposition of their case consistent with 42 Pa.C.S. § 6336(f) (relating to conduct of hearings) unless provided by the juvenile probation office.

(g) ASSISTANCE.—The prosecutor's office shall provide assistance to the victim in all of the following:

(1) Preparation of statements under section 201(5).

(2) Preparation of, submission of and follow-up on financial assistance claims filed with the bureau.

(h) RETURN OF PROPERTY.—The prosecutor's office shall return to the victim any property seized as evidence if the prosecutor's office determines that the evidence is no longer needed for prosecution.

§ 11.214. Responsibilities of department, local correctional facilities and board

(a) FORMS.—The department and the board shall develop standardized forms regarding victim notification. The form shall include the address where the form is to be sent. The department shall develop a standardized form which may be used by local correctional facilities. In the case of counties with victim-witness coordinators, the local correctional facility shall perform its responsibilities under this section in cooperation with the county's victim-witness coordinator.

(b) NOTICE.—If the department and board have received notice of a victim's desire to have input under section 201(7), the appropriate agency shall notify the victim sufficiently in advance of a pending release decision to extend an opportunity for prior comment. The local correctional facility's notice to the victim under section 201(9) shall occur immediately.

(c) COMMENT.—The victim's prior comment may be oral or written and shall be considered by the department or the board as to the advisability of release and any conditions of release which may be imposed.

(d) ESCAPE NOTIFICATION.—If the department or local correctional facility has received notice of a victim's desire to receive notification regarding escape of the offender as provided for in section 201(8), the superintendent of the State correctional institution or warden of a local correctional facility shall immediately notify the victim of the escape.

(e) MENTAL HEALTH.—If the department or local correctional facility has received notice of a victim's desire to receive notification as provided for in section 201(10), the superintendent of the State correctional institution or warden of a local correctional facility shall notify the victim of the commitment of the offender to a mental health facility and the location of the facility within 24 hours of the commitment.

(f) RECORDS.—Records maintained by the department, the local correctional facility and the board pertaining to victims shall be kept separate. Current address, telephone number and any other personal information of the victim and family members shall be deemed confidential.

(g) RELEASE OF OFFENDER.—The department, the local correctional facility or the board shall notify the victim of the final decision rendered, the date of any release and relevant conditions imposed prior to the release of the offender.

§ 11.215. Responsibilities of Department of Public Welfare and mental health institutions under basic bill of rights

(a) FORMS.—The Department of Public Welfare shall develop standardized forms, which shall include the address where the completed form is to be sent, for the receipt of notice from the victim concerning the victim's interest in discharge decisions and notification of an escape. Sufficient copies of the forms shall be provided to the office of the district attorney for distribution to victims upon court-ordered commitment of the offender to a mental health institution in the State system.

(b) DESIGNATED STAFF.—If the Department of Public Welfare has received notice of a victim's desire to receive notification as provided for in section 201(10) regarding release, placement or escape of the offender, the Department of Public Welfare shall designate the appropriate official to notify the victim of the discharge of the offender from the mental health institution and the facility to which the offender was discharged within 24 hours of the discharge. The Department of Public Welfare or the designated official shall immediately notify the victim of an escape of the offender from the mental health institution.

§ 11.216. Responsibilities of juvenile probation office

(a) NOTICE.—The juvenile probation office shall provide the following to victims:

(1) Prior notice of delinquency adjudication hearings unless such hearings have been scheduled by the prosecutor's office.

(2) Notification of disposition hearings.

(3) Notice of a juvenile's preadjudication escape from a detention center or shelter facility and of the juvenile's subsequent apprehension.

(4) Upon request, notice of whether the juvenile probation office has detained or released the juvenile following arrest and whether a delinquency petition has been filed.

(5) Notice of the details of the final disposition of the case consistent with 42 Pa.C.S. § 6336(f) (relating to conduct of hearings) unless provided by the prosecutor's office.

(b) ADDITIONAL NOTICE IN CASES INVOLVING A PERSONAL INJURY CRIME OR BURGLARY.—In cases involving a personal injury crime or burglary, the juvenile probation office shall provide notice and the opportunity to provide prior comment on the potential reduction or dropping of a charge or diversion of any case, including informal adjustment and consent decree, unless such notice and opportunity is provided by the prosecutor's office. Upon request, the victim shall also receive notification of a review of disposition hearing.

(c) DISPOSITIONS.—The juvenile probation office shall:

(1) Offer the victim the opportunity to provide a written victim impact statement to be considered in the disposition of any case and included as part of any predisposition report submitted to the court.

(2) Notify the victim of the right to provide an oral victim impact statement at the time of disposition in cases of juveniles who have been adjudicated delinquent.

(d) POSTDISPOSITION NOTICE.—Upon the request of the victim of a personal injury crime, the juvenile probation office shall:

(1) Provide prior notice to the victim when an adjudicated delinquent ordered into residential placement or official detention will be granted temporary leave or home pass or release.

(2) Notify the victim of a proposed release or transfer of an adjudicated delinquent from placement that is contrary to a previous court order or placement plan approved at a disposition review hearing and shall extend the victim the opportunity to provide a written objection prior to the release or transfer of the juvenile from placement.

(3) Notify the victim immediately of a juvenile's escape from official detention or failure to return from temporary leave or home pass and of the juvenile's subsequent apprehension.

(4) Notify the victim of the termination of the juvenile court jurisdiction.

(5) Provide the opportunity to submit written comment and of their right to provide oral testimony at a disposition review hearing.

§ 11.301. Office

(a) ESTABLISHMENT.—There is established within the board the Office of Victim Advocate to represent the interests of crime victims before the board or department. The office shall operate under the direction of the victim advocate as provided in this section.

(b) APPOINTMENT.—The victim advocate must be an individual who by reason of training and experience, is qualified to represent the interests of individual crime victims before the board. The victim advocate shall be appointed by the Governor, by and with the consent of a majority of all of the members of the Senate. The victim advocate shall hold office for a term of six years and until a successor shall have been duly appointed and qualified but in no event more than 90 days beyond the expiration of the appointed term. A vacancy occurring for any reason shall be filled in the manner provided by section 8 of Article IV of the Constitution of Pennsylvania for the remainder of the term. Whenever the victim advocate's term expires, that position shall be immediately deemed a vacancy, and the Governor shall nominate a person to fill that position within 90 days of the date of expiration even if the victim advocate continues in office. To be eligible to be appointed by the Governor as victim advocate, an individual must have at least six years of professional experience in victim advocacy, social work or related areas, including one year in a supervisory or administrative capacity, and a bachelor's degree. Any equivalent combination of experience and training shall be acceptable. Compensation shall be set by the Executive Board as defined by the act of April 9, 1929 (P.L. 177, No. 175), known as The Administrative Code of 1929.

(c) SERVICE AND EMPLOYEES.—The victim advocate shall operate from the central office of the board with such clerical, technical and professional staff as may be available within the budget of the board. The compensation of employees of the office shall be set by the Executive Board.

§ 11.302. Powers and duties of victim advocate

The victim advocate has the following powers and duties:

- (1) To represent the interests of individual crime victims before the board, department or hearing examiner.
- (2) To supervise the victim notification duties presently conducted by the board.
- (3) To assist in and coordinate the preparation of testimony by the crime victims as set forth in sections 501(c) and 502 or the submission of oral, written or videotaped comments by crime victims prior to a release decision.
- (4) To represent the interests of a crime victim under section 502.
- (5) To act as a liaison with the victim notification program director in the department to coordinate victim notification and services for the department and the board. The victim advocate is authorized to address the interests of all victims before the board, department or hearing examiner concerning any issues determined appropriate by the victim advocate.

§ 11.311. Office of Victims' Services

(a) Establishment. There is established within the commission the Office of Victims' Services. The Office of Victims' Services shall be responsible for administering Chapter 7. The Office of Victims' Services shall also be responsible for the disposition of all claims for compensation filed under Chapter 7.

(b) Director. A director of the Office of Victims' Services shall be appointed by the chairman of the commission. The director shall be paid compensation as the executive board may determine.

(c) Staff. The director of the Office of Victims' Services may employ personnel and contract for services as necessary and authorized to carry out the purposes of the Office of Victims' Services.

§ 11.312. Powers and duties of Office of Victims' Services

The Office of Victims' Services, subject to approval of the commission, has the following powers and duties:

- (1) To establish and maintain a principal office in or near Harrisburg and such other offices within this Commonwealth as it may deem necessary.
- (2) To appoint counsel, clerks, claims verifiers, hearing officers and other employees and agents as it may deem necessary, to fix their compensation within the limits provided by law and to prescribe their duties.

(3) To adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions and purposes of Chapter 7. These regulations shall provide for the approval of attorney fees for representation before the Office of Victims' Services, a hearing examiner or before the Commonwealth Court upon judicial review under section 705. Awards of the attorney fees shall be in addition to awards made to direct victims. Awards of attorney fees shall in no case exceed 15% of the award to the direct victim or victims. It shall be unlawful for an attorney to contract for or receive any sum larger than the amount allowed. Regulations under this paragraph shall include policies, procedures and standards of review regarding claims for compensation; approval or denial of claims, including contributory conduct by direct victims; verification of information and documents; prioritization of review; and all other matters related to the processing.

(4) To request and review from law enforcement agencies and from any other state or municipal department, agency or public authority assistance and data as will enable the Office of Victims' Services to carry out its powers and duties.

(5) To determine all claims for awards filed with the Office of Victims' Services under Chapter 7 and to reinvestigate or reopen cases as the Office of Victims' Services deems necessary.

(6) To direct medical examinations of direct victims.

(7) To appoint hearing officers authorized to administer oaths or affirmations, to examine any person under oath or affirmation and to issue subpoenas requiring attendance of witnesses, testimony of witnesses and production of evidence. Except where a claim is determined to be frivolous, claimants shall receive reimbursement at a rate to be determined by the Office of Victims' Services for attending hearings, regardless of the disposition of the claim.

(8) To take or cause to be taken affidavits or depositions in or outside of this Commonwealth.

(9) To render each year to the Governor and to the General Assembly a written report of its activities.

(10) To arrange with the heads of other Commonwealth agencies for the performance of any of its functions under this act with or without reimbursement and with the approval of the Governor to delegate and authorize the redelegation of any of its powers under this act.

(11) To establish a program to assure extensive and continuing publicity of information regarding the compensation provisions under Chapter 7. This information shall include the right to file a claim, the scope of coverage and procedures to be utilized incident thereto.

(12) To administer the funds under section 1101(b) for the payment of claims filed under Chapter 7 and for all reasonable and necessary administrative expenses.

(13) To establish compensation limits and reimbursement rates for the purpose of carrying out the provisions of Chapter 7. The Office of Victims' Services shall publish a schedule of these compensation limits and reimbursement rates in the Pennsylvania Bulletin provided that the Office of Victims' Services shall, within two years of such publication, promulgate a regulation setting forth the schedule of compensation limits and reimbursement.

§ 11.321. Committee

(a) ESTABLISHMENT.—There is established the Victims' Services Advisory Committee within the commission.

(b) MEMBERSHIP.—The committee shall consist of 15 members:

- (1) The Secretary of Aging or a designee.
- (2) The Secretary of Corrections or a designee.
- (3) The Secretary of Public Welfare or a designee.
- (4) The Commissioner of the Pennsylvania State Police.
- (5) The victim advocate.
- (6) A district attorney appointed by the Governor.
- (7) Nine individuals appointed by the Governor.

Members under this paragraph must represent direct victims, Statewide victims' coalitions, prosecution-based victim/witness programs and other victim service or victim advocacy organizations, the courts, members of local government and other victims' organizations or organizations involved in the coordination or delivery of services to direct victims. At least one of the Governor's appointees must be a representative of a victims' services agency working directly with children.

(c) TERMS.—A member under subsection (b)(1) through (5) shall serve ex officio. A member under subsection (b)(6) or (7) shall serve for a four-year term and may be appointed for no more than one additional consecutive term.

(d) RESTRICTIONS.—The committee and its members are subject to the same limitations and conditions imposed upon the commission as prescribed in section 2 of the act of November 22, 1978 (P.L. 1166, No. 274), referred to as the Pennsylvania Commission on Crime and Delinquency Law.

(e) QUORUM.—A majority of the members shall constitute a quorum. A vote of the majority of the members present shall be sufficient for all actions.

(f) CHAIR.—The Governor shall appoint a chairperson from among the members of the committee. The chairperson shall serve at the pleasure of the Governor. A vice chairperson shall be designated by the chairperson and preside at meetings in the absence of the chairperson.

(g) MEETING.—The committee shall meet at the call of the chair but no fewer than four times a year.

§ 11.322. Powers and duties of committee

The committee has the following powers and duties:

(1) To serve in an advisory capacity to the commission, including the Office of Victims' Services, through the committee's participation in the development of that part of the commission's plan relating to direct victims' services and compensation.

(2) To advise the commission on the development of direct services for minor children who are material witnesses to any of the following crimes and offenses under 18 Pa.C.S. (relating to crimes and offenses) committed or attempted against a member of the child's family:

Chapter 25 (relating to criminal homicide).

Section 2702 (relating to aggravated assault).

Section 3121 (relating to rape).

(3) To perform those functions related to the direct approval and disbursement of financial assistance in an advisory capacity only. The committee shall have the opportunity to review and comment on applications other than applications for claims for compensation pursuant to sections 702 and 706 within 30 days after receipt of the application from the commission.

(4) To advise the commission on the definition, development and correlation of programs and projects and the establishment of priorities for direct victims' services and compensation.

(5) To develop standards, methods and procedures for evaluating and monitoring direct victims' services.

(6) Upon request, to provide assistance and advice to the commission on any other matters relating to direct victims' services and compensation.

(7) To receive staff support from the commission and the Office of Victims' Services in order to adequately perform the duties provided for in this section.

§ 11.501. Parole notification to victim

(a) PERSONS TO BE NOTIFIED.—No later than 90 days prior to the parole date of an offender, the victim advocate shall notify the victim of the offense for which the offender was sentenced, the parent or legal guardian of a victim who is a minor or a member of the family if the victim is incapable of communicating or has died and shall provide the appropriate person with an opportunity to submit a parole statement expressing concerns or recommendations regarding the parole or parole supervision of the offender.

(b) ENROLLMENT.—A victim or member of the family is responsible for notifying the victim advocate of the victim's or family member's intent to submit a parole statement regarding the parole or parole supervision of the offender. The notice shall include a mailing address or change of address notification.

(c) PROCEDURE.—The victim advocate shall notify the person at the person's last known mailing address. The person shall submit the oral, written or videotaped parole statement to

the victim advocate within 30 days of the date of notice. The preparole statement shall be considered by the board during preparation of the parole plan.

§ 11.502. Petitions to deny parole upon expiration of minimum sentence

(a) PETITION.—Upon the request of a victim who has notified the board in writing of the victim's desire to have input and make comment prior to a parole release decision, the victim advocate shall either petition the board as to the special conditions of release which may be imposed or that the offender not be paroled based upon the statement that the victim submitted under section 501.

(b) APPEARANCE.—The victim or the victim's representative shall be permitted to appear in person before the board or hearing examiner or, in the alternative, the victim's testimony may be presented by conference call. The testimony of a victim before the board shall be confidential. Records maintained by the department and the board pertaining to victims shall be kept separate. Current address, telephone number and any other personal information of the victim and family members shall be deemed confidential.

(c) ACTION.—The board, upon petition and after an interview, may do any of the following:

(1) Order that special conditions of parole be placed upon the offender or the offender not be paroled based upon the continuing effect of the crime on the victim.

(2) Order that the offender not be paroled if the board finds that:

(i) the offender would pose a risk or danger to the victim or the family of the victim if the offender were released on parole; or (ii) the interests of the Commonwealth would otherwise be injured.

(d) NOTICE.—The board shall notify the victim of its decision prior to a release of the offender.

(e) DISTRICT ATTORNEY.—Notwithstanding any other statutory provision, the office of the district attorney of the sentencing county may notify a crime victim of a pending release decision and act on the victim's behalf or on its own initiative to submit comments and represent the interests of a crime victim before the board prior to a release decision.

§ 11.701. Persons eligible for compensation

(a) General rule. Except as otherwise provided in this act, the following persons shall be eligible for compensation:

(1) A direct victim.

(2) An intervenor.

(3) A surviving spouse, parent or child of a deceased direct victim or intervenor.

(4) Any other individual dependent for principal support upon a deceased direct victim or intervenor.

(5) Deleted.

(6) Any person who assumes the obligation or who pays for the crime scene cleanup, funeral or burial expenses incurred as a direct result of the crime.

(b) Exception. A person who is criminally responsible for the crime upon which a claim is based or an accomplice of the person shall not be eligible to receive compensation with respect to the claim. A member of the family of the individual who committed the crime shall not be eligible if the offender is living in the same household as the direct victim and will substantially benefit from the award. The Attorney General may at any time sue the offender or the direct victim, or both, to recover the award if the offender benefits from the award.

§ 11.702. Filing of claims for compensation

(a) General rule. Except as otherwise provided in this act, a claim for compensation may be filed by an individual eligible for compensation as provided in section 701 or as follows:

(1) If the individual is a minor, the claim may be filed by a parent or guardian. If the parent or guardian of a minor who is eligible for compensation is unavailable or fails to assume financial responsibility for the minor's care, a person who assumes financial responsibility for services eligible for compensation and who is not a provider of services or an insurance company may file a claim on behalf of the minor and may receive compensation for eligible services provided to the minor.

(2) If the individual is mentally incompetent, the claim may be filed by a guardian or legal representative. If the guardian or legal representative of a mentally incompetent individual who is eligible for compensation is unavailable or fails to assume financial responsibility for the individual's care, a person who assumes financial responsibility for services eligible for compensation and who is not a provider of services or an insurance company may file a claim on behalf of the individual and may receive compensation for eligible services provided to the individual.

(b) Time.

(1) Except as set forth in paragraph (2), a claim must be filed not later than two years after the discovery of the occurrence of the crime upon which the claim is based or not later than two years after the death of the direct victim or intervenor as a result of the crime or the discovery and identification of the body of a murder victim.

(2) Exceptions shall be as follows:

(i) Deleted.

(ii) If a direct victim is under 18 years of age at the time of the occurrence of the crime and the alleged offender is the direct victim's parent or a person responsible for the direct victim's welfare, an individual residing in the same home as the direct victim or a paramour of the direct victim's parent, all of the following shall apply:

(A) The limitation period under this subsection is tolled until the direct victim reaches 21 years of age.

(B) The limitation period shall run until the later of:

(I) the end of the limitation period for the offense as set forth in 42 Pa.C.S. Ch. 55 Subch. C (relating to criminal proceedings); or

(II) the end of the limitation period under paragraph (1).

(ii.1) If a direct victim is under 18 years of age at the time of the occurrence of the crime and the direct victim is seeking reimbursement for counseling services only, all of the following shall apply:

(A) The limitation period under this subsection is tolled until the direct victim reaches 21 years of age.

(B) The limitation period shall run until the later of:

(I) the end of the limitation period for the offense as set forth in 42 Pa.C.S. Ch. 55 Subch. C; or

(II) the end of the limitation period under paragraph (1).

(b.1) Returned claims. If a claim has been filed but subsequently returned to the claimant for correction or for additional verification or information, the date the claim was first received by the bureau shall be the permanent filing date for purposes of subsection (b). The correction or additional verification or information must be filed within a period of time established by the Office of Victims' Services.

(c) Manner. Claims must be filed with the bureau in person, by mail or by any electronic means authorized by the Office of Victims' Services.

§ 11.703. Minimum allowable claim

(a) General rule. Except as set forth in subsection (b), no award shall be made on a claim unless the claimant has incurred an aggregate minimum out-of-pocket loss, loss of earnings or loss of support of \$ 100.

(b) Exception. Subsection (a) shall not apply if the direct victim was 60 years of age or older at the time the crime occurred.

§ 11.704. Determination of claims

(a) Processing. The Office of Victims' Services shall establish functional procedures for the intake, verification and processing of claims.

(b) Review.

(1) The Office of Victims' Services shall review the claim and all supporting documents and investigate the validity of the claim. The investigation shall include an examination of police, court and official records and reports concerning the crime and an examination of medical and hospital reports relating to the injury upon which the claim is based. The Office of Victims' Services may not request or review counseling notes of mental health service providers. The Office of Victims' Services shall request an assessment from the mental health service provider as to the extent the service provided is needed as a direct result of the crime.

(2) Claims shall be investigated and determined, regardless of whether the alleged criminal has been apprehended, prosecuted or adjudicated for the crime in question.

(c) Determination. The Office of Victims' Services shall determine whether to grant an award, increase or decrease an award or deny the claim based on the supporting documents, the report of the investigation and staff recommendations. If the Office of Victims' Services is unable to determine if a claim is justified based upon the supporting documents, it may direct a hearing before a hearing examiner designated by the commission. At the hearing, any relevant evidence not legally privileged shall be admissible.

(d) Notice. The Office of Victims' Services shall promptly notify the claimant of its final decision.

(e) Records. The Office of Victims' Services shall maintain complete records and histories on all claims filed, supplemental awards paid to claimants, claims status and third-party entitlements and recoveries.

§ 11.705. Judicial review

Within 30 days after receipt of a copy of the report containing a final decision of the Office of Victims' Services, the claimant may appeal the final decision of the Office of Victims' Services in the manner provided for appeals from administrative agencies as provided in 2 Pa.C.S. Ch. 7 Subch. A (relating to judicial review of Commonwealth agency action).

§ 11.706. Emergency awards

(a) Authorization. Notwithstanding the provisions of sections 704 and 707, if it appears to the Office of Victims' Services that the claim is one with respect to which an award probably will be made and that undue hardship will result to the claimant if immediate payment is not made, the Office of Victims' Services may make an emergency award to the claimant pending a final decision in the case. The following shall apply:

(1) The total amount of the emergency award shall not exceed \$ 1,500 per claim or at a rate set by the Office of Victims' Services.

(2) The amount of the emergency award shall be deducted from any final award made to the claimant.

(3) The excess of the amount of the emergency award over the amount of the final award or the full amount of the emergency award if no final award is made shall be repaid by the claimant to the Office of Victims' Services.

(b) Reconsideration. The Office of Victims' Services may reconsider an emergency award at any time prior to the final decision in the case and increase previous orders for emergency compensation up to the overall limit of \$ 1,500 per claim or at a rate set by the Office of Victims' Services.

(c) Compilation. The Office of Victims' Services shall compute the total number and amount of emergency awards given in each fiscal year for inclusion in the annual report.

§ 11.707. Awards

(a) REQUIREMENTS.—No award shall be made unless it is determined by a preponderance of the evidence that:

(1) A crime was committed.

(2) The person injured or killed was a direct victim or intervenor.

(3) The crime was promptly reported to the proper authorities. In no case may an award be made if the record shows that the report was made more than 72 hours after the occurrence of the crime unless:

(i) the victim is under 18 years of age at the time of the occurrence of the crime and the alleged offender is the victim's parent or a person responsible for the victim's welfare, an individual residing in the same home as the victim or a paramour of the victim's parent; or

(ii) the Office of Victims' Services finds the delay to have been justified, consistent with bureau regulations.

(4) The direct victim, intervenor or claimant has fully cooperated with all law enforcement agencies and the Office of Victims' Services unless the Office of Victims' Services finds the noncompliance to have been justified consistent with Office of Victims' Services regulations.

(A.1) PROTECTION FROM ABUSE.—A claimant who satisfies the eligibility requirements of subsection (a)(1), (2) and (4) may satisfy the eligibility requirement under subsection (a)(3) for reporting a crime to the proper authorities by commencing an action brought in accordance with 23 Pa.C.S. Ch. 61 (relating to protection from abuse) and as provided for in the Pennsylvania Rules of Civil Procedure. In no case may an award be made if the record shows that the petition was:

(1) Withdrawn, unless the Office of Victim Services finds the withdrawal to have been justified, consistent with regulations of the Office of Victim Services.

(2) Filed more than 72 hours after the occurrence of the criminal conduct leading to the commencement of the action, unless:

(i) the victim is under 18 years of age at the time of the occurrence of the criminal conduct and the alleged offender is the victim's parent or a person responsible for the victim's welfare, an individual residing in the same home as the victim or a paramour of the victim's parent; or

(ii) the Office of Victim Services finds the delay to have been justified, consistent with regulations of the Office of Victim Services.

(b) AMOUNT.—

(1) Any award made under this chapter shall be in an amount not exceeding out-of-pocket loss, together with loss of past, present or future earnings or support resulting from such injury. In no case shall the total amount of an award exceed \$ 35,000 except for payment of the following:

(i) counseling, the maximum amount of which shall be in accordance with paragraph (4.1);

(ii) forensic rape examination and medications directly related to the sexual assault or rape, the amount of which shall not exceed \$1,000; or

(iii) reasonable and necessary costs of cleaning the crime scene of a private residence, the amount of which shall not exceed \$ 500.

(2) An award made for loss of earnings or support shall, unless reduced pursuant to other provisions of this chapter, be in an amount equal to the actual loss sustained. The following shall apply:

(i) No such award shall exceed the average weekly wage for all persons covered by the act of December 5, 1936 (2nd Sp.Sess., 1937 P.L. 2897, No. 1), known as the Unemployment Compensation Law, in this Commonwealth as determined annually by the Department of Labor and Industry for each week of lost earnings or support.

(ii) Except as set forth in subparagraph (iii), the aggregate award for the loss shall not exceed \$ 15,000.

(iii) In the case of death of a direct victim or intervenor, the aggregate award shall not exceed \$ 20,000.

(3) If an order of restitution has been entered on behalf of the direct victim, those amounts actually collected shall be applied first to property losses incident to the crime and secondly to personal injury losses as set forth in subsection (f).

(4) An award for counseling performed by or under the supervision of a psychiatrist, psychologist, licensed professional counselor or licensed social worker and subject to the provisions of paragraph (4.1) may be made to:

- (i) a direct victim;
- (ii) an individual responsible for the direct victim's welfare;
- (iii) an individual who is physically present at the crime scene and witnesses a violent crime;
- (iv) in the case of a homicide, an individual who discovers the body;
- (v) anyone related to the direct victim within the second degree of consanguinity or affinity;
- (vi) anyone maintaining a common-law relationship with the direct victim;
- (vii) anyone residing in the same household with the direct victim; or
- (viii) anyone engaged to be married to the direct victim.

(4.1) In the case of an award made pursuant to paragraph (4), the following shall apply:

(i) The amount of an award under paragraph (4)(i) shall not exceed \$ 5,000 where the direct victim is an adult and shall not exceed \$ 10,000 where the direct victim is a minor.

(ii) The amount of an award under paragraph (4)(ii), (v), (vi), (vii) or (viii) shall not exceed \$ 2,500 except in the case of a homicide whereby the amount of this award shall not exceed \$ 5,000.

(iii) The amount of an award under paragraph (4)(iii) or (iv) shall not exceed \$ 1,500.

(5) An award for the reasonable and necessary costs for the replacement of prosthetic devices, wheelchairs, canes, walkers, hearing aids, eyeglasses or other corrective lenses, dental devices or prescription medications damaged or stolen as a result of the crime shall be at a rate set by the Office of Victims' Services. Expenses for prosthetic devices, wheelchairs, canes, walkers, hearing aids, eyeglasses or other corrective lenses, dental devices or prescription medications needed as a result of the crime shall be counted against the \$ 35,000 award limitation.

(c) PUBLIC ASSISTANCE.—PROVISIONS OF AWARDS MADE PURSUANT TO A STATUTE COMPENSATING OR BENEFITING A DIRECT VICTIM OR CLAIMANT SHALL IN NO WAY AFFECT THE CLAIMANT'S OR DIRECT VICTIM'S ELIGIBILITY UNDER PUBLIC ASSISTANCE OR ANY OTHER FEDERAL OR COMMONWEALTH SOCIAL BENEFIT OR ASSISTANCE PROGRAM.

(d) APPORTIONMENT.—IF THERE ARE TWO OR MORE INDIVIDUALS ENTITLED TO AN AWARD AS A RESULT OF THE DEATH OF A DIRECT VICTIM OR INTERVENOR, THE AWARD SHALL BE APPORTIONED AMONG THE CLAIMANTS.

(e) REDUCTION.—EXCEPT AS OTHERWISE PROVIDED IN THIS ACT, AN AWARD MADE UNDER THIS CHAPTER SHALL BE REDUCED BY THE AMOUNT OF ANY PAYMENTS RECEIVED OR TO BE RECEIVED BY THE CLAIMANT AS A RESULT OF THE INJURY:

- (1) from or on behalf of the individual who committed the crime;
 - (2) under any insurance or health and welfare programs, including those mandated by law;
 - (3) under any contract of insurance wherein the claimant is the beneficiary;
 - (4) from public funds;
 - (5) as an emergency award under section 706;
 - (6) under any pension program, including those providing for disability or survivor's benefits;
- or
- (7) under a settlement or award made by or on behalf of a party alleged to be responsible in whole or in part for the injury, without regard to the party's criminal culpability.

(f) DIRECT VICTIM RESPONSIBILITY.—

(1) Except as set forth in paragraphs (2) and (3), in determining the amount of an award, the Office of Victims' Services shall determine whether the direct victim or intervenor, because of conduct, contributed to the infliction of the injury. The Office of Victims' Services shall reduce the amount or deny the claim altogether in accordance with the determination.

(2) If the crime involved is rape or sexual assault, the conduct of the direct victim shall not be considered. If the crime involved is related to domestic violence, the conduct of the direct victim shall not be considered unless the direct victim was the primary aggressor.

(3) If the crime involved is a homicide, the conduct of the direct victim shall not be considered for claims by eligible claimants for counseling.

(g) INTERVENOR RESPONSIBILITY.—IN DETERMINING THE AMOUNT OF AN AWARD TO AN INTERVENOR, THE OFFICE OF VICTIMS' SERVICES MAY CONSIDER WHETHER THE INTERVENOR, BECAUSE OF CONDUCT, CONTRIBUTED TO THE INFLICTION OF THE INJURY. THE OFFICE OF VICTIMS' SERVICES SHALL REDUCE THE AMOUNT OR DENY THE CLAIM ALTOGETHER IN ACCORDANCE WITH THE DETERMINATION.

(h) FORENSIC RAPE INVESTIGATION.—

(1) A hospital or other licensed health care provider may submit a claim for reimbursement for the cost of a forensic rape examination if the cost is not covered by insurance or if the victim requests that the insurance carrier not be billed. Upon filing of a claim, the Office of Victims' Services shall promptly notify the prosecutor of the county where the crime is alleged to have occurred. The reimbursement, where applicable, shall be at a rate set by the Office of Victims' Services.

(2) The cost of a forensic rape examination and the cost of medications prescribed to the direct victim shall not be charged to the victim.

(3) A sexual assault or rape victim need not be an applicant for any other compensation under this chapter.

§ 11.708. Manner of payment

(a) Lump sum. The award shall be paid in a lump sum, except that, in the case of death or protracted disability, the award may provide for periodic payments. No award made under this chapter shall be subject to execution or attachment other than for expenses resulting from the injury which is the basis for the claim. All awards shall be paid by or under the authority of the State Treasurer. An award shall not be considered as compensation taxable as income under Article III of the act of March 4, 1971 (P.L. 6, No. 2), known as the Tax Reform Code of 1971. The Office of Victims' Services shall reconsider at least annually every award being paid in installments. The Office of Victims' Services may reconsider a claim at any time and modify or rescind previous orders for compensation based upon a change in financial circumstances of a direct victim or one or more surviving dependents.

(b) Medical expenses. Medical expenses, except as otherwise provided, shall be paid to a hospital or other licensed health care provider on behalf of the victim at a rate set by the Office of Victims' Services. If the Office of Victims' Services accepts a claim, the hospital or other licensed health care provider shall accept such payment as payment in full and may not attempt to collect from the victim any amount exceeding the amount of reimbursement made by the Office of Victims' Services.

§ 11.709. Confidentiality of records

(a) General rule. All reports, records or other information obtained or produced by the bureau during the processing or investigation of a claim shall be confidential and privileged, shall not be subject to subpoena or discovery, shall be used for no purpose other than the processing of a claim and, except as otherwise provided by law or as provided in this section, shall not be introduced into evidence in any judicial or administrative proceeding.

(b) Disclosure restricted. Except as otherwise provided by law, no person who has had access to a report, record or any other information under this subsection shall disclose the content of such a report, record or other information or testify in a judicial or administrative proceeding without the written consent of the direct victim or intervenor or, if the direct victim or intervenor is deceased, the claimant.

(c) Construction. This section shall not be construed to preclude or limit introduction of the contents of a report, record or other information in an appeal hearing before the Office of Victims' Services or in an investigation, prosecution or judicial proceeding enforcing section 1303 or in communicating with the prosecutor's office regarding restitution.

§ 11.710. Responsibilities of employers, service providers and insurance companies

(a) Response. Employers, insurance companies or providers of services to direct victims, intervenors or claimants, including, but not limited to, doctors, hospitals and counselors, shall respond in writing to the Office of Victims' Services' request for confirmation or other information under this chapter within 30 days of receipt of the Office of Victims' Services' request.

(b) Penalty. Any person who fails to respond to a request under subsection (a) shall be subject to a penalty of not more than \$ 50 per day, up to and including the date of compliance.

(c) Enforcement. The office of the district attorney of the county in which the crime occurred and the Office of Victims' Services shall be charged with enforcement of this section and the collection of penalties, which may be given to local victim service agencies or used for the enforcement and collection of penalties under this section.

§ 11.901. Eligibility of victims

A victim has the rights and is eligible for the services under sections 201 and 902 only if the victim reported the crime to law enforcement authorities without unreasonable delay after its occurrence or discovery, unless the victim had a reasonable excuse not to do so.

§ 11.902. Establishment of basic services for victims of crime

The commission shall provide technical assistance to and make grants to district attorneys, other criminal justice agencies or victim service agencies which provide crime victims with the following services:

(1) Notification services, including all of the following:

(i) Information concerning financial assistance and other social services available as a result of being a victim of crime.

(ii) Notification that a court proceeding to which they have been subpoenaed will not go on as scheduled, in order to save the victim an unnecessary trip to court.

(iii) Notification of the final disposition of the case.

(2) Protection services, including all of the following:

- (i) Protection from harm and threats of harm arising out of cooperation with law enforcement and prosecution efforts.
- (ii) A secure waiting area during court proceedings which does not require them to be in close proximity to defendants and families and friends of defendants.
- (3) Procedures for the expedited return by law enforcement officials of personal property of victims which is held for prosecutorial purposes.
- (4) Services related to the rights of victims under Chapter 2.
- (5) Other services as defined by the commission.

§ 11.903. Grant program for services

- (a) **AUTHORITY.**—The commission has the authority to make grants to district attorneys and other criminal justice agencies for the provision of the services under section 902.
- (b) **REGULATIONS.**—The commission shall promulgate regulations necessary to ensure the cost-effective delivery of victim services or victim and witness services consistent with section 902.
- (c) **PARTICIPATION.**—In determining grant awards, the commission shall promote broad-based participation by a maximum number of criminal justice agencies Statewide.
- (d) **DATA.**—An agency which makes application for awards under this section shall provide data in support of the request as the commission requires. An agency which receives an award shall provide the commission with reports as the commission determines necessary to assess the agency's progress in the development of victim services.
- (e) **REPORT.**—The commission shall submit an annual report to the General Assembly on the progress of services provided for in section 902. The report shall include:
 - (1) The number of participating agencies and population served.
 - (2) The extent of services provided.
 - (3) Any impediments to the progress of the program.
 - (4) Recommendations for reform.
- (f) **ALLOCATION.**—In the allocation of funds for services under section 902, the commission shall consider the revenue collected by potential grant recipients under the penalty assessments authorized in section 1203 of the act of June 13, 1967 (P.L. 31, No. 21), known as the Public Welfare Code, pertaining to domestic violence and rape crisis services and the extent to which crime victims' compensation claims assistance is made available.

§ 11.1101. Costs

- (a) **Imposition.**
 - (1) A person who pleads guilty or nolo contendere or who is convicted of a crime shall, in addition to costs imposed under 42 Pa.C.S. § 3571(c) (relating to Commonwealth portion of

finer, etc.), pay costs of at least \$ 60 and may be sentenced to pay additional costs in an amount up to the statutory maximum monetary penalty for the offense committed.

(2) A person placed in a diversionary program shall pay costs of at least \$ 60 in addition to costs imposed pursuant to 42 Pa.C.S. § 3571(c).

(3) A juvenile shall pay costs of at least \$ 25 if any of the following apply to the case:

(i) There is a consent decree.

(ii) There is an adjudication of delinquency.

(b) Disposition.

(1) There is established a special nonlapsing fund, known as the Crime Victim's Compensation Fund. This fund shall be used by the Office of Victims' Services for payment to claimants and technical assistance. Thirty-five dollars of the costs imposed under subsection (a)(1) and (2) plus 30% of the costs imposed under subsection (a)(1) which exceed \$ 60 shall be paid into this fund. All costs imposed under subsection (a)(3) shall be paid into this fund.

(2) There is established a special nonlapsing fund, known as the Victim Witness Services Fund. This fund shall be used by the commission for victim-witness services and technical assistance in nonvictim compensation-related areas in accordance with this section. Twenty-five dollars of the costs imposed under subsection (a)(1) and (2) plus 70% of the costs imposed under subsection (a)(1) and (2) which exceed \$ 60 shall be paid into this fund.

(c) Payment. This cost shall be imposed notwithstanding any statutory provision to the contrary.

(d) Mandamus. The district attorney, the Office of Victims' Services, the commission or any victim shall have standing to seek a mandamus order requiring the county to collect the costs imposed by this section.

(e) Court order. No court order shall be necessary in order for the defendant to incur liability for costs under this section. Costs under this section must be paid in order for the defendant to be eligible for probation, parole or accelerated rehabilitative disposition.

§ 11.1102. Costs for offender supervision programs

(a) COUNTY FUND.—The county treasurer of each county shall establish and administer a county offender supervision fund consisting of the fees collected under this section. The county treasurer shall disperse money from this fund only at the discretion of the president judge of the court of common pleas. The money in this fund shall be used to pay the salaries and employee benefits of all probation and parole personnel employed by the county probation and parole department and the operational expenses of that department. Money from this fund shall be used to supplement Federal, State or county appropriations for the county adult probation and parole department. The president judge shall by August 31 provide the board with an annual statement which fully reflects all collections deposited into and expenditures from the offender supervision fund for the preceding fiscal year. The board shall promulgate regulations to provide for the permanent administration of this program.

(b) STATE FUND.—There is established a State Offender Supervision Fund to be administered by the board and comprised of the supervision fees collected by the board under this section. The money in this fund shall be used to supplement the Federal or State funds appropriated for the improvement of adult probation services.

(c) COURT.—The court shall impose as a condition of supervision a monthly supervision fee of at least \$ 25 on any offender placed on probation, parole, accelerated rehabilitative disposition, probation without verdict or intermediate punishment unless the court finds that the fee should be reduced, waived or deferred based on the offender's present inability to pay. Of the fee collected, 50% shall be deposited into the County Offender Supervision Fund established in each county pursuant to this section, and the remaining 50% shall be deposited into the State Offender Supervision Fund established pursuant to this section.

(d) BOARD.—The board shall impose as a condition of supervision a monthly supervision fee of at least \$ 25 on any offender under the board's supervision unless the board finds that such fee should be reduced, waived or deferred based on the offender's present inability to pay. All fees collected shall be deposited into the State Offender Supervision Fund established under subsection (b).

(e) CONTINUATION.—

(1) For offenders under supervision of a county probation department or the board as of August 14, 1991, the fee shall automatically become a part of the supervision conditions as if the court or board had imposed it unless the court or board makes a finding that the offender is presently unable to pay.

(2) The court or board may make a finding that the offender is unable to pay based on any of the following factors:

(i) The offender has diligently attempted but has been unable to obtain employment that provides the offender sufficient income to make such payments.

(ii) The offender is a student in a school, a college, a university or a course of vocational or technical training designed to fit the student for gainful employment.

(iii) The offender has an employment handicap as determined by an examination acceptable to or ordered by the court or board.

(iv) The offender's age prevents employment.

(v) The offender is responsible for the support of dependents, and the payment of the assessment constitutes an undue hardship on the offender.

(vi) Other extenuating circumstances as determined by the court or board.

§ 11.1301. Subrogation

(a) General rule. Payment of an award made under Chapter 7 shall subrogate the Commonwealth, to the extent of the payment, to any right of action against any person accruing to the claimant, the direct victim or the intervenor to recover losses resulting from the crime with respect to which the award is made. In such a case, the Commonwealth shall be entitled to bring an action against the person causing or otherwise liable for the personal injuries or death for which the payment was made. Money recovered under this section shall be deposited in the Crime Victim's Compensation Fund established in section 1101(b)(1).

(b) Excess. If an amount greater than that paid under Chapter 7 is recovered and collected in such an action, the Commonwealth shall pay the balance to the claimant. The Attorney General shall enforce any subrogation. A claimant who fails to notify the Office of Victims' Services of the receipt of funds from any other claim or award arising out of the crime shall forfeit and pay to the Commonwealth an amount equal to all awards paid by the bureau to the claimant or on the claimant's behalf.

§ 11.1302. Restitution

To the extent that restitution is ordered either prior to or subsequent to the making of an award by the Office of Victims' Services, the restitution shall be paid to the Commonwealth to the extent of the award by the Office of Victims' Services.

§ 11.1303. Penalty

An individual who asserts a false claim under Chapter 7 commits a misdemeanor of the third degree and shall, upon conviction, forfeit any benefit and reimburse and repay the Commonwealth for payments received or paid on the individual's behalf under Chapter 7.

§ 11.5101. Effect on legal actions

Nothing in Chapters 2, 3, 5 and 9 creates a cause of action or defense in favor of any person arising out of the failure to comply with any of these chapters.

§ 11.5102. Continuation of existing law

This act is a codification of the statutory provisions repealed in section 5103 and, except where clearly different from current law, shall be deemed to be a continuation of prior law. Funds, programs, regulations and Commonwealth agencies governed by the repealed provisions shall be deemed continued by this act.

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CHAPTER 3: BAIL AND PRELIMINARY HEARINGS

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Summary

In criminal cases involving domestic violence, it is critical that magisterial district judges incorporate appropriate safety considerations at every level, including bail, to prevent future violence and reduce the likelihood of further breaches of the peace. The Pennsylvania Constitution offers every defendant a right to bail except those charged with crimes punishable by death.¹ The Constitution also prohibits preventative detentions for non-capital crimes.² Historically, in non-capital cases, bail was used to ensure a defendant's presence at subsequent criminal proceedings.³ However, in 1998 Article I, Section 14 of Pennsylvania's Constitution was amended to PERMIT THE DENIAL OF BAIL IN SITUATIONS WHERE NO CONDITIONS OTHER THAN IMPRISONMENT WILL ASSURE THE SAFETY OF ANY PERSON AND THE COMMUNITY.⁴ Arguably, this provision could be used to deny bail to a domestic violence defendant who has exhibited the capacity for lethal behavior. At a minimum, however, the effect of this amendment is to permit the consideration of victim safety and public safety when setting bail.

The Pennsylvania Rules of Criminal Procedure grant courts the authority to set ANY CONDITIONS NECESSARY to implement the requirements that defendants refrain from intimidating victims or engage in additional criminal behavior, including bail conditions that are intended to guarantee the safety of victims.⁵

Pennsylvania's Crimes Code and Rules of Criminal Procedure represent an explicit direction that courts consider the safety of victims of domestic violence in setting bail and order specific conditions of bail that are protective in nature. Under the law, such conditions include not entering the victim's residence or place of employment.⁶

In Pennsylvania, a person accused of a crime has a statutory right to a preliminary hearing presided over by magisterial district judges.⁷ Evidence from the preliminary hearing may later be used at trial. A domestic violence victim's testimony at the preliminary hearing, although not a requirement,⁸ can be crucial.

Fear of the abuser's retaliation or intimidation by the abuser often causes domestic violence victims to be reluctant to testify at trial. Thus, their preliminary hearing testimony may be their only testimony. By setting bail conditions aimed at protecting victim safety, a magisterial

¹ *Commw. v. Truesdsale*, 296 A.2d 829 (Pa. 1972).

² *Id.*

³ *Id.* at 834-835.

⁴ PA. CONST. art. I, § 14.

⁵ PA. R.CRIM.P. 526(B), 527(A)(2)-(3).

⁶ 18 PA.C.S. § 2711(c)(2).

⁷ *Id.*

⁸ PA. R.CRIM.P. 524(E).

district judge may significantly improve the likelihood that a victim will continue to participate in the prosecution.

Bail Considerations in Domestic Violence Cases

Pennsylvania Constitution Provides for Denial of Bail to Protect Safety

The Pennsylvania Constitution provides, in pertinent part, the following:

All prisoners shall be bailable by sufficient sureties ... unless no condition or combination of conditions other than imprisonment will reasonably assure the safety of any person and the community when the proof is evident or presumption great..."⁹

Courts can deny bail if the bail authority determines that no condition or combination of conditions other than imprisonment can reasonably assure the safety of the person or the community. This constitutional provision supersedes the Rules of Criminal Procedure and provides any court with the authority to deny bail if it would endanger the safety of the person and the public.¹⁰ If bail is denied, it is good practice for the court to put in writing the reasons for the denial.

Section 5701 of the Judicial Code was also amended in 2009 and now states:

All prisoners shall be bailable by sufficient sureties, unless:

- (1) for capital offenses or for offenses for which the maximum sentence is life imprisonment; or
- (2) no condition or combination of conditions other than imprisonment will reasonably assure the safety of any person and the community when the proof is evident or presumption great.¹¹

Pennsylvania Crimes Code Provides for Bail Conditions to Safeguard Victims

Pennsylvania's Crimes Code contains special provisions for probable cause arrests and bail in domestic violence cases.

