

## No. 1988-56

## AN ACT

## HB 418

Amending the act of October 7, 1976 (P.L.1090, No.218), entitled "An act relating to abuse of adults and children by a person who resides with them; and providing for remedies and procedures," adding and amending definitions; further providing for practice and procedure, relief and remedies; providing additional professional assistance for parties; providing for confidentiality; further providing for contempt orders; and requiring that the training of local law enforcement officers include instruction concerning protection from abuse.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 2 of the act of October 7, 1976 (P.L.1090, No.218), known as the Protection From Abuse Act, amended June 23, 1978 (P.L.513, No.81), is amended to read:

Section 2. Definitions.—As used in this act:

"Abuse" means the occurrence of one or more of the following acts between family or household members **[who reside together; or who formerly resided together and both parties continue to have legal access to the residence], sexual or intimate partners or persons who share biological parenthood:**

(i) Attempting to cause or intentionally, knowingly or recklessly causing bodily injury **[or]**, serious bodily injury, *rape, spousal sexual assault or involuntary deviate sexual intercourse* with or without a deadly weapon.

(ii) Placing by physical menace another in fear of imminent serious bodily injury.

(iii) *The infliction of false imprisonment pursuant to 18 Pa.C.S. § 2903 (relating to false imprisonment).*

(iv) **[Sexually] Physically or sexually** abusing minor children as defined in *this definition* or pursuant to the act of November 26, 1975 (P.L.438, No.124), known as the "Child Protective Services Law."

"Adult" means any person 18 years of age or older.

"*Bail commissioners*" means *bail commissioners of the Municipal Court of Philadelphia.*

"*Confidential communications*" means *information, whether written or spoken, transmitted between a victim and a domestic violence counselor or advocate in the course of the relationship and in confidence by a means which, insofar as the victim is aware, discloses the information to no third person other than to those who are present to further the interest of the victim in the consultation or assistance, to those who are coparticipants in the counseling service or to those to whom disclosure is reasonably necessary for the transmission of the information or an accomplishment of the purpose for which the domestic violence counselor or advocate is consulted. The term*

*includes information received or given by the domestic violence counselor or advocate in the course of the relationship, as well as advice, reports or working papers given or made in the course of the relationship.*

*“Court” shall mean the court of common pleas.*

*“Domestic violence counselor/advocate” means an individual who is engaged in a domestic violence program, who provides services to victims of domestic violence, who has undergone 40 hours of training and who is under the control of a direct services supervisor of a domestic violence program, the primary purpose of which is the rendering of counseling or assistance to victims of domestic violence.*

*“Domestic violence program” means a nonprofit organization or program whose primary purpose is to provide services to domestic violence victims which include, but are not limited to, crisis hotline; safe homes or shelters; community education; counseling systems intervention and inter-face; transportation, information and referral; and victim assistance.*

*“Family or household members” means spouses or persons who have been spouses, persons living as spouses or who lived as spouses, parents and children, [or] other persons related by consanguinity or affinity, current or former sexual or intimate partners or persons who share biological parenthood.*

*“Victim” means a person who is physically or sexually abused by a family or household member.*

Terms not otherwise defined by this act shall have the meaning given to them by the Crimes Code.

Section 2. The act is amended by adding sections to read:

*Section 3.1. Registration of Order.—(a) The prothonotary of each court of common pleas shall maintain a registry in which it shall enter certified copies of orders entered by courts from other jurisdictions in this Commonwealth pursuant to the provision of this act.*

*(b) A plaintiff who obtains a valid order under this act may register that order in any county within this Commonwealth where the plaintiff believes enforcement may be necessary. A court shall recognize and enforce a valid order under this act which has been issued by another court but properly registered with a county within the judicial district of the court where enforcement is sought.*

*(c) A valid order under this act may be registered by the plaintiff in a county other than the issuing county by obtaining a certified copy of the order of the issuing court endorsed by the prothonotary of that court and presenting that certified order to the prothonotary where the order is to be registered.*

*(d) Upon receipt of a certified order for registration, the prothonotary shall provide the plaintiff with a copy bearing the proof of registration to be filed with the appropriate law enforcement agency.*

*Section 3.2. Responsibilities of Local Law Enforcement Agencies.—The police department of each city, borough, incorporated town and township shall insure that all its officers and employees are familiar with the provisions of this act. Instruction concerning protection from abuse shall be made a part of the training curriculum for all trainee officers.*

Section 3. Section 4 of the act, amended June 23, 1978 (P.L.513, No.81), is amended to read:

Section 4. Commencement of Proceeding.—(a) **[A person]** *An adult or an emancipated minor* may seek relief under this act for himself or herself, or any parent **[or]**, adult household member *or guardian ad litem* may seek relief under this act on behalf of minor children, *or a guardian of the person of an adult who has been declared incompetent under 20 Pa.C.S. Ch. 51 Subch. B (relating to appointment of guardian) may seek relief on behalf of the incompetent adult*, by filing a petition with the court alleging abuse by the defendant.

