



COURT ACCESS



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PFA EXPUNGEMENT AND DUE PROCESS RIGHTS

The Protection from Abuse (PFA) Act, case law, and civil rules outline court processes that ensure that the parties' due process rights are upheld during PFA proceedings. Any victim of abuse has the right to file for a PFA order and access the court system. Court personnel play an important role in helping them navigate that system. Typically, a PFA plaintiff relies on the assistance of court personnel for help in filing a petition. PFA parties have rights to a timely hearing and opportunity to be heard by a judge. The option to expunge a PFA record, albeit limited, is another mechanism that protects the due process rights of PFA parties.

According to the PFA Act, courts must:

- Provide simplified forms and clerical assistance in English and Spanish to help with the writing and filing of the petition for a pro se individual.¹
- Provide the plaintiff with written and oral referrals, in English and Spanish, to local domestic violence programs, local legal services offices, and the county bar association.²

To formally request protection from physical or sexual abuse under the PFA Act, a plaintiff must file a petition alleging abuse by the defendant.³ To guarantee the right of access to the courts, a judge must review every PFA petition. The judge is the only person who can decide, on the basis of the PFA petition and a meeting with the plaintiff, whether to grant or deny a temporary PFA order.⁴

Regardless of whether a temporary PFA order is granted, every plaintiff is entitled to a hearing scheduled within ten business days of the filing of the petition.⁵ At the hearing, the plaintiff must prove the allegations of abuse by a preponderance of the evidence.⁶

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In order to request expungement of a PFA record, the defendant must file a petition, serve the other party, and a hearing must be held. The PFAD database does not contain forms for expungement.

A PFA order from the court is notice to defendants that they will face consequences if they continue the abuse.⁷ In some cases when the plaintiff files for protection, the temporary order stops the abuse. If a plaintiff decides not to proceed to the hearing and pursue a final PFA order, the plaintiff can withdraw the petition.⁸ It is important to note that the petition filing is still part of the public record even if the plaintiff decides not to go forward with the PFA order.



The PFA Act preserves defendants' rights as well. Defendants are provided with the following due process rights:

- to be provided with notice of the PFA hearing,
- to have the final hearing be scheduled within 10 business days, and
- to be heard and defend themselves at the hearing.⁹

Defendants may have the right to petition for expungement of a PFA record if a final order has not been entered. Expunging a PFA record removes the record from a court's docket. Although the PFA Act does not explicitly provide for expungement, case law has upheld expungement under certain circumstances. For example, courts have allowed defendants to expunge PFA petitions and temporary orders in cases where a final order was not granted. In these instances the court never held a final order hearing and did not make a judicial finding of abuse.¹⁰ The PFA Act, rules of civil procedure and the option of expungement set by case law protect the due process rights of both PFA plaintiffs and defendants.

Endnotes

¹ The Administrative Office of Pennsylvania Courts makes bilingual PFA forms available in 11 languages at its website: <http://www.pacourts.us/forms/for-the-judiciary/>.

² 23 Pa.C.S. § 6106(h).

³ 23 Pa.C.S. § 6101(a).

⁴ Magisterial district judges review petitions and meet with plaintiffs for emergency PFA orders. Emergency orders do not expire until the end of the next business day (to give the plaintiff time to visit the courthouse to apply for a temporary order).

⁵ 23 Pa.C.S. § 6107.

⁶ *Id.*

⁷ Reviews of court records in multiple jurisdictions find that "a hard core of approximately one-third of abusers will reabuse in the short run, and more will reabuse in the long run." Andrew Klein, National Institutes of Justice Special Report, *Practical Implications of Current Domestic Violence Research* (2009) at 19, available at <https://www.ncjrs.gov/pdffiles1/nij/225722.pdf>

⁸ See Rule 1901.8 of Civil Procedure: Withdrawal, Modification, or Discontinuance (PFA Orders), and [read more about ending PFA orders](#) in an archived issue of Court Access.