- Police may make an arrest without a warrant when the officer has probable cause to believe that the defendant committed certain enumerated crimes against a family member or intimate partner.¹²
- The bail provisions incorporate specific conditions to protect domestic violence victims.

(c) Bail –

- (1) A defendant arrested pursuant to this section shall be afforded a preliminary arraignment by the proper issuing authority without unnecessary delay. In no

⁹ PA. CONST. art. I, § 14

¹⁰ Commw. v. Dixon, 907 A.2d 468, 477 (2006).

¹¹ 42 PA.C.S. § 5701.

¹² 18 PA.C.S. § 2711(a).

case shall the arresting officer release the defendant from custody rather than taking the defendant before the issuing authority.

- (2) IN DETERMINING WHETHER TO ADMIT THE DEFENDANT TO BAIL, THE ISSUING AUTHORITY SHALL CONSIDER WHETHER THE DEFENDANT POSES A THREAT OF DANGER TO THE VICTIM. If the issuing authority makes such a determination, it shall require as a condition of bail that the defendant shall refrain from entering the residence or household of the victim and the victim's place of employment and shall refrain from committing any further criminal conduct against the victim and shall so notify the defendant thereof at the time the defendant is admitted to bail. Such condition shall expire at the time of the preliminary hearing or upon the entry or the denial of the protection of abuse order by the court, whichever occurs first. A violation of this condition may be punishable by 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 shall be provided a hearing on this matter.¹³

Pennsylvania Rules of Criminal Procedure Allow Additional Compliance Conditions

In every case where bail release is ordered, defendants are prohibited from intimidating or retaliating against victims or witnesses and from engaging in any criminal activity.¹⁴

In addition, **THE COURT HAS THE AUTHORITY TO IMPOSE ADDITIONAL CONDITIONS TO ENSURE THE DEFENDANT'S COMPLIANCE,**¹⁵ INCLUDING RESTRICTING DEFENDANT'S TRAVEL AND/OR IMPOSING A CONDITION THAT THE DEFENDANT MUST STAY AWAY FROM CERTAIN INDIVIDUALS.¹⁶ In some counties, the criminal information sheet in cases involving domestic violence is specially marked with a large red "D.V." stamp so that the trial court or magisterial district judge can consider making specific victim safety conditions a part of bail and/or probation orders.

Criminal Protective Orders

Any court with jurisdiction over any criminal matter may, after a hearing, enter criminal protective orders directing the defendant, or any other person, to refrain from stalking or harassing the victim, maintain a set distance from the victim and have no contact or communication with the victim.¹⁷ The evidentiary standard for entry of a criminal protective order is rather low, and can be based on substantial evidence that may include hearsay or the prosecutor's declaration that a witness or victim has been or is likely to be intimidated.¹⁸ If the order is violated, the court may revoke the defendant's pretrial release in any form, whether

¹³ 18 PA.C.S. § 2711.

¹⁴ PA. R.CRIM.P. 526(A)(4), (5).

¹⁵ PA. R.CRIM.P. 526(B).

¹⁶ PA. R.CRIM.P. 527(A)(2), (3), official cmt. (2001).

¹⁷ 18 PA.C.S. § 4954.

¹⁸ *Id.*

the defendant committed the criminal protective order violation, or caused or encouraged it to be committed.¹⁹

Establishment of Bail Before Verdict

Bail before the verdict shall be set in all cases as permitted by law.²⁰ Whenever bail is refused, the bail authority shall state in writing or on the record the reason for that determination.²¹ At the preliminary arraignment, a magisterial district judge must inform the defendant of the type of release on bail as provided by the Rules 523 to 536 of the Rules of Criminal Procedure as well as the conditions of their bail.²² If the defendant is detained, they shall be given the immediate and reasonable opportunity to post bail.²³ If the defendant cannot post bail, they will be committed to jail as provided by law.²⁴

Arresting Officer Can Inform Court at Preliminary Arraignment

When an arrest is made for probable cause or after obtaining a warrant, the defendant shall be taken before a magisterial district judge for preliminary arraignment without unnecessary delay. Generally, an individual is entitled to pretrial release, subject to a court's assessment of whether the defendant poses a risk of flight or a danger to self or others. UNDER NO CIRCUMSTANCES SHOULD THE ARRESTING OFFICER RELEASE THE DEFENDANT BEFORE THE PRELIMINARY ARRAIGNMENT.

In some cases, the issuing authority may not possess much information regarding the defendant. An officer's experience, history and interaction with the defendant will provide the issuing authority with insight in its decision to provide appropriate bail and bail conditions.

An officer can provide the following information or recommendations to the issuing authority at the preliminary arraignment:

- Type of bail – high, moderate, low; release on own recognizance (ROR); or unsecured
- Defendant to have no contact with victim in any manner
- Only way to protect victim is to deny bail (Pa. Constitution Article 1, §14)
- Defendant has failed to report for court on previous occasion(s)
- Defendant is a threat to flee because...
- Defendant is a confidential informant
- County probation officer or state parole agent requests commitment pending detainer
- Defendant exhibits mental health/mental illness problems
- Other arrests are pending or out-of-county warrants forthcoming
- Stern warning will or will not work
- Defendant threatened or injured police or victim
- Defendant has drug or alcohol issues

¹⁹ 18 PA.C.S. § 4955.

²⁰ PA. R. CRIM.P. 520(A).

²¹ *Id.*

²² PA. R. CRIM.P. 540(F)(3).

²³ PA. R. CRIM.P. 540(H).

²⁴ *Id.*

- Defendant poses a significant risk to himself or others (state reasons why)
- Defendant is cooperative and will not present problems
- Defendant will appear for court when required
- Defendant has another place to stay (state the location)

Types of Bail

Magisterial district judges must determine the type or combination of types of bail reasonably necessary to ensure that the defendant will appear at all subsequent proceedings and comply with the conditions of the bail bond.²⁵ Bail is conditioned upon the defendant's written agreement to appear and to comply with the conditions of the bail bond.²⁶

The types of bail are:

- (1) Release on Recognizance (ROR): Release conditioned only upon the defendant's written agreement to appear when required and to comply with the conditions of the bail bond in Rule 526(A).²⁷
- (2) Release on Nonmonetary Conditions: Release conditioned upon the defendant's agreement to comply with any nonmonetary conditions, as set forth in Rule 527, which the bail authority determines are reasonably necessary to ensure the defendant's appearance and compliance with the conditions of the bail bond.
- (3) Release on Unsecured Bail Bond: Release conditioned upon the defendant's written agreement to be liable for a fixed sum of money if he or she fails to appear as required or fails to comply with the conditions of the bail bond. No money or other form of security is deposited.²⁸
- (4) Release on Nominal Bail: Release conditioned upon the defendant's depositing a nominal amount of cash which the bail authority determines is sufficient security for the defendant's release, such as one dollar, and the agreement of a designated person, organization, or bail agency to act as surety for the defendant.²⁹
- (5) Release on a Monetary Condition: Release conditioned upon the defendant's compliance with a monetary condition imposed pursuant to Rule 528. The amount of the monetary condition shall not be greater than is necessary to reasonably ensure the defendant's appearance and compliance with the conditions of the bail bond.³⁰

²⁵ PA. R.CRIM.P. 524(A).

²⁶ *Id.*

²⁷ PA. R.CRIM.P. 526(A).

²⁸ PA. R.CRIM.P. 524(C)(3).

²⁹ PA. R.CRIM.P. 524(C)(4).

³⁰ PA. R.CRIM.P. 524(C).

Nonmonetary Bond – Conditions May Be Imposed

When courts release defendants on nonmonetary conditions, the court may impose the following conditions:

- Reporting requirements
- Restrictions on the defendant's travel
- Any other appropriate conditions designed to ensure the defendant's appearance and compliance with the conditions of the bail bond³¹

A court may also release a defendant on unsecured bond. Releasing a defendant on nominal bail is also an option. In this instance, the defendant is required to deposit a nominal amount of cash, often one dollar, and must designate another person, organization or bail agency to act as a surety.³²

Finally, courts may release a defendant on a monetary condition. In considering a monetary bail condition, courts must consider both of the following:

- The release criteria set forth in Rule 523
- The financial ability of the defendant³³

The amount of the monetary condition must be reasonable in light of the circumstances.³⁴ After determining the amount of the monetary condition, the bail authority may permit the defendant to make a deposit of a sum of money not to exceed 10 percent of the full amount of the monetary condition if it is determined that such a deposit is sufficient to ensure the defendant's appearances and compliance.³⁵ The forms of security include cash, bearer bonds of the U.S. government or the commonwealth of Pennsylvania, realty located within the United States, and surety bonds.³⁶

Bail Consideration Factors

Courts should consider all available information relevant to a defendant's appearance or nonappearance at subsequent proceedings or compliance or noncompliance with conditions of the bail bond, including information about:

- The nature of the offense charged and any mitigating or aggravating factors that may bear upon the likelihood of the conviction and possible penalty
- The defendant's employment status and history, and financial condition
- The nature of the defendant's family relationships
- The length and nature of the defendant's residence in the community, and any past residences
- The defendant's age, character, reputation, mental condition, and whether addicted to alcohol or drugs

³¹ PA. R.CRIM.P. 527.

³² PA. R.CRIM.P. 524(C)(4).

³³ PA. R.CRIM.P. 528(A).

³⁴ PA. R.CRIM.P. 528(B).

³⁵ PA. R.CRIM.P. 528(C).

³⁶ PA. R.CRIM.P. 528(D).

- If the defendant has previously been released on bail, whether he or she appeared as required and complied with the conditions of the bail bond
- Whether the defendant has any record of flight to avoid arrest or prosecution, or of escape or attempted escape
- The defendant's prior criminal record
- Any use of false identification
- Any other factors relevant to whether the defendant will appear as required and comply with the conditions of the bail bond³⁷

The decision by a defendant not to admit criminal culpability or not to assist in an investigation shall not be a reason to impose additional or more restrictive bail conditions.³⁸

Bail Conditions Addressing Protection of Victims and Communities

Must Consider Danger to the Victim

In determining whether an arrested defendant should be allowed bail, the issuing authority must consider whether the defendant poses a threat of danger to the victim.³⁹ The magisterial district judge MUST IMPOSE THE FOLLOWING BAIL CONDITIONS IF THE MAGISTERIAL DISTRICT JUDGE DETERMINES THAT THE DEFENDANT POSES A THREAT OF DANGER TO THE VICTIM.

The defendant must refrain from:

- Entering the residence, household or workplace of the victim
- Committing any further acts of criminal conduct against the victim⁴⁰

These bail conditions usually expire at the time of the preliminary hearing or upon the entry or the denial of a PFA order by the court, whichever occurs first.⁴¹ If the judge determines the need to extend the conditions, the bail conditions form should be re-signed at the preliminary hearing.

May Refuse Bail if Conditions Would Not Ensure Victim or Community Safety

In addition, the Pennsylvania Constitution allows the issuing authority to REFUSE BAIL where there is evident proof or great presumption that NO CONDITION OR COMBINATION OF CONDITIONS OTHER THAN IMPRISONMENT WILL REASONABLY ASSURE THE SAFETY OF ANY PERSON AND THE COMMUNITY.⁴²

³⁷ PA. R.CRIM.P. 523.

³⁸ PA. R.CRIM.P. 523(B).

³⁹ 18 PA.C.S. § 2711(c)(1).

⁴⁰ 18 PA.C.S. § 2711 (c)(2).

⁴¹ *Id.*

⁴² PA. CONST. art. 1, § 14.

May Describe Other Prohibited Behavior

Other bail provisions to prohibit witness intimidation and other criminal behavior⁴³ as well as impose “any other appropriate conditions”⁴⁴ necessary to protect victims, their families, and the community may be beneficial in cases involving domestic violence.

Must Provide Victim Notification

The Crime Victims Act requires that the victim be given access to information regarding the grant or denial of bail to an adult defendant.⁴⁵ In addition, in a personal injury crime, the prosecutor must prove that the victim has been notified of the offender’s release from a state or local correction facility.⁴⁶ Where a defendant is jailed for violation of a PFA order, the local correctional authority is to provide notice to the victim of the defendant’s release on bail.⁴⁷

According to the National Council of Juvenile and Family Court Judges, the safety of victims and other family members should be one of the court’s utmost concerns during the pretrial phase, including during bail proceedings. In a bail proceeding, the court should consider:

- The nature of the offense
- The victim’s injuries
- The defendant’s prior criminal history
- Whether children are victims or witnesses⁴⁸

In addition, **JUDGES ARE ENCOURAGED NOT TO RELEASE DANGEROUS DEFENDANTS.**⁴⁹

If the defendant is released on bail, the victim should be given prior notification of the release, and judges are encouraged to impose special conditions of release, including:

- Relinquishment of weapons
- “No contact” orders
- Allowing the victim to remain in the family home to the exclusion of defendant
- Adequate financial support for the victim and children⁵⁰

Preliminary Hearings

The principal reason for a preliminary hearing is “to protect an individual’s right against unlawful arrest and detention.”⁵¹ The preliminary hearing seeks to prevent a person from

⁴³ PA. R.CRIM.P. 526(A)(4).

⁴⁴ PA. R.CRIM.P. 527(A)(3); *see also*, PA. R.CRIM.P. 526(B).

⁴⁵ 18 P.S. § 11.201(2).

⁴⁶ 18 P.S. §11.213(f).

⁴⁷ 18 P.S. § 11.201(9) and 11.214(b).

⁴⁸ NAT’L COUNCIL OF JUV. AND FAM. CT. JUDGES, FAMILY VIOLENCE: IMPROVING COURT PRACTICE, RECOMMENDATIONS FROM THE NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES’ FAMILY VIOLENCE PROJECT 17 (1990) [hereinafter FAMILY VIOLENCE: IMPROVING COURT PRACTICE].

⁴⁹ *Id.*

⁵⁰ *Id.*

being imprisoned or required to enter bail for a crime that was never committed or for a crime with which there is no evidence of their connection.⁵² In Pennsylvania, a person accused of a crime has a right to a preliminary hearing presided over by magisterial district judges.⁵³ Although this is not a federal or state constitutional right, it is provided by statute.⁵⁴

Evidence from the preliminary hearing may later be used at trial. A domestic violence victim's testimony at the preliminary hearing can be crucial, although it is not a requirement. The Pennsylvania Rule of Criminal Procedure 524(e) states:

Hearsay as provided by the law shall be considered by the issuing authority in determining whether a *prima facie* case has been established. Hearsay evidence shall be sufficient to establish any element of an offense...⁵⁵

Fear of the abuser's retaliation or intimidation by the abuser often causes domestic violence victims to be reluctant to testify at trial. Thus, their preliminary hearing testimony may be their only testimony.

Prima Facie Determination

During the preliminary hearing, the magisterial district judge determines whether the prosecution's evidence establishes both of the following:

- An offense has probably been committed
- The defendant probably committed the offense⁵⁶

To establish such a case (referred to as a *prima facie* case), the Commonwealth must produce evidence that presents "sufficient probable cause to believe that a person charged has committed the offense stated."⁵⁷ The evidence must be such that "if presented at trial in court, *and accepted as true*, the judge would be warranted in allowing the case to go to the jury."⁵⁸ The Commonwealth must produce legally competent evidence to demonstrate the existence of each of the material elements of the crime charged and legally competent evidence to demonstrate the existence of facts that connect the accused to the crime charged.⁵⁹

Attorneys for the Commonwealth are typically present during a preliminary hearing to prosecute the criminal matter and to recommend to the court whether the matter shall be

⁵¹ Commw ex rel. Buchanan v. Verbonitz, 581 A.2d 172 (1990).

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ PA. R.CRIM.P. 524(E).

⁵⁶ PA. R.CRIM.P.P. 542(d).

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

discharged or bound over the court of common pleas.⁶⁰ Defendants are ordered to appear before a magisterial district judge for a preliminary hearing at the date, time and location specified in the summons.⁶¹ Defendants are entitled to waive their preliminary hearing at the preliminary arraignment if they are represented by an attorney, or any time thereafter.⁶² If a defendant did not receive notice of the preliminary hearing, a warrant of arrest shall be issued.⁶³ If cause exists explaining defendant's failure to appear, the hearing shall be continued and a warrant shall be issued.⁶⁴

However, if a defendant's absence is without cause and after they have received notice, the defendant waives his right to be present at the hearing and the case can proceed.⁶⁵

Hearsay

Hearsay is to be considered during a preliminary hearing to determine if a prima facie case has been established.⁶⁶ Hearsay can establish any element of an offense, "including, but not limited to, those requiring proof of the ownership of non-permitted use of, damage to, or value of property."⁶⁷ Pennsylvania Rule of Criminal Procedure 542 was amended in 2013 to "reiterate that traditionally our courts have not applied the law of evidence in its full rigor" at preliminary hearings, particularly the use of hearsay evidence to establish the elements of a prima facie case.⁶⁸ The Superior Court recently decided that hearsay evidence alone may establish a prima facie case at a preliminary hearing.⁶⁹ This matter, however, is currently on appeal to the Supreme Court of Pennsylvania.

As credibility is not an issue at preliminary hearings, there is no need for an affirmative showing of witness unavailability or unreliability in order to allow hearsay testimony at a preliminary hearing.⁷⁰ The prevalence of ongoing abuse and violence in the home creates fear on the part of domestic violence victims and may result in them being reluctant or refusing to appear in court. In other words, a victim's non-appearance does not equate to a lack of credibility, nor is it a requirement for the preliminary hearing.

Defendant Rights

During a preliminary hearing, defendants are entitled to:

- Be represented by an attorney
- Cross-examine witnesses and inspect any physical evidence

⁶⁰ PA. R.CRIM.P. 542(1)(1)(2).

⁶¹ PA. R.CRIM.P. 512.

⁶² PA. R.CRIM.P. 541(A).

⁶³ PA. R.CRIM.P. 543(d)(1).

⁶⁴ PA. R.CRIM.P. 543(d)(2).

⁶⁵ PA. R.CRIM.P. 543(d)(3).

⁶⁶ PA. R.CRIM.P. 542(e).

⁶⁷ *Id.*

⁶⁸ Pa. R.Crim.P. 542 comments.

⁶⁹ Commonwealth v. Ricker, 120 A.3d 349 (Pa. Super. 2015).

⁷⁰ Commw v. Tyler, 587 A.2d 326 (Pa. Super. 1991).

- Call witnesses on their behalf
- Offer evidence on their behalf as well as testify
- Take notes of the proceeding or have a record of the proceeding⁷¹

Bail Must Assure Victim and Community Safety

Rule of Criminal Procedure 543(c) provides for bail.

When a defendant has been held for court after a prima facie case has been established at a preliminary hearing, the magisterial district judge shall set bail, if the defendant did not have a preliminary arraignment, or continue the existing bail unless it is modified.⁷²

IN CASES OF DOMESTIC VIOLENCE, ESPECIALLY THOSE INVOLVING ASSAULT, ESTABLISHING A PRIMA FACIE CASE MEANS THAT THE COURT RECOGNIZES THAT IT IS LIKELY THAT THE DEFENDANT ABUSED THE VICTIM. Bail

must be carefully weighed against the risk to the victim and community of further violence. Courts can deny bail if the magisterial district judge determines that no condition or combination of conditions other than imprisonment can reasonably assure the safety of the person or the community.⁷³ This provision in the Pennsylvania Constitution supersedes the Rules of Criminal Procedure and provides any court with the authority to deny bail if it would endanger the safety of the person and the public.⁷⁴ The Rules of Criminal Procedure and the Crime Victims Act authorize magisterial district judges to set bail conditions⁷⁵ or issue protective orders⁷⁶ to protect victims and witnesses in criminal proceedings.

It is important to note that the magisterial district judge cannot adjudicate the summary offense where summary charges are joined with a misdemeanor, felony, or murder charge, and the case is bound over to the court of common pleas. Such cases will be adjudicated at the court of common pleas.⁷⁷

In addition to setting bail, magisterial district judges may also refer abuse victims to local domestic violence services for safety planning and other community services.⁷⁸ **Domestic violence programs are available in every county.** When magisterial district judges or law enforcement provide victims with meaningful protection and referrals to supportive services, victims are better able to participate with the courts in seeking remedies that end the violence.

⁷¹ PA. R.CRIM.P. 542(c).

⁷² PA. R.CRIM.P. 543(c).

⁷³ Pa. Const. art. I, §14.

⁷⁴ Commw. v. Dixon, 907 A.2d 468, 477 (2006).

⁷⁵ PA. R.CRIM.P. 526(B).

⁷⁶ 18 PA.C.S. § 4954

⁷⁷ PA. R.CRIM.P. 543(f).

⁷⁸ Find local domestic violence programs at the Pennsylvania Coalition Against Domestic Violence website: <http://www.pcadv.org/Find-Help/>

Preliminary Hearing Testimony and Defendant's Right to Confrontation

On appeal, evidence presented at the preliminary hearing can establish whether a defendant's right to confrontation, as established by the United States Constitution, has been met. Preserving such evidence is PARTICULARLY IMPORTANT IN DOMESTIC VIOLENCE CASES, WHERE TRIAL PROSECUTORS MAY PROCEED WITHOUT VICTIM TESTIMONY.

The Confrontation Clause applies *only in criminal cases*⁷⁹ where the prosecution seeks to admit a statement of an unavailable witness and the defendant did not have a prior opportunity to cross-examine the witness. Confrontation rights apply at all “critical stages” of a criminal proceeding. “A critical stage is a point in the proceeding at which substantive rights may be preserved or lost.”⁸⁰ For example, preliminary and suppression hearings are both critical stages that affect a defendant's substantive rights and, therefore, confrontation applies.⁸¹

Commonwealth v. Wholaver began as a sexual assault case and ended with a murder conviction.⁸² The defendant was charged with sexually assaulting his two daughters. The defendant's daughters and wife provided testimony at a preliminary hearing on the sexual offense charges. Trial on those charges was scheduled for January 13, 2003. Shortly before midnight on December 24, 2002, the defendant fatally shot his wife and daughters. At the defendant's murder trial, the court admitted the victims' preliminary hearing testimony. The Pennsylvania Supreme Court ruled that the defendant was not deprived of his right to confrontation when prior unsworn statements and statements made at the preliminary hearing were admitted at trial. The court noted that Wholaver's attorney was able to explore bias, motive, inconsistency, outside influence, and veracity in the preliminary hearing and, as such, the defendant was afforded the right to confront witnesses against him.

In *Commonwealth v. Leak*, the Superior Court found that the defendant was not deprived of his right to confrontation when videotaped testimony from the preliminary hearing was admitted at trial.⁸³ Leak sexually assaulted the victim, who later became terminally ill. Because of her ill health and her incarceration in another state, the prosecution videotaped the victim's preliminary hearing testimony. On June 27, 2008, a jury found Leak guilty of rape, involuntary deviate sexual intercourse, aggravated assault, aggravated indecent assault, unlawful restraint and possession of an instrument of crime. Subsequently, the trial court found Leak to be a sexually violent predator and sentenced him to an aggregate 10 to 20 years of incarceration

⁷⁹ *United States v. Zucker*, 161 U.S. 475, 481 (1896) (“The sixth amendment relates to a prosecution of an accused person which is technically criminal in nature. ... The [confrontation] clause has no reference to any proceeding ... which is not directly against a person who is accused, and upon whom a fine or imprisonment, or both, may be imposed.”). The right to confrontation does not attach in civil cases. This means that the right of confrontation does not apply in PFA, custody, or divorce proceedings. Therefore, when an individual makes an out-of-court statement, but is unavailable to testify at a civil trial, the statement is admissible if it fits within a hearsay exception. Confrontation rights do apply to indirect criminal contempt proceedings for violations of a PFA order.

⁸⁰ *See, e.g., Commw. v. Atkinson*, 987 A.2d 743, 747 (Pa. Super. 2009) (citing *Commw. v. Holzer*, 389 A.2d 101, 105 (Pa. 1978)).

⁸¹ *See id.*

⁸² *Commw. v. Wholaver*, 989 A.2d 883 (Pa. 2010), *cert. denied*, 131 S. Ct. 332 (2010).

⁸³ *Commw. v. Leak*, 22 A.3d 1036 (Pa. Super. 2011).

followed by 30 years of probation. Leak appealed that he did not have the opportunity for full and fair cross-examination. He cited the failure of the prosecution to notify him of its intent to videotape the victim's preliminary hearing testimony and to give him access to certain records prior to the preliminary hearing. In its decision, the Superior Court explained that the defendant was "on notice" that the witness was terminally ill at the time of the preliminary hearing and, therefore, the defendant "had every reason to prepare as if the preliminary hearing would be his only opportunity to cross-examine."⁸⁴ The fact that defense counsel did not have a medical report prior to the preliminary hearing was of no moment, because defense counsel did not show that he was denied access or was prevented from subpoenaing the records on his own.

⁸⁴ *Commw. v. Leak*, 22 A.3d 1036 (Pa. Super. 2011) at 16.

Notes

This image shows a full page of blank, lined paper. It features approximately 20 evenly spaced horizontal black lines across its entire width, providing a guide for handwriting or typing. The background is a solid off-white color.

PA. CONST. art. 1,
§14
18 PA. C.S. § 2711

The purpose of bail

Bail is intended to ensure more than the defendant's appearance at court proceedings. Courts must consider the safety of any person and the community and whether the defendant poses a threat of danger to the victim.

28 U.S.C §534

The court needs relevant information about the defendant:

The National Crime Information databases include identification and criminal history records, protection orders and wanted persons records. The information is available from law enforcement for the civil and criminal courts' use in domestic violence and stalking cases. Courts should also ask law enforcement for a bail recommendation.

PA. R. CRIM. P.
523 (A)

To determine whether to release a defendant on bail, the bail authority should consider all information relevant to:

- The likelihood that the defendant will appear at subsequent court proceedings; or
- The defendant's compliance or noncompliance with bail conditions; and

The conditions of release should be tailored to the defendant's specific circumstances.

PA. R. CRIM. P. 523

To determine whether to release a defendant on bail, consider all of the following information:

- Nature of the offense; mitigating or aggravating factors related to the likelihood of conviction and possible penalty;
- Defendant's employment status and history, and financial condition;
- Nature of the defendant's family relationships;
- Length and nature of the defendant's residence in the community, and any past residences;
- Defendant's age, character, reputation, mental condition, whether addicted to alcohol or drugs;
- Whether defendant has a record of flight to avoid arrest or prosecution, or escape or attempted escape;
- Defendant's prior criminal record;
- Use of false identification;
- Whether defendant has previously been released on bail, appeared as required and complied with the conditions of the bail bond; and
- Any other factors relevant to whether the defendant will appear as required and comply with the conditions of the bail bond.

PA. R. CRIM. P. 529

A bail order can be modified:

- **Prior to the preliminary hearing**, upon motion of defense counsel or the Commonwealth or by the issuing authority, *sua sponte*, after notice and opportunity to be heard by both defense and prosecution;
- **At the preliminary hearing**; See also PA. R. CRIM. P. 543 (Setting bail when case is disposed at preliminary hearing); or
- By a court of common pleas judge **prior to verdict**, with notice to opposing counsel and after a hearing; or at a **pretrial hearing** in open court, on the record, with all parties present or at **trial**.
- If bail is modified, the court must explain the modification to the defendant, in writing or must put explanation on the record.

42 PA. C. S. § 5701
PA CONST. art. 1, §14
PA. R. CRIM. P.
520(A)

Bail Can be Denied

All prisoners are to be able to get bail with sufficient surety, but **bail can be denied when no condition or combination of conditions other than imprisonment will reasonably assure the safety of a person or community** when the proof is evident and the presumption great. If bail is denied, the issuing authority must state in writing or on the record the reasons for that decision.

Additional Considerations in Domestic Violence Arrests

18 PA. C.S. §2711 (c)
(1):

Following a probable cause arrest for a domestic violence crime:

Police officer **must not release defendant from custody**, but instead must take defendant before the court or the magisterial district judge without delay.

18 PA. C.S. §2711 (c) (2)
PA. R. CRIM. P.
526(A) (4)

Setting bail conditions in domestic violence and criminal cases:

If the issuing authority determines that the defendant poses a threat of danger to the victim, the issuing authority **must impose** the following bail conditions and notify defendant accordingly:

- Refrain from entering the victim's residence, household and place of employment
- Refrain from committing any further criminal acts against the victim
- Refrain from committing, causing, or permitting any act proscribed by 18 PA. C.S. §4952 (intimidation of witnesses or victims) or by 18 PA. C.S. §4953 (retaliation against witnesses or victims).

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Summary

Pennsylvania's Protection From Abuse (PFA) Act and the Protection From Sexual Violence and Intimidation (PSVI) Act authorize civil protection orders for victims of domestic violence and sexual assault. Protection orders can also be part of bail conditions.¹ Criminal protection orders protect witnesses and victims of crime.² This chapter discusses PFA and PSVI protection orders.

Separation is the most dangerous time for a domestic violence victim. Studies indicate that when a woman leaves her abuser her risk of serious violence or death at the hands of the abuser increases dramatically.³ Domestic and sexual violence, dating violence and intimidation can encompass a range of behaviors by an abuser over time that frighten and harm victims.⁴ Civil protections do not require the behavior to rise to the level of a crime before victims and their families can be protected.

The PFA Act, 23 Pa. C. S. §§ 6101-22, applies to victims and perpetrators who have a specified family or intimate partner relationship. Abuse can be physical or verbal, and does not have to rise to the level of a crime to fall within the realm of the PFA Act. The PFA Act and federal Violence Against Women Act, also known as VAWA, provide access to relief for individuals abused by a family or household member **REGARDLESS OF THEIR IMMIGRATION STATUS.**

The PSVI Act, 42 Pa. C.S. § 62A, establishes the procedures for obtaining Sexual Violence Protection and Protection From Intimidation orders. The PSVI Act applies to victims and perpetrators who do not have the family or intimate partner relationship specified by the PFA Act, such as strangers or casual acquaintances. Adults and minors can petition for a Sexual Violence Protection (SVP) order. For example, a SVP order could be granted for a victim who is sexually assaulted by a coworker, and who has no other relationship with the coworker, e.g., is not now or never was a family relation, spouse, dating partner, or member of the same household. The Protection From Intimidation (PFI) order was created to protect minors when

¹ See Chapter 3: Bail and Preliminary Hearings In Domestic Violence Cases

² See Chapter 2: Domestic Violence Crimes

³ "Separated [vs. married or divorced] females experienced the highest rate of intimate partner violence during the 18-year period" from 1993 to 2010. This "separation violence" is reflected in long-term data – See Shannan Catalano, *Intimate Partner Violence, 1993–2010*, Table 9: Intimate partner violence against females, by marital status, 1993–2010, Bureau of Justice Statistics, U.S. Dep't. of Justice, (2012), <http://www.bjs.gov/content/pub/pdf/ipv9310.pdf>.

⁴ Domestic violence consists of a wide range of behaviors, including emotionally abusive and controlling behavior. Some are criminal in nature, such as hitting, kicking, shoving, scratching, biting, strangling, assault with a weapon, rape, sexual assault, harassment, threats of violence, stalking, destruction of property and cruelty to pets. Other domestic violence behaviors may not constitute criminal conduct, such as degrading comments, suicide threats, controlling the abused party's time and activities, and controlling access to family resources: food, shelter, and money. Domestic violence is not accidental, out of control behavior. Domestic violence is purposeful and instrumental behavior – a pattern of abuse directed at achieving compliance from or control over the abused party. Domestic violence is rarely a one-time event; without effective intervention, it typically increases in frequency and severity over time.

the offender is 18 or older. For example, a PFI order could be granted for a child who is being stalked or harassed by a sports coach or adult friend of the family.

Protection From Abuse Act

Purpose and Constitutionality

The purpose of the PFA Act is to protect victims of domestic violence.⁵ The Act's provisions are written to enable courts to respond quickly and flexibly to both early signs and subsequent acts of abuse.⁶ The primary goal of the Act is not to penalize past criminal conduct; rather, it is intended to provide **ADVANCE PREVENTION OF PHYSICAL AND SEXUAL ABUSE**.⁷

The Act, which permits *ex parte* emergency relief by minor judiciary,⁸ is constitutionally valid. The temporary suspension of due process rights of the alleged abuser is necessary to meet the special circumstances of domestic violence cases.⁹

PFA Procedure

Courts to Provide Forms and Clerical Assistance

The PFA Act requires Pennsylvania courts to provide simplified PFA forms and clerical assistance in English and **Spanish** to help unrepresented PFA litigants with the writing and filing of PFA petitions:¹⁰

- **Emergency PFA Petition (Spanish)**
- **PFA Petition (English and Spanish)**
- **Attachment A to Petition (English and Spanish)**

Courts are also required by the PFA Act to provide the plaintiff with written and oral referrals in both English and Spanish¹¹ to:

- **Local domestic violence programs**
- **Local legal services offices**
- **County bar association's lawyer referral service¹²**

⁵ 23 PA. C. S. §§ 6101-22.

⁶ *Commw. v. Snell*, 737 A.2d 1232 (Pa. Super. 1999).

⁷ *Snyder v. Snyder*, 629 A.2d 977 (Pa. Super. 1993).

⁸ 23 PA.C.S. § 6110(a)

⁹ *Heard v. Heard*, 614 A.2d 255 (Pa. Super. 1992).

¹⁰ 23 PA.C.S. § 6106(h)(1). Spanish PFA forms are available from the Administrative Office of Pennsylvania Courts website: <http://www.pacourts.us/forms/for-the-judiciary/spanish-protection-from-abuse>

¹¹ More bilingual forms are available from the Unified Judicial System of Pennsylvania website at <http://www.pacourts.us/forms/for-the-judiciary>

¹² 23 PA.C.S. § 6106(h)(2).

These tools from PCADV can assist the court in providing more information for litigants:

- **Pennsylvania’s PFA Act – Information for Completing the Petition**
- **Sample Checklist of Abusive Behaviors**
- **The PFA Act: A Guide for Victims of Domestic Violence**

Plaintiff Filing Fees Prohibited

The PFA statute prohibits courts from charging filing fees or costs to plaintiffs.¹³ No fees or costs may be charged for “filing, issuance, registration or service of a petition, motion, complaint, order or any other filing.”¹⁴ The prohibited fees or costs 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.¹⁵ Gatekeeping mechanisms to control the filing of petitions under the PFA Act frustrate the purpose of the Act and are *prohibited*.¹⁶

Assessment of Fees and Costs Against Defendant

When a PFA order is granted, fees and costs shall be assessed against the defendant.¹⁷ The court is required to waive fees and costs upon a showing of good cause or when making a finding that the defendant is not able to pay.¹⁸

The Protection From Abuse Database (PFAD)

PFAD is an electronic statewide database available 24 hours a day, 365 days a year to authorized users (courts, law enforcement agencies, attorneys) via a secured Internet web site: **www.pfad.pa.gov**

PFAD complements the Pennsylvania State Police (PSP) Protection Order Registry (also known as the Commonwealth Law Enforcement Assistance Network or CLEAN), where law enforcement officers, dispatchers and court staff check the existence and terms of PFA and PSVI orders.

While magisterial district judges generally do not have CLEAN access, they can check PFAD for active orders in the following matters:

- Protection From Abuse
- Protection From Sexual Violence
- Protection From Intimidation

¹³ 23 PA.C.S. § 6106(b).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See *Viruet v. Cancel*, 727 A.2d 591 (Pa. Super. 1999); *Egelman v. Egelman*, 728 A.2d 360 (Pa. Super. 1999).

¹⁷ 23 PA.C.S. § 6106(c).

¹⁸ *Id.*

PFAD also contains electronic forms for Indirect Criminal Contempt and Civil Contempt proceedings and houses both civil and criminal contempt orders issued by judges across the Commonwealth. *Emergency* orders under the PFA Act and PSVI Act are not included in the Registry or in PFAD.

The prothonotary and court administration employees register, via computer, information that the prothonotary is required to transmit to the State Police according to the Rules of Civil Procedure. The PFAD database automates the PFA and PSVI process in the courts; creates and disseminates the Protection From Abuse Summary Data Sheet – information necessary for inclusion in the State Police registry (CLEAN); and contains all standard PFA and PSVI forms in addition to other forms necessary in PFA and PSVI cases.

Magisterial district judges and court personnel may request a PFAD account or get more information about PFAD at:

<https://www.pfad.pa.gov/>

Three Different Types of PFA Orders

There are three different types of protection orders that may be issued under the PFA Act. Two of these orders are issued *ex parte*:¹⁹ emergency protection orders, typically issued on nights and weekends by magisterial district or municipal court judges; and temporary protection orders, issued by common pleas court judges during regular business hours. The third type of protection order is the final PFA order, which is issued by the common pleas court after the defendant is given notice and opportunity to be heard. A final PFA order can be entered by agreement or after a hearing.

Emergency PFA Proceedings by a Magisterial District Judge

These individuals may hear emergency PFA petitions when the court of common pleas is unavailable:

- Magisterial district judges
- Judges of the Philadelphia Municipal Court
- Bail commissioners
- Arraignment court magistrates
- Attorney masters²⁰

These groups generally hear emergency PFA petition cases in counties that have fewer than four judges, generally on nights, weekends and when judges are unavailable, because of duties outside the county, illness or vacation.²¹ In counties with four or more

¹⁹ “[F]or the benefit of one party only, and without notice to, or argument by, any person adversely interested...” Black’s Law Dictionary, West Group, 2001.

²⁰ PA.R.C.P.M.D.J. No. 1202(5).

²¹ 23 PA.C.S. § 6110(a)(1).

judges, this group would generally hear the cases at night and from the end of one business week to the beginning of the next business week.²²

The Act, which permits *ex parte* emergency relief by magisterial district judges,²³ is constitutionally valid. The Superior Court has affirmed that the **TEMPORARY SUSPENSION OF DUE PROCESS RIGHTS OF THE ALLEGED ABUSER IS NECESSARY TO MEET THE SPECIAL CIRCUMSTANCES OF DOMESTIC VIOLENCE CASES.**²⁴

Jurisdiction and Venue

When the court is unavailable, generally after hours and on weekends, and a person needs a protection order, the magisterial district judge may conduct an *ex parte* proceeding and issue an emergency PFA order.²⁵ In addition to weekends and after hours, the common pleas court is deemed to be unavailable during the business day in counties with less than four judges if, by reason of duties outside of the county, illness or vacation there is no judge available.²⁶

Jurisdiction

The plaintiff has a right to PFA relief even if:

- the plaintiff leaves the residence or household to avoid further abuse, or
- the defendant is absent from Pennsylvania or is a non-resident in Pennsylvania, provided that the court has personal jurisdiction over the defendant in accordance with Pennsylvania's long-arm statute.²⁷

Some acts that would subject a PFA defendant to jurisdiction under the long-arm statute may include transacting business within Pennsylvania; owning real estate in Pennsylvania; causing harm or tortious injury in Pennsylvania by an act or omission within or outside of Pennsylvania; and/or violating any Pennsylvania statute.²⁸

Venue

A PFA action may be brought in the following magisterial districts:

- Within the county in which the plaintiff resides, either temporarily or permanently (Temporary residence may include a stay at a domestic violence shelter).
- Where the abuse, sexual violence or intimidation occurred.²⁹
- Within the county in which a household or residence is located if the petitioner

²² 23 PA.C.S. § 6110(a)(2).

²³ 23 PA.C.S. § 6110(a).

²⁴ Heard v. Heard, 614 A.2d 255 (Pa. Super. 1992).

²⁵ PA.R.C.P.M.D.J. No. 1203(a) and 23 PA.C.S. § 6110(a).

²⁶ 23 PA.C.S. § 6110(a).

²⁷ 23 PA.C.S. § 6103(b); 42 PA.C.S. § 5322 (long arm jurisdiction).

²⁸ 42 PA.C.S. § 5322(a).

²⁹ PA.R.C.P.M.D.J. No. 1204(A)(1)-(2); PA. R. CIV. P. 1901.1(a).

seeks exclusive possession of the household or residence.³⁰

Commencement of Proceedings

A plaintiff must file a petition and demonstrate “good cause” to be granted an emergency PFA order.³¹ Immediate and present danger of abuse to the plaintiff or minor children shall constitute “good cause.”³² The plaintiff must sign the petition and set forth the names and addresses of the plaintiff and defendant and the names, addresses and ages of any other person for whom plaintiff is seeking relief.³³

Parties Covered by the PFA Act

Plaintiff

Under the PFA Act, a petition may be filed by any of the following:

- An adult or an emancipated minor seeking emergency relief for themselves
- A parent, adult household member or *guardian ad litem* seeking emergency relief on behalf of minor children
- A guardian of the person of an adult who has been declared incompetent (incapacitated) seeking relief for the incompetent adult³⁴

Defendant

A PFA petition may be filed against any of the following persons:

- “Family or household member” (see definition below)
- Sexual or intimate partner
- Person who shares biological parenthood with the person seeking relief³⁵

Defendants who are active duty service members have special protections under the Servicemembers’ Civil Relief Act (SCRA).³⁶

Meaning of Family or Household Member

“Family or household member” is defined in the PFA Act as:

- 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

³⁰ PA.R.C.P.M.D.J. No. 1204(B); PA. R. Civ. P. 1901.1(b).

³¹ 23 PA.C.S. § 6110(a).

³² PA.R.C.P.M.D.J. No. 1208(A); 23 PA.C.S. § 6110(a).

³³ PA.R.C.P.M.D.J. No. 1206(A)

³⁴ Rule 1205; see also 23 PA.C.S. § 6106(a) and 42 PA.C.S. § 62A05

³⁵ 23 PA.C.S. § 6102(a).

³⁶ 50 U.S.C. §§ 501-593. For more information on the SCRA, view the *PFA Orders and Active Duty Servicemembers* webinar or publication at http://www.pcadv.org/Resources/NEWSL_Jurist_Mil-SCRA_02242015.pdf.

- Current or former sexual or intimate partners
- Persons who share biological parenthood³⁷

Dating relationships meet the relationship requirement of the PFA Act

The Superior Court of Pennsylvania has provided guidance regarding the meaning of “sexual or intimate partners” under the Act.

In *R.G. v. T.D.*, the plaintiff and the defendant were college students.³⁸ The plaintiff sought a PFA against the defendant averring that he was her former boyfriend and alleging that his harassing, stalking, and threatening behavior was causing her fear. At trial, the defendant made no objection to her description of him as her former boyfriend, so this relationship was considered an “intimate partner” relationship. In *Varner v. Holley*, the Superior Court affirmed the holding in *R.G.*, and held that a dating relationship meets the relationship requirement of the PFA Act.³⁹

The holdings from *R.G.* and *Varner* were further clarified in *Evans v. Braun*, a 2010 Superior Court case that found that two dates were enough to satisfy the “sexual or intimate partner” standard.⁴⁰ The Superior Court explained that, even though short-lived, the relationship had a measure of personal interaction elected by the parties and, thus, qualified as an intimate partnership for the purpose of the PFA Act.⁴¹

Sexual orientation is irrelevant

All intimate partnerships are covered under the PFA Act **REGARDLESS OF SEXUAL ORIENTATION**.⁴² Where plaintiff testified that he had a one and one-half month sexual relationship with his “former roommate and homosexual lover,” the Superior Court found the evidence was sufficient to establish an intimate relationship under the PFA Act.⁴³

Relationship by “consanguinity” could include siblings

In *Cochran v. Custer*, a sister and brother were involved in a family business dispute, along with two other siblings.⁴⁴ During a conversation at work, the brother continually yelled at his sister, followed her and pushed his way into her office, knocking her over. He hit her arm, which recently had been in a splint following surgery. The brother also ransacked her purse and office, throwing contents onto the floor and out of the door. The brother was much bigger than his sister and had acted violently toward her in the past. The Pennsylvania Superior Court affirmed the trial court’s entry of a PFA order in this case, determining that while the sister was looking

³⁷ *Id.*

³⁸ *R.G. v. T.D.*, 672 A.2d 341 (Pa. Super. 1996).

³⁹ *Varner v. Holley*, 854 A.2d 520 (Pa. Super. 2004).

⁴⁰ *Evans v. Braun*, 12 A.3d 395 (Pa. Super. 2010).

⁴¹ *Id.*

⁴² *D.H. v. B.O.*, 734 A.2d 409 (Pa. Super. 1999).

⁴³ *Id.*

⁴⁴ *Cochran v. Custer*, 933 A.2d 1050 (Pa. Super. 2007).

for protection from brother's abuse, she was not asking the PFA court to resolve their business dispute.⁴⁵

Relationship by "consanguinity" includes direct blood relationship to child

A child's mother filed a PFA order after the child's paternal grandfather showed her a handgun and issued a veiled threat about being allowed to see his grandchild. The child's mother and father (the defendant's son) were never married. The trial court entered an order evicting the paternal grandfather from the mother's home, and prohibited all contact with her, except under very limited circumstances. The paternal grandfather appealed, claiming that the PFA Act did not cover the relationship between him and the child's mother. On appeal, the Superior Court affirmed the trial court's entry of a PFA order, determining that the mother and paternal grandfather both "have a direct blood relationship to the child, and by extension are inextricably linked to each other by that relationship."⁴⁶

Relationship by "affinity" includes brother-in-law and sister-in-law relationship

The term "affinity" in the PFA Act's definition of "family and household member" includes the familial relationship of brother-in-law and sister-in-law. In **McCance v. McCance**, the sister-in-law filed for and received a PFA order from the trial court.⁴⁷ The PFA filing resulted from a custody exchange incident where her brother-in-law jumped in front of her car, yelled obscenities and verbal threats, and struck her car with his fist hard enough to cause damages worth \$1000. The defendant challenged his sister-in-law's standing, claiming that their relationship was not covered under the PFA Act. The Superior Court examined the definition of affinity and affirmed the trial court's entry of the PFA order.⁴⁸

Relationship by "affinity" includes parent's partner

In **Commonwealth v. Walsh**, the Superior Court affirmed that a child had an affinity relationship with mother's domestic partner.⁴⁹ In this case, the child's mother received a temporary PFA order on child's behalf.⁵⁰ After entry of the order, the defendant induced the child's friend to pass along threats to the child. The trial court found the defendant guilty of indirect criminal contempt, sentenced him to 6 months probation, and extended the final PFA order for 3 years. On appeal, the Superior Court upheld the conviction, finding that the defendant and the child were related by affinity, which is defined as "marriage or by ties other than blood."⁵¹ The court explained that the child and the defendant resided together for 13 years, the defendant was involved in the child's life since she was 5 years old, and the defendant treated the child like a stepdaughter.⁵² Consistent with the goal of the PFA Act to provide the courts with flexibility to

⁴⁵ *Id.*

⁴⁶ *Slusser v. DeBoer*, 985 A.2d 974 (Pa. Super. 2009).