(b) If the plaintiff files an affidavit stating that he or she does not have funds available to pay the costs of filing and service, the petition shall be filed and service shall be made without payment of costs and leave of court to proceed in forma pauperis shall not be required. When the petition is filed without payment of costs, the court shall determine at the hearing on the petition **[if the plaintiff is indigent. If the court finds that the plaintiff is not indigent the court may order the plaintiff to pay the court costs.]** *whether the plaintiff is able to pay the costs of filing and service. If the plaintiff is unable to pay the costs of filing and service, the court may waive the payment of costs or, if the plaintiff prevails in the action, assign them to the defendant. This subsection applies to courts of common pleas, the Municipal Court of Philadelphia, bail commissioners and district justices.*

(c) *The court shall adopt a means of prompt and effective service in those instances where the plaintiff avers that service cannot be safely effected by an adult individual other than a law enforcement officer or where the court so orders.*

(d) *If the plaintiff files an affidavit stating that the plaintiff does not have funds available to pay the costs of filing and service or if the court so orders, the sheriff or other designated agency or individual shall serve the petition and order without prepayment of costs.*

(e) *The petition and orders shall be served upon the defendant, and orders shall be served upon the police departments with appropriate jurisdiction to enforce the orders. Orders shall be promptly served on the police. Failure to serve shall not stay the effect of a valid order.*

(f) *The courts, district justices, the Municipal Court of Philadelphia and bail commissioners shall:*

(1) *Provide simplified forms and clerical assistance in English and Spanish to help with the writing and filing of the petition for a protection order for an individual not represented by counsel.*

(2) *Advise a plaintiff not represented by counsel of the right to file an affidavit stating that the plaintiff does not have funds available to pay the costs of filing and service and assist with the writing and filing of the affidavit.*

Section 4. Section 5 of the act is amended to read:

Section 5. Hearings.—(a) Within ten days of the filing of a petition under this act a hearing shall be held *before the court*, at which (*hearing*) the plaintiff must prove the allegation of abuse by a preponderance of the evi-

dence. The court shall advise the defendant of his right to be represented by counsel.

(b) **[The court may enter such temporary orders as it deems necessary to protect the plaintiff or minor children from abuse, upon good cause shown in an ex-parte proceeding. Immediate and present danger of abuse to the plaintiff or minor children shall constitute good cause for purposes of this section.] *If a plaintiff petitions for temporary order for protection from abuse and alleges immediate and present danger of abuse to the plaintiff or minor children, the court shall conduct an ex-parte proceeding. The court may enter such a temporary order as it deems necessary to protect the plaintiff or minor children when it finds they are in immediate and present danger of abuse.***

(c) If a hearing under subsection (a) is continued, the court may make or extend such temporary orders under subsection (b) as it deems necessary.

(d) ***If the plaintiff prevails, the court shall assign costs to the defendant unless the parties agree otherwise. If the defendant is indigent, costs shall be waived.***

Section 5. Sections 6, 7 and 8 of the act, amended June 23, 1978 (P.L.513, No.81), are amended to read:

Section 6. Relief.—(a) The court shall be empowered to grant any protection order or approve any consent agreement to bring about a cessation of abuse of the plaintiff or minor children, which may include:

(1) Directing the defendant to refrain from abusing the plaintiff or minor children.

(2) Granting possession to the plaintiff of the residence or household to the exclusion of the defendant by evicting the defendant and/or restoring possession to the plaintiff when the residence or household is jointly owned or leased by the parties [or], is owned or leased by the entireties or is owned or leased solely by the plaintiff.

(3) When the defendant has a duty to support the plaintiff or minor children living in the residence or household and the defendant is the sole owner or lessee, granting possession to the plaintiff of the residence or household to the exclusion of the defendant by evicting the defendant and/or restoring possession to the plaintiff, or by consent agreement allowing the defendant to provide suitable, alternate housing.