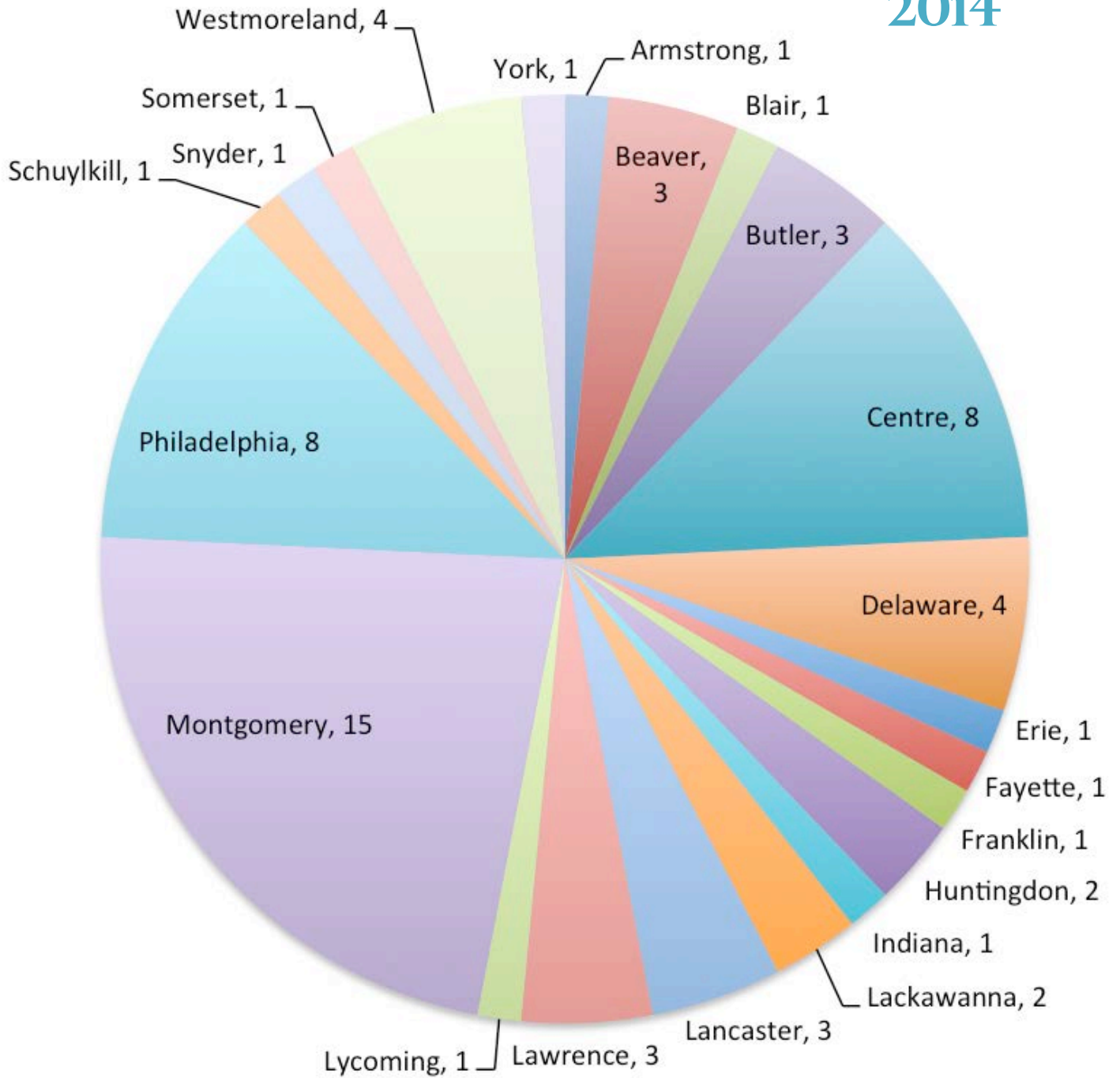
⁹ 23 Pa.C.S. § 6107(a).

¹⁰ *Carlacci v. Mazaleski*, 798 A.2d 186 (Pa. 2002), *Commonwealth v. Charnik*, 921 A.2d 1214 (Pa. Super. 2007).

Indirect Criminal Contempt (ICC) convictions of a PFA cannot be expunged unless the defendant meets the requirements in the criminal code at 18 Pa.C.S. § 9122(b). So held the Superior Court in *Commonwealth v. Charnik*. Generally, conviction records may be expunged only where the individual reaches age 70 and has been free from arrest or prosecution for 10 years, or where the individual has been dead for three years.

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NUMBER OF PFA RECORDS EXPUNGED BY PA COURTS IN 2014



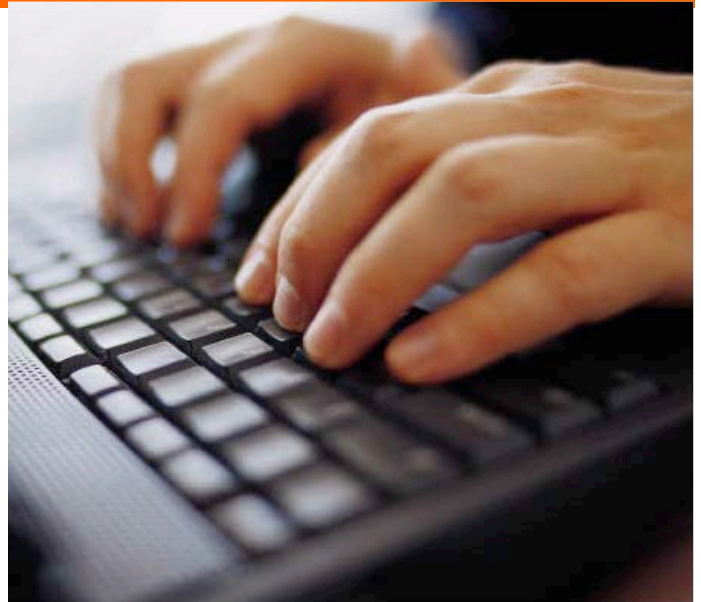
New PFAD! Online as of July 1, 2015

Phase I of the new Protection From Abuse Database (PFAD) rolled out a web-based system that can be accessed from any computer.

