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Newsletter

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PFA Act Amendments Enacted

By Kathy W. Morrison, Staff Attorney, Judicial Project, PCADV



After many years of painstaking negotiations among various advocacy groups, Pennsylvania's legislature enacted Protection From Abuse Act amendments, and Governor Rendell signed the amendments into law on November 10, 2005. These amendments which will take effect on May 9, 2006, will:

- ♦ Increase the permitted duration of a PFA order from 18 months to 36 months, 23 Pa. C.S.A. § 6108(d).
- ♦ Extend the confidentiality privilege to interpreters who assist victims during communication with domestic violence advocates, 23 Pa. C.S.A. § 6102(a).
- ♦ Direct that plaintiffs are not to be assessed any fees or costs relevant to the PFA proceeding even where the plaintiff withdraws or the case is dismissed, unless the court finds that the plaintiff's actions in filing the PFA complaint are in bad faith, 23 Pa. C.S.A. § 6106(b) and 6117(b).
- ♦ Direct that PFA court judges consider risks of

harm to both the children and the abused parent when awarding temporary custody rights, 23 Pa. C.S.A. § 6108(a)(4).

- ♦ Give judges authority to order supervised probation of a PFA defendant who violates the order, 23 Pa. C.S.A. § 6114(b).
- ♦ Require the court to grant an extension of the PFA order upon conviction of the defendant for PFA indirect criminal contempt, if the plaintiff requests an extension, 23 Pa. C.S.A. § 6114(b)(4).
- ♦ Permit that PFA indirect criminal contempt proceedings be filed either in the court that issued the PFA order or in the court having jurisdiction over the location where the PFA order violation occurred, 23 Pa. C.S.A. § 6114(a.1).
- ♦ Authorize sheriffs to arrest perpetrators and to file charges against defendants for violations of PFA orders, 23 Pa. C.S.A. §§ 6106(g) and 6113(a) and 6114(a).
- ♦ Clarify that even if a plaintiff leaves a county to avoid abuse, the court still has the authority to consider a PFA case filed by the plaintiff, 23 Pa. C.S.A. § 6103(b).
- ♦ Clearly permit the court to order relinquishment of all firearms for the duration of the PFA order, 23 Pa. C.S.A. § 6108 (a)(7).
- ♦ Establish a procedure for relinquishment of firearms and other weapons, including a 24-hour relinquishment deadline, relinquishment and storage procedures, and notification to the

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Developed by the Pennsylvania Coalition Against Rape and the Pennsylvania Coalition Against Domestic Violence.



The Violence Against Women Act

By Lynn Carson, Judicial Projects Specialist, PCAR

The Violence Against Women Act (VAWA), enacted in 1994 and re-authorized in 2000 has dramatically changed the criminal justice and community response to crimes of sexual and domestic violence. This act provided funding for training of law enforcement, victim advocates, judges, and others on the complicated issues surrounding these crimes. It also provided financial support to both improve inter-agency collaboration and increase services to victims of sexual and domestic violence. VAWA has also played a vital role in establishing both federal and state laws to address gaps in prosecuting sexual and domestic violence.

Since VAWA was enacted, we have seen a tremendous improvement in the response to crimes of sexual and domestic violence. According to a report from the National Task Force to End Sexual and Domestic Violence Against Women (2005), since the enactment of the Violence Against Women Act, states have passed more than 660 laws to combat sexual assault.

Additionally, in the ten years since VAWA's passage, domestic violence, stalking and intimate partner crime reporting is up 11 percent. The re-authorization of VAWA has provided the foundation for continued improvements in meeting the needs of those devastated by sexual and domestic violence.

Additional information can be obtained from the following on-line resources:

<http://www.ncvc.org/ncvc/AGPNet/Components/documentViewer/Download.aspxnz?DocumentID=40282>

<http://www.ncvc.org/ncvc/AGPNet/Components/documentViewer/Download.aspxnz?DocumentID=40072>

<http://www.vawa2005.org/>

<http://www.naevs.org/news.html>



Sexual Assault Provisions to the Violence Against Women Act of 2005

By Lynn Carson, Judicial Projects Specialist, PCAR

With the re-enactment of the Violence Against Women Act of 2005, Congress hopes to continue the unified efforts of law enforcement, victim advocates, and the judiciary in addressing crimes of sexual and domestic violence. VAWA 2005 addresses the needs of previously underserved populations as well as devotes resources to the prevention of violence against women.

VAWA 2005 has identified several new areas of focus for the next five years. These areas include shifting from a solely criminal justice response to one that includes community-based resources;

providing services to children exposed to domestic violence and sexual assault; addressing the special needs of communities of color, Native women, and women with disabilities; focusing on prevention and education efforts; and engaging men to participate in ending violence against women.



Below is an overview of the provisions of the 2005 Violence Against Women Act that specifically address sexual assault. Also included are some key changes to the act that will impact the investigation and prosecution of sexual assault crimes. The following information was culled from a summary developed by The National Alliance to End Sexual Violence (2005). The provisions of VAWA 2005 will go into effect in 2007.

