

# **PFA's and Firearms:** **Summary of State and Federal Law**

Many private attorneys have asked Legal Services for information about firearms and PFAs. We're providing this summary of the law as a helpful guide, and we direct you to the statutes themselves to answer your more specific questions.

## **Protection from Abuse Act: 23 Pa.C.S. § 6101 et seq.**

### **I. Types of Orders**

A. Emergency Orders from a Magisterial District Judge: MDJs are not authorized to order the relinquishment of firearms under this Act.

B. Temporary/*ex parte* Orders from Common Pleas Judges: the court can order relinquishment of any firearms, other weapons or ammunition if the petition demonstrates any of these:

1. Abuse involving a firearm or weapon (used or threatened to use)

OR

2. **An immediate and present danger of abuse.** In determining whether there is an immediate and present danger of abuse, the court must consider a number of factors, including but not limited to the following:

- whether the temporary order is not likely to achieve protection if weapons surrender is not ordered,
- whether defendant has previously violated a PFA order,
- whether past or present abuse resulted in injury,
- whether the abuse occurred in public,
- whether the abuse includes: threats of abuse, suicide threats, killing or threatening to kill pets, an escalation of violence, stalking, obsessive behavior, sexual violence, drug or excessive alcohol abuse.

C. Final Orders from Common Pleas Judges: the new (2006) language is sometimes misinterpreted. It is clear that the judge has the discretion to order relinquishment of firearms in any PFA, and it is not limited to those situations in which firearms were used or threatened to be used.

D. Modification of Final Orders: A defendant may petition the court to allow return of weapons prior to expiration of court's order. There must be a hearing, and the plaintiff must have notice of the hearing. The Act does not specify when or why a defendant might petition the Court. Even if there is an agreement, judges are reluctant to return firearms that were confiscated while the PFA is in effect due to the Brady Act (below).

## **II. Deadline for Relinquishment:**

When the court orders relinquishment, the defendant has 24 hours from service of the order or close of the following business day to turn in the weapons, unless the judge orders immediate seizure.

- Exception: defendant files an affidavit saying s/he cannot comply due to the location of the firearms. At the final hearing, the defendant must show cause, in which case the court shall set a date and time for relinquishment.

## **III. Options for Relinquishment**

1. To Sheriff
2. To a third party, but must:
  - a. keep firearms away from the defendant
  - b. keep them locked in a place where defendant does not have access
  - c. satisfy all requirements to obtain a safekeeping permit (not a "prohibited party")
  - d. not be a member of defendant's householdThe third party faces criminal penalties if s/he intentionally or knowingly allows access by the defendant.
3. To a licensed firearm dealer, but only with permission at final hearing stage.

## **Pa's Uniform Firearms Act: 18 Pa.C.S. § 6101 et seq.**

- A sheriff must take all firearms from a "prohibited party," which includes a defendant who is the subject of an active PFA which provides for the relinquishment of firearms. Even if the PFA states that only specified weapons are to be taken, the sheriff must take all firearms.
- Sheriff cannot return weapons to a "prohibited party." There are 37 crimes and 9 conditions that prohibit the possession or purchase of a firearm.
- Provides criminal penalties for the defendant and third party holder if they intentionally or knowingly violate the statute.

## **Federal "Brady Act": 18 U.S.C. § 922(g)(8)**

A defendant in a PFA cannot "possess in commerce" or "receive" a firearm if the PFA order:

- (A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

- (B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; AND
  - (C) (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child;  
OR  
(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury.
- Labeling an order after hearing as “temporary” will not protect a defendant from violation of this Act, but in practice, the “temporary” PFA will not prevent purchase of a firearm.