- The secure system is housed on servers maintained by the Pennsylvania State Police.
- Multi-county users have only one account, username and password.
- Search capabilities are expanded and include wildcard searching on text and numerals.

Phase II (no implementation date yet) will feature:

- Extensive reporting
- Search of archived orders (currently users can only view orders that were not archived as of August 1, 2014)
- Access from smart phones and tablets

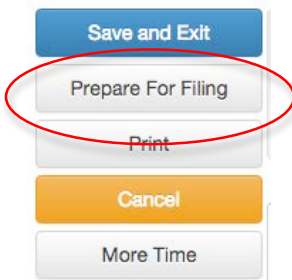


Just a few things that we wanted to point out about PFAD:

Search for Past Orders

At this time, there is no access to PFA orders archived before August 2014. However, don't assume that all old orders were automatically archived – they could still be found in the system. If you can't find them in PFAD, contact your county prothonotary's office. Accessing archived PFAs will be addressed in Phase II of the PFA overhaul and we will keep you informed.

Avoid Errors in Printed Orders



PFA petitions and orders are often prepared in PFAD, printed and presented to a judge for a physical signature.

- BEFORE PRINTING or SAVING, it is critical to CLICK THE **PREPARE FOR FILING** button.

When you click the PREPARE FOR FILING button, the system checks the order to ensure that any necessary items have been completed and any required boxes have been checked. This step is called "validation."

Clicking the Print button or the Save and Exit buttons without validating the order could **leave errors** in the PFA orders and in the printed documents.

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Beware Copying and Pasting Text from Other Documents

Hidden characters and formatting are often embedded in text copied and pasted from other documents, especially Microsoft Word documents. This might be the problem if the error message refers to “letters, digits, spaces and the following special characters.” It is best to type directly into the PFAD fields and boxes, although this may be time consuming for long narratives such as incidents of prior abuse or custody provisions. One workaround: try saving the Word document as plain text (.txt) to remove the hidden characters and formatting.

Searching Other Counties

The new Search Cases feature is designed to allow users to search broadly to find orders. All counties can be searched at once by choosing –Select– in the County field. To find a particular county’s records, either choose the county from the dropdown list or type the first three letters of the county. For example, highlight the County field and type “ada” for Adams County.

