

Protection from Abuse Orders **in Pennsylvania**

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Background

- -The Protection from Abuse Act (PFA Act) was enacted by the Pennsylvania legislature in 1976
- -The Act provides quick and prompt protection & relief to victims of domestic violence
- -Goal is the *advance prevention* of physical and sexual abuse, not retrospective punishment

Civil PFA Orders vs. Criminal Court Orders

- PFA Orders issued by **civil courts**, not criminal courts
- -Criminal Courts can include as part of their orders that the abuser stay away from the victim
- -Even if the victim's abuser has a criminal order to stay away from the victim, the victim should still file a Protection from Abuse petition in civil court
- -This is because of differences in the current technology of how PFA orders and criminal court orders appear in police databases
- -In addition, criminal hearings can be delayed or the defendant can be acquitted
- - PFA Orders last three years

Who Can File Petitions for Protection from Abuse Orders?

The PFA Act requires the victim and the abuser have one of the following relationships

- a current or former spouse
- parent or child
- current or former sexual partner
- others related by blood or marriage
- someone you have a child in common with
- household member

Who Can File Petitions for Protection from Abuse Orders?

- Step-children & same-sex intimate partners are covered
- **Who constitutes a household member is unclear under the current law**
- Advocates for seniors are concerned about seniors who allow someone to live in their home who is not a current or former intimate partner or who is not related by blood or marriage.
- If the senior is abused by this “***household member***,” currently the senior has a difficult time obtaining a Protection from Abuse Order.

Definition of Abuse under the Protection from Abuse Act

-The PA Protection from Abuse Law defines abuse as:

- *Attempting or causing physical injury

- *Placing another in reasonable fear of bodily injury

- *Sexual Assault

- *False Imprisonment

- *Stalking

Standard of Proof

- The plaintiff must prove the allegation of abuse by a preponderance of the evidence
- On appeal, great weight is given to the credibility determinations of the trial court as to witnesses who appeared

Attempting or Causing Physical Injury

- Most common scenario people envision when they hear “abuse”
- Physical abuse of seniors is not always as obvious as kicking, punching, slapping, etc.
- Care-dependent seniors can face physical injury from rough care-giving by their abuser
- Client who was dying of cancer and her abusive ex-boyfriend grabbed her arm and caused bruises; client whose abusive son “rescued” her from a fall by dragging her by her hair across the floor

Placing Another in Reasonable Fear of Bodily Injury

- Reasonable fear of **bodily injury** –
INSULTS ALONE ARE NOT ENOUGH
- The fear must be “reasonable”
- Fear may be reasonable due to:
 - past threats
 - difference in health/size between parties
 - other circumstances

Sexual Assault

- This is the most underreported type of abuse
- Building trust with the senior is essential in order to create an environment where the senior feels comfortable
- PA Coalition Against Rape has excellent resources on its website about elder sexual assault

<http://www.pcar.org/elder-abuse>

False Imprisonment

- Statute requires:
abuser “knowingly restrains another unlawfully so as to interfere substantially with his/her liberty”

Stalking

- Statute requires:
“Knowingly engaging in a course of conduct or repeatedly committing acts towards another person, including following the person, without proper authority, under circumstances which place the person in reasonable fear of bodily injury”

What Can a PFA Order Do?

The Protection from Abuse law permits a Court to issue an Order directing the abuser to:

- *Stay away from you (no contact)*
- *Not to abuse, threaten, harass or stalk you*
- *Turn over weapons to the police*
- *Evict the abuser from your residence*
- *Can't have another individual do for you what you can't do yourself*

What Can a PFA Order Do?

- Temporary child custody and temporary support orders can be included
- Reimbursement for reasonable losses suffered as a result of the abuse

Process of Obtaining a PFA

- Filing the Initial Petition
- Temporary Ex Parte Orders
- Serving the Defendant(s)
- Court Hearing, Orders by Agreements,
Orders by Default
- Final Orders

Filing the Initial Petition

- First step is going to local court and filing a petition for protection from abuse
- By state law, there is no charge to file this petition
- Court staff will interview the victim and present the petition to a Judge
- The victim has no contact with the Judge

Temporary Ex Parte Orders

- On the same day of the filing of the petition, the Court will decide whether or not to grant a temporary ex parte Order
- An ex parte Order is an Order in which the Court only hears from one party- in this case the victim
- The temporary Order only lasts until the hearing date, which must be scheduled within 10 business days of the filing

Court Hearing, Orders by Agreements, Orders by Default

- The hearing must be scheduled within 10 days of the temporary ex parte Order
- If the defendant(s) are not served, then the hearing will not proceed and usually will be continued to another date
- Both sides have the opportunity to present evidence
- If the parties agree, an Order may be entered by agreement, including without admission
- If the defendant fails to appear despite proper service, the Court may enter an Order by default or issue a bench warrant

Final Orders

- Orders may be issued for a maximum term of three years. The term of the Order runs from the entry of the final order itself.
- Prior to the final Order expiring, a Petition can be filed to extend the Order
- Filing extends the date until the hearing

Contempt of PFA Order by the Abuser

- An arrest may be made without a warrant upon probable cause whether or not the violation is committed in the presence of a police officer
- A victim also has the option of filing a private criminal complaint alleging violation
- A sentence for indirect criminal contempt of a PFA can include imprisonment of up to 6 months and a fine of up to \$1000

Modification of the PFA Order

- A petition may be filed by either party asking the Court to modify the PFA Order
- Sometimes victims want to vacate the order
- Many organizations will not assist victims with vacating the Order, out of concern that the victim may be acting due to coercion

Special Issues

- Filing an Emergency PFA Petition
- PFA Orders and Homebound Seniors
- PFA Orders and Limited English Proficiency Seniors

Filing an Emergency PFA Petition

- All counties have a procedure for filing a petition for a PFA Order when Family Court is closed
- Contact your local courts for information specific to your county
- Emergency PFA Orders cannot include custody orders
- Emergency PFA Order only last until 5 pm of the next day that Family Court is open

PFA Orders and Homebound Seniors

- All county courts are required to follow the requirements of the Americans with Disabilities Act
- Court clerks will typically interview the homebound senior on the phone if the senior can produce a Dr's note
- However, the senior must have someone pick up the temporary Order
- Another option is an attorney petition

PFA Orders and Limited English Proficiency

- Title VI of the Civil Rights Act of 1964 requires that courts receiving federal financial assistance provide meaningful access for Limited English Proficiency (LEP) individuals
- Limited resources can create difficulty in putting this into practice
- Resources: www.lep.gov

RESOURCES

- Pennsylvania Coalition Against Domestic Violence www.pcadv.org or 1 800 932-4632
 - All county list of resources and PFA Act Chart
- Pennsylvania Coalition Against Rape www.pcar.org
- National Domestic Violence Hotline
1 800 799-7723
- Philadelphia Domestic Violence Hotline
1 877 723-3014

QUESTIONS?

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