⁴⁷ *McCance v. McCance*, 908 A.2d 905 (Pa. Super. 2006).

⁴⁸ *Id.*

⁴⁹ *Commw. v. Walsh*, 36 A.3d 613 (Pa. Super. 2012).

⁵⁰ *Id.*

⁵¹ *Id.* at 618.

⁵² *Id.*

protect and prevent further abuse, “it is incumbent upon [the court] to interpret ‘affinity’ so as to include this relationship.”⁵³

Ex Parte Hearing to be Held as Soon as Possible After Petition Filed

An ex parte hearing shall be held as soon as possible after the filing of the petition.⁵⁴ The 2013 *Ferko-Fox v. Fox* decision ruled that an ex parte proceeding requires more than a judicial officer examining the PFA petition.⁵⁵ **THE JUDICIAL OFFICER MUST, THEREFORE, MEET WITH THE PLAINTIFF IN SOME CAPACITY.** The plaintiff may, but it is not required to present witnesses.⁵⁶

The plaintiff shall not be required or compelled to disclose the address of the domestic violence program, rape crisis center, plaintiff, minor children or victim in the petition or during the hearing.⁵⁷

The court is permitted to utilize advanced communication technology to hold the hearing and is not required to hold the hearing in their office.⁵⁸

Limited Relief Available in Emergency PFA

Relief available in an emergency PFA is limited to:

- Directing the defendant to refrain from abusing the plaintiff and/or children
- Granting exclusive possession of the household to the plaintiff
- Prohibiting the defendant from having contact with the plaintiff and children⁵⁹

This provision also permits the court to prohibit harassment of the plaintiff’s relatives.⁶⁰

Minor children may be protected parties on an emergency PFA order if the magisterial district judge finds, upon good cause shown, that it is necessary to protect the minor children from abuse.⁶¹ The magisterial district judge may make any protection orders necessary to effectuate relief.⁶²

“Do not abuse” provisions

The court may direct the defendant to refrain from abusing the plaintiff and/or minor children.⁶³

⁵³ *Id.* at 618-19.

⁵⁴ PA.R.C.P.M.D.J. No. 1207.

⁵⁵ *Ferko-Fox v. Fox*, 68 A.3d 917 (Pa. Super 2013).

⁵⁶ PA.R.C.P.M.D.J. No. 1207.

⁵⁷ *Id.*

⁵⁸ PA.R.C.P.M.D.J. No. 215; see also Note to PA.R.C.P.M.D.J. No. 1207.

⁵⁹ PA.R.C.P.M.D.J. No. 1208(A); 23 PA.C.S. §§ 6110(a); 6108(1), (2), (6).

⁶⁰ 23 PA.C.S. §§ 6108(a)(6), 6110(a).

⁶¹ PA.R.C.P.M.D.J. No. 1208(A); 23 PA.C.S. § 6110(a).

⁶² PA.R.C.P.M.D.J. No. 1208.

⁶³ 23 PA.C.S. § 6108(a)(1).

Exclusive possession or suitable housing provisions

The court may grant exclusive possession of the residence owned or leased by the plaintiff or jointly owned or leased by the plaintiff and defendant.⁶⁴ If the defendant solely owns or leases the residence and the defendant has a duty to support the plaintiff or children, the PFA court may grant exclusive possession to the plaintiff of the residence, or, if the plaintiff agrees, require the defendant to provide suitable alternative housing.⁶⁵

“No contact” provisions

The court may prohibit the defendant from contacting the plaintiff and minor children, including at the plaintiff’s place of employment and at the children’s school, and from harassing the plaintiff, the plaintiff’s relatives or minor children.⁶⁶ Issuing and enforcing a “No Contact” order is critical to shield the victim from post-separation coercion and help a victim maintain autonomy. It may also increase the sense of well being, safety, and security felt by a victim and the parties’ children if they know that they will not see the defendant unexpectedly.

No firearms, ammunition and other weapons relinquishment in emergency PFAs

Firearms, ammunition and other weapons relief is not allowed in emergency PFA orders. Section 6110(2) provides, “the court shall not make any orders requiring defendant to surrender, relinquish or remove any weapons, firearms, license or ammunition that defendant owns or possesses.”⁶⁷

Duration of Order

An emergency PFA order expires at the end of the next business day during which the common pleas court is available.⁶⁸ The statute directs the trial court to make provisions for continuing the emergency PFA order to protect a plaintiff and minor children until the ex parte hearing, at which time the victim can seek a temporary PFA order.⁶⁹

Issue Findings, Orders and Enable Court and Plaintiff to Go Forward

The magisterial district judge shall include the findings and any protection orders made or other action taken on the petition form.⁷⁰ The court shall provide the plaintiff with instructions on commencing protection order proceedings in the court of common pleas and initiating a contempt charge should the defendant violate the emergency order.⁷¹ The judge shall also

⁶⁴ 23 PA.C.S. § 6108(a)(2).

⁶⁵ 23 PA.C.S. § 6108(a)(3).

⁶⁶ 23 PA.C.S. § 6108(a)(6).

⁶⁷ Magisterial district judges are given the authority to grant relief only in accordance with sections 6108(a)(1) (no abuse), 6108(a)(2) (exclusive possession of the residence) and 6108(a)(6) (no abuse), or (1) and (6). 23 PA.C.S. § 6110(2).

⁶⁸ PA.R.C.P.M.D.J. No. 1210.

⁶⁹ 23 PA.C.S. § 6110(b).

⁷⁰ PA.R.C.P.M.D.J. No. 1208(B); 23 PA.C.S. § 6110(d).

⁷¹ *Id.*

advise the plaintiff about **domestic violence programs** in the county or nearby counties and about the availability of no-cost legal assistance options.⁷²

Upon completion of the ex parte hearing and issuance of an emergency order, a copy of the emergency PFA order shall be given to the plaintiff.⁷³ If multiple police departments or police jurisdictions are involved, it may be necessary to provide the plaintiff with more than one copy of the emergency PFA order.

The judge shall immediately certify the emergency PFA order along with any documentation in support thereof to the court of common pleas.⁷⁴ Certification shall be accomplished by delivering the certified documents to the prothonotary by first class mail or messenger.⁷⁵ The certification to the court shall have the effect of commencing protection from abuse proceedings.⁷⁶

Victim safety when emergency PFA orders are denied

It is important to remember that violence typically escalates at separation.⁷⁷ If the court must deny an emergency order request, it is important for the court to give the plaintiff a chance to plan how best to stay safe and determine whether to proceed with a temporary order. The best way to accomplish this is to provide victims with referral information to local domestic violence programs that can provide these services. Otherwise, the court's denial may place a victim at risk by leaving the victim without court-ordered protection while advising the abuser that the victim is publicly seeking help and challenging the abuser's authority.

A victim may choose to proceed with petitioning for a temporary PFA order in the court of common pleas. If so, certifying the denial order to the prothonotary could assist the court administratively. It is also good practice to provide the plaintiff with instructions regarding the commencement of the proceedings in the court at the beginning of the next business day as well as referrals to **domestic violence services**.

When the victim decides not to pursue a temporary PFA order, the court is under no obligation to certify the denial order. The PFA Act and the Rules of Civil Procedure are silent as to the post-denial procedure.

Service of Emergency PFA Orders

The judge, or when absolutely necessary, the plaintiff, shall immediately deliver a service copy of the emergency order to a police officer, police department, sheriff or certified constable for service upon the defendant and execution.⁷⁸ If, after making reasonable effort, the executing officer is unable to affect service, the executing officer shall leave a service copy with the police

⁷² *Id.*

⁷³ PA.R.C.P.M.D.J. No. 1209(A)

⁷⁴ PA.R.C.P. M.D.J. No.1211(A).

⁷⁵ PA.R.C.P. M.D.J. No.1211(B).

⁷⁶ 23 PA.C.S. § 6110(c).

⁷⁷ See Catalano, *supra* note 3.

⁷⁸ Pa.R.C.P.M.D.J. No. 1209(A)..

department with jurisdiction over the area in which the plaintiff resides and inform the department that service could not be made.⁷⁹ Service shall be made at no cost to the plaintiff.⁸⁰

Service on military defendants

If the defendant is a member of the Armed Forces on active duty, then service must be made under the Servicemembers Civil Relief Act.⁸¹ In most cases, routine procedures will suffice in serving military defendants. The Department of Defense instructs commanders of military installations to facilitate “making the alleged abuser available to be served with a civilian protection order.”⁸² When military personnel are posted to out-of-state or overseas locations, local law enforcement often have agreements for service on military bases.⁸³

Verbal notice to defendant sustains PFA contempt conviction

When a PFA defendant has been given verbal notice by police of the existence of a PFA order and of the consequences for violating the order, this notice is sufficient to sustain a finding of contempt. In *Commonwealth v. Padilla*, a victim obtained a PFA order late on a Friday afternoon directing that the defendant have no contact with her.⁸⁴ Early Sunday morning, the victim called the police notifying them of the existence of the PFA order and seeking police assistance, because the defendant had been attempting to gain entry into her home and had been threatening her via telephone. When police arrived at the victim’s residence, she handed her cell phone to the police officer, indicating that defendant was on the phone. During this and a subsequent call, the officer advised the defendant of the existence of the no-contact PFA order, and of the consequences for violating the order. Nevertheless, the defendant continued to threaten and harass the victim via telephone for several more hours until the defendant was served with a copy of the order late on Sunday afternoon. After the defendant received a copy of the order, he stopped placing telephone calls to the victim.

The defendant was held in contempt for violating the PFA order and appealed, claiming that his due process rights were violated. On appeal, his conviction was affirmed. The Superior Court referred to the preventive and protective nature of the Act and found that verbal notice of the existence of the PFA order and of the consequences for the violation was sufficient to satisfy the notice requirements.⁸⁵

⁷⁹ *Id.*

⁸⁰ PA.R.C.P.M.D.J. No. 1206(C).

⁸¹ The Servicemembers Civil Relief Act can be found at 50 United States Code Appendix Sections 501-593.

⁸² Department of Defense Instruction 6.1.1.10, updated 2011, <http://www.dtic.mil/whs/directives/corres/pdf/640006p.pdf>, accessed Dec. 30, 2015.

⁸³ A list of military installations by state is available at <http://www.militaryinstallations.dod.mil/MOS/f?p=MI:ENTRY:0>, or contact Brian Clubb, BWJP’s Military Advocacy Program Coordinator, for technical assistance. He can be reached via email at bclubb@bwjp.org or by phone at 571-384-0985.

⁸⁴ *Commw. v. Padilla*, 885 A.2d 994 (Pa. Super. 2005).

⁸⁵ *Id.*

What Constitutes Abuse Under the PFA Act?

Physical injury is not a prerequisite for a finding of abuse under the statute, and the abuse does not have to rise to the level of criminality to qualify for protection under the PFA Act.⁸⁶ The PFA Act includes five categories of abuse.⁸⁷ The defendant's action must fall within at least one of the following categories to qualify as abuse under the statute:

- Attempting to cause or intentionally, knowingly or recklessly causing bodily injury, serious bodily injury or any of various listed crimes of rape and sexual assault
- Placing another in reasonable fear of imminent serious bodily injury⁸⁸
- Causing another to be falsely imprisoned
- Physically or sexually abusing minor children⁸⁹
- Knowingly engaging in a course of conduct or repeatedly committing acts toward another person, including following that person, without proper authority, under circumstances that place that person in reasonable fear of bodily injury⁹⁰

Actual Physical Injury Not Required; Reasonable Fear Is Adequate

The PFA Act only requires that a victim's fear of imminent serious bodily injury is reasonable. The Act does not call for actual physical contact, and a victim is not required to wait for physical or sexual abuse for the Act to apply.

Physical blocking and wall punching

In *Fonner v. Fonner*,⁹¹ testimony – that the defendant, who was the husband, followed his wife through the home, was angry, upset, loud and badgering, stood in front of her and blocked her exit, touched her arm and at one point punched the wall in front of wife – was adequate to support the wife's claim that the defendant's actions placed her in reasonable fear of imminent bodily harm.⁹²

Dangerous driving

Driving at excessive speeds and using the car to trap a victim can constitute abuse. In *Weir v. Weir*, the defendant and the victim were traveling in their car and discussing their pending divorce. The defendant, who was the husband, began driving at an excessive rate of speed over

⁸⁶ *Fonner v. Fonner*, 731 A.2d 160 (Pa. Super. 1999); *R.G. v. T.D.*, 672 A.2d 341 (Pa. Super. 1996); *Miller v. Walker*, 665 A.2d 1252 (Pa. Super. 1995).

⁸⁷ 23 PA.C.S. § 6102(a) and PA.R.C.P.M.D.J. No. 1202(1)(a)-(e).

⁸⁸ See *Fonner*, 731 A.2d 160 (physical injury not required); see also *Weir v. Weir*, 631 A.2d 650 (Pa. Super. 1993) (physical menace put plaintiff in fear of bodily injury).

⁸⁹ The PFA Act definition of child abuse includes, but is not limited to, abuse covered by the Child Protective Services Law. 23 PA.C.S. § 6102(d). *Viruet v. Cancel*, 727 A.2d 591 (Pa. Super. 1999); *Miller v. Walker*, 665 A.2d 1252 (Pa. Super. 1995); see also, *Chronister v. Brenneman*, 742 A.2d 190 (Pa. Super. 1999) (parents may use physical punishment to discipline children).

⁹⁰ *R.G.*, 672 A.2d at 341.

⁹¹ *Fonner v. Fonner*, 731 A.2d 160 (Pa. Super. 1999).

⁹² *Id.* at 163.

dark winding roads. At one point, after the victim, who was the wife, got out of the parties' van, the defendant used the van to trap the victim between the van and a concrete bridge abutment.⁹³ Even though the victim had no physical injuries, these acts were sufficient to constitute abuse.⁹⁴

Splashing water onto child's face

Splashing water onto a child's face, while holding the child down in a tub may cause fear and constitute abuse. In *DeHaas v. DeHaas*, the defendant held her child down in the bathtub and splashed water onto the child's face, causing the child to choke and be in fear.⁹⁵ The trial court held that even though the child suffered no physical harm, the child's fear was adequate to support entry of an order and the Superior Court affirmed.⁹⁶

Blocking car, yelling obscenities and verbal threats, hitting car with fist and causing damage

In *McCance v. McCance*, during a custody exchange, the father blocked his sister-in-law's car, yelled obscenities and verbal threats, and struck her car with his fist hard enough to cause \$1000 worth of damage.⁹⁷ Other evidence established that the father "had anger issues," a drinking problem and was physically violent with others in the past. The Superior Court affirmed the trial court's determination that the father's acts had placed his sister-in-law in reasonable fear of imminent serious bodily injury sufficient to support the entry of a PFA order.⁹⁸

Perpetrator's intent is not relevant to reasonable fear determination

In *Raker v. Raker*, the husband appeared at 2 a.m. in his wife's half of a duplex with socks on his hands and holding a knife or a large nail. His wife testified to prior abusive behavior.⁹⁹ The trial court entered a PFA order based on the wife's claim that the husband's actions placed her in fear. The husband appealed, claiming that there was insufficient evidence to support his wife's claim. On appeal, the Superior Court affirmed, finding that the focus for a trial court's determination is whether the husband's acts placed his wife in fear of imminent serious bodily injury. The court further found that the husband's actual intent was "of no moment."¹⁰⁰

Verbal/Written Threats Sufficient

Threats to kill – e-mail threat

Verbal threats may cause reasonable fear. An e-mailed threat to kill without actual or attempted physical violence may serve as the basis for the issuance of a PFA order.¹⁰¹

⁹³ *Weir v. Weir*, 631 A.2d 650 (Pa. Super. 1993).

⁹⁴ *Id.* at 657.

⁹⁵ *DeHaas v. DeHaas*, 708 A.2d 100 (Pa. Super. 1998).

⁹⁶ *Id.*

⁹⁷ *McCance v. McCance*, 908 A.2 905 (Pa. Super. 2006).

⁹⁸ *Id.* at 910-11.

⁹⁹ *Raker v. Raker*, 837 A.2d 720 (Pa. Super. 2004).

¹⁰⁰ *Id.* at 726.

¹⁰¹ *See R.G. v. T.D.*, 672 A.2d 341 (Pa. Super. 1996).

Telephone threat

A telephone threat may constitute abuse. In *Burke v. Bauman*, the defendant telephoned the victim, his former girlfriend, to arrange retrieval of his clothes from her residence.¹⁰² During the call, the two discussed criminal charges that the defendant was facing as a result of the defendant destroying the victim's property. He threatened her during these calls. "I'll get you back. You are going to burn for this. I will be thinking every day if I go to jail how I can't wait to get out and make you pay. I'm going to get someone to destroy you and the rest of your stuff."¹⁰³ In prior incidents, the defendant pushed the victim, smashed property, kicked holes in walls and doors, had fits of rage at the victim's children and destroyed her car.

The trial court entered a temporary order, but at the final hearing, the victim was hospitalized and unavailable. After a discussion with counsel, the trial court entered an order dismissing the plaintiff's petition, stating that the telephone threats were insufficient to support a finding of abuse. The Superior Court reversed, finding that a person can be placed in reasonable fear of imminent bodily injury based on telephone calls, especially when coupled with past incidents of abuse.¹⁰⁴

False Imprisonment

The PFA Act incorporates the criminal code definition of false imprisonment in its definition of abuse.¹⁰⁵ False imprisonment is committed when an individual knowingly restrains another unlawfully so as to interfere substantially with his liberty.¹⁰⁶ The Superior Court held that an abuser's restraint of his wife for a period of 10 to 15 minutes was sufficient to meet the definition of false imprisonment under the PFA Act in *Snyder v. Snyder*.¹⁰⁷

Stalking

The PFA statute provides that stalking is abuse, defining it as follows: "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."¹⁰⁸ The PFA statute stalking definition expressly limits itself to the PFA Act and provides that it is inapplicable to criminal proceedings.¹⁰⁹ There are two significant differences between the definition of stalking in the crimes code and its definition in the PFA Act. **THE PFA DEFINITION REQUIRES ONLY REASONABLE FEAR AND DOES NOT REQUIRE THE INVOLVEMENT OF SUBSTANTIAL EMOTIONAL DISTRESS TO PROVE STALKING.**¹¹⁰ Also, the PFA definition requires a family and household relationship for the court to have jurisdiction. **THE CRIMES CODE**

¹⁰² *Burke v. Bauman*, 814 A.2d 206 (Pa. Super. 2002).

¹⁰³ *Id.* at 207.

¹⁰⁴ *Id.* 814 A.2d at 209.

¹⁰⁵ 23 PA.C.S. § 6102(a).

¹⁰⁶ 18 PA.C.S. § 2903.

¹⁰⁷ *Snyder v. Snyder*, 629 A.2d 977 (Pa. Super. 1993).

¹⁰⁸ Compare 23 PA.C.S. § 6102(a) and 18 PA.C.S. § 2709.1.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

DEFINITION OF STALKING DOES NOT REQUIRE ANY SPECIFIC RELATIONSHIP between the defendant and victim for a charge to arise.¹¹¹

Repeated calls and e-mails

In *R.G. v. T.D.*, the trial court found and the Superior Court affirmed that abuse had occurred when a university student made repeated telephone calls, sent electronic mail messages, including threatening ones, and advised his former girlfriend, also a student, that he was obsessive-compulsive and she was his obsession object.¹¹² The former girlfriend testified that she was very scared of his increasingly hostile messages and fearful of walking around campus, even in daylight.¹¹³

Child Abuse PFA Act Definition is Broad

The definition of child abuse in the PFA Act includes and incorporates,¹¹⁴ but is not limited to, the definitions of child and sexual abuse set forth in the Child Protective Services law.¹¹⁵ The child abuse definition under the PFA Act is broader than the child protective services definition and the criminal statute.

Therefore, the child abuse protections of the PFA Act apply even when the abuse against a child is not as serious as the abuse that would result in an indicated report of child abuse or removal of a child from the home under the Child Protective Services law. It is also not necessary for the level of violence against the child to give rise to criminal culpability for the PFA Act to apply.¹¹⁶

Excessive, reckless corporal punishment as child abuse

Children can qualify for a PFA order under other definitions of abuse as well. For instance, when a child receives bodily injury as a result of excessive corporal punishment, a PFA order may be entered.

In *Miller v. Walker*, plaintiff filed a PFA petition on behalf of her minor children, alleging that the defendant (the children's father) spanked their son with a board, causing bruises on the child's leg.¹¹⁷ The son testified that his father hit him with a board on the leg and grabbed his arm, causing him to bruise.¹¹⁸ The daughter testified that she heard her brother crying after their father took a board into her brother's room.¹¹⁹ Photographs of the bruises were also introduced.¹²⁰ The trial court entered a PFA order and the Superior Court affirmed, holding that

¹¹¹ *Id.*

¹¹² *R.G. v. T.D.*, 672 A.2d 341 (Pa. Super. 1996).

¹¹³ *Id.*

¹¹⁴ 23 PA.C.S. § 6102(a)(4).

¹¹⁵ 23 PA.C.S. §§ 6102(a), 6303(a).

¹¹⁶ *See Viruet ex rel. Velasquez v. Cancel*, 727 A.2d 591 (Pa. Super. 1999).

¹¹⁷ *Miller v. Walker*, 665 A.2d 1252 (Pa. Super. 1995).

¹¹⁸ *Id.* at 1254.

¹¹⁹ *Id.*

¹²⁰ *Id.*

“[c]orporal punishment inflicted recklessly or in an enraged manner may result in bodily injury, supporting issuance of a PFA order.”¹²¹

Corporal punishment that does not cause bruising or fear is not abuse

In *Ferri v. Ferri*, the Superior Court reversed a trial court order entering a PFA on behalf of a six-year-old child whose mother had slapped her.¹²² The slap did not leave a bruise and there was no testimony at the trial court level that the child was in imminent fear of bodily injury.¹²³ A similar outcome was reached in *Chronister v. Brenneman*, where a father administered corporal punishment by hitting his 16-year-old daughter with a strap across the buttocks after she admitted lying to him.¹²⁴ The Superior Court held this act did not constitute abuse; there was no evidence that the strapping resulted in anything more than a temporary painful condition and the strapping did not leave bruises.¹²⁵

Violation of a Protection Order is a Criminal Matter

Indirect Criminal Contempt

Indirect criminal contempt of a PFA is contemptuous conduct where the contemnor violates a court order or decree outside of the court.¹²⁶ Indirect criminal contempt proceedings are punitive in nature and are used to punish the contemnor for past acts of misbehavior.¹²⁷

Arrest is Mandatory When Defendant Violates Non-Monetary Provisions

The police or sheriff shall arrest a defendant, without a warrant upon probable cause, when the defendant violates provisions in a PFA order requiring any of the following relief:

- No abuse
- Exclusive possession
- Custody/visitation
- No contact
- Weapons relinquishment
- Stalking¹²⁸

Arrest for violation of a PFA is mandatory and defendants who are arrested shall be immediately taken before the court.¹²⁹

¹²¹ *Id.* at 1258.

¹²² *Ferri v. Ferri*, 854 A.2d 600 (Pa. Super. 2004).

¹²³ *Id.*

¹²⁴ *Chronister v. Brenneman*, 742 A.2d 190 (Pa. Super. 1999).

¹²⁵ *Id.*

¹²⁶ *Commw. v. Baker*, 722 A.2d 718 (Pa. Super. 1998) (*en banc*), *aff'd*, 766 A.2d 328 (Pa. 2001).

¹²⁷ *Cipolla v. Cipolla*, 398 A.2d 1053 (Pa. Super. 1979).

¹²⁸ 23 PA.C.S. § 6113(a).

¹²⁹ 23 PA.C.S. § 6113(a), (c).

Seizure of Weapons Used or Threatened to be Used

Subsequent to the arrest, the police officer or sheriff “shall seize all firearms, other weapons and ammunition used or threatened to be used during the violation or during prior incidents of abuse and any other firearms in the defendant’s possession.”¹³⁰

Verbal Notice of PFA Order Adequate for ICC Determination

In *Commonwealth v. Padilla*, the Superior Court examined a due process claim raised by a PFA defendant who was convicted of indirect criminal contempt of a PFA order.¹³¹

In *Padilla*, the victim obtained a no-contact PFA order late on a Friday afternoon. Early on Sunday morning, the victim called police, because the PFA defendant had been threatening her over the telephone and tried to gain entry to her home. The defendant had not been physically served with the PFA order, however, a police officer left a voice mail message for the defendant about the PFA order, and later spoke with the defendant by telephone.

The officer: (1) told the defendant that the plaintiff had a PFA order against him, (2) directed the defendant not to contact the plaintiff, and (3) made the defendant aware of the consequences of violating the order. Despite this warning, the defendant continued to call and threaten the plaintiff. After the defendant was served with the PFA order, the defendant stopped calling and harassing the plaintiff.

The trial court held the defendant in contempt. The defendant appealed the finding, claiming that the verbal notice given him by the police officer was inadequate to comply with the service requirements of due process. The Superior Court upheld the finding of indirect criminal contempt and found that the verbal explanation provided by telephone adequately conveyed notice of the PFA order and possible criminal penalties for violation of the order. The court observed that in section 6106(a), the PFA Act provides that the failure to serve a PFA order does not stay the effect of the order.

The court recognized that there are special exigencies in PFA cases, and observed that “since the point of the statute is to protect the victim from injury or death at the hands of the abuser, resort may be had to extraordinary measures when necessary to ensure that orders designed to provide protection actually do so.”¹³²

Defendant, Not Plaintiff, Can Be Arrested and Held In Contempt for Violating No-Contact Terms of PFA

Where a PFA order clearly prohibited the defendant “from having any contact with the plaintiff,” the fact that the plaintiff invited the defendant to attend a party with her was no defense to an Indirect Criminal Contempt (ICC) charge for violating the PFA order. In

¹³⁰ 23 PA.C.S. § 6113(b).

¹³¹ *Commw. v. Padilla*, 885 A.2d 994 (Pa. Super. 2005).

¹³² *Padilla*, 885 A.2d at 997.

Commonwealth v. Brumbaugh, the trial court’s decision holding the defendant in indirect criminal contempt of the PFA order was subsequently affirmed by the Superior Court.¹³³

Penalties

A judge may hold a defendant in indirect criminal contempt and sentence him or her to a prison term of up to six months, and impose a fine between \$300 and \$1000. In addition, the judge may order supervised probation and a fine between \$300 and \$1000.¹³⁴ The judge may also grant other relief as listed in the PFA Act. If an ICC conviction is entered and the plaintiff requests it, the judge shall extend the PFA order.¹³⁵ Prosecution for indirect criminal contempt does not remove the availability of other criminal charges.¹³⁶ Additionally, a plaintiff may file a private criminal complaint for violation of a PFA order if the district attorney’s office decides not to bring a contempt charge.¹³⁷ Plaintiffs can also file a petition for civil contempt of any portion of the order.¹³⁸

Bail Conditions Addressing Protection of Victim and Community

In determining whether an arrested defendant should be allowed bail, the magisterial district judge must consider whether the defendant poses a threat of danger to the victim.¹³⁹ If so, the magisterial district judge shall require, as a condition of bail, that the defendant refrain from both of the following actions:

- Entering the residence or household of the victim, and the victim’s place of employment
- Committing any further acts of criminal conduct against the victim¹⁴⁰

This bail condition expires at the time of the hearing.¹⁴¹ See Chapter 3 for more information about bail conditions.

Bail may be denied

In addition, the Pennsylvania Constitution allows the magisterial district judge to refuse bail where there is evident proof or great presumption that no condition or combination of

¹³³ *Commw. v. Brumbaugh*, 932 A.2d 108 (Pa. Super. 2007). The PFA Act allows the trial court to enter indirect criminal or civil contempt orders against the defendant only. The plain language of the Act is clear that the defendant, not the plaintiff, is bound by the order and may be held in contempt. See 23 PA.C.S. §§ 6113(a), 6114(a).

¹³⁴ 23 PA.C.S. § 6114(b).

¹³⁵ 23 PA.C.S. § 6114(b)(4).

¹³⁶ 23 PA.C.S. § 6114(d).

¹³⁷ *Id.*

¹³⁸ 23 PA.C.S. §§ 6113.1(a); 6114.1.

¹³⁹ 18 PA.C.S. § 2711(c)(1).

¹⁴⁰ 18 PA.C.S. § 2711(c)(2).

¹⁴¹ *Id.*

conditions other than imprisonment will reasonably assure the safety of any person and the community.¹⁴²

Prohibiting witness intimidation and any other conditions necessary

Other bail provisions that may be helpful in criminal cases involving domestic violence include the provision prohibiting witness intimidation,¹⁴³ and provisions that allow the issuing authority to impose “any other appropriate conditions designed to ensure the defendant’s ... compliance with the conditions of the bail bond.”¹⁴⁴

Victims must be notified whether bail granted or denied

In addition to the aforementioned protective bail conditions, the Crime Victims Act requires that the victim be given access to information regarding the grant or denial of bail to an adult.¹⁴⁵

The prosecutor in a personal injury crime, must provide notice to the victim of the offender’s release from a state or local correction facility.¹⁴⁶

The local correctional authority is to provide notice to the victim when bail is granted to a PFA defendant who is jailed for violation of the PFA order or for a personal injury crime against a victim protected by a PFA order.¹⁴⁷

Statutory Safety Considerations in PFA Proceedings

PFA Court Protection of Location, Telephone Number

The PFA Act includes a provision that allows a court to protect the confidentiality of the plaintiff’s and minor child’s address, telephone number, demographic information, and other information about the location of the plaintiff or minor child if the court finds that the defendant poses a continuing risk or threat to the plaintiff.¹⁴⁸ This provision also maintains the confidentiality of the domestic violence shelter address.¹⁴⁹

Address Confidentiality Program

The Domestic Violence and Sexual Violence Victim Address Confidentiality Act established an Address Confidentiality Program (ACP) for victims of domestic violence, sexual assault or stalking. Pennsylvania’s Office of the Victim Advocate (OVA) administers this program. The ACP consists of two parts. First, the ACP provides a substitute address for qualifying victims who

¹⁴² PA. CONST. art. I, § 14.

¹⁴³ PA. R.CRIM.P. 526(A)(4).

¹⁴⁴ PA. R.CRIM.P. 527(A)(3); *see also*, PA. R.CRIM.P. 526(B).

¹⁴⁵ 18 P.S. §11.201(2).

¹⁴⁶ 18 P.S. § 11.213(f).

¹⁴⁷ 18 P.S. § 11.201(9) and 11.214(b).

¹⁴⁸ 23 PA.C.S. § 6112.

¹⁴⁹ *Id.*

have moved to a new location unknown to the perpetrator. The second part of the program provides participants with a free, confidential first-class mail forwarding service.¹⁵⁰

Victims must apply for the ACP in person through a local domestic violence, sexual assault, or victim service program. ACP applicants must provide their telephone number and address to the OVA, and must list all pending civil and criminal proceedings in which the applicant is a victim, witness, plaintiff or defendant. The applicant must notify OVA if the victim is on probation or parole, and must notify OVA of an address or name change within five days.¹⁵¹ OVA may not disclose the confidential address of a participant except under limited circumstances to a state or local government agency that obtained a waiver; to a person or agency pursuant to a qualifying emergency; or to a person as directed by court order.¹⁵² Criminal penalties apply to those persons who intentionally, knowingly or recklessly attempt to gain access or gains access to a confidential address by fraud or misrepresentation.¹⁵³

Domestic Violence Advocate Privilege and Court Accompaniment

The PFA statute codifies an evidentiary privilege of confidentiality between a victim of domestic violence and a domestic violence counselor/advocate. Pursuant to the PFA Act, privileged information “includes all information, whether written or spoken, transmitted between a victim and a domestic violence counselor or advocate in the course of the relationship.”¹⁵⁴ This protection 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. It also includes communications facilitated by a linguistic interpreter assisting the victim, counselor or advocate.¹⁵⁵

The PFA Act authorizes a domestic violence counselor/advocate to accompany a party to any legal proceeding or hearing under Title 23.¹⁵⁶

Federal Restrictions on Electronic Disclosure of Victim Information

The Violence Against Women Act, also known as VAWA, is a set of federal laws designed to improve services for and responses to violence against women. In 2005, VAWA was amended to restrict the information about victims that a court may make available electronically. With the exception of secured registry information shared for law enforcement purposes (such as www.pfad.org), VAWA prohibits the electronic posting of information that could identify a victim of sexual assault, stalking, or domestic violence. Specifically, it precludes publication

¹⁵⁰ See 23 PA.C.S. § 6701-13.

¹⁵¹ 23 PA.C.S. § 6705.

¹⁵² 23 PA.C.S. §§ 6708-6710.

¹⁵³ 23 PA.C.S. § 6711.

¹⁵⁴ 23 PA.C.S. § 6116.

¹⁵⁵ 23 PA C.S. § 6102(a).

¹⁵⁶ 23 PA.C.S. § 6111.

about any of the following court pleadings if the publication could reveal the identity of the victim: the issuance of or filing for a protection order or the registration of a foreign order.¹⁵⁷

The Administrative Office of Pennsylvania Courts (AOPC) issued a policy setting forth parameters for public access and inspection of electronic case records in the systems controlled by the AOPC. The policy provides that victim information, including name, address and other contact information in an electronic record should not be accessible by the public.¹⁵⁸

The Protection of Victims of Sexual Violence or Intimidation Act

The Protection of Victims of Sexual Violence or Intimidation (PSVI) Act went into effect on July 1, 2015. The Act protects victims of sexual violence or intimidation by providing a civil remedy prohibiting the offender from contacting the victim regardless of whether or not there are outstanding criminal charges.

To obtain relief under the PSVI Act the parties cannot have a family or household relationship, such as that required by the PFA Act.¹⁵⁹ The PSVI Act defines “family or household members” as 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.¹⁶⁰ Therefore, **PARTIES IN A PSVI ACTION CANNOT HAVE ANY OF THE RELATIONSHIPS LISTED** in the definition of “family or household members” in order to obtain relief.

Court processes to obtain protections under the PSVI Act differ slightly from PFA court processes. Please see **the Process Flowchart - Protection From Abuse or Protection From Sexual Violence and Intimidation** later in this chapter.

Sexual Violence Protection Orders

To qualify for protection for sexual violence under the Act, conduct constituting a crime under any of the following provisions has to occur between persons who are not family or household members:

- 18 Pa.C.S. Ch. 31 (relating to sexual offenses, EXCEPT 18 Pa. C.S. §§3129 (relating to sexual intercourse with animal) and 3130 (relating to conduct relating to sex offenders))
- 18 Pa.C.S. §4304 (relating to endangering the welfare of children) if the offense involved sexual contact with the victim
- 18 Pa.C.S. §6301(a)(1)(ii) (relating to corruption of minors)
- 18 Pa.C.S. § 6312(b) (relating to sexual abuse of children)
- 18 Pa.C.S. § 6318 (relating to unlawful contact with minor)

¹⁵⁷ 18 U.S.C. §§ 2265, 2266(5).

¹⁵⁸ See Electronic Case Record Public Access Policy of the Unified Judicial System of Pennsylvania, 36 Pa.Bull. at 7234 (Dec. 2, 2006).

¹⁵⁹ 42 PA.C.S. § 62A03.

¹⁶⁰ *Id.*

- 18 Pa. C.S. § 6320 (relating to sexual exploitation of children)¹⁶¹

Protection From Intimidation

For Protection From Intimidation orders, conduct constituting a crime has to occur under the following provisions between persons who are not family or household members:

- 18 Pa.C.S. §2709(A)(40, (5), (6) or (7) (relating to harassment) where the conduct is committed by a person 18 years of age or older against a person under 18 years of age
- 18 Pa.C.S. §2709.1 (relating to stalking) where conduct is committed by a person 18 years of age or older against a person under 18 years of age¹⁶²

It is important to note that **TO BE ELIGIBLE FOR RELIEF AS A VICTIM OF INTIMIDATION UNDER THE ACT, THE PLAINTIFF MUST BE UNDER 18 AND THE DEFENDANT MUST BE OVER 18**. Age is not a consideration for individuals applying for relief as a victim of sexual violence.

PSVI Act Procedures

An action under the PSVI Act is commenced by filing a petition with the court alleging the need for protection with respect to sexual violence or intimidation. The petition may be filed by an adult or on behalf of a minor child by a parent, adult household member or guardian ad litem.¹⁶³ There is no prepayment of fees for the filing of a petition nor for service of the petition.¹⁶⁴

Jurisdiction, Venue, Relief Available

An emergency PSVI proceeding may be brought to a Magisterial District Court within the county in which the:

- plaintiff resides, either temporarily or permanently; or
- sexual violence or intimidation occurred.¹⁶⁵

However, if the relief sought includes possession of the residence or household to the exclusion of the defendant, **THE ACTION MAY ONLY BE BROUGHT IN A MAGISTERIAL DISTRICT COURT WITHIN THE COUNTY IN WHICH THE RESIDENCE OR HOUSEHOLD IS LOCATED.**¹⁶⁶

The right of the plaintiff to seek relief under the PSVI Act is not affected by the defendant's absence or non-residence from Pennsylvania, provided that the court has personal jurisdiction

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ 42 PA.C.S. § 62A05(a).

¹⁶⁴ 42 PA.C.S. § 62A05(b). When the matter comes before the court for final adjudication, the fees and costs shall be assessed against defendant. The court shall waive fees and costs only upon a showing of good cause or when the court makes a finding that the defendant is not able to pay the fees and costs. 42 PA.C.S. § 62A05(c)(2).

¹⁶⁵ PA.R.C.P.M.D.J. No. 1204(1)(2).

¹⁶⁶ PA.R.C.P.M.D.J. No. 1204(B).

over the defendant in accordance with section 5322 (relating to bases of personal jurisdiction over persons outside of Pennsylvania).¹⁶⁷

Accompaniment by a Sexual Assault Counselor

A sexual assault counselor may accompany and provide assistance to a plaintiff in any legal proceeding or hearing under the PSVI Act as it relates to sexual violence.¹⁶⁸ Any communications between a sexual assault counselor and a victim of sexual violence are confidential and the counselor shall not be competent to testify, release the record of or otherwise disclose confidential communications made to or by the counselor to or by the victim.¹⁶⁹ The privileged communications of a sexual assault counselor can only be waived by a signed writing by the victim, or when reporting facts of physical or sexual violence of a child.¹⁷⁰

Relief Available

Under the PSVI Act, an order or a consent agreement may include the following relief:

- Prohibit the defendant from having any contact with the victim, including, but not limited to, restraining the defendant from entering the victim's residence, place of employment, business or school. This prohibition may also include indirect contact through third parties and direct or indirect contact with other designated persons.
- Granting any other appropriate relief sought by the plaintiff.¹⁷¹

Orders, or consent agreements, shall be for a period of time not to exceed 36 months.¹⁷²

Emergency PSVI Proceedings by a Magisterial District Judge

When the court of common pleas is unavailable, generally on the weekends or after hours, magisterial district judges may enter an ex parte PSVI order if they deem it necessary to protect the victim upon good cause shown in an ex parte proceeding.¹⁷³ Good cause constitutes **IMMEDIATE AND PRESENT DANGER POSED BY THE DEFENDANT TO THE VICTIM**.¹⁷⁴

Proceedings for emergency relief shall be commenced by the plaintiff filing a petition with the hearing officer on a form prescribed by the State Court Administrator.¹⁷⁵ The plaintiff shall sign the petition and list the names and addresses of the plaintiff and the defendant, and the

¹⁶⁷ 42 PA.C.S. § 62A05(f).

¹⁶⁸ 42 PA.C.S. § 62A10.

¹⁶⁹ 42 PA.C.S. § 62A16(a)(1).

¹⁷⁰ 42 PA.C.S. § 62A16(a)(1)(2).

¹⁷¹ 42 PA.C.S. § 62A07(b)(1)(2).

¹⁷² 42 PA.C.S. § 62A0(c).

¹⁷³ 42 PA.C.S. § 62A08(a)(2)(ii).

¹⁷⁴ *Id.*

¹⁷⁵ PA.R.C.P.M.D.J. No. 1206(A).

names, addresses, and ages of persons on whose behalf the plaintiff is seeking relief.¹⁷⁶ The plaintiff shall also allege the cause for seeking relief from sexual violence or intimidation.¹⁷⁷

An ex parte hearing should be held as soon as possible after the filing of the petition.¹⁷⁸ The plaintiff may present witnesses at the hearing.¹⁷⁹ Neither in the petition nor during a hearing shall the hearing officer require disclosure of the address of a rape crisis center or the plaintiff or victim.¹⁸⁰

Relief includes no-contact, “any other appropriate relief”

The relief available in an emergency PSVI order includes prohibiting the defendant from having any contact with the victim, including but not limited to, restraining the defendant from entering the victim’s residence, place of employment, business or school.¹⁸¹ It may also include prohibiting indirect contact through third parties and also prohibiting direct or indirect contact with other designated persons.¹⁸² The minor judiciary may also grant any other appropriate relief sought by the plaintiff.¹⁸³ The hearing officer shall enter on the petition form the findings and any protection order made or other action taken.¹⁸⁴

Expiration and certifying the order to court of common pleas

Emergency orders expire at the end of the next business day the court deems itself available.¹⁸⁵ Any emergency PSVI orders entered, as well as any documentation, shall be immediately certified to the court.¹⁸⁶ Certification to the court shall have the effect of commencing proceedings under the Act.¹⁸⁷ In addition to certifying the order to the court of common pleas, the hearing officer **SHALL PROVIDE THE PLAINTIFF WITH INSTRUCTIONS REGARDING THE COMMENCEMENT OF THE PROCEEDINGS IN THE COURT AT THE BEGINNING OF THE NEXT BUSINESS DAY AND REGARDING THE PROCEDURES FOR INITIATING A CONTEMPT CHARGE** should the defendant violate the emergency order.¹⁸⁸ Hearing officers shall also advise plaintiffs of the existence of rape crisis centers in the case of sexual violence and inform the plaintiff of the availability of legal assistance without cost if they are unable to pay.¹⁸⁹

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ P.A.R.C.P.M.D.J. No. 1207.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² 42 P.A.C.S. § 62A08(a)(1).

¹⁸³ 42 P.A.C.S. § 62A08(a)(2).

¹⁸⁴ P.A. R.C.P.M.D.J. No. 1208(B).

¹⁸⁵ 42 P.A.C.S. § 62A08(b).

¹⁸⁶ 42 P.A.C.S. § 62A08(c).

¹⁸⁷ *Id.*

¹⁸⁸ 42 P.A.C.S. § 62A08(d).

¹⁸⁹ *Id.*

Service

Although emergency orders are in place for a short period of time they are still required to be served. The hearing officer, or when necessary the plaintiff, shall immediately deliver a service copy of any protection order to a police officer, police department, sheriff or certified constable for service upon the defendant and execution.¹⁹⁰ After making reasonable effort, if the executing officer is unable to serve the protection order upon the defendant in a timely fashion, the executing officer shall leave a service copy of the petition form containing the order with the police department with jurisdiction over the area in which the plaintiff resides for service upon the defendant and shall advise the police department that the order was not able to be served.¹⁹¹ Hearing officers shall also, within two business days, serve the order upon the police department, sheriff and district attorney in the jurisdiction where the order was entered.¹⁹² In the case of a minor victim of sexual violence, a copy of the petition and order needs to be served upon the county children and youth agency as well as the Pennsylvania Department of Human Services.¹⁹³

Victim safety when emergency PSVI orders are denied

If the court must deny an emergency order request, it is important for the court to give the plaintiff a chance to plan how best to stay safe and determine whether to proceed with a temporary order. The best way to accomplish this is by providing victims with a referral to a local sexual assault program that can provide these services. Otherwise, the court's denial may place a victim at risk by leaving the victim without court-ordered protection while advising the perpetrator that the victim is publicly seeking help and challenging the perpetrator's authority.

A victim may choose to proceed with their case by petitioning for a temporary PSVI in the court of common pleas. If so, certifying the denial order to the prothonotary could assist the court administratively. It is also good practice to provide the plaintiff with instructions regarding the commencement of the proceedings in the court at the beginning of the next business day as well as referrals to rape crisis centers in the case of sexual violence.¹⁹⁴

When the victim decides not to pursue a temporary PFA order, the court is under no obligation to certify the denial order. The PSVI Act and the Rules of Civil Procedure are silent as to the post-denial procedure.

Temporary PSVI Proceedings

If a plaintiff seeks a temporary PSVI order for protection from immediate and present danger, the court of common pleas shall conduct an ex parte proceeding.¹⁹⁵ That court may enter a temporary order as it deems necessary to protect the plaintiff or another individual when it

¹⁹⁰ PA. R.C.P.M.D.J. No. 1209(A).

¹⁹¹ *Id.*

¹⁹² PA. R.C.P.M.D.J. No. 1209(B)(1).

¹⁹³ PA. R.C.P.M.D.J. No. 1209(B)(2).

¹⁹⁴ 42 PA.C.S. § 62A09(d).