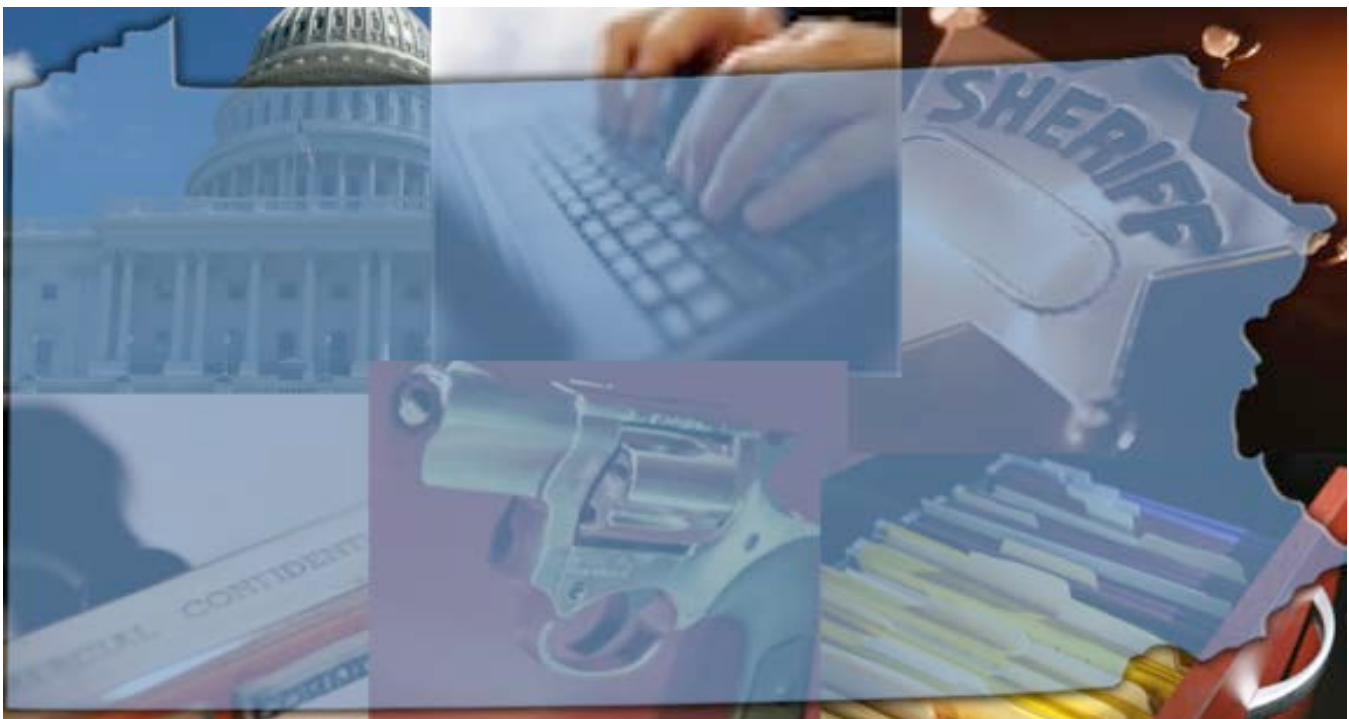
Some Usernames Have Changed

Some usernames have been changed in the new PFAD system. A user who has not used PFAD since July 1 and has difficulty logging in will not be able to reset the password without the correct username. Please contact us at 888-235-3425 for assistance.

Thanks for your patience and invaluable help implementing Phase I. Please contact Steve at sgriffith@pcadv.org with any errors, bugs, fixes or recommendations.

Case Search

Plaintiff	
First	Last
Defendant	
First	Last
Name Wildcard <input type="checkbox"/> (Note: Searches may be slower)	
PFAD # ex: X000000000X	
Docket #	
Docket Wildcard <input type="checkbox"/> (Note: Match any part)	
County - Select -	
Sort Order - Select -	
Search	Cancel Clear Search



The Protection of Victims of Sexual Violence or Intimidation Act: What You Need to Know Now

The Protection of Victims of Sexual Violence and Intimidation (PSVI) Act took effect on July 1, 2015.

The PSVI Act provides victims of sexual assault or intimidation who do not share a “family or household” relationship with the defendant a civil remedy that prohibits the offender from having contact with the victim regardless of whether the victim seeks criminal prosecution.

Implementation of the PSVI Act directly affects domestic violence and sexual assault programs, courts, and court-related agencies involved in the civil legal process.

Learn more!

- Visit our [PSVI webpage](#)
- View the [judicial benchcard](#), [technical assistance bulletin](#) and [process flowchart](#)
- Watch our [webinar](#) about the PSVI Act
- Call us: **888-235-3425**

PCADV staff is available to answer questions about the PSVI Act and Protection From Sexual Violence (SVP) or Protection From Intimidation (PFI) orders.



PSVI Act, Rules of Civil Procedure and PFAD

Rules 1951-1959 (Chapter 1950) of the Rules of Civil Procedure contain the forms to be used for petition, notice of hearing, temporary and final orders. The PFAD team, with representatives from the Pennsylvania State Police, the Pennsylvania Coalition Against Rape and PCADV developed the forms for use online in the PFAD system.

PSVI Forms in PFAD Suggest Possible Relief

As the PSVI Act was modeled on the PFA Act, so the PFAD form developers copied possible relief provisions for PSVI orders from the PFA forms. It is important to note that under the PSVI Act section 62A07(b)(2), **any** other appropriate relief is available, suggesting that courts may consider a broad range of protections, many of which are currently available in the PFA and/or PSVI Act. This array of options is available whether listed on the PFAD petition or Rules forms or not.

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Rules Forms and PFAD Forms Differ

Although PCADV and the State Police submitted comments to the Domestic Relations Rules Committee proposing the forms' content, the forms eventually published in the [Rules of Civil Procedure](#) have different language than the [petitions and orders that were already programmed into PFAD](#). The language is not identical and some courts choose to use the forms in the Rules of Civil Procedure for PSVI orders instead of the forms in PFAD. Others use the PFAD-generated forms. **Orders generated by PFAD are valid and enforceable.** Whichever forms are used, **PSVI orders must be entered into PFAD for enforcement purposes.** 42 Pa.C.S. § 62A04(c)(3).

Stay Tuned for Further Developments

In order to resolve the language differences between the two sets of petitions and orders, PCADV and PCAR will submit detailed comments to the Supreme Court's Rules committee to support the language in the PFAD forms and orders. The Rules Committee will take the comments under advisement. After the discrepancies are resolved, the programming work required is the responsibility of the State Police.



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National Domestic Violence Hotline:
1-800-799-7233

National Teen Dating Violence Hotline:
1-866-331-9474



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