

Relinquishment of Firearms in Temporary Protection From Abuse Orders

The Pennsylvania Protection from Abuse Act 23 Pa.C.S.A. § 6101 *et seq.*

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Discretionary Order for Relinquishment of Firearms

In granting a **temporary protection from abuse (PFA) order**, a court **may order**, in addition to other relief, that the defendant is temporarily prohibited from acquiring or possessing any firearm and to relinquish any firearms, firearm license, other weapons, or ammunition for the duration of the temporary order. 23 Pa.C.S.A. §§ 6107(b)(3) & 6108(a)(7).

Key Elements

Procedure for a Temporary PFA Order including Firearm Relinquishment

1 Ex Parte Hearing

An ex parte hearing is held if the petition alleges immediate and present danger of abuse to the plaintiff or minor children.

23 Pa.C.S.A. § 6107(b)(1).

2 Relief Granted

A temporary order may be granted if the court finds an order is necessary to protect the plaintiff or minor children and they are in immediate and present danger of abuse.

23 Pa.C.S.A. § 6107(b)(2).

3 Temporary Order

If the court orders the relinquishment of firearms, the temporary order must list the firearms, other weapons or ammunition.

23 Pa.C.S.A. § 6107(b)(4).

Standards for Relinquishment of Firearms, Other Weapons, or Ammunition

Pursuant to 23 Pa.C.S.A. § 6107(b)(3), the court may enter an order of relinquishment of firearms only if the petition demonstrates:

✓ Abuse involving a firearm or other weapon; or

✓ An immediate and present danger of abuse.

Factors to consider include, but are not limited to:

- Such a condition is necessary to achieve purpose of temporary order;
- Defendant previously violated a PFA order;
- Did the plaintiff or minor children sustain injury as result of past or present abuse;
- Did the abuse occur in public;
- Did the abuse include:
 - Threats of abuse or suicide;
 - Killing or threatening to kill pets;
 - An escalation of violence;
 - Stalking or obsessive behavior;
 - Sexual violence; or
 - Drug or excessive alcohol use.

Time Period for Relinquishment

- ✓ The temporary order must require relinquishment of the firearms, other weapons, ammunition and any firearm license within **24 hours** of the entry of the order (or close of next business day as necessary by closure of sheriff's office) except for cause shown at the hearing, in which case the court shall specify the time for relinquishment. 23 Pa.C.S.A. § 6108(a)(7)(i)(A).
- ✓ If the firearms cannot reasonably be retrieved within 24 hours, the defendant must provide the sheriff or appropriate law enforcement agency with an affidavit listing the firearms, other weapons or ammunition and their current location. 23 Pa.C.S.A. § 6108(a)(7)(i)(B).

Noncompliance

The Sheriff or appropriate law enforcement agency must provide immediate notice to the court, the plaintiff and appropriate law enforcement authorities if the defendant fails to comply with relinquishment or provide the affidavit. 23 Pa.C.S.A. § 6108(a)(7)(i)(B).

Procedure for Relinquishment

Pursuant to 23 Pa.C.S.A. § 6108(a)(7), relinquishment must be within 24 hours:

- ✓ At the defendant's choice, relinquishment is limited to the following three options:
 - 1 To the sheriff under 23 Pa.C.S.A. § 6108(a)(7)(ii); or
 - 2 Other appropriate law enforcement agency pursuant to 23 Pa.C.S.A. § 6108(a)(7)(ii); or
 - 3 To a third party pursuant to 23 Pa.C.S.A. § 6108.3 limited to:
 - A commercial armory under 23 Pa.C.S.A. § 6108.3(b)(3)(ii)(O)(II); or
 - An attorney with whom the defendant shares an attorney-client relationship pursuant to 23 Pa.C.S.A. § 6108.3(b)(3)(ii)(O)(I).

- ✓ If relinquishment is to a third party:

- The third party must execute an affidavit in the presence of the sheriff or the sheriff's designee that, among other information, contains an acknowledgment that the third party and the defendant are not family or household members. 23 Pa.C.S.A. § 6108.3(b)(3)(ii)(N).
- The sheriff must provide the plaintiff with the name of the person to whom the firearms, etc., were relinquished. 23 Pa.C.S.A. § 6108(a)(7)(iii).

