

Family Law

Defending a Protection From Abuse Case Involving Children

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The scope of the Pennsylvania Protection from Abuse Act (PFA) is much broader than either the scope of the Pennsylvania Child Protective Services Law (CPSL) or the Pennsylvania custody statutes. Understanding the implications of a PFA order entered against a parent in favor of a child is essential to effective representation of your client for the entry of an abuse order that will have long-term implications in any future custody proceeding.

First, be aware that the definition of abuse under the PFA Act is more far-reaching than the definition of abuse under the CPSL. The PFA Act, 23 Pa.C.S.A. 6102(a) defines abuse as:

- Attempting to cause or intentionally, knowingly or recklessly causing bodily injury, serious bodily injury, rape, involuntary deviate sexual intercourse, sexual assault, statutory sexual assault, aggravated indecent assault, indecent assault or incest with or without a deadly weapon.
- Placing another in reasonable fear of imminent serious bodily injury.
- The infliction of false imprisonment pursuant to 18 Pa.C.S. Section 2903 (relating to false imprisonment).
- Physically or sexually abusing minor children, including such terms as defined in Chapter 63 (relating to child protective services).
- Knowingly engaging in a course of conduct or repeatedly committing acts toward another person, including following the person, without proper authority, under circumstances which place the person in reasonable fear of bodily injury. The definition of this paragraph applies only to proceedings commenced under this title and is inapplicable to any criminal prosecutions commenced under Title 18 (relating to crimes and offenses).

The CPSL, 23 Pa.C.S.A. 6303, definition of abuse is: (b.1) Child abuse. The term "child abuse" shall mean intentionally, knowingly or recklessly doing any of the following:

- Causing bodily injury to a child through any recent act or failure to act.

- Fabricating, feigning or intentionally exaggerating or inducing a medical symptom or disease that results in a potentially harmful medical evaluation or treatment to the child through any recent act.
- Causing or substantially contributing to serious mental injury to a child through any act or failure to act or a series of such acts or failures to act.
- Causing sexual abuse or exploitation of a child through any act or failure to act.
- Creating a reasonable likelihood of bodily injury to a child through any recent act or failure to act.
- Creating a likelihood of sexual abuse or exploitation of a child through any recent act or failure to act.
- Causing serious physical neglect of a child.
- Engaging in any of the following recent acts:
 - Kicking, biting, throwing, burning, stabbing or cutting a child in a manner that endangers the child.
 - Unreasonably restraining or confining a child, based on consideration of the method, location or the duration of the restraint or confinement.
 - Forcefully shaking a child under one year of age.
 - Forcefully slapping or otherwise striking a child under one year of age.
 - Interfering with the breathing of a child.
 - Causing a child to be present at a location while a violation of 18 Pa.C.S. Section 7508.2 (relating to operation of methamphetamine laboratory) is occurring, provided that the violation is being investigated by law enforcement.
- Leaving a child unsupervised with an individual, other than the child's parent, who the actor knows or reasonably should have known:
 - Is required to register as a Tier II or Tier III sexual offender under 42 Pa.C.S. Ch. 97 Subch. H (relating to registration of sexual offenders), where the victim of the sexual offense was under 18 years of age when the crime was committed.
 - Has been determined to be a sexually violent predator under 42 Pa.C.S. Section 9799.24 (relating to assessments) or any of its predecessors.
 - Has been determined to be a sexually violent delinquent child as defined in 42 Pa.C.S. Section 9799.12 (relating to definitions).
- Causing the death of the child through any act or failure to act.
- Restatement of culpability: Conduct that causes injury or harm to a child or creates a risk of injury or harm to a child shall not be considered child abuse if there is no evidence that the

person acted intentionally, knowingly or recklessly when causing the injury or harm to the child or creating a risk of injury or harm to the child.

The definition of abuse under the CPSL does not include placing another in reasonable fear of bodily injury or engaging in a course of conduct that could reasonably place a person in fear of bodily injury. Thus, a PFA court is not bound by an unfounded determination of child abuse by child youth services (CYS) when deciding if abuse occurred under the PFA statute, as in Walker v. Walker, 665 A.2d 1252 (Pa. Super 1995); 23 Pa.C.S.A. 6108(a)(4).

Further, the available remedies under the PFA statute are much more expansive than the remedies available under the CPSL statute or the custody statute. For example, under the PFA statute, the court has the authority to enter an ex parte order providing for custody, prohibition of abuse and the immediate eviction of the perpetrator. These remedies are not available under the CPSL or the custody statutes. Criminal sanctions can be imposed for violation of an order under the PFA statute, but are not available under the CPSL or custody statutes.

Practitioners must be mindful of the broad scope of the PFA statute when defending PFA cases involving children. An order regarding custody under the PFA statute, temporary or permanent, will override a custody order or a custody determination made by CYS. Further, a PFA order can remain in effect for up to three years. While the custody provisions of the PFA can be amended pursuant to 23 Pa.C.S.A. 6108 (d), they must be amended through a PFA proceeding, not a custody proceeding, as in Dye for McCoy v. McCoy, 621 A.2d 144 (Pa. Super. 1993).

Procedurally, trying a PFA case is much different from trying a custody case. Further, the trial of a PFA case is much different from the investigation undertaken by CYS. Custody trials may include a custody evaluation and the litigants may have weeks, even months to prepare. CYS investigations involve extensive investigation into the allegations and interviews with collateral sources.

PFA cases must be scheduled within 10 business days of the entry of the temporary ex parte order. Typically they are scheduled on long lists of cases. Judges have limited amounts of time to hear cases and will often continue cases that require hearings. The court must make credibility determinations with regard to abuse allegations often without the assistance of CYS social workers or psychologists trained in custody evaluations.

When hearings get continued, temporary orders remain in effect, which may prevent parents from having any contact with their children. Parents may use PFAs to gain an advantage in a custody dispute or to try to circumvent a custody order. The PFA statute leaves to the trial judge the discretion to decide those cases calling for protection from abuse and those that attempt to circumvent normal custody proceedings.

Case law has made clear that when making a custody determination in the context of a PFA hearing, courts are required to hear testimony on and consider the best interests of the children, as in Lawrence v. Bordner, 907 A.2d 1109 (Pa. Super. 2005); Shandra v. Williams, 819 A.2d 87 (Pa. Super. 2001). Therefore the practitioner should be prepared to present evidence regarding the child's best interests as part of its defense in a PFA action.

Practitioners defending a PFA involving children must be sensitive to the interplay between

the PFA statute, the CPSL statute and the custody statute and devise a strategy taking into careful consideration the impact the PFA order will have on custody issues. Judges should be sensitive to the impact the entry of a PFA order against a parent will have, especially when a custody order is already entered or when custody litigation is pending. It is incumbent on the practitioner to highlight to the court the impact a PFA order will have on a parent's custodial rights, so that the court will give the PFA petition the time and sensitivity it requires. •

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