

September 2005

Volume 1, Issue 1

The Jurist

A Newsletter for Pennsylvania Judges about Domestic Violence

Minor PFA Litigants & Dating Violence

PFAs by, on behalf of and against minors are increasingly being brought into courtrooms.

- Is teen dating violence subject to the same legal remedies as adult domestic violence?
- What type of intimate relationship must the parties have in order for the court to have PFA jurisdiction?

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Minors who seek protection under the Protection From Abuse (PFA) Act present legal and procedural challenges for trial court judges. This article will provide a brief overview of the legal issues and processes courts may consider in addressing abuse by minors or against minors. Four common questions include:

- 1) **How may a minor initiate a PFA action?**
- 2) **How should a minor defendant be served original process?**
- 3) **What type of sexual or intimate relationship must a minor have with another party in order for the court to have jurisdiction to enter into a PFA order?**
- 4) **How are PFA Orders enforced against a minor?**

How May a Minor Initiate a PFA Action?

In Pennsylvania, a minor is not permitted to bring a PFA action on his or her own; however the PFA Act authorizes a parent, adult household member, or guardian to pursue a PFA action on behalf of a minor. [23 Pa.C.S.A. §6101(a).]

The ability of a household member to bring an action would, for instance, authorize a minor's stepparent to bring a claim, if both minor and stepparent lived in the same household. If a minor chooses to pursue a PFA action using a guardian, the minor can select the guardian. [Pa.R.C.P. 2031(a).]

According to the Pennsylvania Rules of Procedure, "Guardian" means the person representing the interest of the minor or juvenile in the action, whether as (a) the guardian of a minor appointed by a court, (b) a person in the nature of a next friend selected to represent the minor, or (c) a *guardian ad litem* specially appointed by the court in which the action is pending. [Pa.R.C.P. 2026.] However, the court may remove, for cause, the guardian selected by the minor. [Pa.R.C.P. 2031 (a) and 2033.]

In addition to the requirement that a juvenile be represented in a PFA action by a parent or guardian, the guardian must be present for approval of any settlement agreements entered into on the juvenile's behalf. [See *Varner v. Holley*, 2004 PA Super. 233 at P18, Pa.R.C.P. 2039(a).]

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How Should a Minor Defendant Be Served Original Process?

When a PFA defendant is a minor, the action may be commenced in the same manner that an action is commenced against an adult. In other words, a juvenile does not need to have a parent or guardian representing him or her in order to be sued. [Pa.R.C.P. 2028(c) and Note.]

However, in order for a trial to proceed, the minor must have a guardian involved in the management of the case. [Pa.R.C.P. 2034.] Therefore, the best practice is to direct the sheriff to serve both the minor and the minor's parent. The court's order should also direct the minor's parent or guardian to appear at the PFA proceeding.

The Superior Court provided direction with regard to juvenile PFA defendants in *Varner v. Holley* [2004 PA Super. 233, 854 A.2d 520 (2004).]

The Superior Court found that a minor defendant needed the protection of a parent or guardian to supervise and control the conduct of the action for the juvenile. The teen defendant in *Varner v. Holley* had neither a parent nor a guardian appear on his behalf in the PFA action, but rather, was guided only by his probation officer. For this reason, the Superior Court found that the underlying PFA agreement was invalid and reversed the defendant's PFA contempt conviction. [2004 PA Super. 233 at P18.]

What Type of Sexual/Intimate Relationship?

What type of sexual or intimate relationship must a minor have with another party in order for the court to have jurisdiction to enter into a PFA order?

Pennsylvania courts have jurisdiction to enter PFA orders when the parties' relationship is merely a dating relationship. The PFA Act covers

relationships that involving "current or former sexual **or** intimate partners (emphasis added)" [23 Pa.C.S.A. §6102, "Definition of Family or Household Members."]

The Superior Court provided appellate guidance on this issue in two cases. The first is *R.G. v. T.D.*, 448 Pa. Super. 525, 672 A.2d 341 (1996). The two litigants were college students. The petitioner alleged that her former boyfriend, the defendant in the case, stalked and threatened her after their relationship ended. At trial, the defendant did not object to being described as plaintiff's former boyfriend. On appeal, however, defendant claimed that the former relationship did not meet the Act's relationship requirement.

The Superior Court disagreed, holding that defendant's failure to object to petitioner's designation of him as her "former boyfriend" waived that issue. **The court further held that a boyfriend/girlfriend relationship qualified as an intimate partner relationship.**

The Superior Court reaffirmed its position that a dating relationship qualifies as an intimate partner relationship in *Varner v. Holley*, 2004 PA Super. 233, 854 A.2d 520 (2004). Both the petitioner and the defendant were minors when the PFA order in this case was entered. Petitioner alleged that the defendant, her "former boyfriend," harassed her and threatened to kill her current boyfriend. The defendant agreed to the entry of a PFA order. Subsequently, the defendant allegedly violated the order, and appealed after being found in contempt.

On appeal, **the Superior Court confirmed that a juvenile may be named as a defendant in a PFA Act and that dating relationships are covered under the PFA Act.** [*Varner v. Holley*, 2004 PA Super. 233 at P9.]

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Recently...

A group of respected Pennsylvania judges with experience in Family, Criminal and Superior Court recently directed the development and distribution of the Pennsylvania Domestic Violence Benchbook. The Benchbook covers a variety of interrelated topics, as indicated by the Table of Contents (at right).

Subject matter chapters feature an overview of applicable statutes and cases, followed by a review of statistics, studies and other relevant information. Each chapter ends with a discussion of emerging practices – recommendations from national judicial and legal experts. Several chapters include sample forms and other tools that county courts may adapt for their own use.

