

No. 1990-111

## AN ACT

HB 2029

Amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, providing for protection from abuse; and providing for jurisdiction to enjoin certain nuisances in the City of Philadelphia.

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

Section 1. Section 1123(a) of Title 42 of the Pennsylvania Consolidated Statutes is amended by adding paragraphs to read:

§ 1123. Jurisdiction and venue.

(a) General rule.—Except as otherwise prescribed by any general rule adopted pursuant to section 503 (relating to reassignment of matters), the Philadelphia Municipal Court shall have jurisdiction of the following matters:

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*(7) Actions to enjoin any nuisance caused by the operation of a licensee or occurring on licensed premises subject to the act of April 12, 1951 (P.L. 90, No. 21), known as the Liquor Code.*

*(8) Any action to enjoin a common law nuisance or a nuisance which involves a violation of any city ordinance or code, or any penal statute. The action to enjoin may be brought by any person who resides or has a place of business within 500 feet of the location of the alleged nuisance.*

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Section 2. Title 42 is amended by adding a chapter to read:

CHAPTER 67  
PROTECTION FROM ABUSE

Sec.

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§ 6701. Short title of chapter.

This chapter shall be known and may be cited as the Protection From Abuse Act.

§ 6702. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Abuse.” The occurrence of one or more of the following acts between family or household members, sexual or intimate partners or persons who share biological parenthood:

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

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

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

(4) Physically or sexually abusing minor children.

“Adult.” An individual who is 18 years of age or older.

“Bail commissioners.” Bail commissioners of the Philadelphia Municipal Court.

“Confidential communications.” 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.

“Domestic violence counselor/advocate.” 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.” 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 interface; transportation, information and referral; and victim assistance.

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

“Minor.” An individual who is not an adult.

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

§ 6703. Effect of departure to avoid abuse.

The right of plaintiff to relief under this chapter shall not be affected by plaintiff leaving the residence or household to avoid further abuse.

§ 6704. Registration of order.

(a) Registry.—The prothonotary shall maintain a registry in which it shall enter certified copies of orders entered by courts from other jurisdictions in this Commonwealth pursuant to this chapter.

(b) Registration of order in any county.—A plaintiff who obtains a valid order under this chapter 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 chapter 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) Certified copy.—A valid order under this chapter 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) Proof of registration.—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.

§ 6705. Responsibilities of local law enforcement agencies.

The police department of each municipal corporation shall insure that all its officers and employees are familiar with the provisions of this chapter. Instruction concerning protection from abuse shall be made a part of the training curriculum for all trainee officers.

§ 6706. Commencement of proceedings.

(a) General rule.—An adult or an emancipated minor may seek relief under this chapter for that person or any parent, adult household member or guardian ad litem may seek relief under this chapter 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) Affidavit of insufficient funds for fees.—If the plaintiff files an affidavit stating that plaintiff does not have funds available to pay the fees for filing and service, the petition shall be filed and service shall be made without payment of fees, and leave of court to proceed in forma pauperis shall not be required.

(c) Determination of indigency.—When the petition is filed without payment of fees, the court shall determine at the hearing on the petition 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 and subsection (b) apply to courts of common pleas, district justices, or, in Philadelphia County, to bail commissioners, Philadelphia Municipal Court Judges or masters who are members of the Pennsylvania Bar and who are appointed by the President Judge of the Philadelphia Municipal Court.

(d) Court to adopt means of service.—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.

(e) Service by sheriff.—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.

(f) Service of petition and orders.—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.

(g) Assistance and advice to plaintiff.—The courts, district justices, or, in Philadelphia County, the bail commissioners, Philadelphia Municipal Court Judges or masters who are members of the Pennsylvania Bar and who are appointed by the President Judge of the Philadelphia Municipal Court, 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.

#### § 6707. Hearings.

(a) General rule.—Within ten days of the filing of a petition under this chapter, a hearing shall be held before the court, at which the plaintiff must prove the allegation of abuse by a preponderance of the evidence. The court shall advise the defendant of the right to be represented by counsel.

(b) Temporary orders.—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) Continued hearings.—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) Costs.—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.

§ 6708. Relief.

(a) General rule.—The court may grant any protection order or approve any consent agreement to bring about a cessation of abuse of the plaintiff or minor children. The order or agreement 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 or restoring possession to the plaintiff when the residence or household is jointly owned or leased by the parties, 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 or restoring possession to the plaintiff or, by consent agreement, allowing the defendant to provide suitable alternate housing.

(4) Awarding temporary custody of 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 chapter, 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 6707(b) (relating to hearings) 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 jurisdiction of the court prior to the hearing under section 6707(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 6707(a), directing the defendant to pay financial support to those persons the defendant has a duty to support. The support order shall be temporary, and any beneficiary of the order must file a complaint for support under the applicable provisions of law within two weeks of the date of the issuance of the pro-

tection order. If a complaint for support 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 complaint for support, the portion of the protection order requiring the defendant to pay support expires.

(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 any 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) Duration and amendment of order or agreement.—A 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) Title to real property unaffected.—No order or agreement under this chapter shall in any manner affect title to any real property.