¹⁹⁵ 42 PA.C.S. § 62A06(b).

finds that the plaintiff is in immediate and present danger from the defendant.¹⁹⁶ The temporary order remains in effect until modified or terminated by the court after notice and a hearing.¹⁹⁷

Final PSVI Proceedings

Within 10 business days of the filing of a petition under the PSVI Act, a hearing shall be held before the court of common pleas where the plaintiff asserts that they are a victim of sexual violence or intimidation committed by the defendant; and proves by preponderance of the evidence that the plaintiff is at continued risk of harm from the defendant.¹⁹⁸

Violation of a PSVI Order

An arrest for a violation of a PSVI order may be made without warrant upon probable cause, whether or not the violation is committed in the presence of law enforcement.¹⁹⁹ Subsequent to the arrest, the defendant shall be taken before the court in the judicial district where the contempt is alleged to have occurred.²⁰⁰ When the common pleas court is unavailable, law enforcement shall transport the defendant to a magisterial district judge.²⁰¹ Defendants shall be afforded a preliminary arraignment without unnecessary delay.²⁰²

Hearings on the indirect criminal contempt violation shall be scheduled within 10 business days of the filing of the charge or complaint of indirect criminal contempt.²⁰³ A sentence for an indirect criminal contempt may include a fine of not less than \$300 or more than a \$1,000 and imprisonment or supervised probation not to exceed six months.²⁰⁴

Victim Protections Available Regardless of Immigration Status

The Pennsylvania Protection from Abuse (PFA) Act and federal Violence Against Women Act (VAWA) provide access to relief for individuals abused by a family or household member **REGARDLESS OF THEIR IMMIGRATION STATUS.**

U.S. immigration laws place the non-citizen's opportunity to gain legal status in the hands of her citizen or permanent resident spouse. The threat or fear of deportation often deters domestic violence victims from taking actions to protect themselves and their children such as filing for a protection order, filing criminal charges, or calling the police.²⁰⁵ The U.S. House of Representatives Committee on the Judiciary, while drafting VAWA 1994, found that domestic

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ 42 PA.C.S. § 62A07(b)(1)(2).

¹⁹⁹ 42 PA.C.S. § 62A12(a).

²⁰⁰ 42 PA.C.S. § 62A12(b)(1).

²⁰¹ 42 PA.C.S. § 62A12(b)(2).

²⁰² 42 PA.C.S. § 62A12(c).

²⁰³ 42 PA.C.S. § 62A12(e).

²⁰⁴ 42 PA.C.S. § 62A12(d)(2)(i)(ii).

²⁰⁵ H.R. REP. NO. 103-395, at 26-27 (1993).

violence was greater in marriages where the non-citizen spouse's legal status depended on her marriage to the abuser.²⁰⁶

Whether married or not, immigrant victims of domestic violence face barriers when seeking protections that are legally due to them, as researchers explain:

[T]he experiences of immigrant women in domestic violence situations are often exacerbated by their specific position as immigrants, including limited host-language skills, lack of access to dignified jobs, uncertain legal statuses, and experiences in their home countries, and thus their alternatives to living with their abusers are very limited.²⁰⁷

For these reasons, it is particularly important that judges play a role in assuring that their courts are accessible to all victims of domestic violence abused in or living in their jurisdiction, without regard to the immigration status, national origin, or language.²⁰⁸

Planning for Litigants with Limited English Proficiency (LEP)

At least 172 languages are spoken in Pennsylvania, including Spanish, Chinese, German, Vietnamese, Russian, Arabic, Polish and Hindi,²⁰⁹ according to 2010 U.S. census data.²¹⁰ The fairness of Pennsylvania courts depends on everyone being able to know what is going on in court, whether a person is the victim, the accused, or a witness.

Both federal and state laws govern language access to prohibit national origin discrimination in Pennsylvania courts.²¹¹ The Administrative Office of Pennsylvania Courts, through district court administrators, implements policies and procedures to provide interpreters in legal proceedings for the following people:

²⁰⁶ H.R. REP. NO. 103-395, at 26 (1993); Leslye E. Orloff & Janice V. Kaguyutan, *Offering a Helping Hand: Legal Protections for Battered Immigrant Women*, 10 AM. U. J. GENDER SOC. POL'Y & L. 95, 110 (2002).

²⁰⁷ Menjívar, Cecilia and Olicia Salcido, *Immigrant Women and Domestic Violence: Common Experiences In Different Countries*, 16 GENDER & SOCIETY 902 (2002), available at https://www.researchgate.net/profile/Cecilia_Menjívar/publication/249667176_Immigrant_Women_and_Domestic_ViolenceCommon_Experiences_in_Different_Countries/links/54c672bc0cf2911c7a58dbaa.pdf citing Hass, Giselle Aguilar, Mary-Ann Dutton, and Leslye E. Orloff, *Lifetime Prevalence of Violence Against Latina Immigrants: Legal and Policy Implications*, 7 INT'L REV. OF VICTIMOLOGY 93-113 (2000).

²⁰⁸ See 42 U.S.C. § 2000d; Executive Order 13166 (federal requirements on language access to Limited English Proficiency persons).

²⁰⁹ Each of these languages is spoken by at least 20,000 people in Pennsylvania. *Id.*

²¹⁰ U.S. Census Bureau, Table 39. *Detailed Languages Spoken at Home and Ability to Speak English for the Population 5 Years and Over for Pennsylvania: 2009-2013* (2015), <http://www.census.gov/data/tables/2013/demo/2009-2013-lang-tables.html>

²¹¹ Title IV of the Civil Rights Act and the Safe Streets Act of 1968 prohibit national origin discrimination by recipients of federal financial assistance. 42 U.S.C. § 2000d et seq. (Title VI); 42 U.S.C. § 3798(c) (Safe Streets Act). These laws require that any organization receiving federal funds, like courts, develop and implement policies that ensure meaningful access for LEP persons for their programs and activities. Failing to do so is a form of national origin discrimination. *Lau v. Nichols*, 414 U.S. 563 (1974).

- those with limited English proficiency (LEP)²¹²
- those who are Deaf or hard of hearing²¹³

Pennsylvania Laws About Interpreters

Magisterial district judges come to know the predominant ethnic communities who are their constituents and can plan for their needs. **Pennsylvania's Interpreter Statute**²¹⁴ and **Regulations**²¹⁵ list how courts should use interpreters for arrests, trials, hearings, and other proceedings. They describe how courts can find qualified and certified interpreters.²¹⁶

In 2015, all judicial districts drafted preliminary language access plans and each district appointed a **language access coordinator** to oversee the provision of language access services in their courts. Lower courts, however, may face greater challenges with language access issues, including less access to resources. Magisterial district judges handle many matters, including Emergency Protection From Abuse actions that occur after business hours when they would be unable to enlist the assistance of their language access coordinator. Guidance from the AOPC has made it clear that LEP policies apply to all Pennsylvania courts and tribunals. Planning and implementation of language access policies for lower courts may merit additional attention.⁶

Requesting Certified Interpreters

The Court Interpreter Act states that the court can appoint certified interpreters for LEP or deaf parties, witnesses and certain others for “all judicial proceedings.”²¹⁷ Such interpreters are certified in the required language and, most importantly, their understanding of legal terms. Certified interpreters also agree to ethics rules, such as translating word-for-word rather than summarizing what someone says.²¹⁸ The Interpreter Certification Program maintains a **current list of certified interpreters**.²¹⁹

Courts can appoint an interpreter upon request or *sua sponte*, if the court determines that a principal party in interest or witness has a limited ability to speak or understand English.¹¹

²¹² See 42 PA.C.S. § 4411 – 4417 (relating to persons with limited English proficiency).

²¹³ See 42 PA.C.S. § 4431 – 4438 (relating to persons who are Deaf), <http://www.pacourts.us/assets/files/setting-1698/file-225.pdf>

²¹⁴ Title 42, Ch. 44(B), available at <http://www.pacourts.us/assets/files/setting-1698/file-225.pdf>

²¹⁵ Title 42, Ch. 44(C), <http://www.pacourts.us/assets/files/setting-2936/file-231.pdf>

²¹⁶ Administrative Offices of Pennsylvania Courts - Court Interpreter Program Interpreter Roster; <http://www.pacourts.us/judicial-administration/court-programs/interpreter-program>

²¹⁷ 42 PA.C.S. § 4401.

²¹⁸ Supreme Court of Pennsylvania, Administrative Office of Pennsylvania Courts, *Interpreter Certification Program Guidelines for the Procurement and Appointment of Interpreters*, [hereinafter ICP Guidelines], Appendix A: Appointment of Interpreters by Case and Certification Level, March 27, 2013, at 4, <http://www.pacourts.us/assets/files/setting-410/file-229.pdf> - search="model voir dire"

²¹⁹ AOPC Interpreter Roster, *supra* note 216.

Courts can also appoint an interpreter or provide for additional interpretation for an immediate family member of a principal party in interest.¹² To request an interpreter, the courts can contact the **language access coordinator** for the judicial district. **Interpreter request forms** are available at this link: <http://www.pacourts.us/judicial-administration/court-programs/interpreter-program>

Family, Friends and Others are Unacceptable Interpreters

Sometimes courts use family and friends of the victim or abuser to interpret during legal proceedings. Volunteer interpreters can be a poor choice for many reasons. Family members or friends can have feelings in favor of or against the victim or abuser. Even when volunteer interpreters understand and speak English better than the parties, they can misunderstand important legal terms. Interpreters who are not certified may insert advice or extra language into their translation. Certified interpreters must keep conversations that they translate between a victim and domestic violence advocate confidential, and they can't testify about it in court.²²⁰ A volunteer interpreter is not required to keep conversations confidential, which can compromise a victim's legal rights.

In fact, AOPC policy states:

Under no circumstances should the presiding judicial officer appoint any of the following to serve as an interpreter:

- Family member of the LEP, deaf or hard-of-hearing person
- Witness or party to the case
- Law enforcement officers such as police, sheriff's deputies, or constables
- Social worker, counselor or health professional involved in the case
- Persons who may have an interest or perceived interest in the outcome to the case.¹³

Bilingual Protection Order Forms

Bilingual forms for PFA and PSVI orders are available from the Unified Judicial System of Pennsylvania website at:

<http://www.pacourts.us/forms/for-the-judiciary>. Sample EPFA petitions in Spanish and English are included at the end of this chapter for convenience.

PFA documents are also available in Arabic, Chinese, French, Haitian Creole, Khmer, Korean, Polish, Portuguese, Russian, Spanish and Vietnamese. Forms for Relief from Sexual Violence or Intimidation orders are available in Spanish. Criminal Protective Order documents are available in Chinese, Khmer, Russian, Spanish and Vietnamese.²²¹

²²⁰ 42 PA.C.S. § 4415.

²²¹ More information about Language Access can be found in the June 2016 issue of THE JURIST: E-NEWSLETTER FOR PENNSYLVANIA JUDGES, available at <http://www.pcadv.org/Learn-More/PCADV-Publications/Newsletters/Jurist/>

Telephonic Interpreters May Be Used

After the non-English form is completed, the petitioner's answers must be interpreted into English. Unless a certified interpreter is immediately available in-person, court personnel assisting the LEP individual must contact the telephone interpreting service, which is designated in their local language access plan. It is good practice to have this telephone number posted by the phones in areas where litigants are interviewed. The telephone interpreter can translate into English what the LEP individual wrote in response to the petition's questions. Because courts have access to telephonic interpretation, there is no reason why litigants with LEP cannot be fully assisted to access safety and justice through the courts. Court personnel can turn to the language access coordinator for protocols and tools to serve litigants with limited English proficiency.

Costs of Interpreter Services

The cost of the interpreter will be paid by the county where the court has jurisdiction when the person with limited English proficiency is one of the following:

- Defendant, party or a direct victim in a judicial proceeding for a criminal matter or juvenile proceeding²²²
- Witness in a judicial proceeding for a criminal matter²²³

For more information from the AOPC, see the **Court Interpreter Program** website, and the **May 3, 2016 Memo: Recommendations Regarding LEP Litigants and Protective Petitions & Orders**.²²⁴

²²² 42 PA.C.S. § 4416(b).

²²³ 42 PA.C.S. § 4416(c).

²²⁴ <http://www.pacourts.us/judicial-administration/court-programs/interpreter-program>;
http://pubs.pcadv.net/palegal/LEPrecommndPFApsvi_AOPC_030516.pdf

Pro Se Practice Tools

In addition to the forms that must be made available pursuant to the PFA and PSVI Acts, some courts make additional written information available, such as legal information, information regarding court processes and procedures, expected courtroom demeanor, and the like. Information is made available to plaintiffs and defendants. Judges may find that the process runs more smoothly when unrepresented litigants are given adequate information about the proceedings in advance.

It is also important to briefly note that the Rules of Civil Procedure require *pro se* parties to file an Entry of Appearance listing any prior representation and a location where the court is authorized to send correspondence.²²⁵ A *pro se* party may list an alternative address, which is particularly important for victims of domestic violence who are residing at a confidential location. See a sample **Entry of Appearance form**, which provides clear instruction regarding the use of an alternative address.

The court may make available the following Sample Fact Sheets to litigants about the PFA Act and complying with no-contact orders:

The PFA Act: A Guide for Victims of Domestic Violence

No-Contact Order Information for Defendants in a PFA Order

Importance of Judicial/Court Staff Demeanor

Victims of domestic violence may be very frightened and emotional. They may be embarrassed and ashamed about their situation. Although working in a domestic violence court is challenging labor for those who do so, taking interest in each case, and maintaining a respectful and appropriate demeanor are some of the most important things judges and court staff can do.

Leaving a violent home is a process, not a single act. Some studies indicate that it takes the victim an average of six attempts at separating before this goal is accomplished. Each time a victim separates from the abuser, the victim gains additional information and strength. Asking the court for help is one way to stop the abuse and violence, but not the only way, and maybe not the way that works best at the moment. Victims constantly negotiate ways to stay safe and protect their children. Sometimes that means that the victim returns to the abuser after successfully seeking help from the justice system. Perhaps the court's protection worked to stop the violence, or the victim returned to protect children or pets. Many safety calculations go into the decisions to petition for, pursue or withdraw a protection order.

It is important to remember that it is a positive reflection on the court and the court employees if a victim returns to the court again to access the protections of the PFA Act. Domestic violence victims will return for help with their process of becoming safe and independent when court personnel are welcoming and helpful.

²²⁵ PA. R.Civ.P. 1930.8.

Abusive Behaviors Checklist

NOTE: The following is a sample checklist for courts to make available to PFA litigants. Courts using this form allow the PFA plaintiff to attach the checklist to the PFA complaint.

We gratefully acknowledge The Hon. Thomas King Kistler, Centre County Court of Common Pleas, for providing us with this sample checklist and permission to reprint it here.

Abusive Behaviors				
Type of Abuse	Location(s) where abuse occurred	Date(s) of incidents	Physical injuries, if any	Police contact?
Threatening/harassing phone calls				
Threat by physical or sexual abuse of children				
Threat by displaying or pointing weapon, access to weapons				
Threat by cruelty to animals				
Throwing things at or in the direction of the victim				
Grabbing				
Shoving or pushing				
Forcing sexual contact				
Physically abusing children in household				
Sexually abusing children in household				
Slapping (with open hand)				
Punching (with closed fist)				
Kicking				
Using a weapon (including but not limited to a firearm)				
Biting				
Choking or strangling (any grabbing of the neck)				
Beating				
Forcing to stay in closet, room, home or location				
Physically restraining/holding down the victim				
**Threat to injure self/others **Threat by following **Threat by damage to property **Name calling/directed use of obscenities				

*Indicates behaviors, which alone may not constitute physical abuse, but may be used to induce and/or heighten fear in victim.

Signature _____ Date _____

Policy/Purpose of the PFA Act – “The primary goal of the PFA Act is not retrospective punishment, but advance prevention of physical and sexual abuse.” *Eichenlaub v. Eichenlaub*, 490 A.2d 918, 922 (Pa. Super. 1984).

Jurisdiction:

The PFA Act authorizes the court to grant protection only to **family or household members**. This is defined in the Act as 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. 23 Pa. C.S.A. § 6102.

“Intimate partners” covers dating relationships. *R.G. v. T.D.*, 672 A.2d 341 (Pa. Super. 1996).

“Intimate partners” covers same-sex relationships. *D.H. v. B.O.*, 734 A.2d 409 (Pa. Super. 1999).

What acts are covered: Abuse defined as “the occurrence of one or more of the following acts:”

- ◆ 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.

Abuse does not need to constitute a crime to be covered. *Miller v. Walker*, 665 A.2d 1252 (Pa. Super. 1995).

- ◆ Placing another in reasonable fear of imminent serious bodily injury.

Fear of imminent serious bodily injury does not require any actual physical injury. *Fonner v. Fonner*, 731 A.2d 160 (Pa. Super. 1999).

Intent of abuser is “of no moment.” *Raker v. Raker*, 847 A.2d 720 (Pa. Super. 2004).

Telephone threats are sufficient. *Burke v. Bauman*, 814 A.2d 206 (Pa. Super. 2002).

- ◆ Infliction of false imprisonment.

Restraining another, interfering with their liberty for even brief time is sufficient. *Snyder v. Snyder*, 629 A.2d 977 (Pa. Super. 1993).

- ◆ Physically or sexually abusing minor children.

Corporal punishment inflicted recklessly or in an enraged manner that results in bodily injury is sufficient. *Vruet v. Cancel*, 727 A.2d 591 (Pa. Super. 1999).

- ◆ Stalking defined as knowingly engaging in a course of conduct or repeatedly committing acts toward another, including following without proper authority, under circumstances that place the person in reasonable fear of bodily injury.

Repeated phone calls, electronic mail messages, including threatening messages sufficient. *R.G. v. T.D.*, 672 A.2d 341 (Pa. Super. 1996).

Relief Available – 23 Pa. C.S.A. § 6108

Emergency Order stage: (1) Do not abuse; (2) Exclusive possession of jointly owned/leased residence; (3) No contact. 23 Pa. C.S.A. § 6110.

Ex parte or Temporary Order: (1) Do not abuse; (2) Exclusive possession of jointly owned/leased residence; (3) If defendant has duty of support to plaintiff or children, exclusive possession of residence owned/leased by defendant; (4) Temporary custody/visitation. If defendant has partial, shared or full custody by written agreement or court order, no custody change unless court finds defendant is likely to abuse/remove children; (5) No contact; (6) Relinquish firearms and other weapons; (7) Pay reasonable losses; (8) Do not stalk or harass; (9) Any other relief.

Final Order: All forms of relief listed for *ex parte* or temporary order, plus directing defendant to pay spousal and/or child support. Note: In final order, court MAY amend/modify existing custody orders/arrangements. Trial court MUST consider risk to children and plaintiff in addressing custody issues. Term of Final Order – up to 36 months.

Evidence

Failure of police to file charges is not relevant to PFA abuse claim. *Boykin v. Brown*, 868 A.2d 1264 (Pa. Super. 2005). Domestic Violence Advocate communications with domestic violence victim are privileged and confidential. 23 Pa. C.S.A. § 6116, *V.B.T. v. Family Services of Western PA*, 705 A.2d 1325 (Pa. Super. 1998), *aff'd* 728 A.2d 953 (Pa. 1999). Prior history of abuse relevant, remoteness in time of prior incidences of hostility goes to weight, not admissibility. *Commw. v. Petrakovich* 329 A.2d 844 (Pa. 1974). Abuse occurring three years earlier admitted. *Commw v. Drumheller*, 808 A.2d 893 (Pa. 2002). Abuse of children occurring six years earlier admitted. *Miller v. Walker*, 665 A.2d 1252 (Pa. 1995).

Extension/ Modification of Final Orders

Court order may be extended if court finds the defendant **abused plaintiff** or if defendant engaged in a pattern or practice that indicates **continued risk of harm** to the plaintiff or child.

- ◆ If defendant is found in contempt, court may extend PFA order duration for another term.
- ◆ Court may amend order at any time upon petition by either party.

Enforcement: Hearings must be **scheduled** within 10 days of Indirect Criminal Contempt (ICC) charge.

The defendant may be sentenced (1) to up to six months in jail, (2) supervised probation, (3) \$300 to \$1000 fine per offense.

Special Considerations

- ◆ No fees shall be charged to PFA plaintiff for filing, service, registration, withdrawals, dismissals or costs associated with appeal.
- ◆ No mutual orders may be entered unless both parties properly filed and served complaints, and court determined both were entitled to protection.
- ◆ Address Confidentiality – disclosure of domestic violence program address prohibited; where plaintiff seeks address confidentiality, and court concludes defendant poses threat, plaintiff's/children's addresses must be kept confidential.

Firearm Issues

- ◆ Courts have discretion to take all or some of the defendant's firearms.
- ◆ Once firearms are relinquished, there may be civil and criminal liability for returning firearms to the PFA defendant even if the state firearm prohibition is removed.

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COMMONWEALTH OF PENNSYLVANIA
COUNTY OF

Petition for Emergency Relief from
Abuse

Mag. Dist. No:

MDJ Name:

vs.

Address:

Telephone:

Docket No:

Case Filed:

PETITION OF THE PLAINTIFF

I, _____, hereby petition for emergency relief from abuse
(Name of Plaintiff - please print)

☐ On behalf of myself.

☐ On behalf of the following minor (child) (children) of whom I am a (parent) (adult household member) (guardian).

☐ On behalf of the following incapacitated person to whom I am guardian.

(Name)

(Address)

(Age)

(Name)

(Address)

(Age)

The cause for seeking relief is as follows:

Emergency relief from abuse is required because there is immediate and present danger of abuse by the defendant to me and to the above listed minor (child) (children) (incapacitated person).

(Print additional names/addresses on a separate sheet of paper and attach hereto.)

(Signature of the Plaintiff)



ESTADO DE PENNSYLVANIA

CONDADO DE _____

Petición de Emergencia para Protección Contra Maltrato

Juez Distrito Núm.:

Nombre del Juez:

Dirección:

Teléfono:

VS.

Núm. de Caso:

Fecha de Radicación:

PETICION DEL QUERELLANTE

Yo, _____, por la presente solicito una orden de emergencia de protección contra el
(Nombre del (de la) querellante en letra de molde) maltrato

- ☐ A nombre propio
- ☐ A nombre del (de los) siguiente(s) menor(es) de quien soy (padre/madre) (miembro adulto del hogar) (tutor/guardián)
- ☐ A nombre de la siguiente persona incapacitada a quien sirvo de tutor/guardián

(Nombre)

(Dirección)

(Edad)

(Nombre)

(Dirección)

(Edad)

Solicito amparo por la siguiente razón:

La orden de emergencia para protección contra el maltrato se requiere debido a que existe peligro real e inminente de maltrato por parte del (de la) demandado(a) hacia mí y (el menor) (los menores) (la persona incapacitada) listados anteriormente.

(Liste nombres y direcciones adicionales en una hoja de papel separada y adjúntela.)

Firma del (de la) querellante

PROTECTION OF VICTIMS OF SEXUAL VIOLENCE OR INTIMIDATION ACT 42 PA. C.S. §62A

Purpose of the Act – The Protection of Victims of Sexual Violence or Intimidation (PSVI) Act provides victims of sexual violence or intimidation a civil remedy that requires the offender to stay away from the victim regardless of whether the victim seeks criminal prosecution.

42 PA. C.S. §§ 62A01(5)-(6)

Jurisdiction - 42 PA. C.S. §§ 62A03.

Victims of sexual violence and intimidation are eligible for relief who do not have a family or household member relationship with the defendant, i.e., who ARE NOT spouses, ex-spouses, living or 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. Victims of sexual violence and intimidation who have a family or household relationship with a defendant would instead be eligible for civil relief under the Protection from Abuse Act.

What acts are covered- 42 PA. C.S. §§ 62A03.

Sexual violence is defined as conduct constituting a crime under any of the following provisions between persons who are not family or household members:

- Sexual Offenses (18 Pa. C.S. Ch. 31) except Sexual intercourse with animals (18 Pa. C.S. § 3129) and Conduct relating to sex offenders (18 Pa. C.S. § 3130)
- Endangering welfare of children if the offense involved sexual contact with the children (18 Pa. C.S. § 4304)
- Corruption of minors (18 Pa. C.S. § 6301(a)(1)(ii))
- Sexual abuse of children (18 Pa. C.S. § 6312(b))
- Unlawful contact with minor (18 Pa. C.S. § 6318)
- Sexual exploitation of children (18 Pa. C.S. § 6320)

Intimidation is defined as conduct constituting a crime under either of the following provisions between persons who are not family or household members:

- Harassment where the conduct is committed by a person 18 years of age or older against a person under 18 years of age (18 Pa. C.S. §§ 2709(A)(4), (5), (6) or (7))
- Stalking where the conduct is committed by a person 18 years of age or older against a person under 18 years of age (18 Pa. C.S. § 2709.1)

Relief Available – 42 PA. C.S. §§ 62A07.

“No contact” orders which can include, but are not limited to, restraining a defendant from entering plaintiff’s residence, place of employment, business or school as well as prohibiting indirect contact through third parties

- Any other appropriate relief sought by plaintiff
- Final orders may remain in effect for up to three years

Hearings – 42 Pa. C.S. §§ 62A06 and 62A09.

Hearings are held within ten business days of filing a petition where plaintiffs must:

- Assert they are a victim of sexual violence or intimidation committed by a defendant who is not a family or household member
- Prove by a preponderance of the evidence that they are at continued risk of harm from defendant

Temporary Orders – 42 Pa. C.S. § 62A06(b).

Upon an ex parte hearing, the court may enter a temporary order if it is necessary to protect plaintiff from immediate and present danger by defendant.

- Temporary order remains in effect until modified or terminated after notice and hearing

Emergency Orders – 42 Pa. C.S. § 62A09(a)(2)(ii).

When the court is unavailable, a hearing officer may enter an emergency order if it is necessary to protect the victim upon good cause shown in an ex parte proceeding.

- Immediate and present danger posed by the defendant to the victim constitutes good cause
- Emergency order expires at the end of the next business day the court is available

Extension/Modification of Orders – 42 Pa. C.S. § 62A07(d).

Order extended where the court finds it necessary because defendant engaged in one or more acts or finds some other circumstances that demonstrate a continued risk of harm to the victim.

- Defendant must be provided with notice and a hearing
- No limits on the number of extensions granted

Extension granted where defendant is convicted of an indirect criminal contempt **and** plaintiff requests an extension. **42 Pa. C.S. § 62A14(d)(3).**

Orders modifiable at any time after filing, service and hearing on modification petition.

42 Pa. C.S. § 62A17(A).

Enforcement

Hearings must be scheduled within ten business days of an Indirect Criminal Contempt charge.

42 Pa. C.S. § 62A12(e).

Defendant may be sentenced to up to six months in jail or up to six months supervised probation and a \$300 to \$1,000 fine per offense. **42 Pa. C.S. § 62A14(d).**

Special considerations:

- No fees charged to plaintiffs for filing, service, registration, withdrawals, dismissals or costs associated with appeals. **42 Pa. C.S. § 62A05(c).**
- Courts shall provide simplified forms and clerical assistance in English and Spanish. **42 Pa. C.S. § 62A05(e)(1).**
- Courts shall provide plaintiff with written referrals in English and Spanish to local sexual assault services, local legal services offices, and county bar associations. **42 Pa. C.S. § 62A05(e)(2).**
- Address confidentiality:
 - Disclosure of address of rape crisis program address prohibited
 - Where plaintiff seeks address confidentiality and court concludes defendant poses a continued risk of harm, plaintiff's address must be kept confidential. **42 Pa. C.S. § 62A11.**

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WHICH PROTECTION ORDER PROCESS?

Abuse, including sexual abuse and intimidation, is alleged and parties DO have household/family relationship*

PFA Order

Protection from Abuse petition

If plaintiff is a minor, parent or legal guardian must file

Sexual abuse or intimidation is alleged and parties DO NOT have household/family relationship*

Sexual Violence or Intimidation Order

Plaintiff alleges *Intimidation*

(Stalking or Harassment)

Plaintiff alleges *Sexual Violence*

SVP Order Process

Plaintiff is 18 or older or Defendant is younger than 18

No civil relief is available.
Refer to District Attorney's Office

Plaintiff is younger than 18 and Defendant is 18 or older

PFI Order Process

Protection from Intimidation Order petition

Parent/legal guardian must file on behalf of minor

Sexual Violence Order petition

If plaintiff is a minor, parent or legal guardian must file

*Household/family relationship includes:

- Spouses, former spouses, or persons living as spouses
- Parents or children
- Current or former sexual, intimate or dating partners
- Family member related by blood (consanguinity)
- Family member related by marriage or affinity



Petition for Emergency Relief in
Connection with Claims of Sexual
Violence or Intimidation

Mag. Dist. No:

MDJ Name:

Address:

Telephone: ()

vs.

Docket No:

Case Filed:

PETITION OF THE PLAINTIFF

I, _____, hereby petition for emergency relief:
(Name of Plaintiff - please print)

- ☐ On behalf of myself.
- ☐ On behalf of the following minor (child) (children) of whom I am a (parent) (adult household member) (guardian).
- ☐ On behalf of the following incapacitated person to whom I am guardian.

(Name) (Address) (Age)

(Name) (Address) (Age)

The cause for seeking relief is as follows:

Emergency relief is required because there is immediate and present danger posed by the defendant to me and/or to the above listed minor (child) (children) (incapacitated person).

(Print additional names/addresses on a separate sheet of paper and attach hereto.)

(Signature of the Plaintiff)

(Título)

AFFIDAVIT DE EMPLAZAMIENTO

Yo, _____, el suscribiente, declaro por la presente que entregué una copia del Aviso de Audiencia y Orden, la Petición y la Orden Temporal de la acción titulada con anterioridad al Acusado, entregando los documentos a

en la siguiente dirección:

el ____ día de _____, 20__, a aproximadamente las _____.m.

Verifico que las declaraciones hechas en esta declaración jurada son verídicas y correctas. Entiendo que hacer declaraciones falsas aquí estaría sujeto a las penalidades establecidas por 18 Pa.C.S. § 4904 en relación con las declaraciones no juramentadas a las autoridades.

(Firma) _____

(Cargo)

(Dirección)

(Fecha) _____

LA PERSONA QUE ENTREGUE EL AVISO DE AUDIENCIA Y ORDEN, LA PETICIÓN Y LA ORDEN TEMPORAL AL ACUSADO DEBE COMPLETAR Y FIRMAR ESTE FORMULARIO. ESTE DEBE ENTREGARSE AL SECRETARIO DEL TRIBUNAL O PRESENTARSE ANTE LA CORTE EN LA FECHA DE LA AUDIENCIA.

[illegible]



THE ANNOTATED PENNSYLVANIA PROTECTION FROM ABUSE ACT

Updated: March 2020

Pennsylvania Coalition Against Domestic Violence
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[PCADV Legal Toll Free: 888-235-3425](#)

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PENNSYLVANIA PROTECTION FROM ABUSE ACT, 23 PA.C.S. § 6101 ET SEQ.

§ 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:

Case Law Illustration: Abuse Includes “Past Abuse”

Jiminez v. Jiminez, 81 Berks L.J. 323 (1988).

The Protection from Abuse Act (PFAA or the Act) does not contain a specific time requirement for filing a petition. The trial court found plaintiff’s PFA petition timely filed under the circumstances where plaintiff’s husband’s brother attacked her eight months prior to the filing.

(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.

Case Law Illustrations: Rape and Sexual Assault

Boykai v. Young, 83 A.3d 1043 (Pa. Super. 2014).

Physical force is not necessary to establish abuse under the PFA Act in cases of rape or sexual assault. A victim can show the element of forcible compulsion in rape by intellectual, moral, emotional or psychological force. Sexual assault requires that the victim refused to consent to sexual relations. Wife’s credible testimony that Husband refused to support their household and provide food for her and their child unless she engaged in sexual relations amounted to intellectual or psychological force. Wife’s testimony supported a finding of either rape or sexual assault, both of which are abuse under section 6102(a)(1) of the PFA Act.

Case Law Illustrations: Bodily Injury

B.T.W., O/B/O T.L. v. P.J.L., 956 A.2d 1014 (Pa. Super. 2008).

Bruising and marks on the child's back from a belt constitute bodily injury under the Act. Child's Grandmother filed for a PFA against the child's Stepmother who had a custody order for primary custody of the child. The trial court found that Stepmother had smacked the child, hit her with a belt and pulled her hair. The court also found that the child was bruised and hit with a belt again when she did not help at home quickly enough. Testimony at the hearing revealed that the child had marks on her back from the belt. On appeal the Superior Court found sufficient evidence to demonstrate that T.L. had been abused and suffered bodily injury in the process, which warranted issuance of a PFA order.

Custer v. Cochran, 933 A.2d 1050 (Pa. Super. 2007).

The Court found "that there was sufficient evidence to support a finding that [Brother] attempted to cause and intentionally, or at least recklessly, caused bodily injury to [Sister]." Sister is about 5 feet, 3 inches tall, and weighs about 125 pounds, while Brother is about 6 feet tall, and 240 pounds, almost twice Sister's weight. Sister testified that on November 9, 2004, Brother "forced his way into her office, knocking her backwards, causing her to hit her leg and knock over a stool. When she attempted to return the eyeglasses that came off his head during their scuffle, he hit her arm which, until approximately two weeks prior, had been splinted following surgery." Sister experienced pain after the incident in the arm for several days and resumed wearing the splint.

Case Law Illustrations: Indecent Assault

Thompson v. Thompson, 963 A.2d 474 (Pa. Super. 2008).

Grabbing Plaintiff in a sexual way without her consent during a custody exchange established abuse under the PFA statute. Plaintiff testified that Defendant "forcibly grabbed her breasts and crotch" without her consent while making lascivious comments, such as "you know you like it." The Superior Court agreed with the trial court's finding that Defendant's actions met the definition of indecent assault found under Pennsylvania's penal code, 18 Pa.C.S. § 3126(a), thereby establishing abuse under the PFA act as defined in section 6102(a)(1). Indecent assault is an abusive act under the statute and thus warranted the entry of a final protection order against Defendant.

Case Law Illustrations: Abuse Need Not Rise to Level of Criminal Activity

Boykin v. Brown, 868 A.2d 1264 (Pa. Super. 2005).

A PFA petitioner is only required to establish that abuse has occurred by preponderance of the evidence and not beyond a reasonable doubt. Thus, a determination by a district attorney or the police as to whether or not to file criminal charges against a defendant is irrelevant to the court's determination under the PFAA.

DeHaas v. DeHaas, 708 A.2d 100 (Pa. Super. 1998), appeal denied, 732 A.2d 615 (Pa. 1998).

Definition of abuse did not require infliction of actual physical injury.

Miller v. Walker, 665 A.2d 1252 (Pa. Super. 1995).

Father's infliction of bodily injury on his son was not so severe as to rise to the level of criminal culpability, but did not preclude a PFA order under the PFAA inasmuch as the Act addresses prevention and not punishment of abuse.

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

Case Law Illustrations: Past Instances of Abuse That Formed the Basis of an Agreed Order May Show Reasonableness of Fear in Current Petition

Buchhalter v. Buchhalter, 959 A.2d 1260 (Pa. Super. 2008).

A trial court erred when it refused to allow Petitioner to testify regarding the instances of abuse that formed the basis for a prior protection order entered by consent of the parties. The Superior Court held that the "facts surrounding the prior PFA consent order are relevant to an understanding as to the reasonableness of [Petitioner's] fear relative to the present petition." The trial court erroneously concluded that it acted within its discretion to exclude Petitioner's testimony of past abuse because the court did not find the petitioner credible.

Case Law Illustrations: Actual Physical Injury Not Required

McCance v. McCance, 908 A.2d 905, 911 (Pa. Super. 2006).

Defendant appealed entry of final PFA order against him filed by his sister-in-law, his brother's wife. He asserted there was insufficient evidence to enter a final PFA. The Superior Court found that the defendant's "verbal chiding, intimidating demeanor (blocking [plaintiff's] vehicular access), threat of retaliation, and striking of [plaintiff's] vehicle to the point of damaging it" combined to meet the definition of abusive behavior prohibited by 23 Pa. C.S. § 6102(a)(2).

Ferri v. Ferri, 854 A.2d 600 (Pa. Super. 2004).

Actual physical injury is not required for the entry of a final order but "reasonable fear of imminent bodily injury" must be demonstrated.

Fonner v. Fonner, 731 A.2d 160 (Pa. Super. 1999).

Placing another in reasonable fear of imminent serious bodily injury provides that the victim's fear of serious bodily injury must simply be reasonable. The section does not call for actual physical contact. A victim is not required to wait for physical or sexual abuse to occur in order for the Act to apply.

Case Law Illustrations: Specific Intent of Perpetrator Not Required to Show Reasonable Fear of Imminent Serious Bodily Injury

Raker v. Raker, 847 A.2d 720 (Pa. Super. 2004).

The focus for the trial court's determination was whether the plaintiff had reasonable fear and the husband's actual intent was "of no moment." Husband's entrance into wife's half of duplex in the middle of the night, coupled with past incidents of abuse by husband towards wife were sufficient to establish that wife reasonably feared serious bodily injury from her husband.

Case Law Illustrations: Bodily Injury, Reasonable Fear of Imminent Serious Bodily Injury, False Imprisonment

Fonner v. Fonner, 731 A.2d 160 (Pa. Super. 1999).

Court found abuse under section 6102(a)(2) where appellant was angry, loud, upset and badgering; appellant restricted victim's movement by standing in front of her and touching and holding her arm; appellant followed appellee into another room and punched the wall in front of her while standing at a fairly close distance; wife testified that appellant had threatened to hit her and she believed that he would hit her; and appellant had threatened to hit her in the past. Victim's fear of imminent serious bodily injury must simply be reasonable. The goal of the Act is to prevent physical/ sexual abuse, so a victim need not wait for physical/ sexual abuse to occur for the Act to apply.

Snyder v. Snyder, 629 A.2d 977 (Pa. Super. 1993).

Respondent's attempt to grab petitioner's purse and keys; dragging her; holding her for 10-15 minutes; forcibly restraining her while screaming at her; picking her up and throwing her down; strangling her; and threatening to have sex with her fit the definition of abuse under sections 6102(a)(2), and (a)(3). Wife was also bruised several places on her body.

Weir v. Weir, 631 A.2d 650, 654 (Pa. Super. 1993).

Driving at excessive rate of speed over dark, winding roads and pinning petitioner against a concrete abutment with a van are "attempts to cause bodily injury or serious bodily injury" under the Act. These acts also "placed petitioner ... in fear of sustaining imminent bodily injury."

Case Law Illustrations: Threats Sufficient to Establish Reasonable Fear

R.G. v. T.D., 672 A.2d 341 (Pa. Super. 1996).

A threat to kill, without actual or attempted physical violence, is abuse and may serve as the basis for the issuance of an order under the Act.

Counterman v. Shoemaker, 14 Pa. D. & C. 4th 217, aff'd, 625 A.2d 95 (Pa. Super. 1992).

Plaintiff was placed in reasonable fear of bodily injury by defendant calling her on phone, stating he had a gun and threatening to kill her, her fiancé and her family.

Case Law Illustration: Telephone Calls Sufficient to Establish Reasonable Fear

Burke v. Bauman, 814 A.2d 206, 209 (Pa. Super. 2002).

In reversing the trial court, the Superior Court held that “[i]t is possible for a person to be placed in reasonable fear of imminent bodily injury based on telephone calls, particularly when coupled with the alleged abuser’s past history of violence.” Defendant called the petitioner and said: (1) “I’ll get you back. You are going to burn for this;” “(2) These are promises, not threats;” and (3) “I will be thinking every day if I go to jail how I can’t wait to get out and make you pay. I’m going to get someone to destroy you and the rest of your stuff.”

Case Law Illustration: Court May Infer Reasonable Fear from Testimony

T.K. v. A.Z., 157 A. 3d 974 (Pa. Super. 2017).).

The Court rejected defendant’s assertion that the plaintiff never testified she was in fear. Stating that although she never specifically used the word “fear”, she clearly had deep concern for her safety, testifying that she believed the defendant’s behavior would eventually escalate from stalking to physical harm.

Karch v. Karch, 885 A.2d 535 (Pa. Super. 2005).

The court determines a witness's credibility and may infer fear based on the witness's testimony describing the defendant's actions. The court will not infer that the failure of police to act on a report of domestic violence means that the victim is not credible.

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

Case Law Illustrations: Restraining Victim Is Interference with Liberty

Snyder v. Snyder, 629 A.2d 977, 984 (Pa. Super. 1993).

“Presently, the appellant has admitted to restraining the appellee during two of the incidents *supra*. During one incident, he admitted restraining her for a period of ten-fifteen minutes. ... [W]e believe there was sufficient evidence for the court to conclude by a preponderance of the evidence that the appellant knowingly restrained the appellee so as to interfere substantially with her liberty.”

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

Case Law Illustrations: Children and Definition of Abuse

B.T.W., O/B/O T.L. v. P.J.L., 956 A.2d 1014, 1016-17 (Pa. Super. 2008).

The Superior Court affirmed the entry of a protection order on behalf of Plaintiff's minor granddaughter against the child's Stepmother. "The trial court found that T.L. had been 'smacked and hit with a belt and had her hair pulled, and that [she] was bruised and hit with a belt again when she did not help at home quickly enough.' Testimony at the hearing revealed that T.L. had marks on her back from the belt." Evidence from the hearing also supported the assertion that Stepmother and her husband, neither of whom had a driver's license, had driven the child in the car. The Superior Court found, therefore, a sufficiency of evidence to demonstrate that the child, "had been abused, suffering bodily injury in the process, and had been placed in fear of serious bodily injury, all of which warranted issuance of a protection from abuse order."

Lawrence v. Bordner, 907 A.2d 1109, 1114 (Pa. Super. 2006).

Mother filed a PFA on behalf of her teenage daughter against the father. Daughter testified that her father put his hands around her throat, choked her, dragged her into the kitchen, choked her again, and then threw her into the dining room. The trial court stopped the hearing during the daughter's testimony and asked whether a custody order existed between mother and father. Upon learning that there was a pre-existing custody order whereby mother had primary and father had partial custody the trial court directed mother to file a Petition to Modify Custody and dismissed the PFA. The Superior Court reversed and remanded. The trial court committed reversible error when it abruptly stopped the minor daughter's testimony and determined that mother was not entitled to a final PFA Order. The trial court limited mother to a custody action as her exclusive remedy for the alleged abuse due to the parties' pre-existing custody order. The Superior Court found that a trial court needs to first determine if a PFA is warranted and if "a permanent PFA is proper, it shall then decide whether the terms of the custody Order would be in conflict with the PFA order and require a specific suspension or supersedance of the custody Order."

Ferri v. Ferri, 854 A.2d 600 (Pa. Super. 2004).

Trial court erred by entering PFA order where mother was found to have struck her seven-year-old daughter in the face but no evidence of injury such as crying or bruising was presented. Nor was any evidence presented that the child suffered reasonable fear as a result of the incident. The Superior Court noted "[w]e do not believe the General Assembly intended the [PFA] Act to tie the hands of parents who may have to discipline their children appropriately."

Viruet v. Cancel, 727 A.2d 591 (Pa. Super. 1999).

Trial court erred in finding plaintiff's lawsuit to be frivolous where defendant hit her daughter multiple times, and grandmother testified that she saw bruises on granddaughter's back, right arm, right knee and left eye. Officer testified he saw bruises on child's left eye, left side of her

back, right arm and left arm. Pictures of bruises taken by the officer were introduced as evidence. Medical records substantiated injuries.

Chronister v. Brenneman, 742 A.2d 190, 192 (Pa. Super. 1999).

The PFAA does not prohibit a parent from using physical punishment to discipline a 16-year-old daughter for misconduct. The father's motivation for hitting his daughter four or five times across the buttocks was punishment and there was no evidence of "malevolent infliction of pain or an attempt to terrorize his daughter." Furthermore, while the daughter experienced pain, she was not bruised. As such, the conduct did not amount to abuse under the PFAA.

DeHaas v. DeHaas, 708 A.2d 100 (Pa. Super. 1998), appeal denied 732 A.2d 615 (Pa. 1998).

Evidence that mother held down child in bathtub, forcing child to swallow the water, that child choked, and had been in fear of imminent serious bodily injury was sufficient to support finding that mother "abused" child within meaning of the PFAA.

Miller v. Walker, 665 A.2d 1252 (Pa. Super. 1995).

Definition of "abuse" in the PFAA that includes reference to Child Protective Services Law does not limit abuse to serious physical injury to a child, but rather includes both bodily injury caused intentionally, knowingly, or recklessly as well as serious bodily injury. The PFAA is distinguished from Child Protective Services Law and the Crime Code. The burdens, standards of proof and purposes of the laws are different. The definition of "abuse" under the PFAA is broader. For a remedy to be available under PFAA, it is not necessary that physical harm to a child be as serious as that which is required for a child to be removed from his home and placed in protective custody. Corporal punishment inflicted recklessly or in enraged manner may result in bodily injury permitting issuance of protection order under PFAA. See also, *Viruet v. Cancel*, above.

Miller v. Walker, 665 A.2d 1252 (Pa. Super. 1995).

Protective order entered against Father on behalf of two minor children as a result of Father's spanking one child with a board, leaving bruises on child's legs. Son testified that Father struck him with a board and caused pain; that Father gripped his arm and caused a bruise; and that he was afraid Father might do these things again. Daughter testified that she heard son crying after Father took board into son's room and that she feared similar punishment. Mother testified that she observed bruising on the children on prior occasions.

Dye v. McCoy, 621 A.2d 144 (Pa. Super. 1993).

Striking a five-year-old child across her nose with a belt buckle and slapping her face while she watched cartoons was abuse under the PFAA. Father and girlfriend were enjoined from contact with child for one year.

Gabel v. Gabel, 26 Pa. D. & C. 4th 83 (Montg. 1994), aff'd, 659 A.2d 8 (Pa. Super. 1995).

14-year-old daughter filed PFA against mother. Mother had verbally abused child, shook her violently, pushed and grabbed her and kneed her in the ribs, causing injuries. Mother's actions did not comport with reasonable traditional notions of discipline. Parent's harm to a child is abuse under the PFAA even if the child provoked the parent's actions. The parent was removed from the marital residence for six months.

Keith v. Keith, 28 Pa. D. & C.3d 462 (Lanc. 1984).

