

The Pennsylvania Protection From Abuse Act

23 Pa. C.S. § 6101 *et seq.*

Policy/Purpose of the PFA Act – “The primary goal of the PFA Act is not retrospective punishment, but advance prevention of physical and sexual abuse.” *Eichenlaub v. Eichenlaub*, 340 Pa. Super. 552, 561, 490 A.2d 918, 922 (1984).

Jurisdiction:

The PFA Act authorizes the court to grant protection only to *family or household members*. This is defined in the Act as spouses or persons who have been spouses, persons living as spouses or who lived as spouses, parents and children, other persons related by consanguinity or affinity, current or former sexual or intimate partners or persons who share biological parenthood. 23 Pa. C.S.A. § 6102.

“Intimate partners” covers dating relationships. *R.G. v. T.D.*, 448 Pa. Super. 525, 672 A.2d 341 (1996).

“Intimate partners” covers same-sex relationships. *D.H. v. B.O.*, 1999 PA Super. 149, 734 A.2d 409 (1999).

What acts are covered: Abuse defined as “the occurrence of one or more of the following acts:”

- ◄ Attempting to cause or intentionally, knowingly or recklessly causing bodily injury, serious bodily injury, rape, involuntary deviate sexual intercourse, sexual assault, statutory sexual assault, aggravated indecent assault, indecent assault or incest with or without a deadly weapon.

Abuse does not need to constitute a crime to be covered. *Miller v. Walker*, 445 Pa. Super. 537, 665 A.2d 1252 (1995).

- ◄ Placing another in reasonable fear of imminent serious bodily injury.

Fear of imminent serious bodily injury does not require any actual physical injury. *Fonner v. Fonner*, 1999 PA Super. 122, 731 A.2d 160 (1999).

Intent of abuser is “of no moment.” *Raker v. Raker*, 2004 PA Super. 107, 847 A.2d 720 (2004).

Telephone threats are sufficient. *Burke v. Bauman*, 2002 PA Super. 396, 814 A.2d 206 (2002).

- ◄ Infliction of false imprisonment.

Restraining another, interfering with their liberty for even brief time is sufficient. *Snyder v. Snyder*, 427 Pa. Super. 494, 629 A.2d 977 (1993).

- ◄ Physically or sexually abusing minor children.

Corporal punishment inflicted recklessly or in an enraged manner that results in bodily injury is sufficient. *Viruet v. Cancel*, 1999 PA Super. 53, 727 A.2d 591 (1999).

- ◄ Stalking defined as knowingly engaging in a course of conduct or repeatedly committing acts toward another, including following without proper authority, under circumstances that place the person in reasonable fear of bodily injury.

Repeated phone calls, electronic mail messages, including threatening message, sufficient. *R.G. v. T.D.*, 448 Pa. Super. 525, 672 A.2d 341 (1996).

Relief Available – 23 Pa. C.S.A. § 6108

Emergency Order stage: (1) Do not abuse; (2) Exclusive possession of jointly owned/leased residence; (3) No contact. 23 Pa. C.S.A. § 6110.

(continued on reverse)

Ex parte or Temporary Order: (1) Do not abuse; (2) Exclusive possession of jointly owned/leased residence; (3) If defendant has duty of support to plaintiff or children, exclusive possession of residence owned/leased by defendant; (4) Temporary custody/ visitation. If defendant has partial, shared or full custody by written agreement or court order, no custody change unless court finds defendant is likely to abuse/ remove children; (5) No contact; (6) Relinquish firearms and other weapons; (7) Pay reasonable losses; (8) Do not stalk or harass; (9) Any other relief.

10-Day or Final Order: All forms of relief listed for *ex parte* or temporary order, plus directing defendant to pay spousal and/or child support. Note: In final order, court MAY amend/modify existing custody orders/arrangements. Trial court MUST consider risk to children and plaintiff in addressing custody issues. Term of Final Order – up to 36 months.

Evidence

Failure of police to file charges is not relevant to PFA abuse claim. *Boykin v. Brown*, 2005 PA Super. 60 (2005).

Domestic Violence Advocate communications with domestic violence victim are privileged and confidential. 23 Pa. C.S.A. § 6116, *V.B.T. v. Family Services of Western PA*, 705 A.2d 1325 (Pa. Super. 1998), *aff'd* 556 Pa. 430, 728 A.2d 953 (1999).