Notice After Filing of Petition

Pursuant to 23 Pa.C.S.A. § 6107(a), after a petition is filed and at the time the defendant is given notice of the final hearing, the court must advise the defendant, in addition to other items, of the following:

- ✓ that any firearm, other weapon or ammunition owned and any firearm license possessed by the defendant may be ordered temporarily relinquished; and
- ✓ the options for relinquishment, and
- ✓ the possibility that federal or state law may prohibit the possession of firearms, including reference to 18 U.S.C. § 922(g)(8) and 18 Pa.C.S.A. § 6105.

Prohibition Under the Uniform Firearms Act

A person subject to a temporary order under 23 Pa.C.S.A. § 6107(b) which provides for relinquishment of firearms, etc., must not possess, use, control, sell, transfer or manufacture or obtain a license to possess, use, control, sell transfer or manufacture a firearm for the period of time the order is in effect. 18 Pa.C.S.A. § 6105(c)(6).

Relinquishment of Firearms in Domestic Violence Cases

Pennsylvania Uniform Firearms Act 18 Pa.C.S.A. § 6105

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Mandatory Order for Relinquishment of Firearms

The court **must** order an individual convicted of a “**misdemeanor crime of domestic violence**” to relinquish any firearms or firearm licenses within **24 hours** to an appropriate law enforcement agency or a licensed firearms dealer. 18 Pa.C.S.A. § 6105(c)(9) & § 6105.2.

- ✓ The order for relinquishment must contain a list of any firearms ordered relinquished. 18 Pa.C.S.A. § 6105.2(a)(2).
- ✓ The order must be transmitted to the appropriate law enforcement agency of the municipality and to the sheriff of the county which the defendant is a resident. 18 Pa.C.S.A. § 6105.2(a)(2).
- ✓ Any individual convicted of a “misdemeanor crime of domestic violence” as defined in 18 U.S.C. § 921(a)(33)(A) and referenced in 18 U.S.C. § 922(g)(9) is subject to a lifetime prohibition of the possession, use, control, sale, transfer, or manufacture of a firearm or from obtaining a license to possess use, control, sell, transfer, or manufacture a firearm pursuant to 18 Pa.C.S.A. § 6105(a)(1), § 6105(c)(9).

Crimes and Penalties for Failure to Relinquish Firearms

Any individual as specified below who intentionally or knowingly fails to relinquish firearms, other weapons or ammunition, commits a **misdemeanor of the second degree**:

- ✓ pursuant to an active protection from abuse (PFA) order (final or temporary) issued under Pennsylvania law in 23 Pa.C.S.A. § 6107(b) or § 6108, or
- ✓ if prohibited from possessing a firearm or ammunition under federal law pursuant to 18 U.S.C. § 922(g)(8), or
- ✓ if convicted of a misdemeanor crime of domestic violence pursuant to 18 Pa.C.S.A. § 6105(c)(9).
18 Pa.C.S.A. § 6105(a.1)(2) & § 6105.2(h).

Any individual upon conviction for failing to relinquish firearms pursuant to a PFA order (final or temporary) entered pursuant to Pennsylvania law under 23 Pa.C.S.A. § 6107(b) or § 6108, or pursuant to federal law under 18 U.S.C. § 922(g)(8), is prohibited from owning or possessing firearms for **five years** from the date of conviction, release from imprisonment, or release from supervision, whichever is later. 18 Pa.C.S.A. § 6105(c)(10).

Definition of Firearm

Under 18 Pa.C.S.A. § 6105, the term “firearm” includes any weapons which are designed to or may readily be converted to expel any projectile by the action of an explosive or the frame or receiver of any such weapon. 18 Pa.C.S.A. § 6105(i).

- ✓ This is a broader definition than the definition of a “firearm” in the definitions section of the Uniform Firearms Act under 18 Pa.C.S.A. § 6102.

