

## **Nicholas Cipriani Matrimonial Inn of Court Meeting**

Wednesday, February 2, 2022 – 1.0 Substantive, .5 Ethics Credits

### **High Conflict Custody Cases with Domestic Violence (and pending legislation)**

**Course Description:** Exploring best practices and ethical implications for representing victims of domestic violence and accused offenders. Discussing the ethical obligations and attorney self-care during representation. Also discussing the status and practical implications of Kayden’s Law.

#### **Course Materials:**

1. Pennsylvania PFA Statute - page 2
2. Pennsylvania Custody Factors - page 94
3. Taking a Page out of the Practice of Psychotherapy: Setting Limits and Managing Expectations in the Practice of Family Law. By Emily Vener-Giszter, Esquire, M.S., LPC – page 96
4. How to Identify and Address Secondary Trauma – page 98
5. Vicarious Trauma and Attorney Self Care – page 101
6. The Rules of Professional Conduct: 1.1 Competence – page 105
7. The Rules of Professional Conduct: 1.16 Declining or Terminating Representation – page 107
8. Senate Bill 78 “Kayden’s Law” – page 110
9. The [E]x Factor: Addressing Trauma From Post-Separation Domestic Violence As Judicial Terrorism by Professor Tucker – page 126



# THE ANNOTATED PENNSYLVANIA PROTECTION FROM ABUSE ACT

*Updated: March 2020*

Pennsylvania Coalition Against Domestic Violence  
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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 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 3<sup>rd</sup> 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).  
*Buchhalter v. Buchhalter*, 959 A.2d 1260 (Pa. Super. 2008).  
*Burke v. Bauman*, 814 A.2d 206 (Pa. Super. 2002).  
*Commonwealth v. Walsh*, 36 A.3d 613 (Pa. Super. 2012).  
*Counterman v. Shoemaker*, 14 Pa. D. & C. 4th 217 (Monroe 1992), *aff'd*, 625 A.2d 95 (Pa. Super. 1992).  
*Chronister v. Brennehan*, 742 A.2d 190 (Pa. Super. 1999).  
*Custer v. Cochran*, 933 A.2d 1050 (Pa. Super. 2007).  
*DeHaas v. DeHaas*, 708 A.2d 100 (Pa. Super. 1998), *appeal denied*, 732 A.2d 615 (Pa. 1998).  
*D.H. v. B.O.*, 734 A.2d 409 (Pa. Super. 1999).  
*Dye v. McCoy*, 621 A.2d 144 (Pa. Super. 1993).  
*Evans v. Braun*, 12 A.3d 395 (Pa. Super. 2010).  
*Ferri v. Ferri*, 854 A.2d 600 (Pa. Super. 2004).  
*Fonner v. Fonner*, 731 A.2d 160 (Pa. Super. 1999).  
*Gabel v. Gabel*, 26 Pa. D. & C. 4th 83 (Montg. 1994), *aff'd*, 659 A.2d 8 (Pa. Super. 1995).  
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*Jiminez v. Jiminez*, 81 Berks L.J. 323 (1988).  
*Karch v. Karch*, 885 A.2d 535 (Pa. Super. 2005).  
*K.B. v. Terrence Tinsley*, 2019 PA Super 116  
*Keith v. Keith*, 28 Pa. D. & C. 3d 462 (Lanc. 1984).  
*Lawrence v. Bordner*, 907 A.2d 1109 (Pa. Super. 2006).  
*McCance v. McCance*, 908 A.2d 905 (Pa. Super. 2006).  
*Mescanti v. Mescanti*, 956 A.2d 1017 (Pa. Super. 2008).  
*Miller v. Walker*, 665 A.2d 1252 (Pa. Super. 1995)  
*Olivieri v. Olivieri*, 678 A.2d 393 (Pa. Super. 1996).  
*Raker v. Raker*, 847 A.2d 720 (Pa. Super. 2004).  
*R.G. v. T.D.*, 672 A.2d 341 (Pa. Super. 1996).  
*Scott v. Shay*, 928 A.2d 312 (Pa. Super. 2007).  
*Slusser v. DeBoer*, 985 A.2d 974 (Pa. Super. 2009), *appeal denied*, 4 A.3d 1055 (Pa. 2010).  
*Snyder v. Snyder*, 629 A.2d 977 (Pa. Super. 1993).  
*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)

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*B.T.W., O/B/O T.L. v. P.J.L.*, 956 A.2d 1014 (Pa. Super. 2008).  
*Commonwealth v. Charnik*, 921 A.2d 1214 (Pa. Super. 2007).  
*Hood-O'Hara v. Wills*, 873 A.2d 757 (Pa. Super. 2005).  
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*Egelman v. Egelman*, 728 A.2d 360 (Pa. Super. 1999).  
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*Boykin v. Brown*, 868 A.2d 1264 (Pa. Super. 2005).  
*Boyle v. Boyle*, 12 Pa. D. & C. 3rd 767 (Allegheny 1979).  
*Buchhalter v. Buchhalter*, 959 A.2d 1260 (Pa. Super. 2008).  
*Coda v. Coda*, 666 A.2d 741 (Pa. Super. 1995).  
*DeHaas v. DeHaas*, 708 A.2d 100 (Pa. Super. 1998), *appeal denied*, 732 A.2d 615 (Pa. 1998).  
*Drew v. Drew*, 870 A.2d 377 (Pa. Super. 2005).  
*Eichenlaub v. Eichenlaub*, 490 A.2d 918 (Pa. Super. 1985).  
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*Lawrence v. Bordner*, 907 A.2d 1109 (Pa. Super. 2006).  
*Miller v. Walker*, 665 A.2d 1252 (Pa. Super. 1995).  
*R.G. v. T.D.*, 672 A.2d 341 (Pa. Super. 1996).  
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*Snyder v. Snyder*, 629 A.2d 977 (Pa. Super. 1993).  
*Thompson v. Thompson*, 963 A.2d 474 (Pa. Super. 2008).  
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*Weir v. Weir*, 631 A.2d 650 (Pa. Super. 1993).

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*Cipolla v. Cipolla*, 398 A.2d 1053 (Pa. Super. 1979).  
*Commonwealth v. Smith*, 552 A.2d 292 (Pa. Super. 1988).  
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*Egelman v. Egelman*, 728 A.2d 360 (Pa. Super. 1999).  
*Eichenlaub v. Eichenlaub*, 490 A.2d 918 (Pa. Super. 1985).  
*Gerace v. Gerace*, 631 A.2d 1360 (Pa. Super. 1993).

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*Melvin v. Melvin*, 580 A.2d 811 (Pa. Super. 1990).  
*Miller v. Walker*, 665 A.2d 1252 (Pa. Super. 1995).  
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*Snyder v. Snyder*, 629 A.2d 977 (Pa. Super. 1993).  
*Stamus v. Dutcavich*, 938 A.2d 1098 (Pa. Super. 2007).  
*T.K. v. A.Z.*, 157 A. 3D 974 (Pa. Super. 2017).

**§ 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

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*Commonwealth v. Abed*, 989 A.2d 23 (Pa. Super. 2010).  
*Commonwealth v. Aikins*, 618 A.2d 992 (Pa. Super. 1993).  
*Commonwealth v. Baker*, 766 A.2d 328 (Pa. 2001).  
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*Commonwealth v. Charnik*, 921 A.2d 1214 (Pa. Super. 2007).  
*Commonwealth v. Decker*, 664 A.2d 1028 (Pa. Super. 1995).  
*Commonwealth v. Felder*, 2017 Pa. Super. 1009.  
*Commonwealth v. Haigh*, 874 A.2d 1174 (Pa. Super. 2005).  
*Commonwealth v. Jackson*, 10 A.3d 341 (Pa. Super. 2010).  
*Commonwealth v. Lambert*, 147 A. 3d 1221 (Pa. Super. 2016).  
*Commonwealth v. Leach*, 729 A.2d 608 (Pa. Super. 1999).  
*Commonwealth v. Manney*, 617 A.2d 817 (Pa. Super. 1992).  
*Commonwealth v. Mitchell*, 986 A.2d 1241 (Pa. Super. 2009).  
*Commonwealth v. Moore*, 978 A.2d 988 (Pa. Super. 2009).  
*Commonwealth v. Nelson*, 690 A.2d 728 (Pa. Super. 1997).  
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*Commonwealth v. Taylor*, 137 A.3d 611. (Pa. Super. 2016).