Prior history of abuse relevant, remoteness in time of prior incidences of hostility goes to weight, not admissibility. *Commw. v. Petrakovich*, 459 Pa. 511, 329 A.2d 844 (1974).

Abuse occurring three years earlier admitted. *Commw. v. Drumheller*, 570 Pa. 117, 808 A.2d 893 (2002).

Abuse of children occurring six years earlier admitted. *Miller v. Walker*, 445 Pa. Super. 537, 665 A.2d 1252 (1995).

Extension/ Modification of Final Orders

Court order may be extended if court finds the defendant *abused plaintiff* or if defendant engaged in a pattern or practice that indicates *continued risk of harm* to the plaintiff or child.

- ✦ If defendant is found in contempt, court may extend PFA order duration for another term.
- ✦ Court may amend order at any time upon petition by either party.

Enforcement: Hearings must be *scheduled* within 10 days of Indirect Criminal Contempt (ICC) charge. The defendant may be sentenced (1) to up to six months in jail, (2) supervised probation, (3) \$300 to \$1000 fine per offense.

Special Considerations

- ✦ No fees shall be charged to PFA plaintiff for filing, service, registration, withdrawals, dismissals or costs associated with appeal.
- ✦ No mutual orders may be entered unless both parties properly filed and served complaints, and court determined both were entitled to protection.
- ✦ Address Confidentiality – disclosure of domestic violence program address prohibited; where plaintiff seeks address confidentiality, and court concludes defendant poses threat, plaintiff's/children's addresses must be kept confidential.

Firearm Issues

- ✦ Courts have discretion to take all or some of the defendant's firearms.
- ✦ Once firearms are relinquished, there may be civil and criminal liability for returning firearms to the PFA defendant even if the state firearm prohibition is removed.

Why Don't They Leave?

Instead of asking "why doesn't she just leave", try asking "why doesn't the abuser stop being violent?"

Leaving the violence sometimes takes a while. It's common for women to make 4 to 7 attempts to leave before they are successful. There are many things that keep women in relationships with someone who abuses them. When people ask "why doesn't she leave", it doesn't help. It just adds to the huge list of factors preventing women from getting away from the violence.

Leaving can be the most dangerous time

- ❖ Abusers threaten to kill women, the children or themselves if they leave
- ❖ Many women are stalked and harassed by ex-partners
- ❖ Violence can escalate when a Protection From Abuse Order is served on the abuser
- ❖ Even abusers in prison have been known to send friends to assault or threaten their victims
- ❖ If women leave they have less chance of predicting when violence will happen
- ❖ Women who stay may be doing what they think is necessary to stay alive

Lack of Money

- ❖ Women may not have any access to the family's money
- ❖ Older women may have never been allowed to deal with money and they are worried they won't be able to survive
- ❖ Going on public assistance may mean a huge drop in income and it might not cover all the bills
- ❖ They may feel they won't be able to get a job to support themselves and their children
- ❖ Women and children's standard of living often drops significantly when they leave

No Where to Go

- ❖ If family and friends can't provide a place to stay, moving house can be very difficult for women with little money, or for women with disabilities or those who live in remote areas
- ❖ Landlords may not want to rent to women if the violent person has caused problems in the household (i.e. the bills haven't been paid, the neighbors have complained, and/or the house has been wrecked)
- ❖ Women believe that no one else will want them

Fear of Losing the Children

- ❖ Abusers often threaten to inform Children and Youth services that women are bad mother/crazy/abusive
- ❖ Abusers often say that if she leaves, they will never let her get the kids
- ❖ Mistrust of government and legal systems can mean women are unwilling to allow authorities to become involved
- ❖ If the abuser has access to the children, the woman cannot control what happens while she is not there
- ❖ The children might not want their father to leave

Belief in Family Values

- ❖ Women may believe that the family should stay together for the sake of the children, or that marriage/commitment is for life
- ❖ The religious or cultural beliefs of some families mean that they pressure women to stay despite the violence
- ❖ Women may believe that there needs to be a male around for the sake of children