Persons Prohibited from Possessing Firearms

Pursuant to 18 Pa.C.S.A. § 6105(a), (c)(6) & (c) (9), any person specified below shall not possess, use, control, sell, transfer or manufacture or obtain a license to possess, use, control, sell, transfer or manufacture any firearm in Pennsylvania:

- ✓ a person subject to an active final or temporary PFA order which provided for relinquishment of firearms, entered pursuant to 23 Pa.C.S.A. § 6107(b) or § 6108;
- ✓ a person otherwise prohibited from possessing or acquiring a firearm pursuant to 18 U.S.C. § 922(g) (8);
- ✓ a person convicted of a “misdemeanor crime of domestic violence” under 18 U.S.C. § 922(g)(9);
- ✓ a person who has been convicted of an offense for failing to relinquish a firearm under 18 Pa.C.S.A. § 6105(a.1)(2) and for whom the five year disqualification period has not expired.

Definition of Misdemeanor Crime of Domestic Violence

A misdemeanor crime of domestic violence, as used in the Pennsylvania Uniform Firearms Act, is defined in 18 U.S.C. § 921(a)(33)(A) as an offense that:

- ✓ is a misdemeanor under federal, state, or tribal law; and
- ✓ has as an element of:
 - the use or attempted use of physical force, or
 - the threatened use of a deadly weapon,
- ✓ committed by:
 - a current or former spouse, parent, or guardian of the victim,
 - a person with whom the victim shares a child in common,

- a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or
- a person similarly situated to a spouse, parent, or guardian of the victim.

Relinquishment of Firearms

Pursuant to 18 Pa.C.S.A. § 6105.2, relinquishment must be within 24 hours except for cause shown:

- ✓ The “cause” is limited to the inability of the person to retrieve a specific firearm due to its location.
- ✓ The location of relinquishment is at defendant’s option.
- ✓ If the defendant is present in court at time of the order for relinquishment, the defendant must inform the court of how they are going to relinquish their firearms:
 - 1 To an appropriate law enforcement agency pursuant to 18 Pa.C.S.A. § 6105.2(a)&(b); or
 - 2 A licensed commercial firearms dealer pursuant to 18 Pa.C.S.A. § 6105.2(a)&(c).

If relinquishment is to a licensed dealer:

- ✓ The dealer must execute an affidavit which includes, *inter alia*, a list of the firearms. 18 Pa.C.S.A. § 6105.2(c)(3).
- ✓ The defendant must provide the affidavit to the law enforcement agency or Sheriff’s office or both.
- ✓ Any firearm ordered to be relinquished that is not specified in the affidavit must be turned over to the law enforcement agency. 18 Pa.C.S.A. § 6105.2(c)(4).

Relinquishment of Firearms in Final Protection From Abuse Orders

The Pennsylvania Protection from Abuse Act 23 Pa.C.S.A. § 6101 *et seq.*

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Mandatory Order for Relinquishment of Firearms

Any final protection from abuse order entered into after a hearing **must** include a provision prohibiting the defendant from acquiring or possessing any firearms and to temporarily relinquish any firearms or firearm license, other weapons and ammunition, for the duration of the order. 23 Pa.C.S.A. §§ 6108(7)&(a.1)(1).

Discretionary Order for Relinquishment of Firearms

Any final court approved consent agreement between the parties **may** include a provision in the agreement that the defendant is subject to firearms relinquishment. 23 C.S.A. § 6108(a.1)(2).

Key Elements

A Final Order (entered after a hearing):

✓ **Must** include direction that the defendant is prohibited from acquiring or possessing any firearms and to relinquish, **within 24 hours of the entry of a final order or the close of the next business day**, for the duration of the final order:

- **Any firearms**
- **Any firearm license (See 18 Pa.C.S.A. §§ 6106 & 6109)**
- **Other weapons, and**
- **Ammunition.** 23 Pa.C.S.A. § 6108(a)(7)&(a.1)(1).

Other weapons or ammunition may be included in the order if they have been used or been threatened to be used in an incident of abuse against the plaintiff or the minor children. 23 Pa.C.S.A. § 6108(a)(7).

✓ **Must** contain a list of any firearm, other weapon or ammunition ordered relinquished. 23 Pa.C.S.A. § 6108(a)(7)(ii).