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*Hill v. Randolph*, 24 A.3d 866 (Pa. Super. 2011).  
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*Vito v. Vito*, 551 A.2d 573 (Pa. Super. 1988).  
*Wagner v. Wagner*, 564 A.2d 162 (Pa. Super. 1989).

**§ 6115.** Reporting abuse and immunity

**§ 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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*P.E.S. v. K.L.*, 720 A.2d 487 (Pa. Super. 1998).  
*Carlacci v. Mazaleski*, 798 A.2d 186 (Pa. 2002).  
*Commonwealth v. Charnik*, 921 A.2d 1214 (Pa. Super. 2007).  
*Courtney v. Courtney*, 205 A.3d 318 (Pa. Super. 2019)  
*Devereaux v. Thomas*, 38 Pa. D. & C. 4th 129 (Phila. 1998).  
*Graham v. Flippen* 2018 PA Super 20 (Decided February 2, 2018)  
*Stamus v. Dutcavich*, 938 A.2d 1098 (Pa. Super. 2007).

**§ 6119.** Immunity

**§ 6120.** Inability to pay

**§ 6121.** Warrantless searches

**§ 6122.** Construction

**§ 5328. Factors to consider when awarding custody.**

**(a) Factors.**--In ordering any form of custody, the court shall determine the best interest of the child by considering all relevant factors, giving weighted consideration to those factors which affect the safety of the child, including the following:

(1) Which party is more likely to encourage and permit frequent and continuing contact between the child and another party.

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

(2.1) The information set forth in section 5329.1(a) (relating to consideration of child abuse and involvement with protective services).

(3) The parental duties performed by each party on behalf of the child.

(4) The need for stability and continuity in the child's education, family life and community life.

(5) The availability of extended family.

(6) The child's sibling relationships.

(7) The well-reasoned preference of the child, based on the child's maturity and judgment.

(8) The attempts of a parent to turn the child against the other parent, except in cases of domestic violence where reasonable safety measures are necessary to protect the child from harm.

(9) Which party is more likely to maintain a loving, stable, consistent and nurturing relationship with the child adequate for the child's emotional needs.

(10) Which party is more likely to attend to the daily physical, emotional, developmental, educational and special needs of the child.

(11) The proximity of the residences of the parties.

(12) Each party's availability to care for the child or ability to make appropriate child-care arrangements.

(13) The level of conflict between the parties and the willingness and ability of the parties to cooperate with one another. A party's effort to protect a child from abuse by another party is not evidence of unwillingness or inability to cooperate with that party.

(14) The history of drug or alcohol abuse of a party or member of a party's household.

(15) The mental and physical condition of a party or member of a party's household.

(16) Any other relevant factor.

**(b) Gender neutral.**--In making a determination under subsection (a), no party shall receive preference based upon gender in any award granted under this chapter.

**(c) Grandparents and great-grandparents.**--

(1) In ordering partial physical custody or supervised physical custody to a party who has standing under section 5325(1) or (2) (relating to standing for partial physical custody and supervised physical custody), the court shall consider the following:

(i) the amount of personal contact between the child and the party prior to the filing of the action;

(ii) whether the award interferes with any parent-child relationship; and

(iii) whether the award is in the best interest of the child.

(2) In ordering partial physical custody or supervised physical custody to a parent's parent or grandparent who has standing under section 5325(3), the court shall consider whether the award:

- (i) interferes with any parent-child relationship; and
- (ii) is in the best interest of the child.

(Dec. 18, 2013, P.L.1167, No.107, eff. Jan. 1, 2014)

**2013 Amendment.** Act 107 added subsec. (a)(2.1). See section 6 of Act 107 in the appendix to this title for special provisions relating to applicability.

**Cross References.** Section 5328 is referred to in sections 5323, 6340 of this title; section 6307 of Title 42 (Judiciary and Judicial Procedure).

Taking a Page out of the Practice of Psychotherapy: Setting Limits and Managing  
Expectations in the Practice of Family Law.  
By Emily Vener-Giszter, Esquire, M.S., LPC

When training to provide psychological services, one of the first lessons I learned was to set limits and have clear boundaries with my patients. What does that mean? It means that as a provider of care, I also needed to protect myself. I needed down time. I needed a clear separation between working hours and non-working hours. I learned to understand that the balance between a healthy work and non-work life made me better equipped to fully engage with my patients, and provide patient, kind and quality care.

A psychotherapist is trained to manage expectations from the get-go. The hour lasts 50 minutes. The therapist cannot respond to texts, emails and phone calls at all hours except in critical emergencies.

A psychotherapist, like a family lawyer, is most often called upon in a time of turmoil.

Yet, as a psychotherapist-turned- family lawyer, I am struck by the shift in boundaries and expectations. A horrible Sunday evening custody exchange—call your lawyer. A fight about the orthodontist bill—send a Saturday email. I have even been sent pictures of lice and soiled underwear! In the age of cell phones and email, even many opposing attorneys do not think twice about expecting immediate attention and responses.

Managing expectations and setting limits is critical for a family lawyer.

To set limits, review and consider revising your firm’s representation agreement. Note your firm’s hours. Describe your firm’s policy for weekend phone calls and emails. Identify the time it will take to return phone calls and emails.

Next, gently help your clients to understand what constitutes an emergency. We have all experienced this: an “emergency” call because Johnny was dropped off two hours late and missed the first half of a birthday party. Or the support check was delivered two days late.

The empathy of a therapist combined with a legal reality check can be valuable. Help your family law client to understand what legal remedies are and are *not* available. Support your client and validate their frustration, anger and hurt. “I can imagine how angry that made you. However, the truth is that the court cannot get involved in these day to day problems.” I often add, “I would be as angry and upset as you are, I wish there was a better solution.”

Often the solution is to teach your family law client to manage their own expectations. To this end, consider some common therapeutic tools. A therapist might work to minimize “*shoulds*.” That is, a patient might describe feeling badly because something *should* have happened, but did not, or someone else *should* have done something. *Shoulds* are a set-up for failure because they limit a patient’s flexibility and resilience.



A therapist might also explore patient expectations in a given encounter. The session might focus on imagining the perspective of the other party and exploring his or her motivations. Role-playing is a way to prepare for a likely interaction in order to identify ways to de-escalate conflict and still get needs met. The goal is to manage expectations to reduce conflict, hurt and disappointment.

In the exploration of differences in parenting, a therapist would likely explore parents' own experiences of being parented. Those experiences, whether good or bad, shape the beliefs of what makes a good parent. A devoted parent may consciously try to repeat good experiences and avoid bad ones. The therapist will reassure disagreeing parents that divergent parenting styles does not necessarily signal that one is misguided. The therapist will work with patients to manage expectations about best way to combine two discrepant, but equally valid beliefs about how to be a good parent.

As lawyers, we are not therapists, but zealous advocates for our client. Nonetheless, a family lawyer can successfully assist their client to realistically expectations. These are the types of conversations an attorney might have with his or her disgruntled parent:

1. What is and is not an emergency? What does the court in your jurisdiction think is an emergency?
2. What can an attorney reasonably accomplish? We can advocate both in and outside the court. However, we cannot "cure" an unreasonable parent of his or her unreasonable behavior....ever.
3. What is reasonable to expect from the other parent? What behaviors simply reflect another parent's background, preferences and beliefs?
4. It is reasonable to expect that co-parenting with an estranged partner will be difficult and frustrating. Assist your client in being prepared for this reality. I often give a speech like this: "Undertaking parenting with a person you don't want to live with and probably do not like will never be easy, you have a rough road ahead. Be prepared for plenty of bumps and detours. My job as your attorney will be to help you figure out which bumps and detours require intervention and repair."
5. Refer your client to a therapist or support group to manage the everyday challenges.

