



9. *Protection from Abuse Orders*

What is a Protection from Abuse Order?

In Pennsylvania, a person can apply for a Protection from Abuse Order, commonly known as a PFA. A PFA prohibits a person from abusing, harassing, stalking, or threatening a protected person.

A PFA can be a very effective tool for victims of domestic violence to obtain various kinds of relief.

What is Abuse?

Pennsylvania Law defines abuse as:

- Attempting to cause or causing bodily injury or causing fear of bodily injury;
- Sexual assault;
- Physical or sexual abuse of minor children;
- Stalking; or
- False imprisonment.

What is **NOT** considered abuse?

Pennsylvania does not consider the following without more, to be sufficient to order a PFA:

- 1) Mental or emotional abuse;
- 2) Arguments concerning custody of children.

Who can file for a PFA?

In order to file a PFA, you must:

- 1) Be 18 years old, or have an adult guardian file on your behalf,

AND:

2) The abuser **MUST** be your:

- a) Parent
- b) Current or former spouse
- c) Child
- d) Current or former sexual or intimate partner, including same sex partners
(i.e., present or former boyfriend/girlfriend or father/mother of your children)

You **MUST contact the police and report the abuse if the person that is abusing you does not fit into one of these categories! You will not be allowed to file a PFA but will need instead to file criminal charges.**

What county should I file in?

If you want to file a PFA, the law allows you to file the PFA in the county where:

- 1) You live;
- 2) The abuser lives; or
- 3) The county where an abusive incident occurred.

If the victim of domestic violence fled their home to avoid further abuse, they may have the right to file in another county or state. You should contact that state or county clerk's office, domestic violence office, or legal aid office for more information.

Where do I need to go to file for a PFA?

During Business Hours:

You can file your petition at your county's Court of Common Pleas. Some counties have a separate PFA office. PFA staff will help you file a PFA petition. In other counties, you may need to go to the Civil Prothonotary/Clerk of Court's office to find out where to file.

After Business Hours, Weekends, or Holidays:

You can file for a PFA in an emergency, when your local courthouse is closed. The emergency PFA can be filed at your local Magisterial district court or in Philadelphia, at the Criminal Justice Center. To find out where and how to file, call 911 and ask for the on-duty magisterial district justice.

YOU MUST REMEMBER: If you receive an emergency order from a magisterial district justice or from the Criminal Justice Center, it will expire at 5 p.m. on the next day that the courthouse is open. You must go to the courthouse and request the order to give you a temporary order. The temporary order will typically last ten (10) days until the hearing on your request for a Final Order.

THERE SHOULD BE BI-LINGUAL STAFF OR ACCESS TO TRANSLATION SERVICES WHEN FILING FOR A PFA. IF NOT, CONTACT YOUR LOCAL LEGAL AID OFFICE OR DOMESTIC VIOLENCE SUPPORT GROUP FOR HELP. PLEASE CHECK THE COUNTY SPECIFIC INSERT TO FIND LOCAL AGENCIES THAT YOU CAN CONTACT FOR HELP.

Is there a fee to file a PFA?

You don't have to pay any fees to file a PFA petition. As a Plaintiff filing a PFA, the Court is **PROHIBITED** from charging you any fees, even if you later want to withdraw it.

You can **ONLY** be required to pay the costs if you lose your hearing **AND** the court finds that you lied when filing the petition.

* If you believe you were truthful in your petition and the court still orders you to pay the court costs, you should consult with an attorney or local legal aid office. You should talk with an attorney **immediately** because a petition for reconsideration needs to be filed within ten (10) days of the order being entered.

What do I need to say in my petition?

Court staff should help you fill out your petition. You are the Plaintiff. The other party is the Defendant. You should try to have the following information:

- 1) Name of Defendant and all persons you want protected;
- 2) Dates of birth;
- 3) Social security numbers;
- 4) Address of Defendant and/or address(es) where the Defendant may frequently be found;
- 5) Specific information about the incident (when, where, what happened?).

The following is helpful, but not required to file:

- 1) Evidence/documentation of incident (i.e. – medical records, police reports, and/or photographs of any injuries);
- 2) Photograph of Defendant;
- 3) Information about Defendant's car (make, model, license plate number).

What happens after I file the PFA petition?