✓ **Must** contain notice of deemed abandonment under 18 Pa.C.S.A. § 6128(a). 23 Pa.C.S.A. § 6108(a)(7)(ii).

Final Orders (entered by agreement)

A final agreement entered **may** include directive pursuant to an argument that the defendant is prohibited from possession or acquiring any firearm, other weapons and ammunition, or firearm license for the duration of the agreement. 23 Pa.C.S.A. § 6108(a.1)(2).

Transmittal of Final Order

A copy of the final order must be transmitted to the chief or head of the appropriate law enforcement agency and the sheriff of the county of which the defendant is a resident. 23 Pa.C.S.A. § 6108(a)(7).

Retention of Final Order

Any order or petition which lists the defendant's firearms, etc., must be maintained in a permanent court record but withheld from public inspection, except:

- ✓ upon an order of court granted upon cause shown;
- ✓ as necessary, by law enforcement and court personnel; or
- ✓ after redaction of information listing the firearms, etc. 23 Pa.C.S.A. § 6108(a)(7)(v).

Time Period for Relinquishment

- ✓ The final order must require relinquishment of the firearms, other weapons, ammunition and any firearm license within **24 hours** of the entry of the final order (or close of next business day as necessary by closure of sheriff's office) except for cause shown at the hearing, in which case the court shall specify the time for relinquishment. 23 Pa.C.S.A. § 6108 (a)(7)(i)(A).
- ✓ If the firearms cannot reasonably be retrieved within 24 hours, the defendant must provide the sheriff or appropriate law enforcement agency with an affidavit listing the firearms, other weapons or ammunition and their current location. 23 Pa.C.S.A. § 6108 (a)(7)(i)(A).

Noncompliance

The sheriff or appropriate law enforcement agency must provide immediate notice to the court, the plaintiff and appropriate law enforcement authorities if the defendant fails to comply with relinquishment or provide the affidavit. 23 Pa.C.S.A. § 6108(a)(7)(i)(B).

Procedure for Relinquishment

- ✓ At the defendant's choosing, relinquishment is limited to the following four options;
 - 1 To the sheriff under 23 Pa.C.S.A. § 6108(a)(7)(ii); or
 - 2 Other appropriate law enforcement agency pursuant to 23 Pa.C.S.A. § 6108(a)(7)(ii); or
 - 3 A licensed commercial firearms dealer under 23 Pa.C.S.A. § 6108.2; or
 - 4 To a third party pursuant to 23 Pa.C.S.A. § 6108.3 limited to:
 - A commercial armory under 23 Pa.C.S.A. § 6108.3(b)(3)(ii)(O)(II); or
 - An attorney with whom the defendant shares an attorney-client relationship pursuant to 23 Pa.C.S.A. § 6108.3(b)(3)(ii)(O)(I).

- ✓ If relinquishment is to a third party as defined:

- The third party must execute an affidavit in the presence of the sheriff or the sheriff's designee that, *inter alia*, contains an acknowledgment that the third party and the defendant are not family or household members. 23 Pa.C.S.A. § 6108.3(b)(3)(ii)(N).
- The sheriff must provide the plaintiff with the name of the person to whom the firearms, etc., were relinquished. 23 Pa.C.S.A. § 6108(a)(7)(iii).

Important Change in 2019 Amendments

Prior law provided the defendant with several options for relinquishment, for example, to any third party.

- ✓ The 2019 Amendments impose a strict limitation on the individuals and entities to which the defendant may choose for relinquishment—limited to the four options stated previously.

Return of Firearms, etc.

Prior to return of the firearms, etc., the defendant must fill out and return the weapons return form provided by the sheriff or other law enforcement agency pursuant to 23 Pa.C.S.A. § 6108.1.

Prohibition Under the Uniform Firearms Act

A person subject to a final order under 23 Pa.C.S.A. § 6108 must not possess, use, control, sell, transfer or manufacture or obtain a license to possess, use, control, sell, transfer or manufacture a firearm for the period of time the order is in effect. 18 Pa.C.S.A. § 6105 (c)(6).