Defendant had been convicted of sexually abusing his children in the past. His close proximity to them, although it caused them great stress, was not sufficient to establish abuse.

(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).

Case Law Illustration: Knowingly Engaging in a Course of Conduct or Repeatedly Committing Acts Toward Another

T.K. v. A.Z., 157 A. 3d 974 (Pa. Super. 2017).

The Court found that the defendant's behavior fell squarely within the meaning of abuse under 23 Pa. C.S. § 6102(a)(5) when the plaintiff's testimony established that the defendant repeatedly followed her in his vehicle at grocery stores, sporting events, outside while the kids were playing, and at other locations. He called the children during the plaintiff's custodial time to say, "Daddy is near the house," and then drove past her home honking the car horn. He tried to maintain verbal contact with the plaintiff despite prior court orders limiting communication to court-monitored applications and put a nail in her tire after taking the children to therapy.

Mescanti v. Mescanti, 956 A.2d 1017 (Pa. Super. 2008).

The actions of a defendant should be considered in the totality of the circumstances and considered as a whole when determining abuse as a course of conduct. Husband's actions over a period of months, wherein he provoked arguments; routed through Wife's personal belongings; prevented Wife from sleeping; followed her when she was out with friends; prevented her from leaving the residence; locked her out of the residence; verbally threatened her saying "you better not go to sleep;" and cocked his guns within earshot of Wife; established a course of conduct that put Wife in reasonable fear of bodily injury.

Scott v. Shay, 928 A.2d 312 (Pa. Super. 2007).

Plaintiff was molested as a child by Appellant, who was convicted of indecent assault. In the years that followed, Plaintiff saw Defendant at various places around the community where

both lived. In August 2004, Defendant visited Plaintiff's house, ostensibly to talk to her father, and revealed that his cousin was their neighbor. In October 2005, Plaintiff and Defendant attended the same church social gathering, where Defendant stared and smiled at her several times, despite being asked to stay away from her by other church members. Plaintiff then filed for, and trial court entered, a final order. The Superior Court reversed. It found that subsequent events occurring over a year apart and under different circumstances that did not resemble each other did not constitute a pattern of conduct rising to the level necessary for a protection order. (See also Family or Household Member).

R.G. v. T.D., 672 A.2d 341 (Pa. Super. 1996).

Court found abuse where former boyfriend, a male university student, made repeated unwanted phone calls and sent e-mail messages (including the statement "you're not answering me, you'll die"). Defendant informed Plaintiff that he suffered from obsessive-compulsive disorder and plaintiff was the object of his obsession. Plaintiff testified that she was "very scared" by increasingly hostile messages and was afraid to walk around campus even in the daylight.

D.H. v. B.O., 734 A.2d 409 (Pa. Super. 1999).

The court determined that there was insufficient evidence to support a finding that Defendant had engaged in a repeated course of conduct which would place Plaintiff in reasonable fear of bodily injury where physical threats were only directed towards Plaintiff's boss and that the one threat to Plaintiff was regarding finances. Plaintiff terminated the relationship after returning home from out of town and finding several "disturbing" phone messages with his employer. Defendant contacted Plaintiff via pager and telephone calls, at work and at home, a total of 13 times over 5 days. Defendant threatened to strangle Plaintiff's boss.

K.B. v. Terrence Tinsley, 2019 PA Super 116.

Petitioner and Defendant were intimate partners who broke up as a result of Defendant's verbal abuse, which escalated dramatically after the break-up. After a hearing, the trial court granted Petitioner a two-year PFA Order. Defendant appealed, arguing that there was insufficient evidence to support the entry of the PFA Order. The Superior Court rejected Petitioner's argument, finding that the behavior described at trial, which included incessant texts and phone calls, public verbal abuse, stabbing an air mattress in front of plaintiff, and physically accosting her in a parking lot, supported the entry of the PFA Order. The Superior Court also rejected claims that the Defendant was not able to explore the Petitioner's motive to show that she was vindictive in filing the PFA as hearing transcripts showed he had ample opportunity to present this argument.

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

"Appropriate law enforcement agency." The duly constituted municipal law 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.

“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.

“Commercial Armory.” A for-profit entity which holds the appropriate Federal and State licenses to possess and secure firearms of third persons.

“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.

Case Law Illustration: Related by “Affinity” Defined

Commonwealth v. Walsh, 36 A.3d 613, 618 (Pa. Super. 2012).

Child and her mother resided with Walsh for many years. Mother sought and received a temporary PFA on behalf Child following allegations of sexual abuse of Child by Walsh. After entry of the order, Walsh induced Child’s friend to pass on threats to Child. The friend told Child and Child’s older sister contacted the police. The trial court found Walsh guilty of indirect criminal contempt, sentenced to six months of probation, and entered a final PFA Order for three years. Walsh appealed, claiming that his relationship to Child was not covered in the PFA Act and that making statements to a third party is not a violation of a PFA order. The Pennsylvania Superior Court upheld the trial court and found that Child met the definition of

“family and household member” under the Act. The Court looked to the definition of the word “affinity” within the Act and concluded that, while the term is not defined directly in the Act, the definition of “affinity” in Webster’s Dictionary includes “as related by marriage or ties other than by blood.” In this case, Walsh and Mother resided together for 13 years, Walsh had been involved in Child’s life since she was five years old, during which time he treated her like a stepdaughter, and her two half-siblings were the children of Mother and Walsh. The Court held that the Child was related to Walsh by affinity because the facts in this case established that they were related through ties other than blood. The Court clarified that, consistent with the goal of the Act to provide the Courts with flexibility to protect and prevent further abuse, “it is incumbent upon [the Court] to interpret ‘affinity’ so as to include this relationship.”

Case Law Illustrations: “Intimate Partners” Defined: Dating Relationship Included

Evans v. Braun, 12 A.3d 395 (Pa. Super. 2010).

“Sexual or Intimate Partners” includes a dating relationship that establishes the domestic, romantic or familial link necessary for standing under the PFA Act even if the relationship is of short duration. Plaintiff, Evans, and Defendant, Braun, went on two dates. On the second date, Braun told Evans that he had a gun. After the date, he took Evans to his residence to meet his son. While at the residence, Braun pulled the gun from his waistband and handed the gun to Evans. He commented on its weight and told her it could put a very big hole in her. Evans was unsure if he was trying to intimidate or impress her. Subsequently the relationship deteriorated. Evans asked Braun to meet her at a restaurant to apologize for misunderstandings between them. When Braun arrived, he was sarcastic and aggressive. Braun told Evans, “Don’t forget I have this” and showed her the gun in his waistband. Alarmed, Evans filed for a PFA. Braun argued that he and Evans were not intimate partners. The trial court granted a final order after a hearing, and the Superior Court affirmed, finding that a dating relationship, even though short-lived, had some measure of personal interaction elected by the parties and thus qualified as an intimate relationship.

Varner v. Holley, 854 A.2d 520, 522 (Pa. Super. 2004)

“A dating relationship, such as the relationship between appellant and Varner, meets the relationship requirement of the Act.”

D.H. v. B.O., 734 A.2d 409 (Pa. Super. 1999).

Evidence was sufficient to demonstrate an intimate relationship where the PFA petition referred to appellant as a “former roommate and homosexual lover” and the complainant testified that he and appellant formerly had a sexual relationship lasting approximately one and one-half months.

R.G. v. T.D., 672 A.2d 341 (Pa. Super. 1996).

Plaintiff averred that defendant was her former “boyfriend.” Where defendant made no objection to this description, the parties were considered “intimate partners” and had a relationship that was covered under PFAA.

Counterman v. Shoemaker, 14 Pa. D. & C. 4th 217 (Monroe 1992), aff’d, by 625 A.2d 95 (Pa. Super. 1992).

PFA order against ex-boyfriend as “former intimate partner.”

Case Law Illustration: “Sexual or Intimate Partners” Definition Limited to those Parties with Domestic, Romantic and/or Familial Link

Scott v. Shay, 928 A.2d 312 (Pa. Super. 2007).

Plaintiff was molested as a child by Defendant, who was convicted of indecent assault. In the years that followed, Plaintiff saw Defendant at various places around the community where both lived. In August 2004, Defendant visited Plaintiff’s house, ostensibly to talk to her father, and revealed that his cousin was their neighbor. In October 2005, Plaintiff and Defendant attended the same church social gathering, where Defendant stared and smiled at her several times, despite being asked to stay away from her by other church members. Plaintiff then filed for, and trial court entered, a final order. Defendant appealed, based on standing and sufficiency of the evidence. To have standing to petition for a PFA an individual must fall into one of the categories defined in section 6102, “Family or household members.”

The Superior Court reversed and found that the only way Plaintiff and Defendant met the statutory definition would be if the court interpreted “sexual or intimate partner” to include assailant and victim. The Court determined that this interpretation did not fall within the rubric of PFA Act, because a sexual assault crime like Defendant’s against Plaintiff did not in and of itself establish the domestic, romantic and/or familial link necessary for standing under the PFAA.

Case Law Illustration: Related by Consanguinity

Slusser v. DeBoer, 985 A.2d 974 (Pa. Super. 2009), appeal denied, 4 A.3d 1055 (Pa. 2010).

Defendant was the grandfather of plaintiff’s daughter. Plaintiff and Defendant’s son never married, but they had a child in common. As such, Plaintiff and Defendant had a direct blood relationship to each other through Plaintiff’s minor child. This relationship by consanguinity adequately provided jurisdiction to the trial court.

H.M.H. On Behalf of Minor, L.M.H. v. D.J.G, 2019 PA Super 156.

Petitioner filed for a PFA on behalf of her thirteen-year-old daughter against the child’s first cousin based on allegations of sexual abuse. A temporary PFA was granted, and the parties proceeded to a final PFA hearing. At the final PFA hearing, the Court requested an offer of proof

from Mother's counsel regarding a prima facie case of abuse and standing. The trial court dismissed the PFA without prejudice on the grounds that Mother failed to present a prima facie case and that the relationship of first cousins did not meet the definition of "family" in the PFA Act. The Superior Court reversed the trial court's decision holding that lack of terms and familial limits in the PFA Act meant it was intended to include broader language to encompass a plethora of relationships. In addition, the Superior Court also stated that because the language around relation by consanguinity in the PFA Act is clear and unambiguous and it encompasses first cousins who are related by blood.

Case Law Illustrations: Persons Related by Consanguinity Need Not Reside Together

Custer v. Cochran, 933 A.2d 1050 (Pa. Super. 2007).

Brother challenged the trial court's jurisdiction to enter a final PFA order against him because he and Sister were business partners. He contended that pursuant to the decision in *Olivieri v. Olivieri*, 678 A.2d 393 (Pa. Super. 1996), the trial court should have dismissed Sister's petition for a protection order. In *Olivieri*, the Superior Court held that the PFA Act was not intended to resolve a dispute between business partners who happen to be siblings but did not reside together. The Superior Court rejected Brother's arguments. The Court found that the plain language of the statute includes "persons related by consanguinity" and it held that siblings are persons related by consanguinity. The Court recognized that the PFA Act previously required siblings to reside together in order to be eligible for relief under the Act. However, the legislature expanded the language of the statute and the present version's plain language did not require a domestic relationship. The Superior Court expressly overruled the *Olivieri* decision with regard to that decision's suggestion that the present version of the PFA Act imposes a common residency requirement. While the court agreed with Brother that the purpose of the Act is to protect victims of domestic violence, the Court found that pursuant to canons of statutory construction it could not disregard the plain language of the statute. Since Sister's petition clearly fell within the ambit of the PFA Act, the trial court did not err in hearing evidence on that petition.

Case Law Illustration: "Living as Spouses" Defined

Yankowskie v. Lenker, 526 A.2d 429 (Pa. Super. 1987).

Whether parties were living together at the time of the abuse is not dispositive. Courts should consider the (1) duration of relationship; (2) frequency of contact between parties; (3) whether parties are financially interdependent; (4) whether parties have children together or have raised children together; and (5) whether parties have engaged in tasks directed toward maintaining a common household.

Case Law Illustration: Related by "Affinity" Defined

McCance v. McCance, 908 A.2d 905, 910 (Pa. Super. 2006) P10.

The Superior Court interpreted "affinity" in the PFAA to include a family relationship of brother-in-law and sister-in-law in a PFA filed by plaintiff against her husband's brother. The Court found that:

"[s]uch an interpretation does not do violence to the purpose of the Act, which is to forestall escalation of disputes among family members where injury may be on the horizon. See *Mahorsky v. Mahorsky*, 22 D. & C. 3d 210, 213 (1982) ("The entire thrust of the [Protection from Abuse Act and rules of civil procedure is to create an efficient, simple and rapid vehicle for the resolution of family disputes."); contrast *Olivieri v. Olivieri*, 678 A.2d 393 (Pa. Super. 1996) (PFA was not a vehicle to resolve dispute between sister and brother feuding as partners about the way the business was being operated)."

Case Law Illustration: Business Partners, Though Family, Not Family or Household Members

Olivieri v. Olivieri, 678 A.2d 393 (Pa. Super. 1996).

PFAA did not apply to a dispute between business partners, who happened to be brother and sister, over the operation of a jointly owned business. Portions overruled by *Custer v. Cochran*, 933 A.2d 1050 (Pa. Super. 2007), *supra*.

"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 district justice, judge of the Philadelphia Municipal Court, bail commissioner 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.

Case Law Illustration: Capacity of Minors

Varner v. Holley, 854 A.2d 520, 523 (Pa. Super. 2004).

PFAA permits the entry of a PFA order against a minor. However, the minor must be represented by a guardian "who shall supervise and control the conduct of the action on behalf of the minor" pursuant to the Pennsylvania Rules of Civil Procedure Nos. (relating to minors as parties) & 2028. The Court found that the PFA order entered by consent agreement against 17-year-old defendant was void because the defendant did not have a guardian or parent with him

at the PFA hearing. Therefore, the defendant later could not be found in indirect criminal contempt of that PFA.

“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).

Case Law Illustrations: Personal Jurisdiction: Minimum Contacts

N.T. ex. Rel. K.R.T. v. F.F., 2015 PA Super 139 (June 15, 2015)

The Pennsylvania Superior Court reversed the trial court's order overruling Defendant's preliminary objections based upon lack of personal jurisdiction, vacated the temporary PFA order, and dismissed Plaintiff's PFA petition. Plaintiff filed a PFA petition alleging that abuse occurred in California leading Plaintiff to flee to Pennsylvania. Defendant filed preliminary objections on the basis of lack of jurisdiction and the trial court overruled those objections. The trial court ruled that while Defendant had never resided in Pennsylvania, his action of hiring a private investigator in Pennsylvania established the minimum contacts necessary to confer personal jurisdiction. Defendant and Plaintiff resided in California. Defendant filed for and eventually obtained custody of the parties' child in California. However, when he initiated his custody action, Plaintiff's whereabouts were unknown and Defendant hired a private investigator to locate Plaintiff. The private investigator found traces of Plaintiff in Pennsylvania and therefore transferred the case to a private investigator in Pennsylvania. The Superior Court found that the PFA Act makes clear that a petitioner may only obtain relief against an out-of-state defendant if the court has personal jurisdiction over the defendant established pursuant to Pennsylvania's long-arm statute, 42 Pa. C.S. 5322. In the instant case, the Superior Court found that Defendant's hiring of a private investigator to locate Plaintiff eight months prior to the PFA action was insufficient to establish personal jurisdiction.

Case Law Illustration: UCCJEA Confers Jurisdiction in PFA

B.T.W., O/B/O T.L. v. P.J.L., 956 A.2d 1014 (Pa. Super. 2008).

Grandmother filed a PFA Petition on behalf of grandchild against the child's Stepmother. Stepmother resided in Maryland. Stepmother conceded personal jurisdiction but challenged the trial court's subject matter jurisdiction over the matter because all of the alleged abuse occurred in Maryland. The Superior Court found that 23 Pa.C.S. § 5422 conferred continuing exclusive jurisdiction over the custody matter and that jurisdiction endured so long as the child's connections to the Commonwealth remained. Appellee grandmother, a partial physical custodian, resided in Pennsylvania, thus the nexus between the child and the Commonwealth remained intact. The Court looked to the definition of "child custody proceedings" in the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) and found that the definition included "a proceeding for... protection from domestic violence." 23 Pa.C.S. § 5402. The PFA petition placed custody of the child at issue, thus the PFA hearing fell within the statutory definition and established the court's authority to enter the PFA order.

Case Law Illustration: Court Loses Jurisdiction to Set Aside Final Order After Thirty-Day Appeal Period

Commonwealth v. Charnik, 921 A.2d 1214 (Pa. Super. 2007).

Plaintiff wife obtained final PFA against Defendant husband following an evidentiary hearing. About two months later Defendant moved back into the residence, at Plaintiff's invitation, to

assist with their ill son. Although Plaintiff admitted at the ICC hearing that she had invited Defendant to return, Defendant was found guilty of violating the PFA. In June, Defendant kicked in Plaintiff's door at a custody exchange. He was again found guilty of violating the PFA. In July, Plaintiff petitioned to withdraw the PFA order, which was granted by the trial court. Defendant motioned the trial court to expunge the final PFA order and the two ICC convictions; the court denied both requests. On appeal, the Superior Court determined that the ICC convictions were criminal in nature, covered by the Criminal History Record Information Act, 18 Pa.C.S. § 9122(b), and upheld the trial court's decision denying expungement. The Superior Court also discussed withdrawal of a PFA, stating that a petition may be withdrawn, but a final order must be set aside by a judicial act. Despite the fact that the trial court set aside the final PFA, the Superior Court stated that based on the rules of civil and appellate procedure, the trial court did not have jurisdiction to set aside its order after the 30-day appeal period had ended and no motion for reconsideration had been filed.

Case Law Illustration: Leaving the Residence Does Not Preclude Protection

Hood-O'Hara v. Wills, 873 A.2d 757, 761 (Pa. Super. 2005).

Appellant challenged the entry of a final PFA order issued against him claiming that the parties had been separated for approximately six weeks and no credible abuse occurred after separation. The Superior Court affirmed the lower court and found this argument lacking. The Superior Court cited to section 6103, which specifically states that "the right of the [appellee] to relief ... shall not be affected by [appellee] leaving the residence or household to avoid further abuse."

§ 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 service 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.**

Case Law Illustration: Failure of Police to File Report Does Not Preclude Issuance of PFA Order.

Karch v. Karch, 885 A.2d 535, 538 (Pa. Super. 2005).

There is no onus on the victim to force police departments to comply with section 6105 as a prerequisite for obtaining a PFA order. The court will not infer that the failure of police to act on a report of domestic violence means that the victim is not credible. “It is well settled that neither the PFA Act nor case law requires that a police report be filed in order to obtain a PFA.”

(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.

(a.3) Notification of need to protect plaintiff.—The plaintiff shall notify the court anytime during the period commencing upon filing the petition and granting of an order or approving a consent agreement at a hearing held under section 6107 (a) (relating to hearings) if the plaintiff has reason to believe the plaintiff’s safety is at risk. In such a case, the court shall 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 by the sheriff or competent adult, as set forth in the Pennsylvania Rules of Civil Procedure.

(a.4) Notification regarding child abuse investigation.—

(1) If the plaintiff has knowledge of a founded or indicated report of child abuse under Chapter 63 (relating to child protective services) involving the defendant, the petition shall include that information together with the name of the investigative agency.

(2) The notice of hearing and order shall include notice to the defendant that an order issued under this chapter may have an impact on the defendant under Chapter 63. The court shall develop procedures to implement the provisions of this paragraph.

(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).

Case Law Illustrations: Court May Not Require Posting of a Bond Prior to Filing Petition

Viruet v. Cancel, 727 A.2d 591 (Pa. Super. 1999).

Trial court erred in imposing a bond requirement as a pre-condition for filing future PFA petitions. Plain reading of the PFAA makes it clear that a court cannot impose financial restrictions, such as requiring the posting of a bond prior to filing a petition. The Act is designed to be expeditious in nature, and the imposition of posting a bond prior to filing a PFA petition will frustrate that purpose and the legislative intent to remove financial barriers to obtaining protection from abuse.

Egelman v. Egelman, 728 A.2d 360 (Pa. Super. 1999).

Authority of a trial court to impose a pre-condition on the filing of future PFA petitions was a question of law; gatekeeping mechanisms to control the filing of petitions under the PFAA are contrary to the intent and the provisions of the Act and case law.

(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.

Case Law Illustration: Verbal Notice from Police of Emergency PFA Order Satisfied Due Process

Commonwealth v. Padilla, 885 A.2d 994 (Pa. Super. 2005).

Verbal notice provided by the police to the defendant informing him of the no-contact order and the consequences of violating that order was sufficient to comply with the service requirements of due process.

(g.1) Service of original process of a successful 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

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 right to present evidence, of the right to compel attendance of the witnesses, of the method by which witnesses may be compelled, 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 or State law may prohibit the possession of firearms, including an explanation of 18 U.S.C. §922 (g)(8) (relating to unlawful acts) and 18 Pa.C.S. §6105 (relating to persons not to possess, use, manufacture, control, sell or transfer firearms), 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.

Case Law Illustrations: Issue Preservation

Thompson v. Thompson, 963 A.2d 474 (Pa. Super. 2008).

Failure to object to purported errors and bring them to the trial court's attention will result in waiver of those issues on appeal. Defendant argued that he was not permitted to make an opening and closing statement, that he was not permitted to present witnesses on his behalf, that the trial court limited and hurried cross-examination, and that the trial court failed to enforce its sequestration order. The Superior Court's careful review of the record revealed that Defendant failed to specifically object to each issue at the time of the trial. Because he did not object, the issues were waived.

Case Law Illustration: Plaintiff Entitled to an Evidentiary Hearing

Lanza v. Simconis, 914 A.2d 902, 906 (Pa. Super. 2006).

Plaintiff filed *pro se* for a temporary PFA and appeared before the court on that petition. When the defendant appeared at the same time, the trial court permitted the defendant to participate in the hearing. Plaintiff was not represented by counsel, was not given an opportunity to present witnesses in support of her allegation of abuse and did not cross-examine the defendant. Instead, the trial court conducted the hearing in a narrative fashion featuring competing accusations and denials. At the end of the hearing, the trial court denied plaintiff's petition because it could not determine which party was being truthful. The Superior Court found that "while the trial court held a hearing on January 10, 2006, it is clear that such did not comport with the necessary requirements of a hearing under Subsection 6107(a)." The Court further held that for a hearing pursuant to Section 6107(a) to comport with due process, "the parties must, at a minimum, have the opportunity to present witnesses, testify on one's behalf, and cross-examine the opposing party and his/her witnesses." The Superior Court declined to address whether a trial court was required to hold an initial, *ex parte* hearing that excludes the defendant regarding a request for a temporary PFA order, finding that issue waived on appeal.

Lawrence v. Bordner, 907 A.2d 1109, 1114 (Pa. Super. 2006).

Remand warranted where trial court abruptly stopped a minor daughter's testimony and determined that her mother was not entitled to a final PFA Order. The trial court limited the mother to a custody action as her exclusive remedy for the alleged abuse due to the parties' pre-existing custody order. The Superior Court found that a trial court needs to first determine if a PFA is warranted and if "a permanent PFA is proper, it shall then decide whether the terms of the custody Order would be in conflict with the PFA order and require a specific suspension or supersedance of the custody Order."

Drew v. Drew, 870 A.2d 377 (Pa. Super. 2005).

The statutory use of the word "shall" mandates the court to hold an evidentiary hearing where plaintiff has the opportunity to appear, with counsel, to submit evidence and witnesses in support of her allegation that she was abused.

Burke v. Bauman, 814 A.2d 206 (Pa. Super. 2002).

The use of the term “shall” in the PFAA creates a mandatory duty to hold an evidentiary hearing on the merits of a PFA petition. The trial court erred when it failed to grant a continuance and dismissed a PFA petition with prejudice without conducting a mandatory evidentiary hearing to determine the merits of the PFA petition.

Weir v. Weir, 631 A.2d 650 (Pa. Super. 1993).

A petition brought under the PFAA that does not contain a *prima facie* allegation of abuse does not deprive a trial court of authority to conduct a hearing on the petition, especially since most petitions are brought *pro se*.

Case Law Illustration: Plaintiff Is Not Rigorously Limited to Allegations in Petition

Snyder v. Snyder, 629 A.2d 977 (Pa. Super. 1993).

Evidence of prior abuse incidents not “pleaded” in wife’s *pro se* PFA petition was admissible given the recent nature of the incidents and their probative relevance. The statute does not anticipate that the person filing a petition will be rigorously limited to the specific allegations in the petition. The PFAA is meant to focus on prevention of abuse.

Case Law Illustration: Timing of the Hearing

Heard v. Heard, 614 A.2d 255 (Pa. Super. 1992).

The term “shall,” as used in the PFAA imposes a mandatory limitations period (10 days) within which hearings must be conducted. The court lacked authority to grant husband relief under the PFAA after limitations period on emergency PFA order against wife had expired and the court had not scheduled nor continued a hearing.

In re Penny R., 509 A.2d 338 (Pa. Super. 1986).

In all cases in which an emergency *ex parte* order is issued under the provisions of the PFAA, a hearing shall be held within 10 days of a motion by the parties regardless of whether the order arose from a petition or from another exigent circumstance. The trial court abused its discretion in effecting an *ex parte* order without a meaningful hearing prior or subsequent to its issuance. The trial court had *sua sponte* vacated a stipulated PFA order and discontinued visitation based upon an unsolicited letter from a counselor in a related dependency proceeding that indicated overnight visitation was adverse to the child’s best interests.

Case Law Illustration: No Right to Jury Trial

Eichenlaub v. Eichenlaub, 490 A.2d 918 (Pa. Super. 1985).

A defendant has no right to a jury trial in a PFA case (civil proceeding or contempt proceeding). See also, section 6115(b)(3).

Case Law Illustrations: No Right to Counsel

DeHaas v. DeHaas, 708 A.2d 100 (Pa. Super. 1998), appeal denied, 732 A.2d 615 (1998).

The court was not required to appoint independent counsel for children with respect to which parent sought PFA order. The procedural requirements of Child Protective Services Law did not apply to the PFAA. Nothing in the Act imposes the procedural requirements of the CPSL to proceedings under the PFAA.

Weir v. Weir, 631 A.2d 650 (Pa. Super. 1993).

Neither the PFAA statute nor the Constitution requires that respondent be given court appointed counsel. Rather, the PFAA requires that the court advise respondent of the right to be represented at a hearing by counsel.

R.G. v. T.D., 672 A.2d 341 (Pa. Super. 1996).

A hearing was held at which the student was entitled to present witnesses in his own defense and to cross-examine witnesses, including plaintiff. The Court found that the defendant had received a fair hearing although unrepresented by counsel. The defendant had to bear the consequences for failing to secure an attorney in time for the hearing.

Case Law Illustrations: Preponderance of the Evidence Standard

Hood-O'Hara v. Wills, 873 A.2d 757, 761 (Pa. Super. 2005).

The PFAA does not require that a plaintiff present police or medical documentation of abuse in order to prevail under the preponderance of the evidence standard. "Nowhere in the [PFA Act] itself, or in the body of case law interpreting it, is there a requirement that a police report be filed or that there be medical evidence of an injury in order to sustain the burden of proof."

Boykin v. Brown, 868 A.2d 1264 (Pa. Super. 2005).

A PFA petitioner is only required to establish that abuse has occurred by preponderance of the evidence and not beyond a reasonable doubt. Thus, a determination by a district attorney or the police as to whether or not to file criminal charges against a defendant is irrelevant to the court's determination under the PFAA.

Ferri v. Ferri, 854 A.2d 600, 603 (Pa. Super. 2004).

Preponderance of the evidence is the burden that the plaintiff must meet in proving abuse under the PFAA. This standard is defined as the greater weight of the evidence.

Snyder v. Snyder, 629 A.2d 977 (Pa. Super. 1993).

The plaintiff's burden of proof on a PFA petition is a preponderance of the evidence burden.

Coda v. Coda, 666 A.2d 741 (Pa. Super. 1995).

Wife's testimony was sufficient to support PFA when the wife testified that her husband grabbed her by her hair, dragged her across the floor, and kicked her in her chest and back for a period of 15 to 20 minutes.

Case Law Illustration: The PFA Proceeding is a Civil Action

K.D. v. J.D., 696 A.2d 232 (Pa. Super. 1997).

Proceedings against an allegedly abusive parent under the PFAA are not "criminal proceedings" as contemplated by the provision of Child Victims and Witnesses Act that renders hearsay testimony of child victims of sexual abuse admissible. ("Tender Years" Hearsay Exception Act, 42 Pa.C.S. § 5985.1 was amended in 2000 to include civil hearings.)

Case Law Illustration: Court May Infer Reasonable Fear from Testimony

T.K. v. A.Z., 157 A. 3D 974 (Pa. Super. 2017).

The Court rejected defendant's assertion that the plaintiff never testified she was in fear. Stating that although she never specifically used the word "fear", she clearly had deep concern for her safety, testifying that she believed the defendant's behavior would eventually escalate from stalking to physical harm.

Karch v. Karch, 885 A. 2d 535 (Pa. Super. 2005).

The court determines a witness's credibility and may infer fear based on the witness's testimony describing the defendant's actions. The court will not infer that the failure of police to act on a report of domestic violence means that the victim is not credible. Neither the PFAA nor any case law require a plaintiff to present medical evidence of injury or require that a police report be filed as a prerequisite to obtaining a PFA order.

Case Law Illustration: Police Report Not Admissible

Coda v. Coda, 666 A.2d 741 (Pa. Super. 1995).

A police report was not properly introduced into evidence because no official custodian or qualified witness introduced it.

Case Law Illustrations: Prior Instances of Abuse Are Admissible

Buchhalter v. Buchhalter, 959 A.2d 1260, 1263 (Pa. Super. 2008).

A trial court erred when it refused to allow Petitioner to testify regarding the instances of abuse that formed the basis for a prior protection order entered by consent of the parties. The Superior Court held that the "facts surrounding the prior PFA consent order are relevant to an understanding as to the reasonableness of [Petitioner's] fear relative to the present petition."

The trial court erroneously concluded that it acted within its discretion to exclude Petitioner's testimony of past abuse because the court did not find the petitioner credible.

Raker v. Raker, 847 A.2d 720 (Pa. Super. 2004).

Wife's testimony regarding past incidents of violence by her husband were admissible in the context of a determination of whether wife experienced reasonable fear when her husband entered her home in the middle of the night. The court noted that the issue of the admissibility of testimony regarding prior instances of abuse or incidents not pleaded in the petition was well settled by case law and quoted *Miller v. Walker*.

Miller v. Walker, 665 A.2d 1252 (Pa. Super. 1995).

Six-year-old prior instances of abuse are admissible and important. Protective purposes of the PFAA required flexibility in the admission of evidence relating to past acts of abuse, and a father's past abusive conduct was crucial inquiry necessary for entry of proper order.

Weir v. Weir, 631 A.2d 650 (Pa. Super. 1993).

Evidence of a husband's prior abuse was relevant and probative with respect to whether the husband's subsequent conduct reasonably placed his wife in fear of imminent serious bodily injury; thus, the evidence was admissible in the wife's PFAA action.

Snyder v. Snyder, 629 A.2d 977 (Pa. Super. 1993).

Questions concerning the admission of past incidents of abuse at hearing are within the sound discretion of the trial court and may be reversed on appeal only when a clear abuse of discretion is apparent. The trial court did not abuse its discretion in admitting evidence of acts of abuse that were not included in plaintiff's *pro se* petition given the recent nature of the incidents and their probative relevance.

Case Law Illustration: Findings by Court Not Required

Weir v. Weir, 631 A.2d 650 (Pa. Super. 1993).

A judge in a PFA hearing is not required to make an adjudication containing a statement of issues, specific factual findings or legal conclusions. The PFAA does not mandate the trial court to specify findings of abuse in a PFA proceeding.

Case Law Illustration: Minor Defendant Requires a Guardian for the Entry of a Valid Protection Order

Varner v. Holley, 854 A.2d 520 (Pa. Super. 2004).

Final PFA void because the defendant was a minor at the time that he consented to the entry of a final order and because he was unrepresented by a guardian, as defined in Pa. Rules of Civil Procedure Nos. 2027 & 2028. The appearance of the minor defendant's probation officer did not qualify as an adult interested in the minor to provide guidance regarding the minor's

position. Therefore, the minor could not be found in indirect criminal contempt (ICC) of the final order for going to plaintiff's workplace.

(b) Temporary orders. —

(1) If a plaintiff petitions for a 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.

Case Law Illustrations: Constitutionality of PFA Act

Boyle v. Boyle, 12 Pa. D. & C. 3rd 767 (Allegheny 1979).

The PFAA bears a real and substantial relationship to its purpose of protecting abuse and therefore is a valid exercise of police power such that a constitutional challenge regarding a spouse's exclusion from jointly held property for a temporary period without an opportunity to be heard would not prevail.

Case Law Illustration: Standard for Entry of a Temporary Protection Order

Drew v. Drew, 870 A.2d 377, 378 (Pa. Super. 2005).

"The *ex parte* hearings conducted in order to secure a temporary PFA Order... require only that the petitioner convince the court he or she is in 'immediate and present danger of abuse'" as opposed to the hearing required under section 6107(a) where plaintiff's burden is the preponderance of the evidence.

Case Law Illustration: "Ex parte hearing" requires more than a judicial examination of the PFA petition

Ferko-Fox v. Fox, 68 A.3d 917 (Pa. Super. 2013).

An "*ex parte proceeding*" requires more than a judicial officer examining the PFA petition. An *in-camera* review of a PFA petition, without the petitioner present, is insufficient to protect a defendant's due process rights. Under § 6107(b) of the PFA Act, an in-person examination of the petitioner is necessary prior to the entry of a temporary protection order because it permits the court to inquire about the facts and circumstances detailed in the petition, observe the petitioner's injuries, and assess the petitioner's motive and demeanor.

(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 relinquishes 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

(1) 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.

(2) If a hearing is scheduled to take place within three business days after a defendant is served under section 6106 (relating to commencement of proceedings), the court shall grant a continuance until the three-business day period has elapsed, if requested by the defendant.

(3) The court shall notify the defendant of the right to such continuance.

Case Law Illustrations: Continuance permitted to protect petitioner during pendency of evidentiary hearing

Ferko-Fox v. Fox, 68 A.3d 917 (Pa. Super. 2013).

Pursuant to section 6107(c), trial courts have discretion to grant a continuance for a final PFA hearing and to enter or continue a temporary PFA order if necessary to protect the petitioner or their children for the duration of the continuance. Whether a trial court properly granted or denied a continuance is reviewed on an abuse of discretion standard. In *Ferko-Fox*, wife sought representation from the local legal services organization, but it was unable to represent her at

the original hearing date. Pursuant to its authority under section 6107(c), the trial court granted wife a continuance to obtain counsel and continued her temporary order until the final order hearing.

Case Law Illustration: Continuance Required

Coda v. Coda, 666 A.2d 741 (Pa. Super. 1995).

Trial court erred when it denied the defendant's request for a continuance because a subpoenaed witness (a police officer) was not present.

Case Law Illustration: Continuance Extends Jurisdiction

Heard v. Heard, 614 A.2d 255, 260 (Pa. Super. 1992).

"The trial court neither scheduled nor continued a hearing on husband's petition within the ten-day limitations period set forth in 23 Pa. C.S. 6107(a). Because the limitations period on the alleged petition filed by the husband had expired, the trial court had no authority to grant the husband relief under the PFA Act." But the court did have jurisdiction over the wife's petition, even though the wife's first hearing date was continued due to her hospitalization.

§ 6108. RELIEF

(a) General rule.—Subject to subsection (a.1), 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:

Case Law Illustrations: Purpose of the PFA Act Is to Prevent Physical and Sexual Abuse

Miller v. Walker, 665 A.2d 1252 (Pa. Super. 1995).

The intent of remedies provided by the PFAA is to allow persons to reside peaceably and without fear of injury within their own families or residences.

Lee v. Carney, 645 A.2d 1363 (Pa. Super. 1994).

The purpose of the PFAA is to protect victims of domestic violence from the perpetrators of such abuse.

Snyder v. Snyder, 629 A.2d 977 (Pa. Super. 1993).

The PFAA is meant to focus on prevention of abuse. The PFAA is not meant to penalize past criminal conduct. The primary goal of the Act is to advance prevention of physical and sexual abuse.

Melvin v. Melvin, 580 A.2d 811 (Pa. Super. 1990).

PFAA protections are in addition to and not in place of traditional remedies already provided by law.

Eichenlaub v. Eichenlaub, 490 A.2d 918 (Pa. Super. 1985).

Summary disposition is essential since the primary goal of the PFAA is advance prevention of physical and sexual abuse, not retrospective punishment.

Cipolla v. Cipolla, 398 A.2d 1053 (Pa. Super. 1979).

The PFAA was a vanguard measure dealing with the problem of wife and child abuse.

Case Law Illustrations: Court Has Broad Powers of Relief

Gerace v. Gerace, 631 A.2d 1360, 1361 (Pa. Super. 1993).

Court may order a defendant to return a plaintiff's property when procuring it by herself would potentially subject her to danger. Per the broad relief allowed under section 6108(a), "the court may grant any protection order or approve any consent agreement to bring about a cessation of abuse of the Petitioner or minor children." Here, a stepfather argued he was not in control of the premises where the property was located and that he was in jail; prior to arrest stepfather had lived with mother and had exercised control over stepdaughter's property. He admitted disposing of the property prior to arrest and could have made arrangements by telephone to have the property returned.

Heard v. Heard, 614 A.2d 255 (Pa. Super. 1992).

The court is empowered to grant broad relief to bring about cessation of abuse.

Case Law Illustration: No Requirement to Grant Least Burdensome Remedy

Snyder v. Snyder, 629 A.2d 977 (Pa. Super. 1993).

In determining an appropriate remedy under the PFAA, the court is not required to order the least burdensome remedy. Exclusion of the husband from a marital residence was an appropriate remedy where escalating incidents of abuse had occurred; the husband broke in while wife was on business trip; he refused to leave despite his initial voluntary agreement to refrain from entering marital residence.

Case Law Illustration: PFA Consent Order Does Not Bar Criminal Prosecution

Commonwealth v. Smith, 552 A.2d 292 (Pa. Super. 1988).

After a defendant hit his wife with his car and struck her head and neck, the police arrested him and charged him with simple assault, aggravated assault, and recklessly endangering another person. The day after the incident, the wife filed a PFA petition, and a consent agreement was

entered. No appeal of the PFA consent agreement was ever filed. On appeal, the Court rejected defendant's argument that the PFA consent agreement barred criminal prosecution for the same conduct.

- (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 entirety or is owned or leased solely by the plaintiff.**

Case Law Illustrations: Excluding Defendant from the Residence

Snyder v. Snyder, 629 A.2d 977 (Pa. Super. 1993).

A trial court did not err in directing the exclusion of the respondent from a jointly owned marital residence where less burdensome alternative remedies existed. The PFAA does not anticipate that a typical remedy would be to structure an order so that the abusive spouse could remain in residence with the abused person.

Heard v. Heard, 614 A.2d 255 (Pa. Super. 1992).

The exclusion of a husband from a marital residence for a two-week period, as opposed to a substantially longer period, was within trial court's discretion.

- (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.

Case Law Illustrations: Custody and Visitation

Rosenberg v. Rosenberg, 504 A.2d 350 (Pa. Super. 1986).

In a footnote, the court disapproved of a procedure whereby permanent custody and visitation orders were entered in PFA proceedings. The PFAA was not intended to replace other, established proceedings for determination of permanent custody of children.

Dye v. McCoy, 621 A.2d 144 (Pa. Super. 1993).

The trial court entered a final PFA on behalf of the minor child but nevertheless directed that a previously entered custody order remain in place in the stated belief that it did not have the authority to alter or modify it. The Superior Court remanded the case back for further consideration as to whether the terms of the custody order were in conflict with the PFA Order. In doing so, the Superior Court held that “the trial court shall consider and may impose on a custody award, conditions necessary to assure the safety of the plaintiff and minor children from abuse....where the PFA Order conflicts with a custody order, then the PFA court should include direction that the PFA order supersedes or suspends the prior custody order.”

Egelman v. Egelman, 728 A.2d 360 (Pa. Super. 1999).

On appeal, the Superior Court held that trial courts may not order that future concerns about the welfare of a child be determined exclusively in a custody proceeding. “If a basis for relief is established in the Act, notwithstanding the availability of another proceeding, such relief should be forthcoming under the law. Denial of consideration of a petition for temporary custody in a PFA proceeding because special relief is available in a custody proceeding is improper because it ignores the special benefits the legislature intended to confer on the victims of domestic violence that are not generally available in emergency custody cases.”

Lawrence v. Bordner, 907 A.2d 1109, 1114 (Pa. Super. 2006).

The Superior Court held that it was reversible error for the trial court to abruptly determine that a PFA was unwarranted and to limit the mother to custody relief under the child custody statute as her exclusive remedy for the alleged abuse. “The trial court’s refusal to find a PFA was warranted and/or modify the existing Custody Order was in error in that in doing so, it placed its concern with civil procedure over a consideration of the best interest of [the child].”

C.H.L. v. W.D.L., 214 A.3d 1272, (Pa. Super 2019).

The trial court entered a final PFA that awarded Mother temporary sole custody of the child pending an upcoming custody conference. Father appealed, arguing that the custody provisions of the PFA were invalid because they did not contain a best interest of the child analysis. The trial court affirmed the trial court’s decision, holding that a PFA court need not conduct a best interests custody analysis to award **temporary** custody as form of relief under section 6108 of the Protection From Abuse Act. In addition, the court clarified as to when a PFA Order superseded a custody order and vice versa. “Custody wise, a PFA order is not designed to impose anything but emergency relief. See *Dye for McCoy*, [supra](#), 621 A.2d at 145. To understand this, look no further than the PFA Act: ‘Nothing in this paragraph [relating to temporary custody as a form of relief] shall bar either party from filing a petition for custody under Chapter 53 (relating to custody) or under the Pennsylvania Rules of Civil Procedure.’ See [§ 6108\(a\)\(4\)\(v\)](#). But while the domestic violence emergency is still pending, a PFA order may alter a pre-existing custody order and remand for clarification to avoid conflict. See *Dye for McCoy*, [621 A.2d at 145](#). ‘To hold otherwise would have the effect of emasculating the central and extraordinary feature of the PFA which is to prospectively control and prevent domestic violence.’” *Id.*

Case Law Illustrations: No Sua Sponte Orders

Brooks-Gall v. Gall, 840 A.2d 993 (Pa. Super. 2003).

A mother brought a PFA petition on behalf of her children against their father and trial court declared the children dependent at the PFA hearing and had Child Protective Services remove the children from the mother. The Court held that trial court’s *sua sponte* actions violated the

parents' due process rights as well as the Pennsylvania Juvenile Act. The Court noted the compelling public policy consideration of the chilling affect that the trial court's action would have on victims of domestic violence seeking protection orders.

(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) Prohibiting the defendant from acquiring or possessing any firearm for the duration of the order, ordering the defendant to temporarily relinquish to the sheriff or appropriate law enforcement agency any firearms under the defendant's possession or control, and requiring the defendant to relinquish to the sheriff or the appropriate law enforcement agency 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. The court may also order the defendant to relinquish the defendant's other weapons or ammunition that have been used or been threatened to be used in an incident of abuse against the plaintiff or the minor children. A copy of the court's order shall be transmitted to the chief or head of the appropriate law enforcement agency 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 or appropriate law enforcement agency 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 or the appropriate law enforcement agency 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 or the appropriate law enforcement agency 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 or the appropriate law enforcement agency pursuant to this paragraph. Where the sheriff or the appropriate law enforcement agency is designated, the sheriff or the appropriate law enforcement agency 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 or the appropriate law enforcement agency 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 or the appropriate law enforcement agency 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. The court shall inform the defendant that firearms, other weapons or ammunition shall be deemed abandoned when the conditions under 18 Pa.C.S. §6128(a) (relating to the abandonment of firearms, other weapon or ammunition) are satisfied and may then be disposed of in accordance with 18 Pa.C.S. §6128.

(iii) The sheriff or the appropriate law enforcement agency 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’ or appropriate law enforcement agencies’ offices or within the time ordered by the court upon cause being shown at the hearing, the sheriff or the appropriate law enforcement agency shall, at a minimum, provide immediate notice to the court, the plaintiff and appropriate law enforcement agencies, as appropriate.

(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).

Case Law Illustration: Firearms Return

DeOrio v. Delaware County, No. 08-5762, 2009 U.S. Dist. LEXIS 65176, 2009 WL 2245067 (E.D. Pa. 2009).

Due process and equal protection claims under the Fourteenth Amendment respecting firearms removal in a Protection from Abuse Action require rational basis analysis. Post-deprivation judicial review satisfies procedural due process, and acquiring a court order for return of firearms is not shocking or egregious, thus conforming with substantive due process. No arbitrary deprivation of a liberty interest occurs because the decision to return the firearms is placed with the court and not the sheriff. The PFA Act provides for return of firearms via a petition; thus, defendant holds the key to his own rights.

Case Law Illustration: Search and Seizure of Weapons

Kelley v. Mueller, 861 A.2d 984, 993 (Pa. Super. 2004), vacated, 912 A.2d 202 (Pa. 2006).

The Pennsylvania Supreme Court vacated the Pa. Superior Court's order in *Kelley v. Mueller*. The Supreme Court reasoned that the substantive issues were not properly preserved for appeal. Plaintiff filed for a temporary PFA stating that her boyfriend had threatened to kill her, and had pointed his father's loaded handgun at her. Although the defendant swore there were no weapons, the trial court judge directed the sheriff to search and seize any weapons found in the residence and the family hunting cabin. The trial judge based its order on the broad powers granted by the PFAA to protect a party from danger by removing weapons. The defendant and his father appealed to the Superior Court. Upholding the trial court's order, the Pa. Superior Court reasoned that the trial court had discretion in choosing a remedy for the petitioner; the facts in this case indicated to the trial court that plaintiff was in danger; and the PFAA was broad enough to cover the trial court's actions. The Pennsylvania Supreme Court vacated the Superior Court order and reinstated the trial court's order. The Supreme Court found that the Superior Court had erred when it addressed substantive issues raised by appellants on appeal. Despite appellants challenging the trial court's authority to order a search of the residence and seizure of weapons in their appellate brief, because they never raised these due process and constitutional issues at the trial court level, the issues were waived.