You will see a judge the day you file your petition. The judge will ask you some questions about the incident. If the judge believes you need immediate protection, the judge can issue a Temporary Protection Order. The Temporary Protection Order prohibits the Defendant from having any contact with you. The law requires that a hearing on your request for a final PFA be scheduled within ten (10) days.

In many counties, if you have a child in common, the temporary order may suspend the Defendant's contact with the child until final hearing.

How is the abuser notified of the protection order?

In many counties in Pennsylvania, the sheriff's office is responsible for serving the Defendant with a copy of the Temporary Protection Order and petition. The order gives the exact date and time of the hearing for the Final Order.

In some counties, YOU may be responsible for serving the Defendant. If that is the case, you can ask the police to serve the Defendant. You can also have any adult (must be at least 18 years of age) give the Defendant the paperwork. Whoever delivers the paperwork to the Defendant must complete a verification of service to be filed with the court.

If you are in a county where you are responsible for serving the Defendant, and you are having trouble finding the Defendant, you may ask the court's permission to serve the Defendant by mail. If you serve by mail, you must mail the petition, order and hearing notice to the Defendant's current or last known address by certified mail with return receipt requested. You should also, but are not required, to serve the Defendant by first class mail.

If the Defendant is NOT served by the time the hearing is scheduled, the hearing will be continued (rescheduled) until the Defendant is served. The court will issue another temporary order that will last until the next hearing date.

Do I need an attorney to represent me at the hearing?

Plaintiffs can represent themselves at PFA hearings. Your legal aid office may not be able to represent you but you should call to find out if they will. If not, and if you still would like an attorney, you should contact your local bar association's lawyer referral service or domestic violence support group. Check the insert for specific information about their availability in your county.

Preparing for Your Hearing

You will be given notice of your hearing date on the day you file your petition. The hearing will be scheduled within ten (10) business days.

EVIDENCE

You may present the following evidence that the judge should consider when making his or her decision:

- 1) **Your own testimony:** Your own testimony is important. You will have an opportunity to explain what happened. You should remember the dates and times of the incident. Give as many facts as possible about the current abusive incident and any past incidences. A judge will hear about incidences that may have happened within the past few years. A judge may not consider an incident that happened more than five years ago.
- 2) **Photos:** You should bring photos of bruises, injuries, or damaged property. The person who took the pictures should be available at the hearing to testify that he or she took the pictures. Besides your own testimony, pictures are often the best type of evidence.

- 3) **Written Communication from Defendant:** Threatening or abusive letters, emails, and text messages may be used as evidence. You must explain when you received the communication and how you know it was from the Defendant.
- 4) **Taped voicemail messages:** Threatening or abusive recorded messages from the Defendant may be used as evidence. You must state when you received the message and how you know it was the Defendant who left the message.
- 5) **Bills showing financial loss:** A Plaintiff may be paid back for any financial expenses caused by the abusive actions of the Defendant.
- 6) **Witnesses:** If other people actually saw or heard the abuse, you should bring them to court to testify. They may need to be served with a subpoena, discussed below in #8.
- 7) You should bring copies of any hospital records, police reports, abuse reports, phone records and taped conversations to use in court if the judge allows it. It is completely up to the judge whether he or she will consider that type of evidence.
- 8) If you want a police officer or other professional to testify on your behalf, you will need to send them a subpoena to appear in court on your behalf.

A subpoena is a form you can fill out requiring a person to testify. You can obtain a subpoena in the Civil Prothonotary/Clerk of Court's office in the county you filed your PFA. It costs between \$3.50 and \$5.00. You will need to serve the subpoena on your witness in advance of the hearing.

Interpretation Services

You should request an interpreter if YOU (or the DEFENDANT) speaks a language other than English. You should call the PFA office or clerk's office **prior to your hearing**.

If an interpreter isn't available, the case may be rescheduled. As a Plaintiff, you want and need to understand every word that the judge or Defendant is saying at the hearing.

What should I wear to Court?

Dressing a certain way should not affect the outcome of your case, but it is important to show respect to the court. It is best to dress nicely. A conservative pair of pants and a shirt are best.

What to Expect at the Hearing

It is important to show up for your hearing on the correct date and time, even if you think the Defendant has not been served. The Defendant may show up even if he does not have a copy of the papers you filed. You will be issued another hearing date and time, if the case is rescheduled.

Your petition will be dismissed if you do not show up.

If you have an emergency the day of your hearing, you can contact the court to reschedule your hearing. Your hearing may or may not be rescheduled. If the court does not agree to reschedule the case, you **MUST** show up or your case will be **dismissed**.