Not Being Believed

- ❖ Many people still don't understand about family violence and blame women
- ❖ Despite the realities of violence in lesbian relationships, many people believe that violence doesn't happen in lesbian relationships, or they think the violence is not as bad for lesbians; or it's mutual
- ❖ Some people think women "make it up" to get back at men
- ❖ Sometimes Police and Judges don't help or don't take violence seriously
- ❖ It might be hard for people to accept that there is violence if an older woman has hidden it all her life
- ❖ Abusers can be charming, friendly, and respected people in the community

Still Feeling Some Love

- ❖ Women want the violence to stop but they might still have feelings for the person what is abusing them
- ❖ Women may remember the charming person that the abuser was in the beginning
- ❖ Despite the violence there may have been times of companionship and socializing and the woman may not want to be left alone
- ❖ Women may think they can change the abuser
- ❖ Abusers often offer change

Social Isolation

- ❖ Abusers often isolate women and make it difficult for women to have friends or stay in touch with their family
- ❖ Women from different cultures and backgrounds may feel ashamed or unsafe about speaking out in their close knit communities
- ❖ Women may risk losing a lot by leaving: a house, friends, money, status, etc.

Not Wanting to Be Judged By Others

- ❖ Some women feel so ashamed they are unable to tell others
- ❖ Women may keep quiet in case people see them as a failure, a weak or bad person
- ❖ Women who are abused can have low confidence and self esteem
- ❖ There are still many social expectations about being a couple, and children needing two parents which make it difficult for women to leave
- ❖ Women may feel ashamed and guilty that they have hit the abuser, planned to hurt them or have hit their children

Seeing Abuse as Normal

- ❖ If women have been brought up in violent families, they might not know that there is any other way

A combination of negative social attitudes towards women, economic factors, lack of social supports for women and their children and a lack of awareness about family violence mean that it is often very difficult for women to leave an abuser.

Common Myths About Domestic Violence

There are many myths about domestic violence. These myths help continue violence by making abuser's actions seem ok; stopping women from seeking help; and stopping others from helping. Understanding the realities behind the myth challenges violence and allows women to come to reality about what is really happening to them, and exposes violence as a social concern not just a problem.

Myth: "It's just one hit"

Physical violence is not only a slap, it's also hitting with objects or hands, punching (especially in areas on the body that cannot be seen easily); pulling hair out, inflicting pain by stabbing, kicking pushing or biting. When one act of physical violence occurs, there usually are long periods of threats, controlling behavior, mind games, verbal abuse and other psychological and emotional violence. Women who have been abused often say that the emotional violence is far worse than the physical violence.

Myth: "If it was really that bad, they would leave"

The first thing to remember is that it should not be the woman's responsibility to avoid violence; it's the abuser who should stop the violence. There are many reasons why women stay with someone who has been violent towards them. The most compelling reason is that it can be safer to stay. Research has shown that violence often escalates and becomes more unpredictable when women leave. Leaving can be dangerous and often times lethal.

Myth: "Violence only happens in poor uneducated families"

Abusers come from all walks of life and anyone can be abused. Violence happens in all types of families—in urban and rural communities and in all ethnic groups—in rich, poor and middle income families of any age.

Myth: "The person asked for it, deserved it or provoked it"

No one deserves or asks to be beaten or emotionally tortured, least of all by someone who says they love you. Abusers often blame women and children for provoking them, but no behavior justifies a violent response. Children can be disciplined in other ways—family problems can be resolved without violence. There is no excuse for violence. The responsibility for violence lies with the abuser. They make the choice to abuse.

Myth: "The violence happens when the abuser loses control or needs anger management"

Most people who get angry don't use violence to deal with it. There are other ways to manage anger. Abusers make the choice to be violent and they also make the choice about who is going to be on the receiving end of the violence. Abusers can be calm and calculating when they use violence. The abuser is trying to get their own way through using violence, it's not just because they have anger management problems.

Myth: "Women are just as violent as men"

In all domestic violence statistics the majority of victims are women and the majority of violent people are men. Some women are violent towards their children or partners, but in many instances women who are being abused act violently in self-defense and this includes "pre-emptive strikes" when the abuser is vulnerable (when they are drunk or ill). It is unusual for men to be seriously injured or killed by a woman and very few men live in fear of their lives because of their female partner's violence.



Domestic Violence Power & Control Wheel