All family lawyers understand that co-parenting with an estranged partner will be challenging. Preparing your client for these challenges through limit setting and managing expectations will most certainly make your job---and your client's journey---a less complicated one.

By Emily Vener-Giszter, Esquire, MS, LPC, Principal and Owner of Vener Family Law and Mediation, LLC

# How to Identify and Address Secondary Trauma



## Article By

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Wednesday, February 6, 2019

Pro bono projects can provide some of the most meaningful and interesting moments in a lawyer's career. It's usually an easy decision to say "yes" when presented with a pro bono opportunity, because this type of work gives young lawyers invaluable experience and offers all lawyers a purposeful way to give back to their communities. Unfortunately, at the same time this work can be incredibly stressful, challenging, and emotionally taxing, and may lead to secondary trauma.

Secondary trauma is when the stress of working with a trauma-exposed client begins to interfere with a pro bono lawyer's professional or personal life. Secondary traumatic stress, also known as vicarious trauma, burnout, or compassion fatigue, shares some symptoms with post-traumatic stress disorder, but it is the product of being indirectly exposed to another's trauma. Examples of secondary trauma have been found in social workers who work with abused children; and therapists who support sexual assault survivors. Secondary traumatic stress also affects public interest lawyers, and has been documented among [public defenders](#) and [judges](#).

According to the [American Bar Association](#), lawyers in practice areas such as

criminal, family, and juvenile law are particularly susceptible to secondary traumatic stress, as their work often requires them to listen to victims' personal stories and review evidence of traumatic events. Likewise, lawyers working on pro bono cases for clients who have survived extremely traumatic events may also be vulnerable to the effects of secondary trauma, particularly when asked to read, view, or listen to graphic depictions of violence.

## Identifying Symptoms of Secondary Trauma

It is important to look for [symptoms of secondary traumatic stress](#) in your colleagues and within yourself.

In the workplace, compassion fatigue may manifest as:

- avoidance (such as avoiding clients or missing deadlines);
- hypervigilance (feeling on edge or like all clients are in immediate danger);
- becoming argumentative or defensive about work on a case, frequently spending large amounts of time on a pro bono case outside of regular work hours, and generally becoming less productive and effective;

In your personal life, it may show-up as:

- disturbing images from cases appearing in dreams or intrusive thoughts;
- physical symptoms such as headaches or stomachaches, feeling tired or guilty all of the time;
- becoming numb and detached from your friends or family outside of the office.

## Tools and Resources

As a busy professional, who is deeply committed to your work on a case, how do you assess your stress? Simply acknowledging and naming what you are experiencing can be an important first step in combatting secondary traumatic stress. One tool to help you examine if your work is taking a toll on your mental health is the Professional Quality of Life Scale (ProQOL) Measure, available [online](#), which evaluates an individual's compassion satisfaction, burnout, and secondary traumatic stress on separate scales.

If you determine you are experiencing burnout or compassion fatigue, it is critical that you find time to be away from your work (and your phone). Erika Tullberg, an expert on secondary trauma and assistant professor at New York University, [recommends](#) establishing regular, defined breaks where you do not check your emails or texts. She suggests telling colleagues that you will be away from your texts/emails for a set amount of time (say, an hour or two in the evening) and to call only if it is an emergency. It can also be helpful to discuss both the positive or rewarding aspects of pro bono work, as well as the stress you may be experiencing, with a colleague who has worked on similar cases in the past, a supervisor on the case, or the head of the pro bono program.

Lawyers may also be able to take advantage of programs offered by their firm to help them cope with secondary trauma. At Proskauer, for example, there is an employee assistance program that includes, among many things, access to confidential

counseling sessions. A firm can also help by placing an emphasis on mentoring and guidance from experienced lawyers, and by being willing to assign additional resources to particular matters. Finally, if stress or burnout reaches a point where it is significantly impacting a lawyer's personal relationships and ability to perform professionally, consider finding help from a licensed mental health professional, who can provide personal guidance and tailored resources.

Please seek care if you recognize the symptoms of compassion fatigue in yourself or a colleague.

Additional resources include:

- [Living Above the Bar's Mental Health Resource Page](#) on burnout and secondary trauma for lawyers, curated by the Attorney Wellness Task Force of the South Carolina Bar.
- [The American Bar Association Guide for Lawyers Working with Child Victims](#), which includes applicable self-help recommendations and firm best practices for lawyers experiencing secondary traumatic stress.
- [The Trauma Informed Law Resource Page](#), which includes self-care tips for lawyers as well as information on trauma-informed legal practice.

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## **Vicarious Trauma and Attorney Self Care as an Ethical Issue** **Iowa Attorney General's Office, 2018**

Recently, available literature addressing the impact of working with victims of abuse and abusers has expanded its consideration to the effect on attorneys. The unpleasant realities of abuse affect those in the helping professions, including therapists and medical professionals (for whom trauma and self-care are more frequent topics of professional conversation), but also law enforcement, attorneys, and judges. Vicarious trauma,<sup>1</sup> also known as secondary trauma or compassion fatigue, occurs when a person develops symptoms of exposure to trauma, even when the exposure is not direct personal experience, but secondary from bearing witness to the trauma experiences of others.

Criteria for Post-Traumatic Stress Disorder in the Diagnostic and Statistical Manual of Mental Disorders can be met from indirect exposure to the trauma of others. Those symptoms include: avoidance, difficulty concentrating and focusing, depression/hopelessness, difficulty sleeping, hypervigilance, intrusive images, and somatic symptoms like headaches or stomachaches. The hallmark symptoms of PTSD like flashbacks (intrusive images) or exaggerated startle response (hypervigilance) may be more recognizable, but may not be as common. Attorneys should be especially aware of symptoms like avoidance and difficulty concentrating or focusing, since those more subtle, symptoms can lead to impairments in practice which can lead to ethical issues.

### **Avoidance and the Ethical Requirement of Diligence**

Iowa Rule of Professional Conduct 32:1.3 provides: “A lawyer shall act with reasonable diligence and promptness in representing a client.” The comments to this rule require a lawyer to “pursue a matter on behalf of a client despite opposition, obstruction, or personal inconvenience to the lawyer . . .” (Comment 1 to R. Prof. C. 32:1.3). This is a weighty burden and is sometimes at odds with the attorney’s needs as a person.

Comment (3) raises the impact of procrastination, not only in terms of the matter in question, but it’s bearing on the regard for the legal profession as a whole. “Perhaps no professional shortcoming is more widely resented than procrastination. A client’s interests often can be adversely affected by the passage of time or change of conditions . . . Even when the client’s interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer’s trustworthiness.”

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<sup>1</sup> C.R. Figley, Compassion Fatigue as Secondary Traumatic Stress Disorder: An Overview, in *Compassion Fatigue: Coping with Secondary Stress Disorder in Those Who Treat the Traumatized*, 1-20 (Charles R. Figley, ed. 1995).

(Comment 3 to R. Prof. C. 32:1.3). Avoidance, as a symptom of vicarious trauma, can lead to procrastination.

Attorneys may relate to the experience of having *THAT* file that sits on the desk, waiting for every other conceivable task to be completed before being addressed. If the attorney finds he or she has a number of *THOSE* files, or that those files have a theme, it may be time to consider whether this is an avoidance symptom of vicarious trauma.

### **Personal Reaction and the Ethical Requirement of Independent Judgment**

Attorneys are people first, and people have personal and emotional reactions to their experiences. The legal profession requires that attorneys separate their personal reactions and rely on objective and independent judgment in advising their clients. Repeated trauma, however, can erode this professional objectivity.

Iowa Rule of Professional Conduct 32:2.1 provides: “In representing a client, a lawyer shall exercise independent judgment and render candid advice.” The Comment to Rule of Professional Conduct 32:1.7 Conflicts of Interests provides: “Loyalty and independent judgment are essential elements in a lawyer’s relationship to a client.” Vicarious trauma can lead to difficulty concentrating. Re-experiencing symptoms, such as intrusive thoughts and images, can complicate efforts at independent judgment.