Case Law Illustration: Federal Firearms Prohibition

Dragani v. Dragani, 42 Pa. D. & C. 4th 295 (Bucks 1999), aff'd, 752 A.2d 426 (Pa. Super. 2000).

The Brady Indicator, which disqualified a defendant from possessing or purchasing firearms, was warranted as a part of the PFA order where the defendant had a history of owning or possessing firearms and had physically abused plaintiff. The Brady Indicator extended the prohibitions regarding the possession, receipt and purchase of firearms to persons who are subject to a final PFA order provided the order meets the following criteria. The PFA order is entered after a hearing of which the defendant received actual notice and had an opportunity to be heard; the protected person is an “intimate partner” of the defendant; the order provides that the defendant is restrained from harassing, stalking or threatening plaintiff; and the defendant represents a credible threat to the physical safety of the plaintiff, or the terms of the order prohibit defendant from using, attempting to use or threatening to use physical force against the plaintiff that would reasonably be expected to cause bodily injury. Where a federal firearms prohibition applies, the defendant may be subject to prosecution by the appropriate federal authorities if he possesses, receives or purchases firearms at any time while the order is in effect. **(The Brady Indicator box has been removed from the PFA forms. However, the U.S. Gun Control Act’s prohibitions on possession and transfer of firearms may still apply to a defendant who is subject to an active PFA order. See 18 U.S.C. §§ 922(d)(8) (relating to firearm transfer and protection orders) and 922(g)(9) (relating to firearm possession and protection orders).)**

(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.

Case Law Illustration: Plaintiff Entitled to Award of Attorney’s Fees

Krassnoski v. Rosey, 684 A.2d 635 (Pa. Super. 1996).

The PFAA authorizes award of attorneys' fees even if a plaintiff was represented by Legal Services attorney. The decision to award fees is within the trial court's discretion. The Legislature included a provision in the PFAA for recovery of counsel fees to encourage victims of domestic abuse, who are often financially dependent upon their abusers, to take advantage of the protections offered by the Act and to include a financial disincentive to deter abusers from further abusive conduct. Trial court may consider defendant's ability to pay award of attorneys' fees in determining whether to make an award. The fact that defendant's income is less than plaintiff's is not conclusive of the issue, but may be relevant in finding ability to pay. The trial court should not deny counsel fees on the basis that the defendant's conduct during the litigation was not dilatory, vexatious, or obstructive.

Case Law Illustrations: Defendant Not Entitled to Award of Attorneys' Fees

Egelman v. Egelman, 728 A.2d 360 (Pa. Super. 1999).

There is no provision under the PFAA authorizing a court to award attorneys' fees to a prevailing defendant. The only remedy a prevailing defendant is entitled to under the Act is for a non-prevailing petitioner to pay the fees and costs of the petition. Court erred in awarding attorneys' fees to the defendant.

Krassnoski v. Rosey, 684 A.2d 635 (Pa. Super. 1996).

Court is not authorized to award attorneys' fees to defendant under 42 Pa.C.S. § 2503(a)(9). Application of that provision is appropriate where attorneys' fees are not specifically authorized by statute. Under the PFAA, when counsel fees are statutorily authorized to promote the purposes of a particular legislative scheme, the trial court should not determine the appropriateness of counsel fees under the general standards applicable in all litigation.

(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 stalking).

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

(a.1) Final order or agreement.--The following apply:

(1) Any final order must direct the defendant to refrain from abusing, harassing, stalking, threatening or attempting or threatening to use physical force against the plaintiff or minor children and must order that the defendant is subject to the firearms, other weapons or ammunition and firearms license prohibition relinquishment provisions under subsection (a)(7).

(2) A final agreement may direct the defendant to refrain from abusing, harassing, stalking, threatening or attempting or threatening to use physical force against the plaintiff or minor children and may order that the defendant is subject to the firearms, other weapons or ammunition and firearms license prohibition and relinquishment provisions under subsection (a)(7).

(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.

Case Law Illustration: No Mutual Orders of Protection Without Cross-Petitions

McKelvey v. McKelvey, 771 A.2d 63 (Pa. Super. 2001).

Trial court cannot, *sua sponte*, enter a mutual no-abuse order. Trial court does not have the authority to enter a protection order against a wife when the husband did not petition for an order. Plaintiff filed a PFA petition and obtained a temporary PFA order. At the hearing, over counsel's objection, the court suggested the entry of a mutual PFA order. Plaintiff expressed her willingness to enter into such an order. The trial court erred when it disregarded the clear language of the statute and entered a mutual PFA order. Because the case implicated the jurisdiction of the court to enter a mutual order, the appellate court found that the stipulation to the order could not bind the plaintiff. See also, *Heard v. Heard*, 614 A.2d 255 (Pa. Super. 1992).

(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.

Case Law Illustrations: Petition Required to Modify

Stamus v. Dutcavich, 938 A.2d 1098 (Pa. Super. 2007).

Trial court errs when it dismisses a final protection order when no petition to modify has been filed by either party prior to the expiration date of the order in question. The statutory text requires a petition filed by a party to modify a final order; thus, the issue of dismissal was not before the court, and a court cannot rule on matters not before it.

Case Law Illustrations: Duration of Order

Holderman v. Hagner, 760 A.2d 1189 (Pa. Super. 2000).

The maximum duration period of a PFA order runs from the date of the final order on the petition and not from the date of a prior temporary *ex parte* proceeding.

Case Law Illustration: Enforcement Is Not Time-Barred

Gerace v. Gerace, 631 A.2d 1360 (Pa. Super. 1993).

A petition for return of property was not time-barred where it was filed after the expiration of the protective order. There is no statute of limitation for obeying a court order or requesting the enforcement of a court order.

(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.**
- (iii) If the plaintiff files a petition for an extension of the order and the defendant is or was incarcerated and will be released from custody in the next 90 days or has been released from custody within the past 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 engaged in a pattern or practice that indicates continued risk of harm to the plaintiff or minor children as set forth in subparagraph (i).**

Case Law Illustration: PFA Extensions

Kuhlmeier v. Kuhlmeier, 817 A.2d 1127 (Pa. Super. 2003).

If the trial court schedules a hearing for a specific date but that date falls on a day after the PFA order expires; the trial court still has jurisdiction to extend a PFA after an evidentiary hearing. Local rules are not valid if they conflict with state rules or statutes.

(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.

(i) Third parties and affidavits.—A court requiring relinquishment of firearms under this section shall provide for the hearing of petitions by third parties who request the return of a firearm relinquished by the defendant under subsection (a)(7). The following apply:

(1) A third party claiming to be the lawful owner of a firearm relinquished by the defendant under subsection (a)(7) may request the return of the firearm by providing proof of ownership and a sworn affidavit.

(2) The affidavit under paragraph (1) must affirm all of the following:

(i) The third party who is the lawful owner will not intentionally or knowingly return to the defendant the firearm or allow access to the firearm by the defendant.

(ii) The third party who is the lawful owner understands that violating subparagraph (i) constitutes a misdemeanor of the second degree under 18 Pa.C.S. Ch. 61 (relating to firearms and other dangerous articles).

(iii) If the third party who is the lawful owner is a family or household member of the defendant, any firearm returned under this section must be stored in a gun safe to which the defendant does not have access and will not be permitted to access, or stored in a location outside the third party's home to which the defendant does not have access.

(3) If the court orders the return of a firearm under this section, prior to the return of the firearm, the sheriff shall independently confirm that the person seeking relief under this section is legally eligible to possess firearms under Federal and State law. The sheriff shall conduct the background check as soon as practicable after the court enters an order under this section.

§ 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. The sheriff's or the other appropriate law enforcement agency's office shall maintain a weapons return form that the defendant may fill out and return to the office once a temporary or final protection from abuse order has been dismissed or expires.

(a.1) Conditions for return.—The following conditions must be satisfied prior to the firearms, other weapons or ammunition being returned to the defendant:

- (1) The firearms, other weapons or ammunition relinquished must not be evidence of a crime.**
- (2) The defendant or owner must not be otherwise prohibited by applicable Federal and State law, or another condition, including, but not limited to, bail, from taking possession of the firearms, other weapons or ammunition seized.**
- (3) The defendant or owner must have been given a clearance by the Pennsylvania State Police Instant Check System Unit or through the National Instant Criminal Background Check System (NICS), requested by the sheriff's office.**

(a.2) Notice to the plaintiff.—The plaintiff of the protection from abuse order shall be notified of the defendant's request to return the firearms, other weapons or ammunition.

(a.3) Petition for return.—If there is a determination under subsection (a.1) that the defendant is ineligible to regain possession of the firearms, other weapons or ammunition, the defendant or owner may file a petition appealing that determination and seeking their return. A copy of the petition must be served upon the plaintiff, sheriff and the district attorney.

(a.4) Abandonment.—Any firearms, other weapons or ammunition shall be deemed abandoned when the conditions under 18 Pa.C.S. §6128(a) (relating to abandonment of firearm, weapon or ammunition) are satisfied and may then be disposed of in accordance with 18 Pa.C.S. §6128.

(b) Modification of court's order providing for return of relinquished firearm, other weapon or ammunition. - 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 or the appropriate law enforcement agency, 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. The dealer may charge the defendant a reasonable fee for accepting relinquishment and for storage of any firearms, other weapons or ammunition.

(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, 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 for safekeeping to a third party who meets the requirements of a third party under subsection (b) (3).

(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.

(N) An acknowledgment that the third party and the defendant are not family or household members.

(O) An acknowledgment that the third party is one of the following:

(I) An attorney at law, and further acknowledgment that the attorney at law and the defendant are in an attorney-client relationship. The attorney at law and the defendant shall sign a written agreement stating in substantially the following form: "Firearms can be relinquished to the attorney at law upon the express, written condition that the firearm(s) will be returned to the defendant, or otherwise transferred, only if in strict conformance with applicable law.

(II) A commercial armory, and further acknowledgment that the owner or operator of the commercial armory is not a family or household member of the defendant; the commercial armory is a secure storage facility designed to store firearms; the commercial armory possesses all Federal and State licenses to storage firearms; and a form stating substantially the following: "Firearms can be relinquished to the commercial armory upon the express, written condition that firearm(s) will be returned, or transferred, to the defendant only in strict conformance with applicable law."

(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 section 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.

§6108.6. Penalty for failure to secure firearms.

In addition to any other penalty provided by 18 Pa.C.S. Ch.61 Subch. A (relating to the Uniform Firearms Act), a commercial armory which violates the provisions of this chapter regarding safekeeping shall forfeit all Federal and State licenses related to firearms.

§6108.7. Order to seal record from public view.

(a) General rule—Notwithstanding any other provision of this chapter, an individual who has entered into a consent agreement approved by the court under section 6108(a) (relating to relief) may petition the court for an order to seal the record of the individual from public view. The court may grant the order if the petitioner proves all of the following by clear and convincing evidence:

- (1)** The consent agreement for which the individual seeks relief under this section is the only such consent agreement to which the individual has ever been subject, and that, during the period in which the consent agreement was in effect, the individual did not violate an order or consent agreement under section 6108;
- (2)** A period of at least ten years has elapsed since the expiration of the consent agreement;
- (3)** The individual has not been subject to another final protection from abuse order under section 6108.
- (4)** The individual has not been convicted of one of the following offenses where the victim is a family or household member:
 - (i)** An offense set forth in 18 Pa.C.S. §2711 (relating to probable cause arrests in domestic violence cases).

(ii) An offense equivalent to subparagraph (I) under the laws of the United States or one of its territories or possessions, another state, the District of Columbia, the Commonwealth of Puerto Rico or a foreign nation.

(b) Notice to district attorney and plaintiff.—

- (1) The petitioner shall serve a copy of the petition under subsection (a) to the district attorney and to the plaintiff within ten days of the filing of the petition.
- (2) The district attorney and the plaintiff shall have an opportunity to be heard at the hearing.
- (3) Within 30 days of receipt of notice, the district attorney or plaintiff may file objections to the petition.
- (4) If no objection under paragraph (3) is timely filed, the court may grant the petition without further hearing if the requirements of this section have been met.
- (5) As used in this subsection, the term “plaintiff” means the person who entered into the consent agreement with the defendant.

(c) Notice to prothonotary.—Notice of an order to seal the individual’s record from public view shall promptly be submitted to the prothonotary of the county holding the record. The prothonotary may not permit a member of the public from accessing the individual’s record regarding the consent agreement. Nothing in this section shall be construed to limit access of the record of the individual by a criminal justice agency as defined in 18 Pa.C.S. §9102 (relating to definitions).

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.

Case Law Illustration: Where Defendant Was Not Served with PFA Order, He Was Not Subject to the Order; As a Result, He Could Not Be Sentenced to Death for Murdering His Wife

Commonwealth v. Stallworth, 781 A.2d 110 (Pa. 2001).

The Pennsylvania Supreme Court considered a PFA order in the context of a death sentence for murder. The trial court had allowed the use of the existence of the PFA as evidence indicative of the defendant’s intent and motive for the crime. The victim had obtained a PFA order on the day before her death. On appeal, the court noted that the admission into evidence of prior bad acts is within the sound discretion of the trial court, and an appellate court will only reverse upon a showing of an abuse of that discretion. During the lower court’s sentencing phase, the jury had also been instructed that at the time of the killing, the defendant was subject to a PFA order restricting his behavior toward the victim. The jury found this to be an aggravating circumstance warranting the imposition of the death penalty. On appeal, the Supreme Court

held that because the defendant was not served with the order and did not have anecdotal knowledge of the existence of the PFA order, he was not “subject to” that order for the purposes of establishing an aggravating circumstance under 42 Pa.C.S. § 9711(d)(18). Therefore, he was improperly sentenced to death. The court found the term “subject to” was not clear or free from ambiguity and should be subject to the most restrictive interpretation, which would require that a defendant either be given actual notice of the PFA or have the equivalent knowledge of a PFA order. There was no record evidence that the defendant had such knowledge.

(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.

Case Law Illustration: Verbal Notice from Police of Emergency PFA Order Satisfies Due Process

Commonwealth v. Padilla, 885 A.2d 994 (Pa. Super. 2005).

Verbal notice provided by a police officer to the defendant informing him of the emergency no-contact order and the consequences of violating that order was sufficient to comply with the service requirements of due process.

(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 district justice 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 district justices.

(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.

Case Law Illustration: Hearing on Criminal Contempt

Stamus v. Dutcavich, 938 A.2d 1098 (Pa. Super. 2007).

Statute directs that when the police have initiated a proceeding for indirect criminal contempt, the court must schedule a hearing within ten days, at which hearing, the court must determine if the defendant has violated the order. Court errs when it issues a rule to show cause instead of scheduling a contempt hearing.

Commonwealth v. Ortiz, 802 A.2d 617 (Pa. Super. 2002), aff'd, 825 A.2d 629 (Pa. 2003).

A lower court misinterpreted section 6113(f) when it dismissed PFA contempt charges because a hearing was held 11 days after the contempt charge was filed. The PFAA specifies that “a hearing shall be *scheduled* within ten days” and does not require that the hearing must be held within ten days pursuant to section 6113(f).

§ 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 district justice 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. 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.

Case Law Illustration: Consent Based Orders Without a Finding of Abuse Are Enforceable with Criminal Contempt

Commonwealth v. Nelson, 690 A.2d 728 (Pa. Super. 1997).

Consent-based protective orders are enforceable by indirect criminal contempt proceedings under the PFAA, even if the orders are unaccompanied by admissions of abuse.

Case Law Illustration: Threats conveyed to third party

Commonwealth v. Walsh, 36 A.3d 613 (Pa. Super. 2012).

Child and her mother resided with Walsh for many years. Mother sought and received a temporary PFA on behalf of Child following allegations of sexual abuse of Child by Walsh. After entry of the order, Walsh induced Child's friend to pass on the threat to Child. The friend conveyed the threat to Child. The trial court found Walsh guilty of indirect criminal contempt, sentenced to six months of probation, and entered a final PFA Order for three years. Walsh appealed, claiming that his relationship to Child did not satisfy the requirement under the PFA Act and that his action, making threats to a third party, did not violate the PFA order. The Pennsylvania Superior Court found that sufficient evidence was established for indirect criminal contempt: the order was sufficiently specific and clear; Walsh had notice of the order; Walsh knowingly and willfully made threatening statements to Child's friend to be conveyed to Child, despite the Order's prohibition on such conduct; and Walsh made the statements with wrongful intent. Based on these findings, the Court upheld Walsh's conviction.

Case Law Illustration: Social Media Posts

Commonwealth v. Lambert, 147 A. 3d 1221 (Pa. Super. 2016).

Social media posts by the defendant support a finding of indirect criminal contempt when an abuser's mere posting of any reference to his or her victim on social media, regardless of content, is automatically considered tantamount to making impermissible contact with the victim. The PFA order in this case specifically prohibited the defendant from posting "any remark(s) and/or images regarding [Victim], on any social network(s) including but [not] limited to, Facebook, Myspace, Twitter, or any other electronic networks." Defendant posted a series of posts to Facebook which alluded to a nameless former paramour, his disapproval of how the relationship ended, and different emotions he was experiencing because of unfair treatment from her and the justice system. He also changed his profile picture to a photograph which contained a set of matching nautical star tattoos, which he and his former paramour obtained

during their relationship. The Superior Court also held that the prohibition did not violate free speech provisions as it was not concerned with the content of Defendant's speech but, instead, with the protected party as the target of his speech.

Case Law Illustrations: Multiple ICC Charges Are Not Prohibited

Hill v. Randolph, 24 A.3d 866 (Pa. Super. 2011).

The PFA Act does not bar prosecution of multiple indirect criminal contempt (ICC) charges that stem from violations of the same order, nor are double jeopardy or trial-by-jury rights implicated by two consecutive six-month sentences for a total incarceration of one year. Defendant entered the home of the plaintiff who had a PFA order against him that evicted and excluded him from her home. The order also prohibited Defendant from abusing the plaintiff. While he was in her home, Defendant attacked the plaintiff; strangled her until close to unconsciousness, threatened to kill her, and threw orange juice at her. Defendant was charged for violations of two distinct sections of the PFA order: one ICC for his entry into the residence, and another for his abuse of the plaintiff. Defendant challenged his convictions and argued that prosecution of two ICC counts arising from the same criminal episode, involving the same PFA order, and the imposition of an aggregate sentence greater than six months violated double jeopardy, deprived him of the right to trial by jury and contravened the intent of the PFA Act. The superior court affirmed the convictions and sentence. The court found that the specific language of the PFA Act contemplates multiple counts of indirect criminal contempt for more than one violation. Since Defendant was properly convicted of two different ICC acts, he was not punished twice for the same abusive act, and not subjected to double jeopardy. Defendant was not entitled to a jury trial even though the two ICC convictions exposed him to an aggregate sentence greater than six months. Additionally, the superior court found that the PFA Act's inherent flexibility over contempt sentences permitted the criminal justice system to effectively provide for the needs of victims of domestic violence. Thus, the sentence imposed did not run contrary to the proper construction of the PFA Act.

Case Law Illustrations: Sentence for Indirect Criminal Contempt

Commonwealth v. Mitchell, 986 A.2d 1241 (Pa. Super. 2009).

Mitchell appealed from a judgment of sentence in which he was found guilty of indirect criminal contempt for a PFA violation and found guilty of harassment. Mitchell's mother received a PFA preventing him from having any contact with her. On April 12, 2008, (4/12) he threw a brick through her window. On April 29 (4/29), he kicked her door and asked for money, then threw a brick through her window. These incidents were docketed at two different docket numbers; one docket number for the 4/12 incidents and one docket number for the 4/29 incidents. Mitchell was convicted of charges arising from the 4/12 incident. He also was convicted criminally of harassment and an ICC for the 4/29 incident and sentenced to 90 days incarceration on the harassment and to six months on the ICC. Mitchell appealed the 4/29 convictions, but when ordered to file the 1925(b) statement, he filed his statement to the wrong docket number (the 4/12 incident, which was not appealed). In addition, his counsel

filed an Anders brief seeking permission to withdraw. The Superior Court found Mitchell failed to preserve any issues on the 4/29 docket number for appeal. The Court, however, did determine that the sparse record prevented it from reviewing if counsel should be permitted to withdraw. The Court also found the flat six month sentence on the ICC was valid, but it vacated the judgment of sentence on the harassment for failure to impose a minimum and a maximum sentence. The Court noted that Mitchell's full appellate rights would apply after re-sentencing and he could file an appeal at that time.

Wagner v. Wagner, 564 A.2d 162 (Pa. Super. 1989).

Although an indirect criminal contempt proceeding is criminal in nature, a sentencing court is not required to give contemnor a minimum as well as a maximum sentence. The sentence is best left to the sentencing court, within the limits stated in the PFA Act. Requiring minimum and maximum sentences would weaken the effectiveness of the Act; if the legislature intended such sentencing requirements, it could have written them into the PFA Act. Subsequent case law limits this case to indirect criminal contempt brought under the statutory provisions of the PFA Act. *Commonwealth v. Williams, 753 A.2d 856, 865 (Pa. Super. 2000).*

Case Law Illustrations: Defendant Entitled to Evidentiary Hearing on Ineffective Assistance of Counsel in ICC Hearing Without Filing for Post-trial Relief

Commonwealth v. Moore, 978 A.2d 988 (Pa. Super. 2009).

Defendant raised an ineffective assistance of counsel claim when the court found him in contempt of a PFA Order and sentenced him to jail. Because the public defender's office represented defendant for the ICC, the public defender (PD) requested an extension of time to file post-sentencing motions, because PD now had a conflict of interest and needed to find alternate counsel. The trial court opined that it did not have jurisdiction to extend the time limits. The defendant appealed. The Superior Court found that judicial economy and fairness dictate that if a defendant raises an ineffective assistance of counsel claim when found in contempt of a protection order and sentenced to imprisonment, he is entitled to an evidentiary hearing on the ineffectiveness assistance claim in order to create a record sufficient to assess the claims on direct appeal. If defendant must wait for post-conviction relief, he likely will have served out his sentence before the appellate court reaches the issue.

Case Law Illustration: Clear, Specific Order Enables Enforcement

Commonwealth v. Brumbaugh, 932 A.2d 108 (Pa. Super. 2007)

A PFA final order was entered on behalf of a 16-year-old minor child. The child called the Defendant to attend a party with her. Defendant rode in the car with and went to the party with the protected child. Defendant was found guilty of an ICC. He appealed, arguing that the evidence was insufficient to prove that Defendant acted with wrongful intent. The Court disagreed, finding that the Commonwealth had met its burden of proof. The order was clear and stated that Defendant was prohibited from having contact with the protected party. Defendant had notice because he consented to the order in writing. Defendant chose to attend

the party with the victim, thereby willfully violating the Order. Intent can be imputed by the substantial certainty that Defendant would be in violation of the Order when he chose to travel with the protected party in the same vehicle. The Superior Court affirmed the judgment of sentence.

Case Law Illustration: PFA Indirect Criminal Contempt Expungement Governed by Criminal History Record Information Act

Commonwealth v. Charnik, 921 A.2d 1214 (Pa. Super. 2007).

Mrs. Charnik (Plaintiff) obtained a final protection order against Mr. Charnik (Defendant) after an evidentiary hearing. The trial court found Defendant guilty of an ICC on two separate occasions. Subsequently, Plaintiff petitioned for and obtained permission to withdraw the PFA order. Defendant motioned the trial court to expunge the final PFA order and the two ICC convictions; the court denied both requests. On appeal, the Superior Court upheld the trial court's decision that denied expungement.

The Court found that ICC convictions are criminal in nature and covered by the Criminal History Record Information Act, 18 Pa.C.S. § 9122(b). Therefore, Defendant's convictions could not be expunged unless he was at least seventy years old and free of arrest or prosecution for ten years, or dead for three years. Since neither criterion applied to Defendant, the trial court could not expunge his ICC convictions.

As for expungement of the final PFA order, the Superior Court found that it could not be expunged because the trial court had conducted a due process hearing, found abuse and Defendant had not appealed nor filed for reconsideration of that decision. Defendant analogized his case to *Carlacci v. Mazaleski*, 798 A.2d 186 (Pa. 2002), a Pennsylvania Supreme Court case wherein the Court found that a defendant seeking to protect his reputation has a right to expungement when the order entered is a temporary one and there are no findings of fact made in conjunction with the *ex parte* order. The Superior Court refused to extend the *Carlacci* rationale to the Charnik case.

Case Law Illustration: Wrongful Intent Required for Conviction

Commonwealth v. Haigh, 874 A.2d 1174 (Pa. Super. 2005).

In a case where defendant questioned plaintiff wife about her health in the courtroom during an indirect criminal contempt (ICC) proceeding, defendant was not guilty of ICC despite existence of a PFA that prohibited any contact with wife. The wife testified at a subsequent ICC hearing that her husband's contact did not place her in fear. The Superior Court found insufficient evidence to establish that defendant acted with "wrongful intent" pursuant to *Commonwealth v. Baker* (see below) and reversed the lower court's conviction.

Commonwealth v. Taylor, 137 A.3d 611.

The no contact PFA order allowed the parties to communicate through text message for the sole purpose of custody scheduling. The Defendant contacted the Plaintiff, through the minor

children, and then directly by text to discuss the sale of the marital residence. The Superior Court held that the Defendant's intent was not to discuss matters involving the children's well-being or custody schedule, but instead was to discuss with Plaintiff the outstanding issues regarding their jointly-held real property, and to impress upon her his desire to come to a quick resolution. The Court also stated that they could not discern a legitimate reason for the subject communication other than to harass or annoy the Plaintiff. The Court held that the Defendant's communication satisfied the "wrongful intent" requirement under the ICC statute, and subsequently affirmed his ICC conviction.

Commonwealth v. Felder, 2017 Pa. Super. 1009.

Petitioner obtained a Final PFA Order against the Defendant which stated that Defendant shall not abuse, harass, stalk, or threaten the Petitioner. However, it did not limit other contact between the Defendant and the Petitioner. After obtaining the PFA Order, Petitioner continued to live with Defendant and a roommate. Subsequently, an incident occurred where the Defendant refused to allow the Petitioner to enter the residence. The Petitioner went to unlock the door to the residence herself, and the Defendant then proceeded to grab her fingers and twist them to lock the door. They went back and forth for several minutes until the Petitioner's fingers started getting numb and she snatched her hand from under the door. Petitioner's fingers were red, swollen and numb for a few days following the incident. Defendant was convicted of an ICC and appealed this conviction. The Superior Court upheld his conviction stating that the Defendant's action of twisting and manipulating her fingers until they "became numb, painful, and swollen" rose to the level of abuse as his actions were intentional and caused bodily injury. In addition, the trial court found there was sufficient evidence to prove that the Defendant acted with "wrongful intent" stating, "Defendant's wrongful intent is demonstrated by the testimony of the witnesses as there is no other valid explanation for his conduct."

Case Law Illustration: Threats

Commonwealth v. Baker, 766 A.2d 328 (Pa. 2001).

Defendant's statement, "I'm going to kill this bitch," could not subject defendant to conviction for contempt of a temporary order that prohibited defendant from "threatening ... the plaintiff or placing her in fear of abuse," because the defendant made the statement while incarcerated and the statement was not conveyed to the plaintiff. To establish contempt, there must be sufficient evidence that (1) the order was definite, clear, specific and leaves no doubt or uncertainty in the mind of the person to whom it was addressed of the prohibited conduct; (2) the contemnor must have notice of the specific order; (3) the act constituting the violation must have been volitional; and (4) the contemnor must have acted with wrongful intent.

Case Law Illustration: The PFA Act's Criminal Contempt Provision Takes Precedence Over Local Rules of Criminal Procedure

Commonwealth v. Burton, 624 A.2d 138 (Pa. Super. 1993).

The specific provision of the PFAA that vests jurisdiction in the Court of Common Pleas to adjudicate and impose punishment for indirect criminal contempt of a PFA order takes precedence over broader and more general language of a Philadelphia municipal court statute and rules of criminal procedure, which apply to commission of any criminal offense with a penalty not exceeding five years. The criminal rule referencing the right to jury trial upon appeal following imposition of sentence by a municipal court judge is rendered nugatory by the Legislature's abolition of such right in the PFAA context.

Case Law Illustrations: Nature of Indirect Criminal Contempt Proceedings

Commonwealth v. Nelson, 690 A.2d 728 (Pa. Super. 1997).

Indirect criminal contempt and PFAA actions are two distinct actions. PFA proceedings are initiated in an effort to stop the perpetration of abuse and are civil in nature. The indirect criminal contempt action, however, is criminal in nature and seeks to punish violations of the protective order. Additionally, the court found that the coordinate jurisdiction rule did not operate where, as in the instant matter, the PFA and ICC were two separate actions and not the same case. The Commonwealth also argued that the trial court's failure to enforce the PFA violated the coordinate jurisdiction rule – a judge with coordinate jurisdiction sitting in the same case should not overrule a colleague's decision in the absence of extraordinary circumstances. The Superior Court rejected this argument because ICC and PFA action are not the same case.

Vito v. Vito, 551 A.2d 573, 574 (Pa. Super. 1988).

Proceedings involving civil contempt differ from those involving criminal contempt. The critical features are the substance of the proceeding and the character of the relief that the proceeding will afford. "If it is for civil contempt, the punishment is remedial, and for the benefit of the complainant. But if it is for criminal contempt, the sentence is punitive to vindicate the authority of the court."

Case Law Illustration: Burden of Proof

Commonwealth v. Nelson, 690 A.2d 728 (Pa. Super. 1997).

Defendant may be found guilty of indirect criminal contempt only if the Commonwealth proves every element beyond a reasonable doubt.

Case Law Illustration: Admission of Prior Bad Acts

Commonwealth v. Barger, 743 A.2d 477 (Pa. Super. 1999).

A court may admit evidence of other crimes in a contempt proceeding where there is a legitimate evidentiary purpose for such evidence. Evidence of prior bad acts generally is not admissible if offered merely to show bad character or a propensity for committing bad acts.

Defendant's earlier actions and past history of physically abusive conduct toward the victim and her mother were intimidating and threatening and the repeated assaults facilitated intimidating the victim into silence. Admission was appropriate to show the reason for the victim's delay in reporting the crimes and to prove lack of consent to sexual assaults.

Case Law Illustration: Violation of a PFA Order Plus Stalking Conviction on Same Victim Triggers 3rd Degree Felony Charge

Commonwealth v. Bortz, 909 A.2d 1221, 1224 (Pa. 2006).

The Pennsylvania Supreme Court confirmed that a prior indirect criminal contempt conviction for violation of a PFA order issued under 23 Pa.C.S. § 6108 is grounds for grading a subsequent first conviction for stalking as a felony of the third-degree under 18 Pa.C.S. § 2709.1.) The defendant ignored the provisions of a PFA by calling, delivering love notes, and making unannounced visits to plaintiff's home. Despite being convicted three times of PFA violations, defendant persisted. The defendant was then convicted of stalking, graded as a third-degree felony, and other offenses. Defendant appealed. The Pa. Superior Court upheld the trial court's decision holding that the stalking statute graded a stalking offense as a third-degree felony where the defendant was previously convicted of a crime of violence. The dissenting Pa. Superior Court Judge contended that the defendant was never convicted of a "crime of violence," but rather adjudicated in civil contempt of the PFA order. Because the defendant's violations involved love notes, absent any threat or act of violence, the judge saw no evidentiary basis to uphold a felony grading. The defendant later used this argument in his appeal. The Pa. Supreme Court upheld the Superior Court's decision, noting: "The stalking statute clearly reads that a first-time offender who was previously convicted of a crime of violence involving the same victim, family, or household member including a violation of an order issued under 23 Pa.C.S. §6108 will receive a third-degree gradation. To read the statute in any other manner would fail to give effect to all of its terms."

Case Law Illustration: Waivers

Commonwealth v. Abed, 989 A.2d 23 (Pa. Super. 2010).

Defendant's admissions during a civil contempt hearing on a PFA violation were admissible during his criminal trial for harassment, stalking and contempt. The trial court properly denied Defendant's suppression motion. Trial court also properly denied Defendant's motion for acquittal for contempt of the PFA order during his criminal trial on contempt, stalking and harassment when the actual order was not entered into the record. Defendant failed to object to brief statements by the District Attorney that the PFA entered against him was a "stay-away" order restricting him from contacting the victim or going to her residence. Defendant did not object that the PFA was improperly characterized or that the actual document should have been entered into the record. Thus, the issue was waived.

(a.1) Jurisdiction.—A court shall have jurisdiction over indirect criminal contempt charges for violation of a protection order issued pursuant to this chapter or a foreign protection order 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).

Case Law Illustration: Minor Defendant

Varner v. Holley, 854 A.2d 520 (Pa. Super. 2004).

While the PFAA does allow for the entry of a PFA order against a minor, the minor cannot be found guilty of indirect criminal contempt if he was not represented at the original PFA hearing by a guardian “who shall supervise and control the conduct of the action on behalf of the minor” pursuant to the Pennsylvania Rules of Civil Procedure.

(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.

Case Law Illustration: Extension of PFA based Indirect Criminal Contempt Conviction

Trout v. Strube, 97 A.3d 387 (Pa. Super. 2014).

Plaintiff filed an appeal of the Trial Court's order denying her petition to extend her PFA order based on Defendant's conviction of an ICC. Plaintiff petitioned for the extension 18 months after the Defendant's conviction and cited section 6114(b)(4) of the PFA Act. County practice did not permit Plaintiff to make a request for an extension of her PFA order at the time of the ICC hearing. Section 6114(b)(4) states "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." In the instant case, the Superior Court ruled that because Plaintiff failed to make her request at the ICC hearing, she was not entitled to an extension of the PFA order under section 6114(b)(4). The Superior Court further found that the county practice for seeking an extension following an ICC conviction was at odds with the PFA Act and thus had to be remedied.

(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.

Case Law Illustrations: Post-trial Practice

Commonwealth v. Moore, 978 A.2d 988 (Pa. Super. 2009).

Defendant Moore sought an extension of time to file a post-trial motion based on ineffective assistance of counsel in an indirect criminal contempt hearing. The trial court denied the motion, finding that it lacked jurisdiction to grant the extension and that the Post-conviction Collateral Relief Act (PCRA) was the appropriate method of seeking relief. On appeal, the Superior Court agreed that the PCRA applied, but PCRA was not a timely method for relief in a PFA case because the six months maximum sentence would expire prior to court review of the PCRA petition. The Superior Court found the trial court had discretion to grant the motion for extension of time, and judicial economy supported hearing ineffective assistance of counsel claim in a post-sentence evidentiary hearing.

Case Law Illustrations: Sentence for Indirect Criminal Contempt

Takosky v. Henning, 906 A.2d 1255, 1258 (Pa. Super. 2006).

Defendant appealed the trial court's order that found him in indirect criminal contempt for violating a final PFA order against him. The trial court's order found the defendant guilty of the

violation but postponed sentencing until a later date. The Superior Court quashed the appeal because the order was not a final appealable order. “It is well settled that unless sanctions or imprisonment is imposed, an Order declaring a party to be in contempt is held to be interlocutory and not appealable.”

Leonard v. Smith, 684 A.2d 622 (Pa. Super. 1996), appeal denied, 698 A.2d 595 (Pa. 1997).

Sentence of 18 months (for three counts of indirect criminal contempt) was not excessive even though defendant also received criminal sentence on charges arising from same incident. Post-adjudication expressions of remorse need not be considered in determining appropriate sentence for violating PFA order.

Commonwealth v. Snell, 737 A.2d 1232 (Pa. Super. 1999).

While punishing the contemnor is the primary goal of a contempt proceeding, the intent is also to prevent further abuse. The relief set forth in the PFAA is specifically enacted to stop the perpetration of abuse and includes extending a PFA order when a court finds the defendant engaged in a pattern that indicates continued risk of harm to the victim. The court found it had the authority in a contempt proceeding to bring about the cessation of abuse by extending the PFA order for one year, without a separate civil proceeding. The defendant was not deprived of due process because of the heightened standard of proof. Defendant also had notice the court that could grant such relief upon a finding of guilt and the contempt hearing provided him with sufficient opportunity to be heard.

(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.

Case Law Illustrations: Double Jeopardy

Commonwealth v. Jackson, 10 A.3d 341 (Pa. Super. 2010).

Offenses that provide a basis for an indirect criminal contempt of a PFA Order may also be charged as criminal offenses so long as the double jeopardy clause is not offended. Jackson was charged with burglary, assault and criminal trespass, as well as an indirect criminal contempt violation of a PFA. On appeal, Jackson questioned whether or not the double

jeopardy clause attached because the criminal charges arose from the same incident as the indirect criminal contempt of the PFA order. The Superior Court applied the *Blockburger v. U.S.*, 284 U.S. 299 (1932) “same elements” test and determined that the criminal trespass charge consisted of the same elements as the indirect criminal contempt and therefore could not both be charged against Jackson. However, a comparison of the elements of burglary and assault revealed that each contained unique elements as compared to the indirect criminal contempt charge and thus the criminal charges for burglary and assault did not offend double jeopardy.

Leonard v. Smith, 684 A.2d 622 (Pa. Super. 1996), appeal denied, 698 A.2d 595 (Pa. 1997).

Double jeopardy did not bar a contempt conviction for violation of a PFA order even though an appellant had been sentenced criminally for charges arising from the same incident. The PFA did not include the elements of the offenses for which the appellant was convicted in a criminal proceeding. The violation concerned defiant trespass and assault, and the defendant had already been sentenced on charges of stalking, harassment by communication, and criminal mischief arising from the same incident. Neither defiant trespass nor assault had the same elements as the offenses of conviction.

Commonwealth v. Yerby, 679 A.2d 217 (Pa. 1996).

After being convicted and sentenced for contempt of a PFA Order, Appellant was subsequently charged and convicted of reckless endangerment, of another person, possession of an instrument of crime, terroristic threats, unlawful restraint and based on the same incident which resulted in the ICC conviction. On appeal, the Pennsylvania Supreme Court held that double jeopardy does attach to criminal contempt prosecutions and that the Blockburger (Same Elements) Test is the appropriate method to determine whether the subsequent prosecution violates double jeopardy. Under the Blockburger Test, if each offense requires proof of an element that the other does not, the offenses are separate and double jeopardy does not apply. That being said, the court also held that the elements of the offenses are not to be compared in the most literal sense. Since no substantive criminal statute contains the same elements as criminal contempt, if the analysis was simply focused on statutory elements, any double jeopardy protection would be “illusory.” As such, the court must consider the actual circumstances/events that led to the criminal contempt conviction as part of the criminal contempt double jeopardy analysis. In applying this rule to Yerba, the Court determined that his subsequent criminal prosecution did not violate the double jeopardy clause because the record for the contempt proceeding did not indicate which wrongful behavior led to the contempt conviction. While the conviction could have been the threats made, it could also have been based on the physical assault, etc.

Commonwealth v. Leach, 729 A.2d 608 (Pa. Super. 1999).

The trial court found defendant Leach guilty of nine counts of stalking, nine counts of criminal mischief and ICC of a protection order. Defendant vandalized victim’s vehicle nine separate

times, smashing the windshield three times and flattening 13 tires. The defendant challenged the nine separate acts of stalking, arguing that the nine counts arose from a single sequence of behavior directed to a common goal. The Superior Court found that Defendant's nine acts of are part of a course of conduct and the circumstances indicate his intent to place the victim in fear of injury or in emotional distress. Each stalking act in an established course of conduct is a separate offense and punishable as a separate offense; the repetitive nature shows the obsession with the victim and the escalation of violence.

Commonwealth v. Zerphy, 481 A.2d 670 (Pa. Super. 1984).

Victim alleged defendant violated her PFA when he struck her in the face with his fists and later showed up at her residence with a rifle. The victim requested assistance from the Pennsylvania State Police. When the police arrived at the victim's residence, Zerphy fired a shot at the police car and hit the front grill. The police ordered Zerphy to drop the rifle; he pointed it at the troopers, and then put it on the ground. The police arrested him, charging him with attempted homicide, recklessly endangering another person, aggravated assault, disorderly conduct, and criminal mischief. The victim petitioned to hold Zerphy in contempt for a violation of the PFA Order. The Superior Court found the indirect criminal contempt was clearly a separate and distinct offense from the conduct that resulted in the criminal charges. A proceeding for indirect criminal contempt under the PFAA and subsequent prosecution for crimes that composed the contempt do not present governmental harassment requiring compulsory joinder. In this case, the contemptuous conduct related to the victim; the criminal charges resulted from shooting at police officers.

§ 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.

Case Law Illustration: Timing of Petition for Contempt

Gerace v. Gerace, 631 A.2d 1360 (Pa. Super. 1993).

A petition alleging that stepfather failed to comply with PFA order requiring him to return stepdaughter's property to her was not time-barred. The petition was in response to stepfather's failure to comply with an affirmative order to return the property and not due to his noncompliance with the PFA order. Stepfather had argued the petition was filed after expiration of the PFA order. The court noted that there is no statute of limitations for obeying a court order or requesting the enforcement of a court order, and stepfather was not actually adjudged in contempt of court.

§ 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.

Case Law Illustration: Confidentiality

V.B.T. v. Family Services of Western Pennsylvania, 705 A.2d 1325 (Pa. Super. 1998), aff'd, 728 A.2d 953 (Pa. 1999).

Privilege created under confidentiality provision of the PFAA is absolute and extends to records as well as oral testimony. The language of the statute creates no exceptions to the privilege. Parents and plaintiff child were barred from discovery of materials that were protected under the PFAA and Juvenile Act. Waiver of the privilege must be in writing. Although foster child previously had testified about facts surrounding her abuse by her father in a criminal trial, this

did not constitute a waiver of sexual assault counselor privilege or domestic violence counselor/advocate privilege.

§ 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.

Case Law Illustrations: Modification or Dismissal Requires Petition

Stamus v. Dutcavich, 938 A.2d 1098 (Pa. Super. 2007).

Either party may seek a modification of an order by filing a petition; however, the trial court errs when it dismisses a final protection order when no petition to modify has been filed. A court cannot rule on matters not before it; without the filing of a petition to modify, the issue is not before the court.

Case Law Illustrations: PFA Expungement Limited

Commonwealth v. Charnik, 921 A.2d 1214 (Pa. Super. 2007).

Mrs. Charnik (Plaintiff) obtained a final protection order against Mr. Charnik (Defendant) after an evidentiary hearing. The trial court found Defendant guilty of an ICC on two separate occasions. Subsequently, Plaintiff petitioned for and obtained permission to withdraw the PFA order. Defendant motioned the trial court to expunge the final PFA order and the two ICC convictions; the court denied both requests. On appeal, the Superior Court upheld the trial court's decision that denied expungement.

The Court found that ICC convictions are criminal in nature and covered by the Criminal History Record Information Act, 18 Pa.C.S. § 9122(b). Therefore, Defendant's convictions could not be expunged unless he was at least seventy years old and free of arrest or prosecution for ten years, or dead for three years. Since neither criterion applied to Defendant, the trial court could not expunge his ICC convictions.

As for expungement of the final PFA order, the Superior Court found that it could not be expunged because the trial court had conducted a due process hearing, found abuse and Defendant had not appealed nor filed for reconsideration of that decision. Defendant analogized his case to *Carlacci v. Mazaleski*, 798 A.2d 186 (Pa. 2002), a Pennsylvania Supreme Court case wherein the Court found that a defendant seeking to protect his reputation has a right to expungement when the order entered is a temporary one and there are no findings of

fact made in conjunction with the *ex parte* order. The Superior Court refused to extend the *Carlacci* rationale to the Charnik case.

Carlacci v. Mazaleski, 798 A.2d 186, 191 (Pa. 2002).

Adopting the holding of *P.E.S. v. K.L.* below, the Pennsylvania Supreme Court concluded that there is a right to petition for expungement of a PFA record where the petitioner seeks to protect his reputation. Although the PFAA does not expressly provide for expungement, the right exists under the due process clause of the Pennsylvania Constitution. The PFA order was temporary and in effect for 41 days in the instant matter. A hearing was never held; rather, the parties stipulated that the temporary PFA order be declared null and void *ab initio*. The court concluded that a court does not need to apply the Wexler balancing test in a PFA expungement proceeding when: “(1) a PFA petition filed against a PFA defendant has been dismissed by a court order, as in *P.E.S.*; or (2) the PFA proceedings never evolve beyond the temporary order stage, as in the instant case.”

P.E.S. v. K.L., 720 A.2d 487 (Pa. Super. 1998).

While expungement is not a remedy available under section 6117 of the PFAA, the trial court does have authority to expunge a PFA record in limited circumstances where a respondent seeks to protect his or her reputation. A defendant asserted that his reputation and livelihood were threatened by the public court files because he was an interstate child custody specialist who acted as a custody evaluator and *guardian ad litem*. The plaintiff failed to appear and pursue her abuse petition and no hearing was held within the required ten-day period (a temporary order was never entered).

Devereaux v. Thomas, 38 Pa. D. & C. 4th 129 (Phila. 1998).

Defendant argued that because the PFA petition was vacated without a hearing on the merits, the records should be expunged from the state registry mandated by the 1994 amendments to the PFAA (23 Pa.C.S. § 6105). The Court found that the Commonwealth has a legitimate interest in maintaining accurate records of abuse data, which could help identify future victims and petitioners who file multiple or frivolous claims. These administrative records remain valuable even if a case has ended for lack of prosecution. The fact that a case was dismissed for lack of prosecution told the court only that the action was not heard on the merits; it said nothing about the existence or the lack of wrongdoing by the defendant. The Court balanced the defendant’s perceived harm of being unable to obtain a position with the FBI (because the FBI had access to the registry) with the state’s need to prevent abuse. The Court also considered that a remedy for expunction was not provided in the PFA statute as it is in criminal statutes and the Child Protection Act, and therefore it was reasonable to conclude the lack of such a provision was deliberate.

