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Changes to Law Spark Concerns

By Sara Ganim, The Centre Daily Times

Apr. 29 – Her friends said it. Her father knew it. Jodi Barone feared for her life.

That fear was realized on Easter Sunday when her estranged husband, the father of her child, shot and killed her, then killed himself – with guns Centre County Court had forbidden him to have.

Now domestic violence groups across the state are watching the case to see if a law put in place last year to protect domestic violence victims failed to protect Jodi Barone.

In particular, they say they have been concerned about the third-party provision of the protection from abuse law. When a PFA order is issued, the law allows the judge to order the defendant to relinquish his or her weapons. The third-party provision allows the defendant to choose anyone – who meets requirements including a background check – to hold the weapons.

Judy Yupcavage, of the Pennsylvania Coalition Against Domestic Violence, said advocates have been concerned that the law could make it too easy for an abuser to get his weapons back, and that it was only a matter of time before someone died as a result. “Honestly, everyone has been holding their breath,” Yupcavage said.

Mill Hall Murder-Suicide

It’s not yet known whether the third-party provision played a role in the death of Jodi Barone, 36, of State College. Her husband, Benjamin Barone, 35, of Williamsport, placed his weapons in safekeeping with a third party after a protection from abuse order was issued against him in Centre County last year.

State police, who are investigating the April 8 murder-suicide, have not yet said whether the handgun used to kill Jodi Barone belonged to her husband or where he obtained the shotgun he used to kill himself.

They have said that Benjamin Barone lured his wife to the parking lot of a Sheetz near Mill Hall to exchange custody of their 3-year-old daughter. But he didn’t bring the child. Instead, he brought the guns.

The third-party provision is part of a revised Protection from Abuse law that went into effect in May 2006. The clause was the result of a reluctant compromise between the coalition and gun lobbyists, Yupcavage said.

“It was not what we wanted to put in the law,” she said. “I would not say that we were happy with it.”

More Protection

The result of years of negotiations, the law gives judges more discretion in protecting victims of domestic violence, especially from defendants with firearms. It allows judges to take away all the weapons a defendant owns, rather than just weapons used to threaten the victim, Yupcavage said.

In its first drafts, the law stated that if a judge ordered weapons to be surrendered, defendants would have 24 hours from the time they were served to give their weapons to the sheriff, who would keep the weapons until the PFA was withdrawn, Yupcavage said.

But concerns were raised by gun lobbyists that the weapons may not be properly cared for while sitting in a sheriff's closet.

The gun lobby wanted alternatives, Yupcavage said. And so it was agreed that three options would be available to defendants: They could give their weapons to the sheriff, to a federally regulated gun dealer, or to an independent third party.

“It was a difficult and painful and a long negotiation,” Yupcavage said. But she said the Pennsylvania Coalition Against Domestic Violence thought that if it didn't agree to the options, “it was the dealbreaker as far as moving forward on bill.”

If a defendant chooses to hand over his weapons to a third party, that party must undergo a background check and agree to keep the guns in a secure location. That person is not permitted to live in the same household as the defendant. The third party also must sign a permit stating he understands he will be subject to criminal charges if the guns are returned illegally to their owner.

“It protects victims of domestic violence while protecting law-abiding gun owners,” said John Hohenwarter, the Pennsylvania liaison for the National Rifle Association. Hohenwarter participated in the negotiations and said the new law was a significant step forward.

Yupcavage agreed the law is an improvement over the previous law, but said the third-party clause complicates things.

“The third party was very difficult issue to concede to because in the past there have been numbers of victims killed if defendants were able to give (weapons) to third parties,” she said. Access to weapons stored by the sheriff is much more restricted, Yupcavage said.

But Hohenwarter said that if someone wants to find a gun, he will.

“The bottom line is you’re not going to stop these violent acts from happening,” he said. “You’re not going to be able to stop them completely.”

Changes Draw Criticism

Many law enforcement officials also are unhappy with some of the new aspects of the PFA law.

Centre County Sheriff Denny Nau said the revised law allows a defendant 24 hours to relinquish his or her guns. That translates to one business day. So if a PFA is issued on a Friday “they’d have the whole weekend to get rid of those weapons,” Nau said.

“I just thought it was a terrible law,” Nau said. “Absolutely terrible law. It provides less protection to the plaintiff now because there’s a long-time period before firearms are relinquished.”

And when a defendant hands his or her weapons over to a third party, Nau said he or she isn’t required to show the guns to the sheriff. He or she brings the third party – it could be a friend or a relative – to the sheriff’s office to receive approval and get a safekeeping permit. The defendant promises to hand over the guns.

“They bring us an inventory of the guns,” Nau said. “We never see the guns.”

Nau has done eight safe-keeping transfers since the law was enacted. He said he makes a point to meet with each third-party candidate. He sits down with them and explains the importance of keeping the weapons locked up.

Nau said he will tell them, “You know spring gobbler season’s coming up, what if he wants one to shoot some turkey? Can’t have ‘em.”

In Benjamin Barone’s case, a third party was brought in, checked out and approved by Lycoming County Sheriff Charles T. Brewer, because Barone lived in Williamsport.

The identity of the person who was holding his weapons is, by law, not available to the public.

The law states that if the third party gives the guns back to the defendant knowing that the protection from abuse order is still in effect, that third party will face first-degree misdemeanor charges.

That stands out as a problem for Clinton County District Attorney Ted McKnight.

“Make it a felony,” McKnight said. “It’s a serious act; people die as result of a violation.”

McKnight has been monitoring the Barone case, as the shooting occurred in his county.

“Put more teeth into this thing,” he said. “If you are supposed to have this responsibility of safeguarding this weapon, if you give that back and harm results, there ought to be a severe penalty that goes with that. You obviously are in a situation where you violated this trust and it’s resulted in additional harm.”

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