Sexual Assault Services Act (SASA)

This provision provides a funding stream for direct services providers as well as state sexual assault coalitions. Grants can be used for general intervention and advocacy, victim accompaniment through medical, criminal justice, and support systems. Additionally, funds can be used to support training and technical assistance. Prior to the addition of this amendment, sexual assault centers were not eligible for direct services funding through VAWA.

Rural domestic violence, dating violence, sexual assault, stalking, and child abuse enforcement assistance

This provision addresses the needs of rural victims of sexual assault, stalking, and dating violence. It focuses

Legal Assistance for Victims

Civil legal assistance grants will be expanded to allow representation of adult and minor victims of domestic violence, dating violence, sexual assault, and stalking in matters that affect the victim's safety, privacy, or rights, including employment, economic justice, housing, protection orders, criminal justice proceedings, and post-trial matters.

Rape Prevention Education

This provision was reauthorized without substantive changes.

Violence Against Women on Campus

This funding will be available for institutions of higher education to collaborate with community and victim services groups to strengthen investigation and strategies to combat sexual assault, dating violence, domestic violence, and stalking. It will provide recommendations for training campus law enforcement and campus judicial boards. Funds will also be provided for technical assistance in implementing the Clery Act requirements.

There have also been some substantive changes to the act that may impact how law enforcement and victim's services respond to victims of sexual violence. One of the main amendments affects the use of polygraph examinations on victims of sexual assault. Under VAWA 2005, law enforcement agencies receiving STOP funding may not request or require any victim of a sexual assault to submit to a polygraph exam. States will have three years to comply with this change.

Forensic exam payments have been clarified with the 2005 act. Although sexual assault victims are currently not required to participate in the criminal justice system to have the cost of their forensic exam covered, some health care facilities and police departments incorrectly made that assumption.

The new act clarifies and reinforces that

cooperation by the victim is not required for forensic exam payment. Additionally, victims will not be required to seek reimbursement for the forensic exam through their insurance company.

Confidentiality and privacy protection has also been re-affirmed in VAWA 2005. Although victims of sexual violence, domestic violence, stalking, and dating violence currently have privacy protections, the language has been clarified to assure that all agencies receiving STOP funding protect the privacy and confidentiality of victims who receive their services.

The National Alliance to End Sexual Violence. (2005). Violence Against Women Act of 2005, select sexual assault-related provisions. Retrieved January 16, 2006 from <http://www.nawacsv.org/news.html>.

PFA Act Amendments Enacted

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plaintiff, and law enforcement upon failure to relinquish, 23 Pa. C.S.A. §§ 6108 (a)(7), 6108.1, 6108.2, 6108.3.

Provide procedures for the return of firearms and other weapons at the expiration of the PFA order, 23 Pa. C.S.A. § 6108.1.

Add definitions of "firearm" and "weapon" for clarity, 23 Pa. C.S.A. § 6102(a). Specifically, the firearm definition includes both long and short guns. Under the previous version of the PFA Act, authorization for weapons surrender included, by inference, both long and short guns.

Increase the surcharge for orders entered after a requested hearing from \$25 to \$100, 23 Pa. C.S.A. § 6106(d).

Increase the minimum fine for PFA indirect criminal contempt from \$100 to \$300, 23 Pa. C.S.A. § 6114.

For example, when a PFA defendant has been

ordered to relinquish firearms or other weapons, the defendant is required to either turn the weapons over to the sheriff or provide the sheriff with an affidavit listing for the firearm that is not being surrendered along with an explanation why the weapon cannot be reasonably retrieved as well as identifying the weapon's present location.

Placing weapons with the sheriff is only one way that weapons can be secured during the pendency of a PFA order under the amendments. Each county's sheriff's office is also in charge of a process whereby the defendant can turn weapons over to a third party rather than surrender them to the sheriff. The amendments require that the sheriff review the third party's ability to take possession of a firearm or other weapon that the court has ordered relinquished. The sheriff may issue a safekeeping permit to the third party authorizing them to take possession of the weapons that defendant is prohibited from possessing during the pendency of the PFA order.

Each county's sheriff's office is also given responsibility with regard to the return of weapons at the expiration or termination of a PFA order. The amendments obligate the sheriff at the expiration of an order and upon request of the defendant, to: (1) determine whether the defendant is not otherwise prohibited from possessing a firearm; and (2) if the defendant is not otherwise prohibited, to return the surrendered firearms to the defendant.

The Pennsylvania State Police are assigned the responsibility of developing forms relevant to firearm surrender, and safekeeping permits.

PCADV is developing training materials and other information to assist justice system personnel in implementing the procedures and provisions obligated under the Act. For more information about the PFA Act amendments or to schedule training in your community, please contact:

Lois D. Fasnacht, Legal Advocate/Criminal Justice Trainer, PCADV, 6400 Hank Drive, Suite 1300, Harrisburg, PA 17112. Toll-free 1-888-235-3425 (1-888-23-LEGAL) or 717-671-4767. E-mail: ldf@pcadv.org.