

# The Morning Call (Allentown, PA)

May 8, 2006 Monday

## **Protection Order Law Changes Tuesday; Amendments Mean PFAs Can Run 3 Years, Judge Can Order All Guns Removed**

By Debbie Garlicki, The Morning Call [debbie.garlicki@mcall.com](mailto:debbie.garlicki@mcall.com), 610-820-6764

Sweeping changes to the state's Protection from Abuse Act become effective Tuesday, and are among the most significant amendments to the law since 1976 when Pennsylvania became the third state to enact protection legislation.

Above all else, victim advocates say, the changes strengthen the law to keep people safe. But defense lawyers say the changes put a greater burden on defendants, who are not always found to have threatened or abused someone, and increase the incentive for someone to lie to obtain a protection order.

Under the changes, protection orders can be granted for up to three years, instead of 18 months, and can be extended if there are violations. Not only police, but also sheriffs and deputies, will be able to arrest someone for a violation.

And if an alleged violation occurs outside the county where the original order was obtained, a hearing on the violation can be held in the county where the order was first granted.

"This is our most comprehensive package" of amendments, said Judy Yupcavage, director of communications for the Pennsylvania Coalition Against Domestic Violence.

The amendments – especially one regarding the seizure of firearms – had been the subject of much debate.

"It is not a perfect bill," said Pam Russell, executive director of Turning Point of Lehigh Valley Inc., which provides support and shelter to domestic abuse victims in Lehigh and Northampton counties. "However, it is vastly improved over what existed previously and increases the protection for victims of domestic violence."

The firearms amendment states that a defendant will have to relinquish guns, other weapons and ammunition within 24 hours of a final protection order being issued or the close of the next business day.

In the case of a temporary order, a defendant will have to turn over firearms within 24 hours of being served with the order or the close of the next business day. There is an exception if, for instance, the firearms are in another county or state.

If a person can't surrender firearms within that period, the sheriff's office has to notify the plaintiff, the court and other law enforcement.

The legislation containing the amendments was signed into law by Gov. Ed Rendell in November.

Not everyone is welcoming the changes.

Defense lawyers and judges are troubled by a provision that prohibits a judge from putting any costs on a plaintiff seeking an order, even when a judge doesn't grant an order or the plaintiff withdraws the request or doesn't show up for a hearing on a final order.

"It takes away the discretion of the trial judge to punish the person who brought a meritless PFA," said Allentown defense lawyer Gavin Holihan.

Before the amendments, if there was not a valid basis for an order, a judge could order the plaintiff to pay costs associated with the order's filing and deputy sheriffs' service on the defendant.

The county now will "eat those costs," said Lehigh County Judge Alan M. Black, administrative judge of family/civil court. He has asked a staff member to research the potential amount.

State Rep. Doug Reichley, R-Lehigh, said a provision allows judges to order a plaintiff to pay a defendant reasonable attorney fees and actual damages if a PFA action is started in "bad faith." He said he believes that provision gives judges discretion to impose a penalty on plaintiffs who abuse the legal process.

Sharon Lopez, senior attorney for the Coalition Against Domestic Violence, said it's good public policy not to make plaintiffs pay fees, which could have a chilling effect on them seeking protection. "There's so much suspicion about litigants seeking protection," she said. "We hear so many times, 'Women lie.'"

As with many issues, government money plays a role. Under a federal act, if a state, such as Pennsylvania, gets Department of Justice funding to enforce domestic violence laws, plaintiffs can't be required to pay fees.

Judge Black takes issue with a change that increases the fine for a violation from \$100 to \$300. "I personally don't like it myself," he said, "because there are cases where a significant fine may not be justified."

He said he would prefer to have discretion on the amount of the fine.

The amendments also increase the surcharge – from \$25 to \$100 – on a defendant who doesn't agree to a protection order and unsuccessfully contests abuse allegations.

“Maybe that's the due process surcharge,” Holihan, the attorney, said. “If you just bite the bullet on it, it will cost you less. Exercise your right to due process; it will cost you \$100.”

People don't agree on whether PFAs are already too easy to get and whether they should be even easier to obtain when the loss of life is at stake. “It is one of those balancing situations where we will try to ensure that victims are protected and the rights of people are upheld,” Reichley said.