#### § 6709. Service of orders.

(a) Issuance.—A copy of an order under this chapter 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 chapter or as ordered by the court, district justice, or, in Philadelphia County, by a bail commissioner, Philadelphia Municipal Court Judge or master who is a member of the Pennsylvania Bar and who is appointed by the President Judge of the Philadelphia Municipal Court.

(b) Placement in county registry.—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.

#### § 6710. Emergency relief by minor judiciary.

(a) General rule.—When, in counties with less than four judges, the court is unavailable 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, or, in Philadelphia County, before a bail commissioner, Philadelphia Municipal Court Judge or master who is a member

of the Pennsylvania Bar and who is appointed by the President Judge of the Philadelphia Municipal Court, who may grant relief in accordance with section 6708(a)(1) and (2) or (1) and (3) (relating to relief), if the district justice, or, in Philadelphia County, the bail commissioner, Philadelphia Municipal Court Judge or master who is a member of the Pennsylvania Bar and who is appointed by the President Judge of the Philadelphia Municipal Court, 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 the purposes of this subsection.

(b) Expiration of order.—An order issued under subsection (a) shall expire as of the resumption of business of the court at the beginning of the next business day, at which time the court shall schedule hearings on protection orders entered by district justices, or, in Philadelphia County, by bail commissioners, Philadelphia Municipal Court Judges or masters who are members of the Pennsylvania Bar and who are appointed by the President Judge of the Philadelphia Municipal Court, 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) Certification of order to court.—An emergency order issued under this section and any documentation in support thereof shall be immediately certified to the court. The certification to the court shall have the effect of commencing proceedings under section 6706 (relating to commencement of proceedings) and invoking the other provisions of this chapter. 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 6706.

(d) Instructions regarding the commencement of proceedings.—Upon issuance of an emergency order, the district justice, or, in Philadelphia County, the bail commissioner, Philadelphia Municipal Court Judge or master who is a member of the Pennsylvania Bar and who is appointed by the President Judge of the Philadelphia Municipal Court, 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, or, in Philadelphia County, the bail commissioner, Philadelphia Municipal Court Judge or master who is a member of the Pennsylvania Bar and who is appointed by the President Judge of the Philadelphia Municipal Court, 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.

§ 6711. Domestic violence counselor/advocate.

A domestic violence counselor/advocate may accompany a party to a hearing under this chapter.

§ 6712. Disclosure of addresses.

During the course of a proceeding under this chapter, the court, district justice, or, in Philadelphia County, the bail commissioner, Philadelphia Municipal Court Judge or master who is a member of the Pennsylvania Bar and who is appointed by the President Judge of the Philadelphia Municipal Court, 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. Neither in the pleadings nor during proceedings or hearings under this chapter shall the court, district justice, or, in Philadelphia County, the bail commissioner, Philadelphia Municipal Court Judge or master who is a member of the Pennsylvania Bar and who is appointed by the President Judge of the Philadelphia Municipal Court, require disclosure of the address of a domestic violence program.

§ 6713. Arrest for violation of order.

(a) General rule.—An arrest for violation of an order issued pursuant to this chapter 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.

(b) Seizure of weapons.—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.

(c) Procedure following arrest.—Subsequent to an arrest, the defendant shall be taken by the police officer without unnecessary delay before the court in the judicial district where the contempt is alleged to have occurred. When that court is unavailable, the police officer shall convey the defendant to a district justice designated as appropriate by local rules of court, or, in Philadelphia County, to a bail commissioner, Philadelphia Municipal Court Judge or master who is a member of the Pennsylvania Bar and who is appointed by the President Judge of the Philadelphia Municipal Court.

(d) Preliminary arraignment.—The defendant shall be afforded a preliminary arraignment without unnecessary delay.

(e) Other emergency powers unaffected.—This section shall not be construed to in any way limit any of the other powers for emergency relief provided in this chapter.

(f) Hearing.—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.



(g) Notice.—Notice shall be given to the defendant, in orders issued pursuant to section 6708 (relating to relief), 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.

§ 6714. Contempt for violation of order or agreement.

(a) General rule.—Upon violation of a protection order issued under this chapter or a court-approved consent agreement, the court may hold the defendant in indirect criminal contempt and punish the defendant in accordance with law.

(b) Trial and punishment.—A sentence for contempt under this chapter may include imprisonment up to six months or a fine not to exceed \$1,000, or both, and may include other relief set forth in this chapter. The defendant shall not have a right to a jury trial on such a charge; however, the defendant shall be entitled to counsel.

§ 6715. Reporting abuse and immunity.

(a) Reporting.—A person having reasonable cause to believe that a person is being abused may report the information to the local police department.

(b) Contents of report.—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) Immunity.—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.

§ 6716. 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.

§ 6717. Procedure and other remedies.

Unless otherwise indicated in this chapter, a proceeding under this chapter shall be in accordance with applicable general rules and shall be in addition to any other available civil or criminal remedies.

Section 3. This act shall take effect in 60 days.

APPROVED—The 11th day of July, A. D. 1990.

ROBERT P. CASEY