

No. 1978-81

AN ACT

SB 964

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," further defining "abuse", further providing for the commencement of proceedings, and notification, further regulating the right to possession of the residence or household and further providing for contempt, temporary financial support, arrest and emergency relief by the Philadelphia Municipal Court.

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

Section 1. The definition of "abuse" in section 2 and sections 4, 6, 7, 8, 9 and 10, act of October 7, 1976 (P.L.1090, No.218), known as the "Protection From Abuse Act," are 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:*

(i) Attempting to cause or intentionally, knowingly or recklessly causing bodily injury or serious bodily injury with or without a deadly weapon.

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

(iii) Sexually abusing minor children as defined pursuant to the act of November 26, 1975 (P.L.438, No.124), known as the "Child Protective Services Law."

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Section 4. Commencement of Proceeding.—(a) A person may seek relief under this act for himself or herself, or any parent or adult household member may seek relief under this act on behalf of minor children 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.

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.

(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 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 the portion of the protection order requiring the defendant to pay support becomes void.

(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 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.*

Section 8. Emergency Relief.—(a) When 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 a petition may be filed before a district justice *or Philadelphia Municipal Court Judge* who may grant relief in accordance with section 6(a),(2) or (3) if the district justice *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.

(c) Any 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.

Section 9. Procedure.—**[Any] Unless otherwise indicated in this act, any proceeding under this act shall be in accordance with the Rules of Civil Procedure and shall be in addition to any other available civil or criminal remedies.**

Section 10. Contempt.—**(a) Upon violation of a protection order or a court approved consent agreement the court may hold the defendant in indirect criminal contempt and punish him in accordance with 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 defendant shall not have a right to a jury trial on such a charge.

(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.

(d) Subsequent to an arrest the defendant shall be taken without unnecessary delay before the court that issued the order. When that court is unavailable the defendant shall be arraigned before a district justice, 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 anyway limit any of the other powers for emergency relief provided in this act.

Section 2. This act shall take effect in 60 days.

APPROVED—The 23rd day of June, A. D. 1978.

MILTON J. SHAPP