



## MEMORANDUM

**TO:** The Pennsylvania House Judiciary Committee

**FROM:** Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

**DATE:** September 22, 2023

**RE: OPPOSITION TO HB 703 P.N. 647 (KAZEEM)**

**Bill summary:** [HB 703](#) (PN 647) would extend the time period for emergency protection from abuse (PFA) orders up to 10 days, if done by local rule. If such a local rule were adopted, it would require the minor judiciary to provide notice of a hearing in the court of common pleas. However, this appears inconsistent with other provisions of the [Protection from Abuse Act](#)<sup>1</sup> that specifically address the commencement of proceedings, hearings, and notice.

**Current law:** The purpose of an emergency protection from abuse order is to address an immediate and present danger to a person or minor children. Under [current law](#),<sup>2</sup> an emergency PFA is only in effect until the end of the next business day the court is available. The hearing is held ex parte before the hearing officer, usually a magisterial district judge (MDJ). If granted, the MDJ may evict the defendant from the residence pending a final PFA hearing. **An emergency order has the full force and effect of a temporary or final PFA order.** This means that if a defendant violates any provision of the emergency order (intentionally or unintentionally), they may be subject to indirect criminal contempt charges (arrest and jail) before they have an opportunity to present their side of the story.

The entering of an emergency protection from abuse order serves to commence proceedings under the PFA Act. A final hearing must be held within 10 business days from the certification of order to the court. At that point, the emergency order expires. The plaintiff may request a temporary order be entered pending the final hearing, but a temporary order does not extend the time frame in which the final hearing must be held.

**On behalf of over 100,000 members and supporters of the ACLU of Pennsylvania, I respectfully urge you to oppose House Bill 703.**

### **HB 703 would impede a defendant's due process rights.**

Currently, a defendant must wait at least 10 days following the commencement of proceedings to receive notice of a hearing date where they may present evidence and be heard. Extending an emergency order up to 10 days would mean that a defendant could wait 20 or more days before they would be entitled to a hearing before a common pleas judge. During that time, a defendant may continue to be evicted from their home and subject to an order that remains in full force and effect. **The current process for obtaining emergency and temporary PFA orders already balances the rights and interests of both parties and does not run afoul of due process considerations.**

### **HB 703 would undermine the very definition of an "emergency," creating additional confusion around the PFA process.**

The [PFA Act](#) permits both emergency and temporary orders based on the particular circumstances of each case. By extending an emergency order, during the time when a temporary order may have been ordered, it creates confusion and puts at odds the purpose and function of emergency and temporary PFA orders.

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<sup>1</sup> [23 Pa.C.S. Chapter 61](#)

<sup>2</sup> [23 Pa.C.S. § 6110](#)

Emergency orders are intended to provide protection in situations when a plaintiff cannot access the common pleas court. In these *limited* circumstances, the MDJ is permitted to make a determination that there is an urgent, unexpected situation that requires immediate action. Extending an emergency order past the initial determination is inconsistent with the presence of an emergency. Following expiration of the emergency order, the plaintiff is still able to request a similar temporary protection order if there is a belief protection is needed before the final hearing is held. These temporary orders already serve the purpose of providing additional protection while a final hearing is pending. **There is no reason to extend an emergency order from the lower court when a plaintiff has the ability to request a temporary order.**

**For these reasons, we urge you to oppose House Bill 703.**