“It is important to note that PFAs do work in many, many cases,” said Russell, of Turning Point. “The PFA is an indication that the judicial system is holding batterers accountable for their actions.”

In fiscal year 2004-05, Turning Point assisted 2,950 adults in the judicial system by providing court advocacy services. That is up from 2,176 in 2002-03.

The amendments, which had been in the works for nine years, are the product of drafting and redrafting and input from many stakeholders – public policy leaders, victims' advocates, prosecutors, judges, defense lawyers, sheriffs, police and gun owners groups.

One of the most controversial issues was the seizure of firearms, other weapons and ammunition.

The previous act allowed a judge to order a defendant to relinquish weapons that were used or threatened to be used. A judge also could prohibit a defendant from having any other weapon for the duration of the protection order.

Now, a judge can order a defendant to turn over not only weapons and ammunition used or threatened to be used, but also all of a defendant's firearms.

There was strong opposition from groups with members living in the northern and central parts of the state where hunting is a major sport and form of recreation. Some gun owners raised questions about antique firearms and commemorative guns they had.

There also was controversy over whether state police could keep a record of what guns were being turned in and who turned them in, something the coalition wanted. Opponents didn't want a registry or database of guns that were relinquished, said Yupcavage of the coalition.

She said gun owners didn't want firearms turned over to sheriff's departments because they had concerns about the care of their guns.

After much wrangling, a compromise was reached. A defendant can turn his firearms over to the sheriff, a licensed firearms dealer or to a third party – a family member, friend or other “safe-keeper” who has been cleared in a firearms check by a sheriff's office.

Despite the debate on firearms, it might be academic. Some judges already had been ordering defendants to turn over all guns owned, said Allentown attorney Lee Conrad, whom the court appointed to represent indigent defendants accused of violating protection orders.

Black said it was customary for Lehigh judges to order seizure of all firearms. Because a plaintiff might not always know how many guns a defendant has, the court usually included a catch-all phrase in protection orders that said a defendant had to relinquish firearms and not possess any for the duration of the order, he said.

Defendants can ask the court to allow their guns to be returned before the order expires. A sheriff has to tell a plaintiff when that request happens.

Mary Nelson, Turning Point's court advocacy coordinator, said a sheriff has to notify a plaintiff if a third-party "safe-keeper" is holding the guns and who that person is.

The amendments now also spell out the ramifications for violating a protection order. A violator can be sentenced to jail and fined or can be placed on supervised probation and fined.

Although some judges had ordered supervised probation in the past, others were reluctant to because it wasn't clearly stated in the act, Russell said. Supervised probation means a defendant has to report to an adult probation officer and comply with conditions, such as drug testing.

John Sikora, Lehigh County's chief adult probation officer, said the county's judges have for years put violators on supervised probation.

## ***AT A GLANCE***

Changes to the state's Protection from Abuse Act go into effect Tuesday.

Length of orders: Up to three years, rather than 18 months. Can be extended another three years if violation occurs.

Fines: \$300 for violators, up from \$100.

Weapons: Court can order defendant to turn over all firearms for up to three years, not just those used or threatened to be used in abuse.

Surcharges: \$100, up from \$25, on defendants who don't agree to a protection order and unsuccessfully contest the abuse allegations.

Arrests: Can be made by sheriffs and deputies, not only police, when there is a violation.

Fees: None for plaintiffs unless court determines order sought in "bad faith."

To see the entire text of House Bill 1717 go to  
[www.legis.state.pa.us/WU01/LI/BI/BT/2005/0/HB1717P2918.HTM](http://www.legis.state.pa.us/WU01/LI/BI/BT/2005/0/HB1717P2918.HTM).

For more information on the Act, visit the Pennsylvania Coalition Against Domestic Violence  
Web site at [www.pcadv.org](http://www.pcadv.org).

To reach someone at the Turning Point Help Line, 24 hours a day, call 610-437-3369.

*Sources: Turning Point of Lehigh Valley Inc., state House, Pennsylvania Coalition Against  
Domestic Violence.*

Copyright © 2006 The Morning Call, Inc.