There is little in the Rules of Professional Conduct that address the attorney as person and how an attorney’s emotional involvement impacts the professional duties to be discharged. One of the few areas that does directly address emotional involvement is Comment 17 to Rule of Professional Conduct 32:1.8, describing a prohibition on sexual relationships with a client. “In addition, such a relationship presents a significant danger that, because of the lawyer’s emotional involvement, the lawyer will be unable to represent the client without the impairment of the exercise of independent professional judgment.”

Vicarious trauma is an emotional reaction and it can affect objectivity in a similar manner to a romantic relationship.

### **Empirical Studies Confirm the Impact of Vicarious Trauma on Attorneys**

Empirical studies have confirmed vicarious trauma in attorneys and their support staff. One study of the Wisconsin State Public Defenders Office found that 34% met criteria for secondary trauma and 75% met criteria for functional impairment (disruption in personal life, family life).<sup>2</sup>

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<sup>2</sup> A.P. Levin, L. Albert, A. Besser, D. Smith, A. Zelenski, S. Rosenkranz, Y. Neria (2011). Secondary traumatic stress in attorneys and their administrative support staff working with trauma exposed clients. *J. Nerv. Ment. Dis.* 199(12), 946-55.

A study of 23 Canadian prosecutors working with “sensitive cases” involving domestic violence and incest indicated the attorneys experienced demoralization, anxiety, helplessness, exhaustion, and social withdrawal.<sup>3</sup>

Judges also can experience vicarious trauma. One study found that 63% experienced symptoms of trauma, including sleep disturbances, intolerance of others, physical complaints and depression.<sup>4</sup> A study investigating both mental health professionals and attorneys all serving victims of domestic violence found that compared with mental health professionals and social service workers, attorneys were consistently higher on measures of secondary trauma.<sup>5</sup> Research on vicarious trauma in other disciplines suggests that trauma not only leads to psychological distress, disruption of deeply held beliefs about safety or the inherent kindness of others, but can also degrade the professional’s ability to do his or her job.<sup>6</sup>

In short, the emotional toll taken on attorneys by virtue of the privilege of their professional is significant. Recognition of the personal cost should be more common place, and attorneys should be encouraged to discuss and seek support throughout their careers.

### **How to Manage Vicarious Trauma in the Context of a Meaningful Legal Career.**

- Set healthy work/life boundaries. Although it’s not uncommon for attorneys to work long hours to meet deadlines and prepare for upcoming court appearances, these times should be balanced with time off or times of reduced stress. Vacations should be just that - vacations.
- Develop a team. Developing a cohesive professional team that can respond for one another during times out of the office is key to having true respite.
- To the extent possible, TURN IT OFF. Electronic means of communication set the expectation of constant responsiveness, which in turn erodes work/life boundaries. There are times where after-hours responsiveness is needed, but to the extent possible, refrain from immediately attending to any electronic communication outside of work.

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<sup>3</sup> I.M. Gomme and M.P. Hall, Prosecutors at Work: Role Overload and Strain, 15 J. Crim. Just. 191-200 (1995).

<sup>4</sup> P. Jaffe, C.Crooks, B.L. Dunford-Jackson, & M. Town. Vicarious Trauma in Judges: The Personal Challenge of Dispensing Justice, 54 Juv. & Fam. Ct. J. 1-9 (2003).

<sup>5</sup> A. Levin & S. Greisberg, Vicarious Trauma in Attorneys, 24 Pace L. Rev. 245-257 (2003).

<sup>6</sup> A.P. Levin. Secondary Trauma and Burnout in Attorneys: Effects of Work with Clients Who are Victims of Domestic Violence and Abuse. (2008).

- Take a break. There will be times when an attorney needs a break and some variety in the legal diet. Seek variety or respite in case load before the secondary trauma becomes too severe. If an attorney is supported by a team, perhaps another team member can step into a particularly bothersome matter, ensuring the client's representation and the attorney's well-being.
- Confess. Find a confidant to talk about the issues of the day. Some of the literature on vicarious trauma indicates attorneys felt relief in knowing they were not alone in the personal distress that accompanies the work.
- Maintain good physical health habits, like healthy eating, exercising, and getting enough rest.
- Be aware. Attorneys are people first. It is natural to have an emotional response to trauma, but the legal culture does not often recognize the attorney as a person. If an attorney notes symptom progression, the attorney should self-monitor and adjust practices to the extent possible.
- Seek assistance. Professional support is available and can help manage the emotional toll taken in service to others.

The legal profession infrequently addresses the attorney as a person and the impact that trauma or other artifacts of the practice of law could have on the practitioner. Attorneys should know personal reactions are normal responses to what can be rewarding but taxing work.



## 1.1 Competence

1. A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

### COMMENT:

#### **Legal Knowledge and Skill**

1. In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.
2. A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.
3. In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or consultation or association with another lawyer would be impracticable. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances, for ill considered action under emergency conditions can jeopardize the client's interest.
4. A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person. See also Rule 6.2.

#### **Thoroughness and Preparation**

5. Competent handling of particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The

required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence. An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. See Rule 1.2(c).

### **Retaining or Contracting With Other Lawyers**

6. Before a lawyer retains or contracts with other lawyers outside the lawyer's own firm to provide or assist in the provision of legal services to a client, the lawyer must reasonably believe that the other lawyers' services will contribute to the competent and ethical representation of the client. See also Rules 1.2, 1.4, 1.6, and 5.5(a). The reasonableness of the decision to retain or contract with other lawyers outside the lawyer's own firm will depend upon the circumstances, including the education, experience and reputation of the nonfirm lawyers; the nature of the services assigned to the nonfirm lawyers; and the legal protections, professional conduct rules, and ethical environments of the jurisdictions in which the services will be performed, particularly relating to confidential information.
7. When lawyers from more than one law firm are providing legal services to the client on a particular matter, the lawyers ordinarily should consult with each other and the client about the scope of their respective representations and the allocation of responsibility among them. See Rule 1.2. When making allocations of responsibility in a matter pending before a tribunal, lawyers and parties may have additional obligations that are a matter of law beyond the scope of these Rules.

### **Maintaining Competence**

8. To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject. To provide competent representation, a lawyer should be familiar with policies of the courts in which the lawyer practices, which include the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania.

## 1.16 Declining or Terminating Representation

1. Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
  1. the representation will result in violation of the Rules of Professional Conduct or other law;
  2. the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or,
  3. the lawyer is discharged.
2. Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:
  1. withdrawal can be accomplished without material adverse effect on the interests of the client;
  2. the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
  3. the client has used the lawyer's services to perpetrate a crime or fraud;
  4. the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;
  5. the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
  6. the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or,
  7. other good cause for withdrawal exists
3. A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.
4. Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

### COMMENT:

1. A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest and to completion. Ordinarily, a representation in a matter is completed when the agreed-upon assistance has been concluded. See Rules 1.2(c) and 6.5. See also Rule 1.3, Comment [4].

## **Mandatory Withdrawal**

2. A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the Rules of Professional Conduct or other law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation.
3. When a lawyer has been appointed to represent a client, withdrawal ordinarily requires approval of the appointing authority. See also Rule 6.2. Similarly, court approval or notice to the court is often required by applicable law before a lawyer withdraws from pending litigation. Difficulty may be encountered if withdrawal is based on the client's demand that the lawyer engage in unprofessional conduct. The court may request an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. The lawyer's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient. Lawyers should be mindful of their obligations to both clients and the court under Rules 1.6 and 3.3.

