

Initial Hearing
Abuse Defined – 23 Pa.C.S.A. § 6102

- (1) 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.
- (2) Placing another in reasonable fear of imminent serious bodily injury.
- (3) The infliction of false imprisonment pursuant to 18 Pa.C.S. § 2903
- (4) Physically or sexually abusing minor children, including such terms as defined in Chapter 63 (relating to child protective services).
- (5) 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).

Threats to divulge personal and damaging information are not abuse. D.H. v. B.O., 734 A.2d 409, (Pa. Super 1999)

No mutual orders can be made without a Cross-Petition. McKelvey v. McKelvey, 771 A.2d 63 (Pa. Super. 2001).

Reasonable corporal punishment is not abuse, Viruet ex rel. Velasquez v. Cancel, 727 A.2d 591 (Pa. Super. 1999) but **excessive corporal punishment may support a finding of abuse.** Ferri v. Ferri, 854 A.2d 600, (Pa. Super. 2004)

Prior Acts, alleged in previous petitions admissible. Buchhalter v. Buchhalter, 959 A.2d 1260 (Pa. Super. 2008) (Court must hear allegations of previous abuse, even if they formed the subject matter of previous petitions, because they are relevant to the reasonableness of petitioner's fear.) **Petitioner not limited to pleadings.** Snyder v. Snyder, 629 A.2d 977 (Pa. Super. 1993)

No actual physical injury required, only reasonable fear of imminent bodily injury required. McCance v. McCance, 908 A.2d 905 (Pa. Super. 2006), Ferri v. Ferri, 854 A.2d 600, 603-4 (Pa. Super. 2004), Fonner v. Fonner, 731 A.2d 160 (Pa. Super. 1999).

Specific intent on behalf of Defendant to cause fear is not required. Raker v. Raker, 847 A.2d 720 (Pa. Super. 2004).

Demands of sexual acts in exchange for financial support of indigent spouse is abuse under §1 of PFA act. Boykai v. Young, 83 A.3d 1043, (Pa. Super. 2014)

Standing

In-laws have standing under "Affinity." McCance v. McCance, 908 A.2d 905 (Pa. Super. 2006)

Paramour's Children have standing under "Affinity." Com. v. Walsh, 36 A.3d 613 (Pa. Super. 2012)

Court should be wary to use PFA act when parties are business partners. Olivieri v. Olivieri, 451 Pa. Super 50 (1996); Overruled by Custer v. Cochran, 933 A.2d 1050 (Pa. Super. 2007) (overruled Olivieri holding that living together was required)

Contempt

Burden of Proof is beyond a reasonable doubt. Commonwealth v. Nelson, 690 A.2d 728 (Pa.Super. 1997)

Elements: (1) the order was definite, clear, specific and leaves no doubt or uncertainty in the mind of the person to whom it was addressed of the prohibited conduct;
(2) the contemnor must have notice of the specific order;
(3) the act constituting the violation must have been volitional; and
(4) the contemnor must have acted with wrongful intent.
Commonwealth v. Baker, 564 Pa. 192, 766 A.2d 328 (2001)

Wrongful intent required for Conviction. Commonwealth v. Haigh, 874 A.2d 1174 (Pa. Super. 2005).
(Genuine concern over Plaintiff's health is not a basis for contempt, especially when it does not place plaintiff in fear.)

Prior bad acts admissible in limited circumstances to show reasonableness in plaintiff's delay of filing after incident, i.e., to show that plaintiff filed late due to fear caused by Defendant. Commonwealth v. Barger, 743 A.2d 477 (Pa. Super. 1999).

Wiretap Act

18 Pa.C.S.A § 5701 - 5782

"Expectation of non-interception" rather than "expectation of privacy" renders recording inadmissible.

18 Pa.C.S.A § 5702 - Definition of "Oral Communication"

18 Pa.C.S.A § 5703 - Defines crime

18 Pa.C.S.A. § 5704 - Provides for exceptions

18 Pa.C.S.A § 5721.1 - Provides for exclusion of evidence

To Bring in: Conversations within home that are loud enough to be heard outside of home are not subject to wiretap act and are therefore admissible. Com v. Louden, 536 Pa. 180, 638 A.2d 953 (1994).

18 Pa.C.S.A. § 5704(17) – Specifically exempts victims & witnesses from wiretap act if they have reasonable suspicion that a crime of violence is about to occur or if the recording will garner evidence of a crime of violence. Victim's recording therefore admissible. **(Note that the §5702 definition of "crime of violence" does not include SA, TT, etc.)**

To keep out: Expectation of non-interception exists within one's home when there is no knowledge of recording and only homeowner and one other person are involved in convo. Com v. Kuder, 2013 Pa.Super 35, 62 A.3d 1038 (2013).

18 Pa.C.S.A § 5721.1 (b) – empowers any aggrieved party to make a motion to exclude the recording. Under **18 Pa.C.S.A § 5721.1 (c)(4)** recorder must prove non-violation of wiretap act by a preponderance of the evidence, once the motion is made.

LAW OFFICES OF SPITALE VARGO MADSEN & BLAIR

(610) 258-3757

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