(4) Awarding temporary custody of and/or establishing temporary visitation rights with regard to minor children. ***A defendant shall not be granted custody or partial custody where it is alleged in the petition, and the court finds after a hearing under this act, that the defendant abused the minor children of the parties or where the defendant has been convicted of violating 18 Pa.C.S. § 2904 (relating to interference with custody of children) within two calendar years prior to the filing of the petition for protection order. If a plaintiff petitions for a temporary order under section 5(b) and the defendant has partial, shared or full custody of the minor children of the parties by order of court or written agreement of the parties, the custody shall not be disturbed or changed unless the court finds that the defendant is likely to inflict abuse upon the children or to remove the children from the jurisdic-***

*tion of the court prior to the hearing under section 5(a). Nothing in this paragraph shall bar either party from filing a petition for custody under 23 Pa.C.S. Ch. 53 (relating to custody) or under the Pennsylvania Rules of Civil Procedure. The court shall consider, and may impose on a custody award, conditions necessary to assure the safety of the plaintiff and minor children from abuse.*

(5) After a hearing in accordance with section 5(a), directing the defendant to pay financial support to such persons as defendant has a duty to support. Such a support order is temporary and any beneficiary of the order must petition for support under the provisions of [the Civil Procedural Support Act] 23 Pa.C.S. Ch. 43 (relating to support matters generally) within two weeks of the date of the issuance of the protection order. If such a petition is not filed that portion of the protection order requiring the defendant to pay support is void. When there is a subsequent ruling on a petition for support under [the Civil Procedural Support Act] 23 Pa.C.S. Ch. 43 the portion of the protection order requiring the defendant to pay support becomes void.

(6) *Prohibiting the defendant from having any contact with the plaintiff, including, but not limited to, restraining the defendant from entering the place of employment or business or school of the plaintiff and from harassing the plaintiff or plaintiff's relatives or minor children.*

(7) *Ordering the defendant to temporarily relinquish to the sheriff the defendant's weapons which have been used or been threatened to be used in an incident of abuse against the plaintiff or the minor children. The court's order shall provide for the return of the weapons to the defendant subject to such restrictions and conditions as the court shall deem appropriate to protect the plaintiff or minor children from further abuse through the use of weapons.*

(8) *Directing the defendant to pay the plaintiff for reasonable losses suffered as a result of the abuse, including medical, dental, relocation and moving expenses; counseling; loss of earnings or support; and other out-of-pocket losses for injuries sustained. In addition to out-of-pocket losses, the court may direct the defendant to pay reasonable attorney fees.*

(b) Any protection order or approved consent agreement shall be for a fixed period of time not to exceed one year. The court may amend its order or agreement at any time upon subsequent petition filed by either party.

(c) No order or agreement under this act shall in any manner affect title to any real property.

Section 7. Notification.—(a) A copy of any order under this act shall be issued to the plaintiff, the defendant and the police department with appropriate jurisdiction to enforce the order or agreement, in accordance with the provisions of this act or as ordered by the court, *district justice, the Municipal Court of Philadelphia or bail commissioners.*

(b) *Upon receipt of an order, the police department shall immediately place the order in a county registry of protection orders. The police department shall assure that the registry is current at all times and that orders are removed upon expiration thereof.*

Section 8. Emergency Relief.—(a) When, *in counties with less than four judges*, the court is unavailable [from the close of business at the end of the week to the resumption of business at the beginning of the week] *during the business day by reason of duties outside the county, illness or vacation, and when, in counties with at least four judges, the court deems itself unavailable from the close of business at the end of each day to the resumption of business the next morning or from the end of the business week to the beginning of the business week*, a petition may be filed before a district justice, *bail commissioner* or Philadelphia Municipal Court Judge who may grant relief in accordance with section 6(a)(1), (2) or ~~and (2) or (1) and (3)~~ if the district justice [or], *bail commissioner or Philadelphia Municipal Court Judge* deems it necessary to protect the plaintiff or minor children from abuse, upon good cause shown in an ex-parte proceeding. Immediate and present danger of abuse to the plaintiff or minor children shall constitute good cause for purposes of this section.

(b) Any order issued under subsection (a) shall expire as of the resumption of business of the court at the beginning of the [week or within 72 hours, whichever occurs sooner; at which time, the plaintiff may seek a temporary order from the court.] *next business day, at which time the court shall schedule hearings on protection orders entered by district justices, bail commissioners or Philadelphia Municipal Court Judges under subsection (a) and shall review and continue in effect protection orders that are necessary to protect the plaintiff or minor children from abuse until the hearing, at which time the plaintiff may seek a temporary order from the court.*

(c) Any *emergency* order issued under this section and any documentation in support thereof shall be immediately certified to the court. Such certification to the court shall have the effect of commencing proceedings under section 4 and invoking the other provisions of this act. *If it is not already alleged in a petition for an emergency order, the plaintiff shall file a verified statement setting forth the abuse of defendant at least five days prior to the hearing. Service of the verified statement shall be made subject to section 4(a).*

(d) *Upon issuance of an emergency order, the district justice, bail commissioner or Philadelphia Municipal Court Judge shall provide the plaintiff instructions regarding the commencement of proceedings in the court of common pleas at the beginning of the next business day and regarding the procedures for initiating a contempt charge should the defendant violate the emergency order. The district justice, a bail commissioner or Philadelphia Municipal Court Judge shall also advise the plaintiff of the existence of programs for victims of domestic violence in the county or in nearby counties and inform the plaintiff of the availability of legal assistance without cost if the plaintiff is unable to pay for them.*