Graham v. Flippen 2018 PA Super 20 (Decided February 2, 2018).

Defendant petitioned for expungement of four separate Protection from Abuse matters. There were three separate PFA petitions filed by the defendant’s intimate partner Lynna Flippen against

the defendant and one filed by Defendant against Lynna Flippen. Defendant had been convicted of the murders of Lynna Flippen and her acquaintance, Ernest Yarbrough and received two life sentences. The trial court denied the request, and Defendant appealed. The Superior Court reversed the trial court's decision, recognizing that all the PFAs had even temporary and dismissed before a hearing. As such, the expungements had been warranted as a matter of law. The Superior Court also rejected the prosecution's argument that the PFA records could not be expunged because they were used as evidence in Defendant's murder case, stating that the expungements were proper as a matter of law and that granting them would not erase them from evidentiary record of the murder trial.

(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.**

Case Law Illustrations: Bad Faith Filing

Courtney v. Courtney, 205 A.3d. 318 (Pa. Super 2019).

After Petitioner withdrew her petition for a Protection From Abuse Order upon the parties reaching an agreement regarding custody exchanges, the court held a hearing on Defendant's petition for counsel fees. The trial court found that Petitioner had filed her petition for a Protection From Abuse Order in bad faith and ordered her to pay \$310 in attorneys fees to Defendant's counsel. Upon appeal, the Pennsylvania Superior Court reversed, holding that the trial court's finding of bad faith based on Petitioner's failure to prove her allegations by a preponderance of the evidence was improper and explicitly against the language of 23 Pa.C.S. §6117(b). Along the same lines, the Superior Court also held that the trial court's finding was unsupported by the certified record and that the trial court had simply restated Plaintiff's allegations of forcible entry from an earlier petition and noted that there had not actually been a hearing on the PFA petition. Courtney is the first published opinion in Pennsylvania interpreting the concept of bad faith in the context of a PFAA.

§ 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).

APPELLATE STANDARDS

SCOPE OF REVIEW

Kuhlmeier v. Kuhlmeier, 817 A.2d 1127 (2003).

Where the appellate challenge to the trial court's order involves the application of law, an appellate court's scope of review is plenary.

STANDARD OF REVIEW

Ferri v. Ferri, 854 A.2d 600 (2004).

In the context of a PFA order, the appellate court reviews the trial court's legal conclusions for an error of law or an abuse of discretion. See also, *Drew v. Drew, 870 A.2d 377 (Pa. Super. 2005).*

Snyder v. Snyder, 629 A.2d 977 (Pa. Super. 1993).

Reviewing court must view the evidence in the light most favorable to the verdict winner, granting that party the benefit of all reasonable inferences, and determine only whether the evidence produced at trial was sufficient to sustain the verdict.

Snyder v. Snyder, 629 A.2d 977 (Pa. Super. 1993).

Trial court has discretion in choosing between remedies afforded under the Act and the determination is reviewed under an abuse of discretion standard.

Kelley v. Mueller, 861 A.2d 984 (Pa. Super. 2004), vacated, 912 A.2d 202 (Pa. 2006).

An abuse of discretion has occurred when the trial court's order is manifestly unreasonable, or the result of partiality, prejudice, bias or ill will or without support in the record.

MOOTNESS

Snyder v. Snyder, 629 A.2d 977 (Pa. Super. 1993).

Review of final order was not moot despite its expiration. Case falls within well-recognized exception to the mootness doctrine as a case that has important public policy considerations and yet may escape review. PFA orders are usually temporary and it is seldom that a court has the opportunity to review one before it expires.

PFA ORDER REGARDING CUSTODY APPEALABLE DESPITE SEPARATE PROCEEDING

Miller v. Walker, 665 A.2d 1252 (Pa. Super. 1995).

PFA ordered father to refrain from abusing parties' children and granted mother legal custody of children. PFA order was a final order subject to appeal as of right, even though the parties might also have been involved in separate custody action concerning the same children.

CONSENT ORDERS ARE CONCLUSIVE AND WILL ONLY BE REVIEWED FOR FRAUD OR MUTUAL MISTAKE

Lee v. Carney, 645 A.2d 1363 (Pa. Super. 1994).

A decree entered by consent of the parties is so conclusive that it will be reviewed only on a showing that an objecting party's consent was obtained by fraud or that it was based upon a mutual mistake. When the order succeeds in terminating the abuse, the purpose of the Act is fulfilled and the appellate court will not judge the parties' wisdom in choosing the terms.

ATTORNEYS' FEES ON APPEAL

Krassnoski v. Rosey, 684 A.2d 635 (Pa. Super. 1996).

This appeal was necessitated by a judge's ruling denying counsel fees in an action under the PFAA, which was unrelated to substantive issues regarding defendant's abusive conduct or to the PFA order itself. An award of appellate counsel fees would not further the statutory purposes of the Act, nor was the defendant's conduct dilatory or vexatious allowing an award under the specific statutory authorization of the Act or under the Rules of Appellate Procedure.

CREDIBILITY OF WITNESSES

Raker v. Raker, 847 A.2d 720 (Pa. Super. 2004).

A finder of fact is entitled to weigh evidence and assess credibility and to believe all, part or none of the evidence presented.

R.G. v. T.D., 672 A.2d 341 (Pa. Super. 1996).

In reviewing validity of PFA order, appellate court must defer to lower court's determination of credibility of witnesses at the hearing.

Miller v. Walker, 665 A.2d 1252 (Pa. Super. 1995).

Trial court is empowered to assess credibility of witnesses.

EVIDENTIARY QUESTIONS

Boykin v. Brown, 868 A.2d 1264 (Pa. Super. 2005).

Questions concerning the admission or exclusion of evidence are within the sound discretion of the trial court and may be reversed on appeal only when a clear abuse of discretion is present.

Hood-O'Hara v. Wills, 873 A.2d 757 (Pa. Super. 2005).

Electronic communication (e-mail) will only be admitted if it does not constitute hearsay pursuant to Pa.R.E. and if the communication can be properly authenticated. Discovery is not permitted in PFA actions without leave of the trial court pursuant to Pa.R.C.P. 1930.5(a).

BURDEN OF PROOF

Boykin v. Brown, 868 A.2d 1264 (Pa. Super. 2005).

The PFAA does not seek to determine criminal culpability; rather in such an action the petitioner must only prove the allegation of abuse by the preponderance of the evidence.

Raker v. Raker, 847 A.2d 720 (Pa. Super. 2004).

The preponderance of the evidence standard is defined as the greater weight of the evidence, i.e., to tip a scale slightly is the criteria or requirement for preponderance of the evidence.

THE PFA ACT'S RELATIONSHIP WITH OTHER PROCEEDINGS

CUSTODY PROCEEDINGS

Landis v. Landis, 869 A.2d 1003 (Pa. Super. 2005).

In a custody action the trial court must consider the parties' past violent or abusive conduct, which may include but is not limited to abuse as defined in the PFAA pursuant to 23 Pa.C.S. § 5303(a)(3). When a trial court fails to make this consideration, it is reversible error. *See also, Costello v. Costello, 666 A.2d 1096 (Pa. Super. 1995)* (custody case remanded where trial court failed to develop full and complete record regarding PFA against father and father's drug and alcohol abuse).

DIVORCE PROCEEDINGS

Laczkowski v. Laczkowski, 496 A.2d 56 (Pa. Super. 1985).

PFA proceeding is quasi-criminal whereas relief under Divorce Code is equitable. The PFAA must be construed *in pari materia* with the Divorce Code since they were enacted for different, but not incompatible, purposes.

EQUITABLE DISTRIBUTION

Lee v. Lee, 978 A.2d 380 (Pa. Super. 2009).

In an equitable distribution proceeding, husband was not entitled to 25-month rental credit for the time he was evicted and excluded from the marital residence because of wife's protection

from abuse order. Equitable distribution lies in equity, and equity demands clean hands; husband's bad behavior prompted the PFA, and equity prevented recovery for the rental credit after the PFA issued.

DEPENDENCY PROCEEDINGS

Brooks-Gall v. Gall, 840 A.2d 993 (Pa. Super. 2003).

A mother brought a PFA petition on behalf of her children against their father; trial court declared the children dependent at the PFA hearing and had Child Protective Services remove the children from the mother. The Court held that trial court's *sua sponte* actions violated the parents' due process rights as well as the Pennsylvania Juvenile Act. The Court noted the compelling public policy consideration of the chilling affect the trial court's action would have on victims of domestic violence seeking protection orders.

ESTATES

In the Matter of the Estate of Elaine L. Cochran, 738 A.2d 1029 (Pa. Super. 1999).

The defendant's conduct before and after the issuance of a PFA was wholly inconsistent with the marital relationship and constituted a willful and malicious desertion within the meaning of the forfeiture statute. Husband forfeited spousal share of his wife's estate when his conduct resulted in his removal from the marital residence for one year or more.

CRIMINAL PROCEEDINGS

Commonwealth v. Stallworth, 781 A.2d 110 (Pa. 2001).

The Pennsylvania Supreme Court considered a PFA order in the context of a death sentence for murder. During the lower court's sentencing phase, the jury had been instructed that, at the time of the killing, the defendant was subject to a PFA order restricting his behavior toward the victim. The jury found this to be an aggravating circumstance warranting the imposition of the death penalty. On appeal, the Supreme Court held that because the defendant was not served with the order and did not have anecdotal knowledge of the existence of the PFA order, he was not "subject to" that order for the purposes of establishing an aggravating circumstance. Therefore, he was improperly sentenced to death. The court found the term "subject to" was not clear or free from ambiguity and should be subject to the most restrictive interpretation, which would require that a defendant either be given actual notice of the PFA or have the equivalent knowledge of a PFA order. There was no record evidence that the defendant had such knowledge.

Commonwealth v. Majeed, 694 A.2d 336 (Pa. 1997).

Violation of a PFA order may create criminal culpability. Defendant was convicted of burglary after forcibly entering his home with the intent to commit a crime. Defendant had been

excluded from the home pursuant to the PFA order. Defendant's unlawful entry facilitated his harassment of the plaintiff. If the only sanction for defendant's behavior was indirect criminal contempt, the purpose underlying the PFAA (to prevent domestic violence and concomitantly to promote the security of the home) would be frustrated. The Commonwealth has an interest in enforcing a PFA and is not precluded from using a violation of the PFA order to create an element of burglary.

Dunkelberger v. Pa. Board of Probation & Parole, 593 A.2d 8 (Pa. Commw. 1991).

Parolee being held in criminal contempt for violation of a PFA order provides a basis for the Board to recommit the parolee as a convicted parole violator.

Commonwealth v. Jackson, 900 A.2d 936, 940-41 (Pa. Super. 2006).

The Pennsylvania Superior Court sustained the trial court's discretion to admit the evidence of past abuse, including PFA orders, because the evidence indicated that the defendant had a motive to kill his girlfriend. The evidence presented at trial established that defendant had a history of assaulting the victim and had violated numerous PFA orders obtained by the victim. On the night of the victim's death, defendant and the victim were arguing and defendant strangled her with the vacuum cord. The court found admission of the past abuse proper. "Furthermore, evidence of prior abuse between a defendant and a homicide victim tending to establish motive, intent, malice, or ill will is generally admissible."

Commonwealth v. Bortz, 909 A.2d 1221 (Pa. 2006).

The Pennsylvania Supreme Court confirmed that violation of a PFA order plus stalking conviction triggers a third-degree felony charge. A prior ICC conviction for violation of a PFA order (under 23 Pa.C.S. § 6108) is grounds for grading a subsequent first stalking conviction as a third-degree felony (under 18 Pa.C.S. § 2709.1).)The Pa. Superior Court upheld the trial court's decision holding that the stalking statute graded a stalking offense as a third-degree felony where the defendant was previously convicted of a crime of violence. The Pa. Supreme Court upheld the Superior Court's decision.

PFA AS AGGRAVATING FACTOR IN CRIMINAL HOMICIDE

Commonwealth v. Staton, 38 A.3d 785 (Pa. 2012).

In this review of a death penalty case, the Pennsylvania Supreme Court considered the use of a PFA as an aggravating factor. The victim, Ms. Yohn, was granted a temporary PFA. At a hearing on the final order, at which the defendant did not appear, the court granted a final PFA order. At the homicide trial, Staton contested whether or not he had notice of the PFA. Notice of the PFA is important, because without notice, the PFA cannot be an aggravating factor in the sentence. The aggravating factor applies only where the defendant has actual knowledge of the PFA order. Staton argued that he did not have notice, and believed that Ms. Yohn had withdrawn the PFA petition. There was no court order, however, withdrawing or modifying the PFA. The court concluded that the defendant must have either actual or the equivalent

knowledge of the PFA for the Commonwealth to use it as an aggravating factor. The court determined that Staton had such knowledge. Staton testified that the victim told him about the PFA. Other witnesses also testified that Staton talked to them about the PFA. Although Staton never received actual service of the PFA, the court found that he had equivalent knowledge of the existence of a PFA and use of the aggravating factor was appropriate. The judgment of sentence was affirmed.

BATTERED WOMAN SYNDROME

Commonwealth v. Miller, 634 A.2d 614, 621 (Pa. Super. 1993).

Miller appealed her judgment of sentence following conviction of third degree murder at a bench trial. The trial court sentenced her to five to twelve years of imprisonment. Miller and the victim, Mark Smith, resided together several years. During an argument prior to the shooting, Smith poked Miller in the chest, slapped her, and burned her with a cigarette. Miller claimed she acted in self-defense when both parties reached for a knife that fell from Smith's pants. Miller also testified to many previous abusive incidents by Smith against her. The Superior Court remanded for an evidentiary hearing on battered woman syndrome in the context of self-defense. Battered Woman's Syndrome is "admissible as probative evidence of defendant's state of mind as it related to self-defense." The syndrome is not a defense to homicide, but provides the type of "evidence which may be introduced on the question of the reasonable belief requirement of self-defense in cases which involve a history of abuse between the victim and the defendant." Evidence of battered woman syndrome may not be used to bolster the credibility of the defendant; failure to present such evidence is not per se ineffectiveness of counsel.

Commonwealth v. Stonehouse, 555 A.2d 772 (Pa. 1989).

A victim of years of severe physical and psychological domestic abuse shot and killed the perpetrator of the abuse. Both parties were police officers. The Pennsylvania Supreme Court reversed the judgment of a sentence finding the defendant guilty of third degree murder, and remanded for a new trial because of the ineffectiveness of trial counsel in not requesting the proper jury instructions on self-defense and voluntary manslaughter. Trial counsel failed to request jury instructions that would require the jury to consider the cumulative effects of psychological and physical abuse when assessing the reasonableness of a battered person's fear of imminent death or serious bodily harm with respect to a claim of self-defense, and when assessing what constitutes sufficient provocation to support a conviction for voluntary manslaughter. The jury should have been apprised of the fact that the abuse the defendant suffered for three years was to be considered by the jury with respect to the reasonableness of her fear of imminent danger of death or serious injury. Also, a party may establish sufficient provocation to support a conviction for manslaughter by the cumulative impact of a series of related events. The test for adequate provocation remains whether a reasonable person, confronted with this series of events, became impassioned to the extent that his or her mind was incapable of cool reflection.

Counsel also failed to present expert testimony on the battered woman syndrome where uncontradicted testimony revealed that the defendant was a victim of such abuse. Because Battered Woman Syndrome is not within the ordinary training, knowledge and experience of jurors, expert testimony is admissible as the basis for proving justification in the use of deadly force where the defendant has been shown to be a victim of psychological and physical abuse. [Defendant was retried and found not guilty, and all criminal charges were dismissed. She was later reinstated to the police force and awarded back pay.]

SECTIONS AND CASES

§ 6101. Short title of chapter

§ 6102. Definitions

Boykai v. Young, 83 A.3d 1043 (Pa. Super. 2014).
Boykin v. Brown, 868 A.2d 1264 (Pa. Super. 2005).
B.T.W., O/B/O T.L. v. P.J.L., 956 A.2d 1014 (Pa. Super. 2008).
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Commonwealth v. Walsh, 36 A.3d 613 (Pa. Super. 2012).
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Raker v. Raker, 847 A.2d 720 (Pa. Super. 2004).
R.G. v. T.D., 672 A.2d 341 (Pa. Super. 1996).
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T.K. v. A.Z., 157 A. 3D 974 (Pa. Super. 2017).
Thompson v. Thompson, 963 A.2d 474 (Pa. Super. 2008).
Varner v. Holley, 854 A.2d 520 (Pa. Super. 2004)
Viruet v. Cancel, 727 A.2d 591 (Pa. Super. 1999).
Weir v. Weir, 631 A.2d 650 (Pa. Super. 1993).
Yankowskie v. Lenker, 526 A.2d 429 (Pa. Super. 1987)

§ 6103. Jurisdiction

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§ 6106. Commencement of proceedings

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Viruet v. Cancel, 727 A.2d 591 (Pa. Super. 1999).

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§ 6109. Service of orders

Commonwealth v. Stallworth, 781 A.2d 110 (Pa. 2001).

§ 6110. Emergency relief by minor judiciary

Commonwealth v. Padilla, 885 A.2d 994 (Pa. Super. 2005).

§ 6111. Domestic violence counselor/advocate

§ 6112. Disclosure of addresses

§ 6113. Arrest for violation of order

Commonwealth v. Ortiz, 802 A.2d 617 (Pa. Super. 2002), *aff'd*, 825 A.2d 629 (Pa. 2003).
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§ 6116. Confidentiality

V.B.T. v. Family Services of Western Pennsylvania, 705 A.2d 1325 (Pa. Super. 1998), *aff'd*, 728 A.2d 953 (Pa 1999).

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Stamus v. Dutcavich, 938 A.2d 1098 (Pa. Super. 2007).

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Summary

Pennsylvania’s legislature enacted the Crime Victims Act and directed that all crime victims “be treated with dignity, respect, courtesy and sensitivity.”¹ Provisions of the Crime Victims Act and the Protection From Abuse Act grant rights to victims to have pertinent, timely case information, to provide information the courts can use to appropriately set bail and sentences, and to be accompanied to proceedings by someone to inform and support them. The Crime Victims Act and the PFA Act apply to criminal and civil proceedings over which magisterial district judges preside, such as preliminary hearings, bail determinations, small claims and landlord/tenant matters, and PFA proceedings.

Domestic violence and sexual assault programs provide staff and services that can ease the court’s burden by providing information about court processes and connecting victims with supportive services. Pennsylvania statutes permit counselor/advocates to accompany victims to legal proceedings² and impose strict confidentiality on their communications with victims. Because ending domestic violence is an important goal in society and addressing domestic violence is an important goal of the criminal justice system, every effort to assist victims in seeking safety and accessing justice is beneficial.

The mandate to include the victim’s voice in the criminal and civil justice systems can help to reduce ongoing and future domestic violence and protect community safety. Courts are greatly assisted by the additional insight that victims, who know the abusers best, can offer. When victims believe that the justice system hears them and values their input, they can be empowered to participate in the process. Empowered victims may cope better with the trauma of domestic violence and build lives free from their abusers.

Magisterial district judges play a role in protecting victim safety by recognizing intimidation in domestic violence cases. While domestic violence cases can seem frustrating due to lack of victim participation, easing victims’ fears of further violence can support their ongoing participation in the case.

The chapter also reviews ways for magisterial district judges to prepare district facilities and staff to prevent and combat intimidation. Magisterial district judges must be aware of and responsive to the varied forms of intimidation without unnecessarily precluding access to a proceeding and without depriving a defendant’s presumption of innocence.³

¹ See 18 P.S. § 11.210(a).

² See the PFA Act, 23 PA.C.S. § 6111; Crime Victims Act, 18 P.S. § 11.201(3); Protection for Victims of Sexual Violence and Intimidation Act, 42 PA.C.S. § 62A10.

³ Pennsylvania Commission on Crime and Delinquency, *Free to Tell the Truth: Preventing and Combating Intimidation in the Courtroom, a Bench Book for Pennsylvania Judges*, 1 (2014), available at <http://www.pccd.pa.gov/AboutUs/Documents/Bench%20book%20published%202014-05-20.pdf>

Crime Victims Act

Pennsylvania's Crime Victims Act⁴ requires that victims of crime be given access to certain information, such as notice of proceedings, dispositions, releases and escapes; be advised of the right to be accompanied at proceedings;⁵ and be given the opportunity to offer prior comment on sentencing, including the submission of a written and oral victim impact statement.⁶

The prosecutor's office is required to provide the opportunity to offer prior comment on disposition, sentencing and release, and notice of actual release.⁷ The law requires that state and local law enforcement agencies give victims notice of their right to file a crime victim's compensation claim, notice of arrest of the suspect, and notice of an inmate's escape from custody.⁸ The Pennsylvania Department of Corrections or local correctional institution is also required to give notice of an escape to the crime victim.⁹

Promoting Safety Using Victim-Witness Programs

Victim-witness programs are generally based in the county District Attorney's office and perform the notice and assistance duties assigned to prosecutors' and probation offices under the Crime Victims Act. Victim-witness programs in every Pennsylvania county offer victims and witnesses services to help protect their safety, keep them informed of case developments, provide support and crisis intervention, and assure the voices of victims are heard.¹⁰

Victim-witness programs routinely provide information to victims about what is happening in their individual cases, how the court system works, the status of the defendant's bail, as well as information regarding available social services designed to help victims deal with the trauma and hardships resulting from being a crime victim. Victim-witness program personnel provide a valuable link between prosecutors and victims whose circumstances need to be taken into consideration when decisions like conditions of bail, evidentiary matters that affect victim's privacy, and sentencing are before the courts.

Victims Compensation Assistance Program

The prosecutor's office is mandated to assist victims in filing financial assistance claims.¹¹ The Crime Victims Act established **Pennsylvania's Victims Compensation Assistance Program** (VCAP). VCAP is designed to compensate crime victims for some of the financial losses incurred as a result of a crime and to encourage victims to cooperate with officials prosecuting the

⁴ Crime Victims Act, Act of Nov. 24, 1998, P.L. 882, No. 111.

⁵ 18 P.S. § 11.201(3).

⁶ 18 P.S. § 11.201.

⁷ 18 P.S. § 11.213.

⁸ See 18 P.S. § 11.212.

⁹ 18 P.S. § 11.214.

¹⁰ A map to find victim services offices in each county can be found at this link:

<http://www.oa.pa.gov/Services/Resources/LocateaVictimServiceAgency/Pages/default.aspx>

¹¹ 18 P.S. § 11.213.

crime.¹² Qualifying victims of domestic violence may access the VCAP for compensation.¹³ The VCAP benefits include payment of medical expenses, compensation for loss of earnings or support, funeral expenses, travel expenses, childcare reimbursement for court appearances, medical appointments or relocation, home healthcare expenses, reimbursement for counseling fees, replacement services, relocation expenses, crime scene cleanup, forensic rape examinations, and attorneys fees.¹⁴ Most often, victim-witness advocates assist victims in filing claims, although domestic violence advocates, sexual assault advocates and attorneys do so as well. Victims may also file claims on their own directly with VCAP.¹⁵

Promoting Safety by Protecting Victim Confidentiality

The Protection From Abuse (PFA) Act provides statutory confidentiality protections for victims of domestic violence and sexual assault and their communications with designated advocates. The duty of domestic violence and sexual assault program counselors is always to the victim. Although the criminal justice system may see advocates as potential witnesses, they are statutorily precluded from testifying or disclosing any communications with victims.¹⁶ The goal of the criminal justice system is prosecution of the offender, and sometimes that is the victim's goal as well. More often, the victim's goal is simply to stop the abuse and keep themselves and their families safer. In cases where the victim and the offender have intimate and familial connections, prosecution of the offender may be only one strategy toward safety. Advocates are protected from testifying in order to preserve all the strategies needed to protect a victim from ongoing and future abuse.

Domestic Violence Advocate/ Counselor Confidentiality

The legislature recognized the need for confidentiality of communications between domestic violence victims and domestic violence program counselor/advocates, and created a statutory privilege for these communications in the PFA Act.

Section 6116 protects the communications between victims and domestic violence counselor/advocates and states:

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

¹² 18 P.S. §§ 11.103, 11.707.

¹³ See *id.* (setting forth requirements).

¹⁴ See 18 P.S. §§ 11.103, 11.703, 11.707.

¹⁵ See Pennsylvania Crime Victims, Victims Compensation, [http://www.pccd.pa.gov/Victim-Services/Pages/Victims-Compensation-Assistance-Program-\(VCAP\).aspx](http://www.pccd.pa.gov/Victim-Services/Pages/Victims-Compensation-Assistance-Program-(VCAP).aspx) (last visited Sept. 15, 2015).

¹⁶ 23 PA.C.S. § 6116. Chapter 63 requires that domestic violence advocates report child abuse when the domestic violence counselor/advocate has reasonable cause to suspect that a child is a victim of child abuse under certain circumstances. 23 PA.C.S. § 6311.

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.¹⁷

The statute defines “domestic violence program” as:

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.¹⁸

Pennsylvania has **domestic violence programs** serving all of its 67 counties.¹⁹ Each program has a local independent board of directors, executive director and staff. Standards are monitored by the Pennsylvania Coalition Against Domestic Violence, which also provides technical assistance and training.

The PFA Act and the Crime Victims Act PERMIT DOMESTIC VIOLENCE COUNSELOR/ADVOCATES TO ACCOMPANY VICTIMS TO LEGAL PROCEEDINGS.²⁰

Absolute Privilege Extends to Records and Oral Testimony

The domestic violence counselor/advocate privilege is absolute and extends to records as well as to oral testimony.²¹ Domestic violence counselor/advocate is defined as 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.²² 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.²³

¹⁷ 23 PA.C.S. § 6116. Chapter 63 requires that domestic violence advocates report child abuse when the domestic violence counselor/advocate has reasonable cause to suspect that a child is a victim of child abuse under certain circumstances. 23 PA.C.S. § 6311.

¹⁸ *Id.*

¹⁹ A map of local domestic violence programs can be found on the Pennsylvania Coalition Against Domestic Violence website: <http://www.pcadv.org/find-help/>

²⁰ See the PFA Act, 23 PA.C.S. § 6111 and the Crime Victims Act, 18 P.S. § 11.201(3).

²¹ **V.B.T. v. Family Servs. of Western Pa., 705 A.2d 1325 (Pa. Super. 1998)**, *aff'd* by 728 A.2d 953 (Pa. 1999); see also *Commw. v. Wilson*, 602 A.2d 1290 (Pa. 1992) (explaining the importance of extending privilege for all communications, including the full contents of documents and/or records, that were created in the course of a privileged relationship).

²² 23 PA.C.S. § 6102.

²³ 23 PA.C.S. § 6102(a).

Confidentiality for Victim Encompasses Others Who Seek Advocacy

For purposes of the confidentiality protections, the statutory definition of “victim” includes persons who have a significant relationship with the victim, and who seek assistance from the domestic violence advocate:

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.²⁴

Sexual Assault Counselor Confidentiality

One of the most sensitive areas of victim confidentiality involves crimes of sexual violence. Pennsylvania’s legislature granted victims an absolute privilege of confidentiality over information passed to rape crisis counselors. The sexual assault confidentiality statute provides, in pertinent part:

(b) Privilege.—

(1) No sexual assault counselor may, without the written consent of the victim, disclose the victim's confidential oral or written communications to the counselor nor consent to be examined in any court or criminal proceeding.²⁵

The privilege prevents sexual assault counselors from disclosing confidential communications made to them by victims of sex-related crimes. The PRIVILEGE IS ABSOLUTE AND APPLIES BOTH TO ORAL COMMUNICATIONS AND TO RECORDS CREATED DURING THE COURSE OF THE CONFIDENTIAL RELATIONSHIP.²⁶

Definitions in the sexual assault confidentiality provisions are similar to those concerning domestic violence advocate/counselor provisions:

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

"Rape crisis center." Any office, institution or center offering assistance to victims of sexual abuse and their families through crisis intervention, medical and legal accompaniment and follow-up counseling.

"Sexual assault counselor." A person who is engaged in any office, institution or center defined as a rape crisis center under this section, who has undergone 40 hours of sexual assault training, whose primary purpose is the rendering of advice, counseling or assistance to victims of sexual assault.

²⁴ *Id.*

²⁵ 42 PA.C.S. § 5945.1(b)(1).

²⁶ See *Commw. v. Wilson*, 602 A.2d 1290 (Pa. 1992).

"Victim." A person who consults a sexual assault counselor for the purpose of securing advice, counseling or assistance concerning a mental, physical or emotional condition caused or reasonably believed to be caused by a sexual assault. The term shall also include those persons who have a significant relationship with a victim of sexual assault and who seek advice, counseling or assistance from a sexual assault counselor concerning a mental, physical or emotional condition caused or reasonably believed to be caused by a sexual assault of a victim.

"Confidential communication." All information, oral or written, transmitted between a victim of sexual assault and a sexual assault counselor in the course of their relationship, including, but not limited to, any advice, reports, statistical data, memoranda, working papers, records or the like, given or made during that relationship.²⁷

The Protection From Sexual Violence and Intimidation Act also provides for confidential communication between a victim of a crime of sexual violence and a sexual assault counselor. Any communications between a sexual assault counselor and a victim of sexual violence are confidential and the counselor shall not be competent to testify, release the record of or otherwise disclose confidential communications made to or by the counselor to or by the victim.²⁸ The privileged communications of a sexual assault counselor can only be waived by a signed writing by the victim, or when reporting facts of physical or sexual violence of a child.²⁹

Pennsylvania has a rape crisis center serving each county.³⁰ Each program has a local independent board of directors, executive director and staff. Standards are monitored by the **Pennsylvania Coalition Against Rape**, which also provides technical assistance and training.

The Crime Victims Act and the Protection From Sexual Violence and Intimidation Act **PERMIT SEXUAL ASSAULT COUNSELORS TO ACCOMPANY VICTIMS TO LEGAL PROCEEDINGS.**³¹

Victim and Witness Intimidation

The hallmark of domestic violence is an abuser who uses various tactics to exert power and control over the victim – essentially ongoing intimidation. As an intimate partner or family member, the perpetrator knows the victim's vulnerabilities and fears. Abusers become skilled at both explicit pressure and subtle actions, both of which the victims know to interpret as threats.

²⁷ 42 PA.C.S. § 5945.1(b)(1).

²⁸ 42 PA.C.S. § 62A16(a)(1).

²⁹ 42 PA.C.S. § 62A16(a)(1)(2).

³⁰ A map of local rape crisis programs can be found on the Pennsylvania Coalition Against Rape website: <http://www.pcar.org/help-in-pa>

³¹ See the Crime Victims Act, 18 P.S. § 11.201(3); Protection for Victims of Sexual Violence and Intimidation Act, 42 PA.C.S. § 62A10.

Domestic violence perpetrators know many ways to manipulate victims into hiding, excusing and minimizing the violence and abuse. Using those manipulation skills to prevent a victim from reporting or testifying about a crime, itself constitutes a crime under 18 Pa. C.S. Chapter 49:

- (a) Offense defined.--A person commits an offense if, with the intent to or with the knowledge that his conduct will obstruct, impede, impair, prevent or interfere with the administration of criminal justice, he intimidates or attempts to intimidate any witness or victim to:
- (1) Refrain from informing or reporting to any law enforcement officer, prosecuting official or judge concerning any information, document or thing relating to the commission of a crime.
 - (2) Give any false or misleading information or testimony relating to the commission of any crime to any law enforcement officer, prosecuting official or judge.
 - (3) Withhold any testimony, information, document or thing relating to the commission of a crime from any law enforcement officer, prosecuting official or judge.
 - (4) Give any false or misleading information or testimony or refrain from giving any testimony, information, document or thing, relating to the commission of a crime, to an attorney representing a criminal defendant.
 - (5) Elude, evade or ignore any request to appear or legal process summoning him to appear to testify or supply evidence.
 - (6) Absent himself from any proceeding or investigation to which he has been legally summoned.³²

Grading ranges from a felony to a misdemeanor depending on whether the intimidation included force, bribery, conspiracy, murder, prior conviction for intimidation or other enumerated circumstances.³³

An abuser who causes harm by retaliating against a person “for anything lawfully done in the capacity of witness, victim or a party in a civil matter” can be charged under section 4953.³⁴

If the magisterial district judge or prosecutor has evidence that a “witness or victim has been intimidated or is reasonably likely to be intimidated,” section 4954 provides for protective orders. Any criminal court, including a magisterial district judge, following a hearing, has discretion to issue a protective order which directs that the defendant or other person:

- Not violate the intimidation statute
- Maintain a certain distance from a specified witness or victim
- Have no communication with any specified witness or victim³⁵

³² 18 PA.C.S. §§ 4952(a)(1) – (6).

³³ 18 PA.C.S. §§ 4952(b)(1) – (5).

³⁴ 18 PA.C.S. §§ 4953(a), (b).

³⁵ 18 PA.C.S. § 4954.

Both a hearing and substantial evidence are required, but there is no requirement of a formal motion. A judge may invoke this statute sua sponte.³⁶ Admissible evidence at the hearing may include both hearsay and declarations by the prosecutor.³⁷ The order should specify the person(s) prohibited, the person(s) protected, prohibited actions, and the duration of the order.³⁸ The order should also provide for its service upon the police department that would have primary responsibility for the protection of the witness or victim.

General Forms of Intimidation

A common intimidation tactic used by perpetrators is to make the victims and witnesses aware that there are consequences for revealing and testifying to the abuse or other crimes.

The Pennsylvania Commission on Crime and Delinquency's manual for preventing and combating intimidation in the courtroom identifies the following intimidation tactics:

- Actual or attempted physical violence or property damage
- Explicit threats of physical violence or property damage
- Economic threats (as may be utilized in domestic violence cases to induce a victim not to pursue criminal prosecution of an abuser)
- Indirect or implicit threats such as anonymous phone calls, internet postings, or repeatedly driving past the residence of the witness or other location where the witness is present
- Even in the absence of specific conduct or threats, the prevalence of organized criminal activity and violence in the community creates fear on the part of the witness and may result in the witness being reluctant or refusing to appear in court
- Although acts of intimidation may be directed at the witness, they may also be directed at anyone close to the witness, including but not limited to a spouse, parent, sibling or child
- Explicitly communicated threats
- Photographing or recording the face and/or voice of the witness
- Defendant's allies sitting in the courtroom or waiting room as a show of force

In the context of domestic violence, the defendant has an intimate and/or familial relationship with the victim and potential witnesses to the abuse. Domestic violence perpetrators have ways to intimidate that are uniquely personal and effective.

- Threats against the children, or to keep the victim from seeing the children
- Pressure from in-laws, family members, friends, religious leaders and community, to keep the family intact, especially in ethnic and conservative communities
- Threats that, without an abuser's financial support, the victim and children will lose their housing or housing vouchers
- Threats of suicide

³⁶ Pennsylvania Commission on Crime and Delinquency, *Free to Tell The Truth*, *supra* note 3 at 13.

³⁷ 18 PA.C.S. § 4954.

³⁸ Pennsylvania Commission on Crime and Delinquency, *Free to Tell The Truth*, *supra* note 3 at 13.

If a victim has a PFA order, intimidation may constitute a violation warranting arrest. See Chapter 4: Protection Orders.

Magisterial district judges should be aware of both the explicit and implicit forms of intimidation that occur inside and outside of a hearing room. Magisterial district facility staff must also be trained to recognize all forms of intimidation and to immediately report such conduct to the magisterial district judge.

Safety for Litigants and Staff

It is essential to have safe and secure judicial facilities to ensure an impartial hearing where the rights of both the plaintiff and the defendant are protected. The 2016 Magisterial District Court Facility and Equipment Guidelines includes these requirements for safety of the parties, visitors and employees:

B. Public Areas

1. Waiting Areas

- a. Gun or property lockers, as required by law, should be provided at each district court facility. These lockers should be used to store handguns and other personal items not permitted in the court facility. A sign should be posted outlining the policy and applicable penalties. The lockers and signage must be consistent with the Pennsylvania Crimes Code (18 Pa.C.S. §913).³⁹
- b. There should be a sufficient number of functioning CCTV cameras to cover all public areas (Waiting areas (lobbies), public transaction counters). This CCTV equipment should be connected to a recorder that can save and download video footage. A policy should be established that states how to handle requests for video surveillance footage. Signage should be prominently displayed to indicate that CCTV equipment is being used.⁴⁰
- e. The waiting area must facilitate the separation of parties (for example, victims from perpetrators, family members or parties to a dispute.)⁴¹

Having general security measures, such as the use of metal detectors and examining an individual's identification at courthouse entrances have been upheld when challenged as unconstitutional.⁴²

³⁹ ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS, MAGISTERIAL DISTRICT COURT FACILITY & EQUIPMENT GUIDELINES, 6 (2016), available at http://www.co.fayette.pa.us/BidsandRFPs/Documents/District Justice Facilities Guidelines-FINAL_June.pdf

⁴⁰ *Id.*

⁴¹ ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS, MAGISTERIAL DISTRICT COURT FACILITY & EQUIPMENT GUIDELINES, 5 (2016), available at http://www.co.fayette.pa.us/BidsandRFPs/Documents/District Justice Facilities Guidelines-FINAL_June.pdf

⁴² *United States v. Smith*, 426 F.3d 567 (2nd Cir. 2005), *cert. denied*, 546 U.S. 1204, 126 S. Ct. 1410, 164 L. Ed.2d 109 (2006), *United States v. DeLuca*, 137 F.3d 24 (1st Cir.), *cert. denied*, 525 U.S. 874, 119 S. Ct. 174, 142 L.Ed.2d 142 (1998).

Staff Training

Staff should be alert to intimidating acts by defendants and witnesses, including subtle acts of intimidation such as smirking, gestures of disgust or prolonged staring at witnesses or using a hand-held device to photograph witnesses. Staff should immediately report such conduct to the magisterial district judge.

The Administrative Office of Pennsylvania Courts reports that it provides “training for staff in magisterial district judge courts in “best practices” to ensure court security and personal safety, and to control and resolve conflicts when they arise inside court facilities.”⁴³

Safety in the Hearing Room

A magisterial district judge shall require order and decorum in proceedings before the court.⁴⁴ Courts are also tasked with participating in and monitoring the development of security arrangements in hearing rooms. The Pennsylvania Commission on Crime and Delinquency’s court safety manual suggests that JUDGES MAY TAKE PROACTIVE MEASURES TO DISCOURAGE INTIMIDATION IN THE HEARING ROOM. The following suggestions are adapted from the manual to be appropriate to magisterial district courts.

Verbally Warn Courtroom

Warn everyone in the hearing room at the beginning of the proceedings that the judge will utilize all available powers, when appropriate, to respond to instances of witness intimidation.

These warnings may include:

- Criminal conduct will be referred to law enforcement agencies for arrest and prosecution.
- Misbehaving spectators will be held in contempt of court with accompanying fines and imprisonment.
- Misbehaving spectators will be excluded from the hearing room.
- Cell phones or other electronic devices that are not powered off and out of sight may be confiscated, searched, and may result in criminal contempt and expulsion from the hearing room unless you have express permission from the judge to use the device.
- “If you believe that intimidating a witness will stop the proceedings, or otherwise help the defendant, you are wrong.”⁴⁵

Respond promptly to misconduct. When a spectator smirks, laughs or tosses a hand or otherwise indicates disapproval of a witness’s testimony, or similar disrespect for the

⁴³ Administrative Office of Pennsylvania Courts, *Securing Pennsylvania’s Courts: What Has the Judiciary Done To Make Sure Pennsylvania’s Courts Are Secure?*, 2012, <http://www.pacourts.us/assets/files/setting-2236/file-1751.pdf?cb=c4ba76>

⁴⁴ Pa. Standards of Conduct of a Magisterial District Judge, Rule 2.8.

⁴⁵ Pennsylvania Commission on Crime and Delinquency, *Free to Tell The Truth*, *supra* note 3 at 3.

proceedings, the judge should immediately announce that such behavior will not be tolerated.

Create physical separation between parties

Keep the first two rows of seating reserved as a buffer zone to be filled by neutral persons approved by the court, such as law enforcement officers. The purpose is to create distance between the testifying witness and any potential intimidator. The buffer zone should not be used as a basis for excluding individuals from the hearing room except as otherwise permitted by law.

Allow the victim, witnesses, and family and friends of the victim to leave the hearing room first (by a separate door if possible). Instruct the defendant, defendant's allies, and other spectators to wait in the hearing room for 15 minutes after the witnesses are permitted to leave the hearing room. The delay allows the victim and allies time to leave the facility to avoid confrontations with the defendant and allies. Alternately, request that any available law enforcement officers present in the facility escort the victim to the car.

Prohibit use of phones, cameras and other electronic devices

Preclude the use of electronic devices pursuant to Pa.R.Crim.P. 112(A). Any telephone or communication device that is improperly used should be seized. The seized device should be stored together with a photocopy of the owner's identification so that the device may be stored and possibly returned after being searched or at the end of the proceeding.⁴⁶

Video Conferencing

The Administrative Office of Pennsylvania Courts reports that it provides "video conferencing equipment to magisterial district courts to allow for preliminary arraignments while defendants are held in secure facilities."⁴⁷ Video conferencing minimizes intimidation when the parties are physically in two separate locations. As more courts move toward video conferencing, research continues into best practices and limitations.⁴⁸

⁴⁶ Pa.R.Crim.P. 112(A) states that "the court or issuing authority shall: 1. Prohibit the taking of photographs, video, or motion pictures of any judicial proceedings or in the hearing room or hearing room or its environs during the judicial proceedings; and (2) prohibit the transmission of communications by telephone, radio, television, or advanced communications technology from the hearing room or the hearing room or its environs during the progress of or in connection with any judicial proceedings, whether or not the court is actually in session."

⁴⁷ Administrative Office of Pennsylvania Courts, *Securing Pennsylvania's Courts*, *supra* note 43.

⁴⁸ Robin Davis et al., *Research on Videoconferencing at Post Arraignment Release Hearings: Phase I Final Report* (2015), <https://www.ncjrs.gov/pdffiles1/nij/grants/248902.pdf>

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CHAPTER 6: CIVIL CASES INVOLVING DOMESTIC VIOLENCE

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Notes

Summary

This chapter focuses on the ways domestic violence issues manifest in civil cases, including housing cases, municipal code violations and small claims matters.

Studies indicate that domestic violence creates and sustains poverty for victims. On the other hand, economic stress and hardship may increase the risk of domestic violence.¹ Abusers commonly use money as a strategy to control their victims and families – for example, by keeping control of household finances, interfering with the victim’s ability to work and failing to make support or mortgage payments. Research of female welfare recipients in several states indicates high rates of domestic violence.² Racial, ethnic and cultural factors can also multiply the effects of poverty for women of color who are domestic violence victims.³

Victims overwhelmingly cite financial obstacles as reasons for staying with an abuser.⁴ Legal service providers have reported hundreds of cases of domestic violence survivors being evicted from housing for violence perpetrated against them.⁵ Survivors are particularly vulnerable to losing housing and becoming involved in eviction cases after leaving their abuser. Many women who do escape abusive relationships experience a lower standard of living once they leave, living

¹ Claire M. Renzetti, *Economic Stress and Domestic Violence*, VAWNET.ORG (2009), (internal citations omitted) at http://www.vawnet.org/Assoc_Files_VAWnet/AR_EconomicStress.pdf. See also, Jody Raphael & Richard M. Tolman, *Trapped by Poverty; Trapped by Abuse, New Evidence Documenting the Relationship Between Domestic Violence and Welfare* 4 (1997), available at <http://humanservices.ucdavis.edu/resource/uploadfiles/x%20Trapped%20by%20Poverty,%20Trapped%20by%20Abuse.pdf>.

² Natalie J. Sokoloff & Ida Dupont, *Domestic Violence at the Intersections of Race, Class, and Gender: Challenges and Contributions to Understanding Violence Against Marginalized Women in Diverse Communities*, 11 VIOLENCE AGAINST WOMEN 38, 44 (2005), available at http://www.researchgate.net/profile/Natalie_Sokoloff/publication/7701217_Domestic_violence_at_the_intersections_of_race_class_and_gender_challenges_and_contributions_to_understanding_violence_against_marginalized_women_in_diverse_communities/links/544106.

³ See Tricia Bent-Goodley, *Eradicating Domestic Violence in the African American community: A Literature Review and Action Agenda*. 2 TRAUMA, VIOLENCE AND ABUSE, 316-330 (2001). Research on male perpetrators also suggests that men who experience unemployment are at a greater risk of perpetrating domestic violence. “[C]omparing ... femicide perpetrators with other abusive men, ... unemployment was the most important demographic risk factor for acts of intimate partner femicide.” Jacquelyn C. Campbell, *Risk Factors for Femicide in Abusive Relationships: Results From a Multisite Case Control Study*, 93 AM J PUBLIC HEALTH, 1089 (2003) available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1447915/>.

⁴ Deborah Anderson, Daniel Saunders, *Leaving an Abusive Partner: An Empirical Review of Predictors, the Process of Leaving, and Psychological Well-Being*, 4 TRAUMA, VIOLENCE AND ABUSE 163 (2003); Adrienne Adams et al., *Development of the Scale of Economic Abuse*, 14 VIOLENCE AGAINST WOMEN 563, 568 (2008), available at http://wbg.org.uk/GBA_Present_2_2951060362.pdf.