## **Discharge**

4. A client has a right to discharge a lawyer at any time, with or without cause, subject to liability for payment for the lawyer's services. Where future dispute about the withdrawal may be anticipated, it may be advisable to prepare a written statement reciting the circumstances.
5. Whether a client can discharge appointed counsel may depend on applicable law. A client seeking to do so should be given a full explanation of the consequences. These consequences may include a decision by the appointing authority that appointment of successor counsel is unjustified, thus requiring self-representation by the client.
6. If the client has severely diminished capacity, the client may lack the legal capacity to discharge the lawyer, and in any event the discharge may be seriously adverse to the client's interests. The lawyer should make special effort to help the client consider the consequences and may take reasonably necessary protective action as provided in Rule 1.14.

## **Optional Withdrawal**

7. A lawyer may withdraw from representation in some circumstances. The lawyer has the option to withdraw if it can be accomplished without material adverse effect on the client's interests. Withdrawal is also justified if the client persists in a course of action that the lawyer reasonably believes is criminal or fraudulent, for a lawyer is not required to be associated with such conduct even if the lawyer does not further it. Withdrawal is also permitted if the lawyer's services were misused in the past even if that would materially prejudice the client. The lawyer may also withdraw where the client insists

on taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement.

8. A lawyer may withdraw if the client refuses to abide by the terms of an agreement relating to the representation, such as an agreement concerning fees or court costs or an agreement limiting the objectives of the representation.

### **Assisting the Client upon Withdrawal**

9. Even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client. The lawyer may retain papers as security for a fee only to the extent permitted by law. See Rule 1.15.

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 78 Session of 2021

INTRODUCED BY BAKER, SANTARSIERO, VOGEL, KEARNEY, FONTANA, BARTOLOTTA, COLLETT, HUGHES, MARTIN, YUDICHAK, BLAKE, COSTA, SCHWANK, BROWNE, PHILLIPS-HILL, MENSCH, YAW, MUTH, KANE, COMMITTA AND STEFANO, JANUARY 22, 2021

AS AMENDED ON THIRD CONSIDERATION, JUNE 21, 2021

AN ACT

1 Amending Titles 23 (Domestic Relations) and 42 (Judiciary and
2 Judicial Procedure) of the Pennsylvania Consolidated
3 Statutes, in child custody, further providing for
4 definitions, for award of custody, for factors to consider
5 when awarding custody, for consideration of criminal
6 conviction, for guardian ad litem for child, for counsel for
7 child and for award of counsel fees, costs and expenses; and,
8 in Administrative Office of Pennsylvania Courts, providing
9 for child abuse and domestic abuse education and training
10 program for judges and court personnel.

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

13 Section 1. The General Assembly finds and declares as
14 follows:

15 (1) The Commonwealth has a duty to protect all children
16 in this Commonwealth and all three branches of the State
17 government play important roles in fulfilling that duty.

18 (2) Domestic abuse is a pattern of abuse within the
19 family or household and can include abuse of a partner,
20 spouse, child or pet.

21 (3) Although abusers often use physical violence as one

1 of the tactics to commit domestic abuse, these tactics are  
2 not necessarily physical or illegal.

3 (4) These tactics can include verbal, emotional,  
4 psychological and economic abuse, isolation, threats,  
5 controlling behaviors, monitoring, litigation abuse and  
6 threats to seek or demands for custody or joint custody to  
7 pressure the partner to return or punish the partner for  
8 leaving.

9 (5) The health and safety of all children in this  
10 Commonwealth must be the first priority in all decisions  
11 concerning child custody.

12 (6) It is the intent of the General Assembly to ensure  
13 that in all cases and controversies before the courts  
14 involving questions of child custody, the health, safety and  
15 welfare of the child are protected and regarded as issues of  
16 paramount importance.

17 Section 2. The definition of "abuse" in section 5322(a) of  
18 Title 23 of the Pennsylvania Consolidated Statutes is amended  
19 and the subsection is amended by adding definitions to read:  
20 § 5322. Definitions.

21 (a) This chapter.--The following words and phrases when used  
22 in this chapter shall have the meanings given to them in this  
23 subsection unless the context clearly indicates otherwise:

24 "Abuse." As follows:

25 (1) As defined in section 6102 (relating to definitions)  
26 [.] and the term includes the crime of stalking pursuant to  
27 18 Pa.C.S. § 2709.1 (relating to stalking).

28 (2) The term does not include the justified use of force  
29 in self-protection or for the protection of other persons in  
30 accordance with 18 Pa.C.S. § 505 (relating to use of force in

1 self-protection) by a party in response to abuse or domestic  
2 abuse by the other party.

3 \* \* \*

4 "Health and safety of the child." The term includes, but is  
5 not limited to, the physical, emotional and psychological well-  
6 being of the child.

7 "HOUSEHOLD MEMBER." A SPOUSE OR AN INDIVIDUAL WHO HAS BEEN A <--  
8 SPOUSE, AN INDIVIDUAL LIVING AS A SPOUSE OR WHO LIVED AS A  
9 SPOUSE, A PARENT OR CHILD, ANOTHER INDIVIDUAL RELATED BY  
10 CONSANGUINITY OR AFFINITY, A CURRENT OR FORMER SEXUAL OR  
11 INTIMATE PARTNER OR AN INDIVIDUAL WHO SHARES BIOLOGICAL  
12 PARENTHOOD, CURRENTLY SHARING A HOUSEHOLD WITH THE CHILD OR A  
13 PARTY.

14 \* \* \*

15 "Nonprofessional supervised physical custody." Custodial  
16 time during which an agency or an adult, who is not a licensed <--  
17 professional, designated by the court or agreed upon by the <--  
18 parties, monitors the interaction between the child and the  
19 individual with those rights.

20 "Professional supervised physical custody." Custodial time  
21 during which a licensed professional monitors, WITH EDUCATION <--  
22 AND TRAINING ON THE DYNAMICS OF DOMESTIC VIOLENCE, SEXUAL  
23 ASSAULT, CHILD ABUSE AND THE IMPACT OF DOMESTIC VIOLENCE ON  
24 CHILDREN, OVERSEES the interaction between the child and the  
25 individual with those custody rights and promotes the child's <--  
26 health and safety OF THE CHILD during the interaction. <--

27 \* \* \* <--

28 "TEMPORARY HOUSING INSTABILITY." A PERIOD NOT TO EXCEED SIX  
29 MONTHS FROM THE DATE OF THE LAST INCIDENT OF ABUSE AS DETERMINED  
30 BY A COURT.



1 Section 3. Section 5323(e) of Title 23 is amended and the  
2 section is amended by adding subsections to read:

3 § 5323. Award of custody.

4 \* \* \*

5 (e) Safety conditions.--After considering the factors under  
6 [section 5328(a)(2)] sections 5328, 5329 (relating to  
7 consideration of criminal conviction), 5329.1 (relating to  
8 consideration of child abuse and involvement with protective  
9 services) and 5330 (relating to consideration of criminal  
10 charge), if the court finds [that there is an ongoing] a history  
11 of abuse of the child or a household member by a party or A <--  
12 PRESENT risk of harm to the child or an abused party and awards  
13 any form of custody to a party who committed the abuse or who  
14 has a household member who committed the abuse, the court shall  
15 include in the custody order safety conditions [designed],  
16 restrictions or safeguards as REASONABLY necessary to protect <--  
17 the child or the abused party~~]., including: THE COURT SHALL <--~~  
18 INCLUDE IN THE CUSTODY ORDER THE REASON FOR IMPOSING THE SAFETY  
19 CONDITIONS, RESTRICTIONS OR SAFEGUARDS AND AN EXPLANATION WHY  
20 THE SAFETY CONDITIONS, RESTRICTIONS OR SAFEGUARDS ARE IN THE  
21 BEST INTEREST OF THE CHILD OR THE ABUSED PARTY. IF SUPERVISED  
22 CONTACT IS ORDERED, THERE SHALL BE A REVIEW OF THE RISK OF HARM  
23 AND NEED FOR CONTINUED SUPERVISION ON AT LEAST AN ANNUAL BASIS.  
24 THE SAFETY CONDITIONS, RESTRICTIONS OR SAFEGUARDS MAY INCLUDE  
25 ANY OF THE FOLLOWING:  
26 (1) Nonprofessional supervised physical custody.  
27 (2) Professional supervised physical custody.  
28 (3) Limitations on the time of day that physical custody  
29 is permitted or on the number of hours of physical custody  
30 and the maximum number of hours of physical custody permitted

1 per day or per week.