Be prepared to wait all day for your case to be called, but if the Defendant harasses you while you are waiting, you should immediately tell a sheriff and/or court personnel.

Do I have to have a full hearing?

These are some other possibilities of what may happen the day of your hearing:

1) The Defendant is not served:

If the Defendant is not served, you will be given another date to appear for a hearing. Your temporary order will be extended until your next hearing date.

2) You do not show up:

If you do not show up, your petition will be dismissed. The Temporary Protection Order will end. If you have a good reason for not showing up, you may be able to ask the court to reconsider and reschedule your case. You will need to file legal papers asking the court to reconsider. This is a complicated procedure and you may need an attorney to assist you.

3) The Defendant does not show up:

The judge will enter a final order "by default" if the Defendant does not show up but was served with the petition.

The judge may ask you questions about what happened before granting the requested relief.

4) You decide to withdraw your PFA:

You have the right to withdraw your PFA without being assessed filing fees. If you filed the PFA because of an abusive incident, you should consult with a domestic violence agency or attorney before withdrawing your PFA.

You should carefully consider a decision to withdraw your PFA if:

- A) You are doing so because of a further threat of harm by the Defendant to yourself or a third party.
- B) You are doing so because of a threat concerning child custody issues with the Defendant.
- C) You are doing so because of a threat concerning child support issues with the Defendant.

5) The Plaintiff and Defendant agree to the entry of a final order against Defendant without admission:

If the Defendant will not admit they committed the acts that you have accused them of in your petition, you and the Defendant can agree to the entry of a Final Protection order without a full hearing. The agreement without admission has the same force and effect as a final protection order. The parties can agree to additional provisions in the final order such as the duration of the PFA and child custody provisions.

6) The Plaintiff or Defendant requests a continuance:

You or the Defendant may request a continuance to obtain counsel or other witnesses or for other reasons. If the Defendant is also facing criminal charges due to the incident against you, the Defendant will typically ask for a continuance so his or her testimony cannot be used against him or her at a criminal hearing. The judge will hear the reasons for the continuance and decide whether or not it should be granted.

What if I have to have a full hearing?

1) You will present your case. When testifying, you should try to do the following:

- a) Begin with the recent incident.
- b) Be as specific as possible about what happened.
- c) If the judge asks you specific questions, answer them as best as you can.
- d) Look at the judge directly and be respectful. Address the judge as "Your Honor" and do not interrupt the judge when he or she is speaking.

- e) Try to have your evidence organized. You will need to show your evidence to the Defendant during the hearing. Also, you will need to explain how the evidence relates to your case. Judges understand that you may not know the proper way to enter evidence. Just be clear that you want to offer the documents as evidence to support your case.
- f) You should clearly explain why you are afraid of the Defendant.
- h) You should be clear about the other type of relief you are seeking and why. (i.e. child custody, support, etc.)
- i) You will then have the right to have your witnesses testify on your behalf. You or the judge may ask your witnesses questions.

2) Plaintiff's Cross-examination:

The Defendant or their attorney may ask you and your witnesses questions. Their questions should be limited to what you said in your testimony. You and your witnesses should try to stay calm during cross-examination and be brief with your answers.

3) The Defendant will present their case:

The Defendant will have an opportunity to respond to your testimony and present their case. You cannot interrupt the Defendant while they are testifying.

4) Defendant's Cross-examination:

You will have an opportunity to ask the Defendant and their witnesses questions about their testimony and evidence. Your questions should be limited to what they said in their testimony.

5) Rebuttal:

A judge may give you an opportunity to present further testimony after the Defendant has testified.

6) The Judge's decision:

In a PFA case, the burden of proof is "preponderance of the evidence." This means that you must prove that it is more likely than not that the abuse occurred. Pennsylvania Law defines abuse as having "a reasonable fear of further harm if the order is not granted." The judge will either grant a final order or dismiss the petition.

The judge may or may not give the reasons why they granted or dismissed the case. The judge may or may not order any additional relief if he grants an order for protection.

What type of relief can I get with a PFA?