⁵ National Law Center on Homelessness & Poverty & National Network to End Domestic Violence, *LOST HOUSING, LOST SAFETY: SURVIVORS OF DOMESTIC VIOLENCE EXPERIENCE HOUSING DENIALS AND EVICTIONS ACROSS THE COUNTRY* 3 (2007), <http://www.nsvrc.org/publications/reports/lost-housing-lost-safety-survivors-domestic-violence-experience-housing-denials>.

in poverty, depending on government assistance, or becoming homeless.⁶ For women of color, racially discriminatory employment and housing practices compound abusers' control tactics.⁷

Landlord-Tenant Cases

Domestic violence victims have housing protections under the Pennsylvania eviction process and state and federal laws, including:

- Violence Against Women Act
- Fair Housing Act
- Pennsylvania Human Relations Act

Women are the overwhelming majority of victims of domestic violence, dating violence, sexual assault and stalking. Some housing protections are based in part on the premise that evicting a victim of domestic violence as a result of the violence she endured constitutes **UNLAWFUL GENDER DISCRIMINATION** because domestic violence disproportionately impacts women.

Protections pursuant to the Violence Against Women Act are gender neutral and apply equally to both male and female victims of domestic violence, dating violence, sexual assault and stalking. Also, some jurisdictions in Pennsylvania, such as Philadelphia, have adopted ordinances that explicitly prohibit discrimination against victims of domestic violence, protecting both women and men.

In conventional housing, what may be most relevant to domestic violence victims is **WHERE THERE IS NO LANDLORD TENANT RELATIONSHIP**. An abuser may try to evict a victim from a home she occupied solely on the basis of the romantic relationship, but not from any agreement to rent property. In such instance, a valid landlord tenant case does not exist and the magisterial district court does not have jurisdiction. However, abusers often attempt to evict the victim through multiple filings, any of which may be filed as a general civil case before a magisterial district judge.

Residential Leases

Collectively, the Landlord Tenant Act of 1951⁸ and the Manufactured Home Community Rights Act⁹ govern most residential arrangements for rental housing in Pennsylvania. In conventional housing, a lease may be oral or written.¹⁰ A lease for real property that is for a term more than three years must be in writing and signed by the parties.¹¹

⁶ Adams, *supra* note 4 at 568 (2008).

⁷ Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STANFORD L. REVIEW 1241, 1246 (1991), available at <http://www.jstor.org/stable/1229039>.

⁸ 68 P.S. 250.101 – 250.602

⁹ 68 P.S. 398.1 – 398.16

¹⁰ 68 P.S. § 250.201.

¹¹ 68 P.S. § 250.202.

Tenants shall have the following rights so long as their obligations as a tenant are observed:

- To invite to his or her apartment or dwelling employees, business visitors, tradesmen, deliverymen, suppliers of goods and services, and the like;
- To invite to his or her apartment or dwelling social guests, family or visitors for a reasonable period of time.¹²

These rights cannot be waived by any provisions of a written rental agreement and the landlord and/or owner may not evict a tenant, charge any fee, service charge or additional rent for exercising these rights.¹³

Eviction Process for Residential Property

An action for recovery of possession of real property shall only be brought in the magisterial district where the real property is located.¹⁴ An action is commenced by filing a written complaint that is signed and verified by the plaintiff or plaintiff's agent.¹⁵

Jurisdiction

In order for a case to proceed, the court must also determine that both of the following are true:

- The plaintiff is the owner or agent of the owner of the property; and
- A landlord - tenant relationship exists between the plaintiff and defendant.

Each of these elements must be satisfied for the court to assert jurisdiction in an action for recovery of real property. In a case involving domestic violence a landlord tenant relationship does not typically exist between intimate partners or family members living together. However, that may not stop an abuser from attempting to evict a domestic violence victim in an action for recovery of real property. Where a judge finds that there was never a bona fide agreement establishing a landlord-tenant relationship between the parties, including a contractual agreement for payment of rent, the magisterial district court **must** decline to assert jurisdiction.

When a landlord tenant relationship exists, there are three reasons available for a residential eviction in conventional housing:

- Failure to pay rent
- Expiration of the lease
- Breach of the lease¹⁶

¹² 68 P.S. § 250.505-A.

¹³ *Id.*

¹⁴ PA.R.C.P.M.D.J. No. 502.

¹⁵ PA.R.C.P.M.D.J. No. 503(A) & (B).

¹⁶ 68 P.S. § 250.502-1(a).

In a manufactured home community, rental agreements must be in writing.¹⁷ There are four grounds to terminate a lease for space in a manufactured home community:

- Failure to pay rent
- Violation of the rules of the manufactured home community for the second (or more) time in six months
- Use of the manufactured home community has changed
- Manufactured home community closure

In addition to the jurisdictional and standing requirements mentioned above, proper service by the landlord of a notice to quit is a condition precedent to an action for recovery of real property. In a landlord tenant cases involving domestic violence, it is important for judges to ensure that the notice to requirements have been followed.

Service

At the time the complaint is filed, the magisterial district judge shall set a hearing date not less than seven or more than 15 days from the date of filing.¹⁸ The magisterial district judge shall serve the complaint by:

- Mailing a copy, by first class mail, to the defendant/tenant, and
- Delivering a copy for service to the sheriff or any certified constable of the county in which the magisterial district judge's office is situated¹⁹

The magisterial district judge shall note on the docket the date that the service copy was mailed.²⁰

Service can be made by any certified constable in the Commonwealth if the local sheriff or constable are unavailable.²¹ Service can be personal or by posting the complaint in a conspicuous place if no one is found at the premises.²² The appearance of a defendant or representative, or the filing of a claim in the case shall be deemed a waiver of any defect in service, but not a defect in venue.²³

Hearing

The plaintiff must appear at the hearing and present testimony.²⁴ In a hearing, the magisterial district judge shall be bound by the rules of evidence.²⁵ If it appears at the hearing that the

¹⁷ 68 P.S. 398.4.1

¹⁸ PA.R.C.P.M.D.J. No. 504(1).

¹⁹ PA.R.C.P.M.D.J. No. 506(A).

²⁰ PA.R.C.P.M.D.J. No 507(A).

²¹ *Id.* at 506(A).

²² *Id.* at 506(A)

²³ *Id.* at 507(B).

²⁴ PA.R.C.P.M.D.J. No. 512(A).

complaint has been proven, the magisterial district judge shall enter a judgment against the defendant/tenant to deliver the property to plaintiff/landlord, and shall enter judgment by separate entries for the following:

- Amount of rent, if any, which remains due
- Amount of damages, if any, for unjust detention
- Physical damage, if any, to the leasehold premises
- Costs of the proceeding less any amount due to the defendant on any cross-complaint filed
- Identifying the sum of the money found to constitute the monthly rental²⁶

Claims for property damage are typically undetermined at the time of the landlord tenant hearing, as a landlord has limited ability to inspect rental property in the possession of the tenants for the duration of a tenancy. As such, landlord claims for property damage, as well as tenant claims for recovery of security deposits may arise as distinct civil actions brought separately from an action for recovery of real property.

The landlord shall, within 30 days of a lease termination or surrender of the property, whichever occurs first, provide tenant with a written list of damages for which tenant is liable.²⁷ Except when there is outstanding rent, the damages list shall include payment for the difference between the amount deposited in escrow plus interest and the actual payment for damages.²⁸ A tenant cannot waive rights to recover her or his security deposit.²⁹

A tenant is not responsible for property damage resulting from normal wear and tear. However, a landlord may recover for damage caused by tenant abuse or neglect. Thorny issues arise in the domestic violence context where property damage is not caused by a tenant, but rather a non-tenant abuser. Generally, landlords bear the insurance risk for damage to a dwelling; while tenants carry the burden to ensure against personal property loss. For example, following a burglary to rental property, the landlord is typically the party to ensure against damage to the structure (such as to a door, door jam, and door locks); while the tenant would ensure against theft of her or his personal property.

In the case of damage caused by acts of domestic violence by an abuser who is not a party to the lease, a similar approach may apply, such that a tenant might not be liable to a landlord for

²⁵ Judges are bound by the rules of evidence except that a bill, estimate, receipt, or statement of account, which appears to have been made in the regular course of business, may be introduced into evidence by any party without affidavit or other evidence of its truth, accuracy, or authenticity. PA.R.C.P.M.D.J. No. 512(B).

²⁶ PA.R.C.P.M.D.J. No. 514(A).

²⁷ 68 P.S. § 250.512(a).

²⁸ *Id.*

²⁹ 68 P.S. § 250.512(d).

property damage caused by a third party. Interpretive case law delineating liability for damages caused by third parties beyond control of the landlord or tenant remains undeveloped.

Abandoned Personal Property of Domestic Violence Victims May Be Protected

In conventional housing, personal property of tenants remaining in the leased property following an eviction, or when a tenant vacates the rental housing, is governed by the abandoned property law.³⁰ In light of the hardships a domestic violence survivor may endure when fleeing from an abuser, the abandoned property law provides an exception for domestic violence victims. After an eviction, if a landlord has actual knowledge or is notified that a PFA has been entered on behalf of the tenant or a member of their immediate family, the landlord may not take custody of the tenant's personal property for 30 days from the date of the notice.³¹ If the owner of the property requests it, the landlord is obligated to store personal items for a period of 30 days from the date of the request.³²

Federal and State Protections Against Housing Discrimination

Tenants can use federal protections against housing discrimination as defenses in Pennsylvania landlord tenant cases. Article VI of U.S. Constitution, known as the Supremacy Clause, provides that federal law prevails over contrary laws of any state.³³ Therefore, it is important for magisterial district judges to be familiar with federal discrimination protections and ways they may affect Pennsylvania landlord tenant law.

Violence Against Women Act

Lack of housing options creates a serious safety risk as victims often return to abusive partners because they cannot find long-term housing.³⁴ The Violence Against Women Act (VAWA) was first passed in 1994 and reauthorized in 2000, 2005 and 2013. The 2005 reauthorization added legal protections for domestic violence victims who live in public or subsidized housing. Those protections were expanded in the 2013 reauthorization because women and families were being denied access to or evicted from public and subsidized housing, specifically because of their status as victims of domestic violence.³⁵

VAWA PROHIBITS DISCRIMINATION IN HOUSING APPLICATIONS, IN EVICTION OR TERMINATION OF ASSISTANCE BASED ON THE APPLICANT'S STATUS AS A VICTIM OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT OR STALKING.³⁶

VAWA applies to the majority of government housing programs including:³⁷

³⁰ 68 P.S. § 250.505a

³¹ 68 P.S. § 250.505a(h).

³² *Id.*

³³ U.S. CONST. ART. VI, CL. 2.

³⁴ 42 U.S.C § 14043e(7).

³⁵ 42 U.S.C. § 14043e(3).

³⁶ 42 U.S.C. § 14043e-11.

³⁷ 42 U.S.C. § 14043e-11(a)(3).

- Public Housing
- Section 8 Housing Choice Voucher program
- Project-Based Section 8
- Supportive Housing Programs under Section 202 and 811
- Low Income Tax Credit Properties
- Rural Housing Programs
- Housing Opportunities for Persons with AID
- McKinney-Vento Homeless Program
- HOME Investment Partnerships Program
- Below Market Interest Rate Program
- Section 236 Housing

VAWA DOES NOT APPLY TO PRIVATE LANDLORDS, UNLESS the housing unit falls under one of the aforementioned housing programs.

VAWA prohibits all covered housing programs from denying an application for housing benefits or admission to a covered housing program unit based on the applicant's status as a victim of domestic violence, dating violence, sexual assault or stalking.³⁸ As a matter of policy, the federal Department of Housing and Urban Development (HUD) encourages preferential treatment for victims of domestic violence.³⁹

Qualified Victims of Actual or Threatened Domestic Violence, Dating Violence, Sexual Assault or Stalking

To qualify for VAWA protections, an individual must be a victim of actual or threatened domestic violence, dating violence, sexual assault or stalking as defined by law.⁴⁰ These acts are defined specifically in VAWA as follows:

- (1) Domestic violence is defined as a felony or misdemeanor crime of violence committed by a:
 - Current or former spouse or intimate partner of the victim;
 - Person with whom the victim shares a child in common;
 - Person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;
 - Person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies; or
 - Any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.⁴¹

³⁸ 42 U.S.C. § 14043e-11.

³⁹ 24 C.F.R. 960.206.

⁴⁰ 42 U.S.C. § 14043e-11.

- (2) Dating Partner refers to a person who is or has been in a social relationship of a romantic or intimate nature with the abuser, and where the existence of such relationship shall be determined based on a consideration of:
- The length of the relationship;
 - The type of relationship; and
 - The frequency of interaction between the persons involved in the relationship.⁴²
- (3) Dating Violence is defined as violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of which is determined based on a consideration of:
- The length of the relationship;
 - The type of relationship; and
 - The frequency of interaction between the persons involved in the relationship.⁴³
- (4) Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to—
- Fear his or her safety or the safety of others, or
 - Suffer substantial emotional distress.⁴⁴
- The definition of stalking includes stalking by an acquaintance or stranger and does not require an intimate relationship between the victim and the perpetrator.
- (5) Sexual Assault means any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.⁴⁵

The victim's immediate family members are also protected.⁴⁶

VAWA Protects Against Evictions and Loss of Housing Benefits

VAWA prohibits discrimination in housing applications and in eviction or termination of assistance. A victim cannot be evicted or lose benefits for any of the following reasons:

- (1) The victim or her abuser committed a crime or engaged in criminal activity related to her abuse or stalking.⁴⁷
- (2) The abuser or stalker's violence or threats violated her lease.

VAWA creates an express exception to the federal "One-Strike Rule" by providing that incidents of actual or threatened domestic violence, dating violence, or stalking may not be construed as serious or repeated violation of the lease by the victim.⁴⁸

⁴¹ 42 U.S.C. § 13925(a)(8); 24 C.F.R. § 5.2003.

⁴² 42 U.S.C. § 13925(a)(9); 24 C.F.R. § 5.2003.

⁴³ 42 U.S.C. § 13925(a)(10); 24 C.F.R. § 5.2003.

⁴⁴ 42 U.S.C. § 13925(a)(30); 24 C.F.R. § 5.2003.

⁴⁵ 42 U.S.C. § 13925(a)(29); 24 C.F.R. § 5.2003.

⁴⁶ 42 U.S.C. §§ 14043e-11(a)(1) (affiliated individual); 24 C.F.R. § 5.2003.

⁴⁷ 42 U.S.C. § 14043e-11; 24 C.F.R. § 5.2005(b).

⁴⁸ 42 U.S.C. § 14043e-11; 24 C.F.R. § 5.2005(a).

Likewise, such incidents do not constitute good cause for terminating a victim's tenancy or occupancy rights.⁴⁹

(3) The victim acted in self-defense.

Exception in Cases of Demonstrated Threat to Other Tenants and/or Employees

Although victims of domestic violence have legal protections under VAWA, they can be evicted if the housing program can demonstrate that an actual or imminent threat to other tenants and/or employees exists.⁵⁰ Actual or imminent threat is defined as “a physical danger that is real, would occur within an immediate timeframe, and could result in death or serious bodily harm.”⁵¹

Evidence of Protected Status

A housing provider has the discretion to provide VAWA protections based solely on an individual's statement or corroborating evidence,⁵² or request certification. A housing provider that wants certification must submit a written request to the victim.⁵³ The victim has 14 business days to provide the requested certification, but the victim can request extra time.⁵⁴ If the victim does not provide the documentation within the timeframe allotted, the housing provider may start the process to evict the tenant or deny assistance.⁵⁵

The following documents can be provided for certification:

- A HUD Self-Certification Form⁵⁶
- Qualified Third-Party Statement from a domestic violence advocate, medical professional or attorney⁵⁷
- Police or Court Record⁵⁸
- Alternative documentation or statement by the victim at the discretion of the owner or manager of the covered housing program⁵⁹

⁴⁹ 42 U.S.C. §14043e-11.

⁵⁰ 42 U.S.C. § 14043e-11(b)(3)(C)(iii).

⁵¹ 24 C.F.R. 5.2005(d).

⁵² 42 U.S.C. § 14043e-11(c)(3)(d) & (c)(5).

⁵³ 42 U.S.C. § 14043e-11(c)(1).

⁵⁴ 42 U.S.C. § 14043(c)(2); 24 C.F.R. § 5.2007(a)(1).

⁵⁵ *Id.*

⁵⁶ 42 U.S.C. § 14043(c)(3); 24 C.F.R. § 5.2007(a)(1).

⁵⁷ 42 U.S.C. § 14043(c)(3)(B).

⁵⁸ 42 U.S.C. § 14043(c)(3)(C).

⁵⁹ 42 U.S.C. § 14043(c)(3)(D).

Victim Rights Under VAWA

The right to transfer Section 8 Vouchers

Section 8 vouchers can be used anywhere within the jurisdiction of the PHA or the county in which the PHA is administering a voucher program. Under the program rules for portability, a tenant may also “port” the subsidy into another jurisdiction where a Section 8 voucher program is administered by a different entity. A family that has complied with other obligations of the program may port the voucher to another PHA jurisdiction to protect the family or someone in the household from domestic violence, dating violence or stalking.⁶⁰ There is no limit to the number of times a victim can port a voucher or how often a victim may move. Also, a victim may port a voucher even if she is leaving the old unit in violation of the lease, when the breach is related to the domestic violence.⁶¹

The right to request emergency transfers

A victim may be granted a transfer if she reasonably believes that she is at risk of imminent harm from further violence or if she was sexually assaulted on the premises during the 90 days prior to the request.⁶² Under VAWA, federal agencies that administer covered housing programs (e.g., HUD, IRS, Department of Agriculture) are required to adopt a model emergency transfer policy that will allow a victim to move to another available and safe dwelling.⁶³ The plan must include reasonable confidentiality measures to ensure that the victim’s new location is not disclosed to the perpetrator.⁶⁴

The right to amend the lease to remove an abuser

VAWA provides that the PHA owner or manager of a covered housing program can bifurcate the lease to remove a household member from the residence. Bifurcation or removal allows the housing program or provider to evict, remove, terminate occupancy rights, or terminate assistance to a tenant who engages in criminal activity directly related to domestic violence, dating violence, or stalking without interrupting the rights of the victim to retain her housing assistance or subsidy.⁶⁵

Covered housing programs must notify tenants of their rights under VAWA, including the right to confidentiality.⁶⁶ Notice must be included in all leases and the lease addendum in programs and must be provided in multiple languages.⁶⁷ The notice must also be posted in a public area of the housing.⁶⁸ In addition, the Pennsylvania Housing Finance Agency (PHFA) requires all Low

⁶⁰ 42 U.S.C. §1437r(5).

⁶¹ 24 C.F.R. § 982.353(b).

⁶² 42 U.S.C. § 14043e-11.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ 42 U.S.C. § 14043e-11(b)(3)(B); 24 C.F.R. § 5.2009(a).

⁶⁶ 42 U.S.C. § 14043e-11(d).

⁶⁷ *Id.*

⁶⁸ *Id.*

Income Housing Tax Credit properties to have a lease addendum outlining the protections of VAWA.⁶⁹

PFAs Ordering Housing Relief Must Be Honored

Covered housing programs must honor court orders addressing rights of access to or control of property. For example, **THEY MUST HONOR A PFA ORDER** granting exclusive possession or other housing-related remedies to a victim. Covered housing programs also have a duty to recalculate a household's rent to reflect the new family composition.

Fair Housing Act

The goal of the Fair Housing Act (FHA) is to ensure that a person's background does not arbitrarily restrict access to the housing or rental market. The Fair Housing Act, among other things, prohibits sex discrimination in housing and protects both prospective and current tenants. Landlords are prohibited from purposely discriminating against women and against taking actions that predominantly affect women, even if landlords did not intend to discriminate.

The FHA prohibits both *direct intentional discrimination* and *indirect acts that have a disparate impact* on a protected group, including:

- The refusal to sell or rent a dwelling to any person on the basis of race, color, religion, sex, national origin, disability, or familial status
- Discrimination based on race, color, religion, national origin, disability, or familial status in the terms, conditions or privilege of the sale or rental of a dwelling
- Advertising the sale or rental of a dwelling indicating a preference of discrimination based on race, color, religion, sex, disability, familial status, or national origin
- Represent that any dwelling is not available for inspection, sale, or rental because of race, color, religion, sex, disability, familial status, or national origin, when in fact the property is available⁷⁰
- Coercing, threatening, intimidating, or interfering with a person's enjoyment or exercise of housing rights based on discriminatory reasons or retaliating against a person or organization that aids or encourages the exercise or enjoyment of fair housing rights⁷¹

Housing nuisance ordinances may lead to discrimination that a victim can challenge under the FHA. For example, if a landlord's response to a nuisance ordinance violation affects female victims of domestic violence more substantially than other kinds of tenants, the landlord may be discriminating against women and violating the FHA.

⁶⁹ 42 U.S.C. §41043e-11(d)

⁷⁰ 45 U.S.C. § 3604.

⁷¹ 45 U.S.C. § 3617.

The U.S. Department of Housing and Urban Development (known as “HUD”) is the administrative agency charged with enforcing the provisions of the FHA. However, victims may also file a complaint in the common pleas court. HUD has stated that WHEN A LANDLORD’S ACTIONS IMPACT THE HOUSING OF DOMESTIC VIOLENCE VICTIMS, THIS MAY AMOUNT TO DISCRIMINATION ON THE BASIS OF SEX, AS THE MAJORITY OF DOMESTIC VIOLENCE VICTIMS ARE WOMEN.⁷²

In a hearing for recovery of real property, a plaintiff/landlord may be denied relief if the defendant establishes that the determination by the landlord to terminate the lease is based on the tenant’s gender. Judgment may also be awarded to a defendant who shows that enforcement of a lease provision alleged by the landlord to have been breached has a discriminatory impact, by effecting women disproportionately over men.

Public Housing Agencies hold an additional obligation to “affirmatively further fair housing.”⁷³ Beyond merely refraining from discriminatory conduct in its own right, a PHA must adopt written policy in its planning process, stating actions it will take to aid individuals in identified groups suffering discrimination in housing.⁷⁴

Pennsylvania Human Relations Act (PHRA)

PHRA prohibits housing discrimination based on handicap or disability. Prohibited acts include *direct, intentional* discrimination against a protected group and *indirect acts that have a disparate impact* on a protected group.⁷⁵ The PHRA codifies the Federal Housing Act and adds the following protected parties:

- Any person who uses a guide or support animal because of blindness, deafness or physical handicap; and
- A handler or trainer of support or guide animals⁷⁶

The PHRA also adds the following prohibited acts:

- To evict or attempt to evict an occupant before the end of the term of the lease because of pregnancy or birth of a child;
- Discrimination based on the use of a guide or support animal;
- Discrimination or refusal to rent because the individual has a known relationship or association with an individual with a handicap or disability;
- Refusal to permit, at the expense of the person with the handicap or disability, reasonable modifications to afford such person full enjoyment of the premises;
- Refusal to make reasonable rules, policies, practices or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy the housing accommodations; and
- Make any inquiry, elicit any information, make or keep any record or use any form

⁷² Sara K. Pratt, U.S. Dep’t of Hous. & Urban Dev., Office of Fair Housing & Equal Opp., ASSESSING CLAIMS OF HOUSING DISCRIMINATION AGAINST VICTIMS OF DOMESTIC VIOLENCE UNDER THE FHA AND VAWA 2 (2011).

⁷³ 42 U.S.C. §§ 3608(e)(5), 1437 c-1(d)(15).

⁷⁴ 24 C.F.R. §§ 903.15, 903.7(o)(3).

⁷⁵ 43 P.S. § 952.

⁷⁶ *Id.*

application containing questions or entries concerning a persons' status in one of the protected categories.⁷⁷

Retaliatory Evictions

A landlord may not retaliate against a tenant who has exercised a legal right, including:

- Participating in a tenant association or assembling a tenant union⁷⁸
- Filing a complaint with a government agency about unsafe or illegal living conditions⁷⁹
- Exercising any legal right allowed by state or local law, such as escrow of rent due to an uninhabitable unit⁸⁰

There is also a presumption of retaliation if the landlords' actions occur within six months of a tenant's exercise of legal rights. Covered acts that are considered retaliatory actions include:

- Terminating a lease or filing an eviction;
- Increasing the rent;
- Decreasing services or access to services, e.g., locking the laundry room.⁸¹

PFA Order to Vacate

A Protection From Abuse order may grant possession of the residence or household to one party by evicting and excluding another party.⁸² Upon learning of the exclusion of a tenant through a PFA order, a landlord may respond by voluntarily bifurcating the lease in this circumstance. The landlord cannot evict a tenant for seeking a protection order or for excluding an abusive household member via a protection order. If the property is subsidized, the landlord must abide by the VAWA protections.

When an abuser is evicted by a protection order, legal issues may be presented to the magisterial district court concerning the remaining liabilities among the parties. Although a PFA defendant may lose the right to possess rental property through a PFA proceeding, he or she may remain liable to a landlord for rent for the unexpired lease term. Between the tenants, liability for damages is joint and several under the general rule. Where a tenant is displaced by a protection order, the equitable principle of "unclean hands" may inform the apportionment of liability for remaining rent liability. Courts have historically applied the doctrine of unclean hands to deny relief premised on immoral behavior.⁸³ In the context of domestic violence, the

⁷⁷ 43 P.S. § 955(h).

⁷⁸ 68 P.S. § 250.205.

⁷⁹ while we are unaware of published authority; the prohibition on retaliatory evictions in this circumstance is generally recognized.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² 23 PA.C.S. § 6108(a)(2).

⁸³ See generally *Universal Builders. v. Moon Motor Lodge*, 430 Pa. 550, 553-555 ((1968).

doctrine might inform refusal to excuse future rent liability to the abuser in relation to the remaining innocent tenant.

Municipal Code Violations

Nuisance Ordinances

Nuisance ordinance enforcement cases often begin in the magisterial district court. Nuisance ordinances take several different forms and may also be referred to as “disorderly” or “disruptive house” laws. Nuisance ordinances may perniciously discriminate against domestic violence victims and their children because the abusive behaviors of the perpetrator are often categorized as disruptive and disorderly. Such ordinances put victims at risk of harm either by evicting the victim from stable housing or deterring victims from accessing police protection or emergency assistance when needed for fear of eviction.

These ordinances can come in the form of:

- **Tenant Fines** - This type of ordinance requires tenants to pay a fine each time the police are called to their home within a certain time period. For example, three calls or more within a 90-day period may result in a fine.
- **Landlord Abatement/Eviction** - This type of ordinance requires the landlord to evict any tenant who has a certain number of calls to the police from or about the tenants’ home within a certain period of time or risk being penalized. For example, even though a landlord may not want to evict the tenant, the ordinance may require landlords to evict or be penalized with a fine or loss of their rental license or certificate.
- **Crime-Free Zones** - “Crime-Free Rental Housing Ordinances” are designed to force eviction or deny admission to of tenants who repeatedly commit crimes, such as drug dealing or gang-related crimes. Unfortunately, domestic violence victims may be included in this category of targeted tenants. An eviction notice may be received even if the tenant was the victim, not the perpetrator, of the crime and even if the perpetrator is not a resident.

If a municipality has a nuisance ordinance in place, THE MAGISTERIAL DISTRICT JUDGE HAS THE DISCRETION TO FOREGO ENFORCEMENT OF THE ORDINANCE if, for example, it impedes on safety, a person’s right to enjoyment of property, or if enforcement may result in a future chilling effect. Pennsylvania Act 200 of 2014, Protection for Victims of Abuse or Crime, provides protections for a resident, tenant or landlord when a municipality tries to enforce any of these nuisance ordinances.

Briggs v. Borough of Norristown

In *Briggs v. Borough of Norristown*, tenant Lakisha Briggs suffered extreme abuse at the hands of her ex-boyfriend.⁸⁴ Norristown, Pennsylvania’s local ordinance 245-3 penalized landlords and

⁸⁴ American Civil Liberties Union, *Briggs v. Borough of Norristown et al.*, at <https://www.aclu.org/cases/briggs-v-borough-norristown-et-al>

encouraged them to evict tenants who called the police three or more times in a four-month period.

After the first attempt to receive help from the police, Briggs was warned that additional calls to the police could result in eviction. The abuser knew this so he continually went to her home to attack her. In the final attack, he stabbed Briggs and knocked her unconscious. When she came to, she was afraid to call the police for fear of eviction. She ran out of her apartment and a neighbor saw her bleeding on the street and called 911. Briggs was airlifted to the hospital.

A few days after returning home from the hospital, she was served with eviction papers for violating the disruptive conduct nuisance ordinance. Briggs, the ACLU-Women's Rights Project and her team of lawyers filed a federal lawsuit. Ultimately the case was settled and the ordinance was repealed. This case culminated in **HB 1796** and the passage of Act 200.

Act 200

Act 200, codified as 53 Pa.C.S. § 304, ensures that all victims of abuse and crime and individuals in an emergency are able to contact police or emergency assistance. It is intended to shield residents, tenants and landlords from penalties that may be levied pursuant to enforcement of an ordinance or regulation if police or emergency services respond to a residence or tenancy to assist a victim of abuse or crime or individuals in an emergency.⁸⁵

It further states that no ordinance shall penalize⁸⁶ a resident, tenant, or landlord if the person who called for assistance reasonably believed that intervention or emergency assistance was:

- Necessary to prevent the perpetration or escalation of the abuse, crime or emergency
- Actually needed in response to the abuse, crime or emergency.⁸⁷

If a municipality enforces or attempts to enforce an ordinance against a resident, tenant or landlord, that person may bring a civil action for a violation of Act 200 and seek an order from the court for any of the following remedies:

- Requiring the municipality to cease and desist the unlawful practice
- Payment of compensatory damages, provided that the resident, tenant or landlord make reasonable efforts to mitigate damages
- Payment of reasonable attorney fees
- Payment of court costs
- Other equitable relief, including, but not limited to, reinstating a rental license or

⁸⁵ 53 PA.C.S. § 304(a)(3).

⁸⁶ 53 PA.C.S. § 304(e) the term “penalize” includes the actual or threatened revocation, suspension or nonrenewal or a rental license, the actual or threatened assessment of fines or the actual or threatened eviction, or the actual or threatened eviction from leased premises.

⁸⁷ 53 PA.C.S. § 304(b).

rental permit, as the court may deem appropriate⁸⁸

General Civil Cases

For victims of domestic violence, civil actions often arise when the parties separate and need to divide personal and household property. For example, abusers may take items belonging to victims, or hide or destroy items in retaliation for the victim leaving the relationship. Victims may also use civil suits to recover damages for the value of property taken by an abuser. It is important that magisterial district judges are aware that abusers may prolong or complicate civil court proceedings by filing multiple civil actions against their victim as a way to harass or to maintain contact with them.

Civil actions include any action within the jurisdiction of the magisterial district judge, except an action by a landlord against a tenant for recovery of the possession of real property, as discussed elsewhere in this chapter.⁸⁹ Magisterial district courts hear civil cases with claims to recover up to \$12,000 not including court costs.⁹⁰

Process

A civil action for damages up to \$12,000 may be brought against any individual only in the magisterial district where the individual may be served, the action arose, or a transaction or occurrence took place out of which the cause arose.⁹¹ A written complaint signed and verified by the plaintiff or the plaintiff's agent must be filed to commence a civil action.⁹² A hearing date must be set at the time of filing. The date shall not be less than 12 or more than 60 days from the date of filing.⁹³

Service shall be made at least 10 days before the hearing by sheriff, or any certified constable in the county in which the magisterial district judge's court is situated.⁹⁴ If this service is not available, the judge may use any certified constable of the Commonwealth.⁹⁵ If service is to be made in a county other than the magisterial district, the sheriff shall deputize the sheriff of the county in which service is to be made.⁹⁶ An appearance by the defendant's or a representative of the defendant or the filing of a claim shall be deemed a waiver of any defect in service but not venue.⁹⁷

⁸⁸ *Id.* at § 304(C).

⁸⁹ PA.R.C.P.M.D.J. No. 301(A).

⁹⁰ 42 PA.C.S. § 1515(a)(3).

⁹¹ PA.R.C.P.M.D.J. No. 302.

⁹² PA.R.C.P.M.D.J. No. 304.

⁹³ PA.R.C.P.M.D.J. No. 305.

⁹⁴ PA.R.C.P.M.D.J. No. 307.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ PA.R.C.P.M.D.J. No. 314(C).

If the complaint is not served in time to permit holding the hearing within 60 days of the filing of the complaint, the complaint shall be dismissed without prejudice.⁹⁸ A complaint dismissed for lack of service may be reinstated at any time and for any number of times.⁹⁹

Because a defendant may assert **any** claim against the plaintiff that is within the jurisdiction of the judge by filing a complaint at least five days before the date set for the hearing, abusers can also use this as another way to harass and maintain contact with the victim.¹⁰⁰ It is important to note that the complaint does not have to arise out of the same transaction or occurrence and need not be the same type of claim as the plaintiff.¹⁰¹ All hearings are bound by the rules of evidence.¹⁰² Complaints can also be withdrawn at any time prior to the commencement of the hearing by filing written notice.¹⁰³

If the plaintiff does not appear, but the defendant does and the plaintiff has been given notice of the defendant's intention to defend, the judge shall enter judgment for the defendant or continue the case for cause.¹⁰⁴ This may occur in cases involving domestic violence as the victim may be unable to appear due to fear of their abuser. However, it is important to determine whether or not the plaintiff was given notice of the case because if they were not, the case shall be continued.¹⁰⁵ If the defendant does not appear, regardless of whether or not the plaintiff appears, the judge shall enter judgment for the plaintiff or continue the case for cause.¹⁰⁶ A judgment shall be given at the end of the hearing or within five days thereafter and shall be entered on the complaint form with a separate entry for costs.¹⁰⁷ The judge may include an order for payments to be made in periodic installments not to exceed beyond 12 months from the date of judgment.¹⁰⁸

⁹⁸ PA.R.C.P.M.D.J. No. 314(D).

⁹⁹ PA.R.C.P.M.D.J. No. 314(E).

¹⁰⁰ PA.R.C.P.M.D.J. No. 315(A).

¹⁰¹ *Id.*

¹⁰² The hearing is bound by the rules of evidence except that a bill, estimate, receipt or statement of account can be introduced without an affidavit. PA.R.C.P.M.D.J. No. 321.

¹⁰³ PA.R.C.P.M.D.J. No. 320.

¹⁰⁴ PA.R.C.P.M.D.J. No. 319(A).

¹⁰⁵ *Id.*

¹⁰⁶ PA.R.C.P.M.D.J. No. 319(B).

¹⁰⁷ PA.R.C.P.M.D.J. No. 322.

¹⁰⁸ PA.R.C.P.M.D.J. No. 323.

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CHAPTER 7: DOMESTIC VIOLENCE LETHALITY FACTORS

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Summary

Research reveals the behaviors outlined in this chapter describe abusers who are more likely to kill their intimate partners. By incorporating lethality factors into a magisterial district justice's decision-making, judges will be able to incorporate appropriate safety considerations at every level to prevent future violence and reduce the likelihood of further breaches of the peace, especially when making bail determinations and setting bail conditions.

The Pennsylvania Constitution offers every defendant a right to bail except those charged with crimes punishable by death.¹ Historically, in non-capital cases, bail was used to ensure a defendant's presence at subsequent criminal proceedings.² However, in 1998 Article I, Section 14 of the Pennsylvania Constitution was amended to permit the denial of bail in situations where no conditions other than imprisonment will assure the safety of any person and the community.³ Arguably, this provision could be used to deny bail to a domestic violence abuser who has exhibited the capacity for lethal behavior. The purpose of this chapter is to provide information on evidence-based lethality factors that magisterial district justices can incorporate into their decision-making.

Domestic Violence Lethality Factors

Threatens with Weapon

Research shows that women who are threatened, assaulted with a gun or other weapons are 20 times more likely to be murdered than other women.⁴ Women threatened with murder by their partners are 15 times more likely to be killed than other women. Women who are victimized by an intimate partner with a firearm report more types of weapons are used against them during their lifetime.⁵ Furthermore, studies suggest that abusers who possess guns tend to inflict the most severe abuse.⁶ Based on this research, when victims state they have been threatened with a weapon, it is critical that action be taken to ensure the victim's safety such as denying bail, or imposing appropriate bail conditions upon the defendant.

Has Access to Firearms

Similar to an abuser's threats to use weapons, an abuser's access to firearms is a strong indicator of lethality. With a gun in the house, an abused woman is six times more likely than

¹ *Commw. v. Truesdale*, 296 A.2d 829 (Pa. 1972)

² *Id.* at 834-853

³ PA. CONST.art. I, § 14.

⁴ Campbell, Jacqueline C. et al., "Assessing Risk Factors for Intimate Partner Homicide," *NIJ Journal* (250) (2003): 16. NCJ 196547. See also. Campbell, Jacquelyn C., Daniel Webster, Jane Koziol-McLain, Carolyn Rebecca Block, Doris Williams Campbell, Faye Gary, Judith M. McFarlane, Carolyn Sachs, Phyllis W. Sharps, Yvonne Ulrich, Susan A. Wilt, Jennifer Manganello, Xiao Xu, Janet Schollenberger, and Victoria Fyre, "Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study," *American Journal of Public Health* (93) (2003): 1089-1097.

⁵ Sorenson, S. B., & Wiebe, D. J. (2004). Weapons in the Lives of Battered Women. *American Journal of Public Health*, 94(8), 1412-1417.

⁶ See Note 4, *supra*

other abused women to be killed.⁷ Abusers who shot and killed intimate partners were asked whether they would have used another weapon if a gun was not available and most said no.⁸ The Centers for Disease Control and Prevention’s National Violence Death Reporting System reported that of the 408 homicide suicide cases, most perpetrators were men (91 percent) and most used a gun (88 percent).⁹ Furthermore, additional research shows that in a sample of 591 cases of murder-suicides, 92 percent involved a gun.¹⁰ Magisterial district judges should always inquire into an abuser’s access to firearms and set appropriate bail and bail conditions to protect the victim if the abuser has access to firearms.

Threatens Homicide

Threats to kill an intimate partner greatly increase the likelihood that the victim will be murdered by their abusive intimate partner.¹¹ Abused women who were threatened to be killed were 15 times more likely to be killed than other women.¹² During interviews with attempted homicide victims of intimate partner violence, 25 percent of these victims reported that they received weekly threats, and many received graphic and explicit threats before the attempted homicide.¹³ Threats to kill include not only explicit death threats but also nonverbal threats such as displaying a weapon, cleaning, loading, holding a gun, or firing a weapon during an argument, as well as threatening to shoot a pet or object that the victim cared about.¹⁴ Magisterial district judges should be cognizant of threats to kill an intimate partner as they can be a precursor to homicide.

Attempts Strangulation

Strangulation is one of the best predictors of a future homicide in domestic violence cases. According to a 2008 study in the *Journal of Emergency Medicine*, more than half of all domestic violence homicide victims had experienced at least one episode of attempted strangulation prior to a lethal or near-lethal violent incident.¹⁵ This study also found that victims of prior attempted strangulation are seven times more likely to become a homicide victim.¹⁶ In 2016, Pennsylvania law enforcement conducted 3,754 lethality screens and identified 2,506 victims of intimate partner violence as being at high risk of being killed. Of those victims, 68 percent had reported that their abuser had attempted to strangle them.¹⁷ While victims of strangulation will typically not have physical signs of being strangled, magisterial district judges should take

⁷ *Id.*

⁸ *Id.*

⁹ Auchter, Bernie, “Men Who Murder Their Families: What the Research Tells Us.” *NIJ Journal* (266)(2010).

¹⁰ *Id.*

¹¹ See Note 4, *supra*.

¹² *Id.*

¹³ Adams, David, *Why Do They Kill? Men Who Murder Their Intimate Partner*, Nashville, TN: Vanderbilt University Press, 2007.

¹⁴ Rothman, E., D. Hemenway, M. Miller, and D. Azrael, “Batterers’ use of guns to threaten intimate partners.” *Journal of the American Medical Women’s Association* 60(1)(2006): 62-68

¹⁵ Glass, N., K. Laughon, J.C. Campbell, R.B. Block, Hanson, G., & P.S. Sharps, “Strangulation is an important risk factor for attempted and completed femicides.” *Journal of Emergency Medicine* (35)(2008):329-335

¹⁶ *Id.*

¹⁷ Pennsylvania Coalition Against Domestic Violence, PCADV Lethality Dashboard, 2016 All Year, at <https://isra.hbg.psu.edu/pcadvdashboards/PCADVLethalityDashboard/tabid/2645/Default.aspx>

notice when victims state they have been strangled or “choked” as it is a predictor of future homicide.

Violent Jealous/Controlling Daily Activity

A national study found when an intimate partner is violently or constantly jealous, homicide is nine times more likely; when the partner controls the victim’s daily activities, homicide is five times more likely.¹⁸ Of the 31 intimate partner perpetrators a national researcher interviewed, 22 were categorized as extremely jealous¹⁹. Eighteen out of the 20 attempted homicide victims, or 90 percent, said their abusers were extremely jealous.²⁰ Although an abuser’s jealous and controlling behaviors may seem benign or simply rude, such behaviors can be indicators of a lethality risk for the victim.

Recent Separation

When a woman separates from her abusive partner, the most dangerous time for her is immediately after the separation.²¹ Sixty-four percent of abusers were estranged from their victims, or the victims were planning to leave the relationship, when the homicide occurred.²² Sixty percent of the attempted homicide victims were estranged or planning to leave at the time of the attempted homicide.²³ Women who separated from their abusive partners after cohabitation, experienced increased risk of femicide, particularly when the abuser was highly controlling.²⁴ Magisterial district judges should be mindful of the timeline in an intimate partner relationship and whether the victim and abuser recently separated; a recent separation can indicate lethality for a victim.

Stalking

Stalking is highly prevalent in cases of actual or attempted female homicide.²⁵ Women who reported an intimate partner followed or spied on them were more than twice as likely to be attempted or actual homicide victims.²⁶ Stalking when combined with estrangement and prior abuse had a high correlation with lethality.²⁷ The strongest association was the combination of estrangement and prior abuse. However, stalking also occurred in the majority of femicides in intact marriages and relationships where there was no history of violence.²⁸

Stalking allows abusers to continue exerting power and control over their victims by monitoring their victims’ daily movement and habits. Technology also allows abusers to track and control

¹⁸ See Note 4, *supra*.

¹⁹ See Note 13, *supra*.

²⁰ *Id.*

²¹ Campbell, Jacqueline C., N. Glass, P.W. Sharps, K. Laughon, and T. Bloom, “*Intimate Partner Violence, Trauma, Violence & Abuse*,” 8 (July 2007): 246-269.

²² See Note 13, *supra*.

²³ *Id.*

²⁴ See Note 4, *supra*.

²⁵ McFarlane, J., J. Campbell and K. Watson, “*Intimate Partner Stalking and Femicide: Urgent Implications for Women’s Safety*,” *Behavioral Science and the Law* (20)(2002): 51-68

²⁶ *Id.*

²⁷ Campbell, J., O’Sullivan, C., Roehl, J., Webster, D., “*Intimate Partner Violence Risk Assessment Validation Study, Final Report*,” National Institute of Justice (209731) (2005): 10.

²⁸ *Id.*

their victim in a variety of unseen ways. Claims made by victims in which they are being followed or monitored by their abuser should be taken seriously.

Unemployment

Unemployment, when combined with domestic violence, is a lethality factor because it can either be a triggering event for further violence or it provide an abuser with the time to continue exerting power and control over a victim.²⁹ For example, some men quit their jobs to have more time to monitor their partner's activities. Others were fired because they missed work to conduct surveillance of their partners.³⁰ While unemployment is not always coincidental to murder or attempted murder, a study found nearly equal portions of killers and would-be-killers were unemployed at the time they committed their final assault.³¹ Therefore, it is important for magisterial district judges to perform multifaceted inquiries into all recent events in both the abuser's and the victim's life when setting bail or bail conditions. Events such as a recent job loss may help to predict the likelihood of a lethal outcome.

Threatened Suicide

There is an increased risk of homicide when the abuser is suicidal.³² In 70 percent of cases where people killed their families and then committed suicide, prior domestic violence was a factor.³³ It is important for magisterial district judges to inquire as to whether or not there have been any recent threats of suicide from the abuser, especially if the victim is alleging non-physical abuse.

Child Who Is Not Abuser's Biological Child

A lethality factor exists when an abuser is in an intimate relationship and the victim has a child who is not the abuser's child. In *Collateral Intimate Partner Homicide*, a study which looked at media reports of domestic violence killings and found 16.5 percent of female homicide victims had biological children who were not the biological children of the perpetrators.³⁴ Having a child living in the home who is not the abuser's biological child more than doubled the risk of homicide.³⁵ A child who is not the biological child of the abuser reminds them that the victim was once with someone else and that child is a product of that relationship.³⁶ This dynamic further fuels an abuser's jealous and controlling behavior. Magisterial district judges should be mindful of a victim's family background because it, along with a history of abuse, can predict future deadly violence by an abuser.

²⁹ See Note 13, *supra*.

³⁰ *Id.*

³¹ *Id.*

³² Campbell (2003): 16.

³³ Campbell, J.C. et al., "Risk Factors for Femicide in Abusive Relationships: Results From Multisite Case Control Study," *Am J Public Health*, 2003 July; 93(7): 1089-1097.

³⁴ Emily Meyer, Lori Post. *Collateral Intimate Partner Homicide*, Sage Open, 2013, Table 2. Available at <http://sgo.sagepub.com/content/3/2/2158244013484235.full.print>

³⁵ See Note 4, *supra*.

³⁶ *Id.*

Victim Believes Abuser Would Kill Them

A victim's perception of future violence is one of the strongest indicators of potential lethality. Victims know their abusers best and they know the abuser's triggers, and whether or not the abusers intend to make good on threats. Women's predictions of additional assaults was the strongest single predictor of re-assault.³⁷ When researchers asked victims whether they believed their abuser had intended to kill them during the most serious assault, 90 percent of the women said yes, and 95 percent of the attempted homicide victims believed the reasons for attempting to kill them were to "to punish me."³⁸ It is important for magisterial district judges to perform appropriate inquiries with victims, if possible, to determine whether the victims believe they are at risk for life-threatening violence at the hands of their abuser.

³⁷ See Note 27, *supra*.

³⁸ See Note 13, *supra*

Notes