2 (4) ~~Appoint a qualified professional specializing in~~ <--  
3 ~~treatment relating to the history of abuse or risk of harm to~~  
4 ~~provide counseling. Counseling may include a program of~~  
5 ~~treatment or individual therapy designed to rehabilitate the~~  
6 ~~offending individual, which includes issues regarding~~  
7 ~~physical or sexual abuse, domestic abuse, the psychology of~~  
8 ~~the offender and the effects of abuse on the victim and the~~  
9 ~~child. If counseling is ordered the court may require an~~  
10 ~~evaluation by the appointed qualified professional to~~  
11 ~~determine whether further counseling of the offender is~~  
12 ~~necessary.~~ THE APPOINTMENT OF A QUALIFIED PROFESSIONAL <--  
13 SPECIALIZING IN PROGRAMMING RELATING TO THE HISTORY OF ABUSE  
14 OR RISK OF HARM TO PROVIDE BATTERER'S INTERVENTION OR HARM  
15 PREVENTION PROGRAMMING. BATTERER'S INTERVENTION AND HARM  
16 PREVENTION PROGRAMMING MAY INCLUDE PROGRAMMING DESIGNED TO  
17 REHABILITATE THE OFFENDING INDIVIDUAL, INCLUDING PRIORITIZING  
18 A BATTERER'S INTERVENTION OR HARM PREVENTION PROGRAM, IF  
19 AVAILABLE, OR THE IMPACTS OF PHYSICAL, SEXUAL OR DOMESTIC  
20 ABUSE ON THE VICTIM. THE COURT MAY ORDER AN EVALUATION BY THE  
21 APPOINTED QUALIFIED PROFESSIONAL UNDER THIS PARAGRAPH TO  
22 DETERMINE WHETHER ADDITIONAL PROGRAMMING IS NECESSARY.

23 (5) Limitations on legal custody.

24 (6) Any other safety condition, restriction or safeguard  
25 as necessary to ensure the health and safety of the child OR <--  
26 TO PROTECT A HOUSEHOLD MEMBER.

27 (e.1) Supervision.--If a court finds by a preponderance of  
28 the evidence that a party has ~~subjected~~ ABUSED the child or any <--  
29 household member to abuse, the court shall be presumed to, THERE <--  
30 SHALL BE A REBUTTABLE PRESUMPTION THAT THE COURT SHALL only

1 allow nonprofessional supervised physical custody or  
2 professional supervised physical custody between the child and  
3 the party who committed the abuse unless the court makes a <--  
4 finding on the record that it finds by a preponderance of the  
5 evidence that the party no longer poses a risk of abuse to the  
6 child or any other household member and that another custody  
7 arrangement is in the best interest of the child and will not  
8 cause physical, emotional or psychological harm to the child.. A <--  
9 COURT MAY FIND THAT AN INDICATED REPORT FOR PHYSICAL OR SEXUAL  
10 ABUSE UNDER CHAPTER 63 (RELATING TO CHILD PROTECTIVE SERVICES)  
11 IS A BASIS FOR A FINDING OF ABUSE UNDER THIS SUBSECTION ONLY  
12 AFTER A DE NOVO REVIEW OF THE CIRCUMSTANCES LEADING TO THE  
13 INDICATED REPORT. NOTWITHSTANDING THE PROVISIONS OF THIS  
14 SUBSECTION, THE COURT MAY AWARD AN ALTERNATIVE FORM OF CUSTODY  
15 IF THE COURT FINDS BY A PREPONDERANCE OF THE EVIDENCE THAT:  
16 (1) THE PARTY NO LONGER POSES A RISK OF ABUSE TO THE  
17 CHILD OR ANY OTHER HOUSEHOLD MEMBER; AND  
18 (2) ANOTHER CUSTODY ARRANGEMENT IS IN THE BEST INTEREST  
19 OF THE CHILD AND WILL NOT JEOPARDIZE THE HEALTH AND SAFETY OF  
20 THE CHILD.  
21 (e.2) Professional supervision.--If a court finds by a  
22 preponderance of the evidence that there is an ongoing risk of  
23 abuse of the child, the court shall be presumed to THERE SHALL <--  
24 BE A REBUTTABLE PRESUMPTION THAT THE COURT SHALL only allow  
25 professional supervised physical custody between the child and  
26 the party who committed the abuse unless the court makes a <--  
27 finding on the record that it finds by a preponderance of the  
28 evidence that the party no longer poses a risk of abuse to the  
29 child or any other household member and that another custody  
30 arrangement is in the best interest of the child and will not

1 ~~cause physical, emotional or psychological harm to the child.~~

2 POSES THE RISK OF ABUSE. A COURT MAY FIND THAT AN INDICATED <--  
3 REPORT FOR PHYSICAL OR SEXUAL ABUSE UNDER CHAPTER 63 IS A BASIS  
4 FOR A FINDING OF ABUSE UNDER THIS SUBSECTION ONLY AFTER A DE  
5 NOVO REVIEW OF THE CIRCUMSTANCES LEADING TO THE INDICATED  
6 REPORT. NOTWITHSTANDING THE PROVISIONS OF THIS SUBSECTION, THE  
7 COURT MAY AWARD AN ALTERNATIVE FORM OF CUSTODY IF THE COURT  
8 FINDS BY A PREPONDERANCE OF THE EVIDENCE THAT:

9 (1) THE PARTY NO LONGER POSES A RISK OF ABUSE TO THE  
10 CHILD OR ANY OTHER HOUSEHOLD MEMBER; AND

11 (2) ANOTHER CUSTODY ARRANGEMENT IS IN THE BEST INTEREST  
12 OF THE CHILD AND WILL NOT JEOPARDIZE THE HEALTH AND SAFETY OF  
13 THE CHILD.

14 \* \* \*

15 Section 4. Section 5328(a) of Title 23 is amended and the  
16 section is amended by adding a subsection to read:

17 § 5328. Factors to consider when awarding custody.

18 (a) Factors.--In ordering any form of custody, the court  
19 shall determine the best interest of the child by considering  
20 all relevant factors, giving weighted consideration to those  
21 factors which affect the health and safety of the child,  
22 including the following:

23 ~~(1) Which party is more likely to ensure the health and~~ <--  
24 ~~safety of the child.~~

25 [(1) Which party is more likely to encourage and permit <--  
26 frequent and continuing contact between the child and another  
27 party.]

28 (1) WHICH PARTY IS MORE LIKELY TO ENSURE THE HEALTH AND <--  
29 SAFETY OF THE CHILD.

30 (2) The present and past abuse committed by a party or

1 member of the party's household. [ , whether there is a  
2 continued risk of harm to the child or an abused party and  
3 which party can better provide adequate physical safeguards  
4 and supervision of the child. ]

5 (2.1) The information set forth in section 5329.1(a)  
6 (relating to consideration of child abuse and involvement  
7 with protective services).

8 (2.2) Violent or assaultive behavior committed by a  
9 party, including past or current protection from abuse and  
10 sexual violence abuse protection orders WHERE THERE HAS BEEN <--  
11 A FINDING OF ABUSE.

12 (2.3) Which party is more likely to encourage and permit  
13 frequent and continuing contact between the child and another  
14 party if contact is consistent with the health and safety  
15 needs of the child.

16 (2.4) THE EXISTENCE OF A PROTECTION FROM ABUSE ORDER <--  
17 ENTERED ON CONSENT OF THE PARTIES, WITH NO ADMISSION OR  
18 FINDING OF ABUSE, IF, UPON REVIEW OF THE FACTS PRESENTED AT  
19 THE CUSTODY HEARING, THE COURT FINDS THAT ABUSE OCCURRED.