The Pennsylvania Coalition Against Domestic Violence is indebted to the judges who comprise the Benchbook Advisory Group for their expertise, guidance, and support. The Advisory Group members are:

The Honorable James G. Arner, Clarion County; The Honorable Michael J. Barrasse, Lackawanna County; The Honorable John A. Bozza, Erie County; The Honorable John J. Driscoll, Westmoreland County; The Honorable Idee C. Fox, Philadelphia County; The Honorable Wayne G. Hummer, Jr., Lancaster County; The Honorable Thomas K. Kistler, Centre County; The Honorable Maureen Lally-Green, Superior Court of Pennsylvania; The Honorable Eugene F. Scanlon, Jr., Allegheny County; and The Honorable Thomas A. Wallitsch, Lehigh County.

Distribution of the Benchbook began in July at the annual State Trial Judges Conference in Hershey. **Free copies are available to all state judges.** If you have not yet received a copy of the Benchbook and would like one, please contact Kathy Morrison or Shelby Shoop at 1-800-932-4632, or email: km@pcadv.org.

The Pennsylvania Domestic Violence Benchbook

Chapters

- **The Court's Role in Addressing Domestic Violence**
- **Evidence**
- **The Protection From Abuse Act**
- **PFA and Custody**
- **Child and Spousal Support**
- **Firearms**
- **Custody**
- **Domestic Violence Crimes**
- **Stalking**
- **Enforcement**
- **Pro Se Process**

Minor PFA Litigants – Cont'd from page 2

How Are Protection Orders Enforced Against Minors?

Summary

The PFA Act provides that any minor PFA defendant who is accused of violating a PFA order shall be considered to have allegedly committed a delinquent act. ["Delinquent act" is defined in 42 Pa.C.S.A. §6302.] The PFA indirect contempt case shall be handled as a juvenile proceeding. [23 Pa.C.S.A. §6114(a)(2).]

Addressing PFA cases involving minors requires that the court follow special procedural rules. Appellate court guidance appears to indicate that **it is not necessary for a trial court to inquire as to the level of sexual intimacy between litigants for the jurisdictional requirement to be met.** A dating relationship meets the relationship requirements of the PFA Act.

This Domestic Violence Benchbook was supported by PCCD Subgrant #2003/04 VA-06 – 14567, awarded by the Pennsylvania Commission on Crime and Delinquency (PCCD). The awarded funds originate with the U.S. Department of Justice, Office on Violence Against Women (OVW). Points of view or opinions contained within this document are those of the authors and do not necessarily represent any official position, policy, or view of PCCD, OVW, or the U.S. Department of Justice.

Teen Dating Violence and Stalking – Prevalent, But Under-Reported

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PFA order provisions
may include:

- A stay-away order that specifically addresses school or campus buildings, classrooms or school buses;
- a stay-away order including after-school activities such as clubs, sporting events or teams, libraries and workplaces;
- a stay-away provision prohibiting contact with the victim's parents, siblings, and parents' or siblings' workplaces;
- prohibited contact through third parties, contact by e-mail, cell phone, text message or instant message; and
- a directive that the school or educational institution receive a copy of the PFA order.

Teen girls and young women (ages 16-24) experience the most nonfatal intimate partner violence – at a rate nearly three times the national average. [Teen Dating Violence Fact Sheet, Dating Violence Resource Center, The National Center for Victims of Crime, available at <http://www.ncvc.org/dvrc>.]

Teen dating violence and stalking are often interrelated behaviors. An alarming number of teens and young adults are stalked. According to a national study, 12% of stalking victims report being stalked prior to age 18. A similar level of stalking occurs on college campuses. [“Teen Stalking Deserves A Closer Look,” Newsletter of the Stalking Resource Center, Vol. 5, No. 1, Summer 2005.]

Dating Violence and Stalking are Under-Reported

Teens and young adults are very unlikely to report stalking and dating violence. Although half of dating violence victims tell someone, only 20% of those who tell someone report their victimization to law enforcement. [Teen Dating Violence Fact Sheet, *supra*.] Similarly, only 17% of campus stalking victims report their stalking to law enforcement.

Inexperience with romantic relationships, distrust of adult figures, under-estimation of the dangers associated with dating violence and stalking, and desire for privacy and autonomy are some of the reasons that young people fail to report interpersonal violence.

Dating relationships are covered under the PFA Act. In addition, the Act specifically includes violence, threats of violence, false imprisonment and stalking as forms of abuse that would support the entry of a PFA order (23 Pa.C.S.A. §6102(a)(1), (2), (3), and (5)).

Pennsylvania trial courts received appellate guidance on teen dating violence and stalking PFAs in *R.G. v. T.D.*, 448 Pa. Super. 525, 672 A.2d 341 (1996). This case involved two college students. The former boyfriend made repeated unwanted phone calls, electronic mail threats, and informed the former girlfriend that she was the object of his obsessive-compulsive disorder. The plaintiff testified that as a result of the defendant's increasingly hostile behavior, she was too scared to walk around campus, even in daylight. The trial court entered a PFA order, and the Superior Court affirmed the order on appeal.

Targeted Relief

Judges faced with teen and young adult dating violence and stalking cases are able to enter relief provisions appropriately targeted to the unique circumstances involved when both victim and abuser attend the same educational institution. (See Sidebar.)

As more teens and young adults become aware of and assert their right to relationships free of violence and intimidation, more young people may turn to the courts for help. A court's awareness of the prevalence and under-reporting of teen dating violence as well as the applicable statutory and case law provisions will enable the court to deal effectively with this issue.