If you are able to obtain a final PFA (either after hearing or by agreement), an order may contain the following:

- 1) An order prohibiting the Defendant from having any contact with you or any other protected persons (including other family members besides yourself and your children);
- 2) An order prohibiting the Defendant from any abusive contact (whether it is stalking, physical abuse, threats, etc.) with you or any protected person;
- 3) An order evicting the abuser from a home or apartment;
- 4) An order establishing or modifying custody, partial custody or visitation rights of a child;
- 5) An order establishing or modifying a support order. This can include health insurance coverage and rent or mortgage payments. If a support order is established in a PFA, you **MUST** file a separate support case with your local domestic relations office within two weeks.
- 6) An order for the abuser to turn-in weapons, ammunition, and any firearms to law enforcement agencies;
- 7) An order for the abuser to turn-in any firearm license(s) (including hunting licenses);
- 8) An order prohibiting an abuser from acquiring or possessing any firearms for the duration of the PFA;
- 9) An order for the abuser to pay for any financial losses that you may have suffered or incurred as a result of the abuse. This may include: medical treatment, damages to personal property, loss of employment, wages, or moving expenses.
- 10) An order specifying when and how an abuser can retrieve any personal belongings the Plaintiff may still have;
- 11) An order keeping your current or future addresses confidential from the Defendant; and
- 12) Any other provision that will prevent further abuse.

The Defendant filed a PFA against me. Can he do that?

There are times when a Defendant will file a PFA around the same time you filed against them. A PFA office cannot refuse to file a PFA for someone, even if the Defendant's petition does not seem believable. The Defendant would have had to follow the same procedures you did.

A judge may grant a temporary order against you and the two petitions will be heard together. If the Defendant has a temporary PFA order against you, you will also be prohibited from having contact with the Defendant. You can also be subject to criminal liability if you violate the Temporary Order.

A judge may not grant a temporary order if he is aware you filed and received a PFA. The Defendant will still have the right to have a hearing on his petition that will be heard the same day as your case.

A Defendant may file against you to pressure you to either withdraw your PFA or agree to a mutual PFA. Mutual PFAs are when there is a PFA order against each party in a case. **You should consult with an attorney before agreeing to a final PFA order against you because of the possible criminal consequences for any violations of the order.**

How long does my PFA last?

In Pennsylvania, a Plaintiff can obtain a PFA order for a maximum period of three (3) years. A PFA may be shorter by agreement or order of court.

My PFA is about to expire, what do I do?

A PFA can be extended when the Defendant commits further abusive acts after the entry of the initial PFA.

You will need to file an additional petition prior to the expiration of your PFA and have a hearing. The same procedures apply as with the initial hearing.

The judge dismissed my case or did not grant me all the relief I requested. Is there anything I can do?

If either party is unhappy with an order after a full hearing, either side can file a motion to reconsider or an appeal of the judge's order. Both procedures are complicated and you should consult with an attorney when considering these options. You should immediately contact an attorney because time limits do apply.

If my order is granted, are the police notified?

Once the judge grants your protection order, it is automatically placed on the Pennsylvania State Police registry. It can be enforced anywhere in the state. A certified copy of the order is provided to the sheriff or police department where you live.

What happens if the Defendant violates my PFA order?

If the Defendant violates the PFA order by attempting to contact or abuse you, you should call the police **IMMEDIATELY** and report the violation. You can also file an indirect criminal contempt complaint and a warrant may be issued for the Defendant's arrest. A contempt hearing will then be scheduled before a judge. The hearing procedures are similar to those outlined for the initial hearing.

There are consequences, such as criminal liability and incarceration. The Defendant will have the right to be represented by a public defender at the hearing.

You may also obtain an attorney but you do not have the same right to have an attorney appointed on your behalf. The district attorney's office may represent you at the hearing. Contact that office to ask if they can help you. Call your local legal aid office to request counsel.

If the judge decides after a hearing that the PFA has been violated, the Defendant can be put in jail for up to six (6) months and/or fined up to \$1,000.00 per violation.

If the Defendant is sentenced to jail, make sure a prison official knows how to contact you so they can inform you when the Defendant is released.

The judge can also modify your current order and issue any additional relief that he or she may deem necessary.

Can the Defendant face criminal charges for the same incident that I filed the PFA for?

Yes. Abuse is a crime and the District Attorney may pursue criminal charges against the Defendant. You should keep in touch and cooperate with the District Attorney's Office in prosecuting any case against the Defendant.

Unfortunately, due to limited resources, North Penn Legal Services can only provide representation in a limited number of PFA cases. Your local office may be able to provide representation or advice concerning your case. Please call 1-877-953-4250 to see what services may be available in your county.