20 (3) The ~~present and past~~ parental {duties} ~~and caretaker <--~~  
21 ~~duties~~ performed by each party on behalf of the child.

22 (4) The need for stability and continuity in the child's  
23 education, family life and community life except if changes  
24 are necessary to protect the health and safety of the child  
25 OR A PARTY. <--

26 (5) The availability of extended family.

27 (6) The child's sibling relationships.

28 (7) The well-reasoned preference of the child, based on  
29 the child's developmental stage, maturity and judgment. In  
30 assessing the factor under this paragraph, IF THE COURT FINDS <--

1 THAT the child's fear of a party IS based on the party's <--  
2 ACTUAL AND specific conduct that is contrary to the child's <--  
3 best interest, THE FINDING shall be considered well-reasoned. <--

4 (8) The attempts of a [parent] party to turn the child  
5 against the other [parent] party, except in cases of ~~abuse~~ <--  
6 ABUSE [domestic violence] where reasonable safety measures <--  
7 are necessary to protect the health and safety of the child  
8 from harm. A PARTY'S REASONABLE CONCERNS FOR A CHILD'S HEALTH <--  
9 AND WELFARE AND THE PARTY'S REASONABLE EFFORTS TO PROTECT THE  
10 CHILD SHALL NOT BE CONSIDERED ATTEMPTS TO TURN THE CHILD  
11 AGAINST THE OTHER PARTY. A CHILD'S DEFICIENT OR NEGATIVE  
12 RELATIONSHIP WITH A PARTY SHALL NOT BE PRESUMED TO BE CAUSED  
13 BY THE OTHER PARTY.

14 ~~A party's reasonable concerns for a child's health~~ <--  
15 ~~and welfare and the party's reasonable efforts to protect~~  
16 ~~the child shall not be considered attempts to turn the~~  
17 ~~child against the other party. A child's deficient or~~  
18 ~~negative relationship with a party shall not be presumed~~  
19 ~~to be caused by the other party.~~

20 (9) Which party is more likely to maintain a loving,  
21 stable, consistent and nurturing relationship with the child  
22 adequate for the child's emotional needs.

23 (10) Which party is more likely to attend to the daily  
24 physical, emotional, developmental, educational and special  
25 needs of the child.

26 (11) The proximity of the residences of the parties.

27 (12) Each party's availability to care for the child or  
28 ability to make appropriate child-care arrangements.

29 (13) The level of conflict between the parties and the  
30 willingness and ability of the parties to cooperate with one

1 another. A party's effort to protect a child or self from  
2 abuse by another party is not evidence of unwillingness or  
3 inability to cooperate with that party.

4 (14) The history of drug or alcohol abuse of a party or  
5 member of a party's household.

6 (15) The mental and physical condition of a party or  
7 member of a party's household.

8 (16) Any other relevant factor.

9 (a.1) Exception.--None of the factors in A FACTOR UNDER <--  
10 subsection (a) shall NOT be adversely weighed against a party if <--  
11 that party or the child was subjected to abuse by the other <--  
12 party. THE CIRCUMSTANCES RELATED TO THE FACTOR WERE IN RESPONSE <--  
13 TO ABUSE OR NECESSARY TO PROTECT THE CHILD OR THE ABUSED PARTY  
14 FROM HARM AND THE PARTY ALLEGING ABUSE DOES NOT POSE A RISK TO  
15 THE HEALTH AND SAFETY OF THE CHILD AT THE TIME OF THE CUSTODY  
16 HEARING. TEMPORARY HOUSING INSTABILITY AS A RESULT OF ABUSE  
17 SHALL NOT BE CONSIDERED AGAINST THE PARTY ALLEGING ABUSE.

18 (A.2) DETERMINATION.--NO SINGLE FACTOR UNDER SUBSECTION  
19 (A) SHALL BY ITSELF BE DETERMINATIVE IN THE AWARDING OF CUSTODY.  
20 THE COURT SHALL EXAMINE THE TOTALITY OF THE CIRCUMSTANCES,  
21 GIVING WEIGHTED CONSIDERATION TO THE FACTORS THAT AFFECT THE  
22 HEALTH AND SAFETY OF THE CHILD, WHEN ISSUING A CUSTODY ORDER  
23 THAT IS IN THE BEST INTEREST OF THE CHILD.

24 \* \* \*

25 Section 5. Section 5329(a) of Title 23, amended June 5, 2020  
26 (P.L.246, No.32), is amended AND THE SECTION IS AMENDED BY <--  
27 ADDING A SUBSECTION to read:

28 § 5329. Consideration of criminal conviction.

29 (a) Offenses.--Where a party seeks any form of custody, the  
30 court shall consider whether that party or member of that

1 party's household has been convicted of or has pleaded guilty or  
2 no contest to any of the offenses in this section or an offense  
3 in another jurisdiction substantially equivalent to any of the  
4 offenses in this section. The court shall consider such conduct  
5 and determine that the party does not pose a threat of harm to  
6 the child before making any order of custody to that party when  
7 considering the following offenses:

8 18 Pa.C.S. Ch. 25 (relating to criminal homicide).

9 18 Pa.C.S. § 2701 (relating to simple assault).

10 18 Pa.C.S. § 2702 (relating to aggravated assault).

11 18 Pa.C.S. § 2705 (relating to recklessly endangering another  
12 person).

13 18 Pa.C.S. § 2706 (relating to terroristic threats).

14 18 Pa.C.S. § 2709.1 (relating to stalking).

15 18 Pa.C.S. § 2718 (relating to strangulation).

16 18 Pa.C.S. § 2901 (relating to kidnapping).

17 18 Pa.C.S. § 2902 (relating to unlawful restraint).

18 18 Pa.C.S. § 2903 (relating to false imprisonment).

19 18 Pa.C.S. § 2910 (relating to luring a child into a motor  
20 vehicle or structure).

21 18 Pa.C.S. § 3011 (relating to trafficking in individuals).

22 18 Pa.C.S. § 3012 (relating to involuntary servitude).

23 18 Pa.C.S. § 3013 (relating to patronizing a victim of sexual  
24 servitude).

25 18 Pa.C.S. § 3121 (relating to rape).

26 18 Pa.C.S. § 3122.1 (relating to statutory sexual assault).

27 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual  
28 intercourse).

29 18 Pa.C.S. § 3124.1 (relating to sexual assault).

30 18 Pa.C.S. § 3125 (relating to aggravated indecent assault).



1 18 Pa.C.S. § 3126 (relating to indecent assault).  
2 18 Pa.C.S. § 3127 (relating to indecent exposure).  
3 18 Pa.C.S. § 3129 (relating to sexual intercourse with  
4 animal).  
5 18 Pa.C.S. § 3130 (relating to conduct relating to sex  
6 offenders).  
7 18 Pa.C.S. § 3301 (relating to arson and related offenses).  
8 18 Pa.C.S. § 4302 (relating to incest).  
9 18 Pa.C.S. § 4303 (relating to concealing death of child).  
10 18 Pa.C.S. § 4304 (relating to endangering welfare of  
11 children).  
12 18 Pa.C.S. § 5533 (relating to cruelty to animal).  
13 18 Pa.C.S. § 5534 (relating to aggravated cruelty to animal).  
14 18 Pa.C.S. § 5543 (relating to animal ~~infighting~~ FIGHTING). <--  
15 18 Pa.C.S. § 5544 (relating to possession of animal fighting  
16 paraphernalia).  
17 18 Pa.C.S. § 4305 (relating to dealing in infant children).  
18 18 Pa.C.S. § 5902(b) (relating to prostitution and related  
19 offenses).  
20 18 Pa.C.S. § 5903(c) or (d) (relating to obscene and other  
21 sexual materials and performances).  
22 18 Pa.C.S. § 6301 (relating to corruption of minors).  
23 18 Pa.C.S. § 6312 (relating to sexual abuse of children).  
24 18 Pa.C.S. § 6318 (relating to unlawful contact with minor).  
25 18 Pa.C.S. § 6320 (relating to sexual exploitation of  
26 children).  
27 Section 6114 (relating to contempt for violation of order or  
28 agreement).  
29 The former 75 Pa.C.S. § 3731 (relating to driving under  
30 influence of alcohol or controlled substance).