Section 6. The act is amended by adding sections to read:

**Section 8.1. Domestic Violence Counselor/Advocate.**—*A domestic violence counselor/advocate may accompany a party to a hearing under this act.*

**Section 8.2. Disclosure of Addresses.—(a)** *During the course of a proceeding under this act, the court, district justice, Philadelphia Municipal Court Judge or bail commissioner may consider whether the plaintiff or plaintiff's family is endangered by disclosure of the permanent or temporary address of the plaintiff or minor children.*

**(b)** *Neither in the pleadings nor during proceedings or hearings under this act shall the court, district justice, Philadelphia Municipal Court Judge or bail commissioner require disclosure of the address of a domestic violence program.*

Section 7. Section 10 of the act, amended June 23, 1978 (P.L.513, No.81), is amended to read:

**Section 10. Contempt.—(a)** *Upon violation of a protection order issued under this act, or a court approved consent agreement the court may hold the defendant in indirect criminal contempt and punish him in accordance with the law.*

**(b)** *Notwithstanding any provision of the law to the contrary any sentence for this contempt may include imprisonment up to six months or a fine not to exceed \$1,000 or both and [the] may include other relief set forth in this act. The defendant shall not have a right to a jury trial on such a charge; however, the defendant shall be entitled to counsel.*

**(c)** *An arrest for violation of an order issued pursuant to this act may be without warrant upon probable cause whether or not the violation is committed in the presence of the police officer. The police officer may verify, if necessary, the existence of a protection order by telephone or radio communication with the appropriate police department, county registry or issuing authority.*

**(c.1)** *Subsequent to an arrest, the police officer shall seize all weapons used or threatened to be used during the violation of the protection order or during prior incidents of abuse. As soon as it is reasonably possible, the arresting officer shall deliver the confiscated weapons to the office of the sheriff. The sheriff shall maintain possession of the weapons until the court issues an order specifying the weapons to be relinquished and the persons to whom the weapons shall be relinquished.*

**(d)** *Subsequent to an arrest the defendant shall be taken by the police officer without unnecessary delay before the court [that issued the order] in the judicial district where the contempt is alleged to have occurred. When that court is unavailable the [defendant shall be arraigned before] police officer shall convey the defendant to a district justice designated as appropriate by local rules of court, or, in cities of the first class [the municipal court, in accordance with the Rules of Criminal Procedure. This section shall not be construed to in any way limit any of the other powers for emergency relief provided in this act.], to a Philadelphia Municipal Court Judge or designated bail commissioner.*

**(e)** *The defendant shall be afforded a preliminary arraignment without unnecessary delay.*

**(f)** *This section shall not be construed to in any way limit any of the other powers for emergency relief provided in this act.*

*(g) A hearing on a charge or allegation of indirect criminal contempt shall not preclude a hearing on other criminal charges underlying the contempt, nor shall a hearing on other criminal charges preclude a hearing on a charge of indirect criminal contempt.*

*(h) Notice shall be given to the defendant, in orders issued pursuant to section 6(a)(2) or (3), of the possible ramifications of resumption of residence in the family domicile contrary to court order. Resumption of co-residence on the part of the plaintiff and defendant shall not nullify the provisions of the court order directing the defendant to refrain from abusing the plaintiff or minor children.*

Section 8. The act is amended by adding sections to read:

*Section 10.1. Reporting Abuse and Immunity Therefor.—(a) A person having reasonable cause to believe that a person is being abused may report the information to the local police department.*

*(b) The report should contain the name and address of the abused person, information regarding the nature and extent of the abuse and information which the reporter believes may be helpful to prevent further abuse.*

*(c) A person who makes a report shall be immune from a civil or criminal liability on account of the report unless the person acted in bad faith or with malicious purpose.*

*Section 10.2. Confidentiality.—Unless a victim waives the privilege in a signed writing prior to testimony or disclosure, a domestic violence counselor/advocate shall not be competent nor permitted to testify or to otherwise disclose confidential communications made to or by the counselor/advocate by or to a victim. The privilege shall terminate upon the death of the victim. Neither the domestic violence counselor/advocate nor the victim shall waive the privilege of confidential communications by reporting facts of physical or sexual assault under the act of November 26, 1975 (P.L.438, No.124), known as the "Child Protective Services Law"; a Federal or State mandatory reporting statute; or a local mandatory reporting ordinance.*

Section 9. This act shall take effect in 60 days.

APPROVED—The 20th day of April, A. D. 1988.

ROBERT P. CASEY