1 75 Pa.C.S. Ch. 38 (relating to driving after imbibing alcohol  
2 or utilizing drugs).

3 Section 13(a)(1) of the act of April 14, 1972 (P.L.233,  
4 No.64), known as The Controlled Substance, Drug, Device and  
5 Cosmetic Act, to the extent that it prohibits the manufacture,  
6 sale or delivery, holding, offering for sale or possession of  
7 any controlled substance or other drug or device.

8 (A.1) DETERMINATION.--A CRIMINAL CONVICTION SPECIFIED UNDER <--  
9 SUBSECTION (A) SHALL NOT BY ITSELF BE DETERMINATIVE IN THE  
10 AWARDING OF CUSTODY. THE COURT SHALL EXAMINE THE TOTALITY OF THE  
11 CIRCUMSTANCES WHEN ISSUING A CUSTODY ORDER THAT IS IN THE BEST  
12 INTEREST OF THE CHILD.

13 \* \* \*

14 ~~Section 6. Sections 5334(c), 5335(b) and 5339 of Title 23~~ <--  
15 ~~are amended to read:~~

16 SECTION 6. SECTION 5334(C) OF TITLE 23 IS AMENDED AND THE <--  
17 SECTION IS AMENDED BY ADDING A SUBSECTION TO READ:

18 § 5334. Guardian ad litem for child.

19 \* \* \*

20 (c) Abuse.--If substantial allegations of abuse [of the  
21 child] are made, the court [shall] may appoint a guardian ad  
22 litem for the child if:

23 (1) counsel for the child is not appointed under section  
24 5335 (relating to counsel for child); [or] AND <--

25 (2) the court is satisfied that the relevant information  
26 will be presented to the court only with such appointment[.] <--  
27 ~~or~~

28 ~~(3) a guardian ad litem appointed under this section~~  
29 ~~shall establish that the guardian ad litem received education~~  
30 ~~and training under the program specified under 42 Pa.C.S. §~~

1 ~~1908 (relating to child abuse and domestic abuse education~~  
2 ~~and training program for judges and court personnel) or~~  
3 ~~substantially similar training prior to appointment.~~

4 \* \* \*

5 (F) EDUCATION AND TRAINING.--A COURT APPOINTING A GUARDIAN <--  
6 AD LITEM UNDER THIS SECTION SHALL MAKE REASONABLE EFFORTS TO  
7 APPOINT A GUARDIAN AD LITEM WHO RECEIVED EVIDENCE-BASED  
8 EDUCATION AND TRAINING RELATING TO CHILD ABUSE, INCLUDING CHILD  
9 SEXUAL ABUSE, DOMESTIC ABUSE EDUCATION AND THE EFFECT OF CHILD  
10 SEXUAL ABUSE AND DOMESTIC ABUSE ON CHILDREN.

11 SECTION 7. SECTIONS 5335(B) AND 5339 OF TITLE 23 ARE AMENDED  
12 TO READ:

13 § 5335. Counsel for child.

14 \* \* \*

15 (b) Abuse.--Substantial allegations of abuse [of the child]  
16 constitute a reasonable basis for appointing counsel for the  
17 child.

18 \* \* \*

19 § 5339. Award of counsel fees, costs and expenses.

20 ~~(a) Award.~~ Under this chapter, a court may award reasonable <--  
21 interim or final counsel fees, costs and expenses to a party if  
22 the court finds that the conduct of another party was obdurate,  
23 vexatious[,], OR repetitive [or in bad faith]. This section may <--  
24 not apply if that party engaged the judicial process in good  
25 faith to protect the child from harm.

26 ~~(b) Other costs.~~ The court may direct that a party who has <--  
27 been found to have perpetrated abuse to pay all or a portion of  
28 the fees, costs and expenses incurred by the other party,  
29 including attorney fees, costs relating to any counsel for the  
30 child and treatment expenses incurred relating to the abuse,

1 ~~including fees associated with any form of supervised physical~~  
2 ~~custody.~~

3 Section 7 8. Title 42 is amended by adding a section to <--  
4 read:

5 § 1908. Child abuse and domestic abuse education and training  
6 program for judges and court personnel.

7 ~~The Administrative Office of Pennsylvania Courts may develop <--~~  
8 ~~and implement an ongoing education and training program for~~  
9 ~~judges, magisterial district judges and relevant court~~  
10 ~~personnel, including guardians ad litem, counsel for children,~~  
11 ~~masters and mediators, regarding child abuse, which includes all~~  
12 ~~aspects of maltreatment, including sexual abuse, physical abuse,~~  
13 ~~emotional abuse, implicit and explicit bias, trauma and neglect~~  
14 ~~and the impact of child abuse and domestic violence on children.~~  
15 ~~The education and training program shall include the latest best~~  
16 ~~practices from evidence based and peer reviewed research by~~  
17 ~~recognized experts in the types of abuse designated under this~~  
18 ~~section. The education and training program shall be designed to~~  
19 ~~improve the ability of courts to recognize and respond to the~~  
20 ~~impact of child abuse, domestic abuse and trauma on all victims,~~  
21 ~~specifically children, and make appropriate custody decisions~~  
22 ~~that are in the best interest of the child.~~

23 (A) PROGRAM.--THE ADMINISTRATIVE OFFICE OF PENNSYLVANIA <--  
24 COURTS MAY DEVELOP AND IMPLEMENT AN ONGOING EDUCATION AND  
25 TRAINING PROGRAM FOR JUDGES, MAGISTERIAL DISTRICT JUDGES AND  
26 RELEVANT COURT PERSONNEL, INCLUDING GUARDIANS AD LITEM, COUNSEL  
27 FOR CHILDREN, MASTERS AND MEDIATORS REGARDING CHILD ABUSE. THE  
28 EDUCATION AND TRAINING PROGRAM SHALL INCLUDE ALL ASPECTS OF THE  
29 MALTREATMENT OF CHILDREN, INCLUDING ALL OF THE FOLLOWING:

30 (1) SEXUAL ABUSE.

- 1           (2) PHYSICAL ABUSE.  
2           (3) IMPLICIT AND EXPLICIT BIAS.  
3           (4) TRAUMA AND NEGLECT.  
4           (5) THE IMPACT OF CHILD ABUSE AND DOMESTIC VIOLENCE ON  
5           CHILDREN.

6           (B) BEST PRACTICES.--THE EDUCATION AND TRAINING PROGRAM  
7           UNDER SUBSECTION (A) SHALL INCLUDE THE LATEST BEST PRACTICES  
8           FROM EVIDENCE-BASED, PEER-REVIEWED RESEARCH BY RECOGNIZED  
9           EXPERTS IN THE TYPES OF CHILD ABUSE SPECIFIED UNDER SUBSECTION  
10          (A). THE ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS SHALL  
11          DESIGN THE EDUCATION AND TRAINING PROGRAM UNDER SUBSECTION (A)  
12          TO EDUCATE AND TRAIN RELEVANT COURT PERSONNEL ON ALL OF THE  
13          FACTORS LISTED UNDER 23 PA.C.S. § 5328(A) (RELATING TO FACTORS  
14          TO CONSIDER WHEN AWARDING CUSTODY) AND IMPROVE THE ABILITY OF  
15          COURTS TO MAKE APPROPRIATE CUSTODY DECISIONS THAT ARE IN THE  
16          BEST INTEREST OF THE CHILD, INCLUDING EDUCATION AND TRAINING  
17          REGARDING THE IMPACT OF CHILD ABUSE, DOMESTIC ABUSE AND TRAUMA  
18          ON A VICTIM, SPECIFICALLY A CHILD, AND SITUATIONS WHEN ONE PARTY  
19          ATTEMPTS TO TURN A CHILD AGAINST ANOTHER PARTY.

20          Section § 9. This act shall take effect in ~~60~~ 120 days.

<--