

**TESTIMONY PRESENTED TO COMMITTEE ON PUBLIC SAFETY,  
CITY COUNCIL, CITY OF PHILADELPHIA  
ON SERVICE OF PROTECTION FROM ABUSE ORDERS  
BY CAROL E. TRACY, EXECUTIVE DIRECTOR  
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Good morning. My name is Carol Tracy and I am the Executive Director of the Women's Law Project in Philadelphia. We appreciate the ongoing attention of the Public Safety Committee of City Council to issues concerning domestic and sexual violence.

This Committee has played a major role in improving the Philadelphia Police Department's response to sex crimes through public hearings related to allegations of miscoding and inadequate investigations in 1999. As a result of the hearings, significant improvements were made and a state of the art facility was created for this important police work. In addition, four advocacy groups – Women's Law Project, Women Organized Against Rape, the Support Center for Child Advocates and the Philadelphia Children's Alliance conduct an unprecedented case review each year. It is currently underway. We have a very productive collaboration with the Special Victims Unit of the Police Department.

The Public Safety Committee has also held hearings on domestic violence services in Philadelphia which led to the creation by former Mayor John Street of a city wide domestic violence task force which I had the honor to co-chair with former Commissioner Sylvester Johnson. Accomplishments from the task force include increases in city funding for a consolidated hot line and a new and larger shelter. In addition, under the auspices of the task force, we obtained a \$950,000 grant from the Department of Justice Office of Violence Against Women to improve the law enforcement response to domestic violence, stalking and sexual assault. This grant enabled us to provide training for almost 600 police supervisors, added personnel to enhance prosecution and probation efforts, and increased the number of civil attorneys in Protection from Abuse proceedings. A Domestic Violence Law Enforcement Committee meets monthly to coordinate grant and other related activities and to evaluate and monitor progress of these efforts. We have the full support of the Nutter Administration in this work.

Thank you for the opportunity to present testimony to you today. Today's hearing is in response to a resolution introduced by Councilmember At-Large Bill Green and adopted by Council on February 28, 2008 regarding the Protection From Abuse (PFA) legal process, specifically service of orders and petitions.

Representatives from the Women's Law Project and Women Against Abuse conferred with Councilmember Green's staff prior to today's hearing. We believe that we helped clarify the process followed in Philadelphia to serve protection from abuse papers. When the resolution was adopted, Council members were under the mistaken impression that plaintiffs were *required* to serve these papers themselves and that they misused the 911 phone system to obtain police assistance. Accompanying our written testimony is an outline of all legal provisions relating to service of process of PFA petitions and orders in Philadelphia.

In Pennsylvania, service of process in domestic relations matters is governed by court rules which provide that service may only be effectuated by a sheriff or other competent adult and only by handing a copy of the legal papers to the defendant or other designated individual at the defendant's home or place of business. Pa. R.C.P. 1930.4. (a). A competent adult is defined as "an individual eighteen years of age or older who is neither a party to the action nor an employee or a relative of a party." Pa. R.C.P. 76.

In Protection From Abuse matters only, the rules additionally permit any adult to serve the defendant. Pa. R.C.P. 1930.4 (b). Under this provision, service may be made by a party to the action but is not required to be made by a party.

While service rules have been amended and revised over the years since the PFA Act was adopted in 1976, it has always been the case that service could be made by any adult or a sheriff, the latter being police officers in Philadelphia, a city of the first class.

We believe Pennsylvania intentionally made it possible for any adult to make service in PFA cases in order to improve the plaintiff's ability to accomplish service within the time period within which a hearing must be scheduled. Under the PFA Act, a hearing must be held within ten days of the filing of a petition. When the PFA Act was first adopted, plaintiffs sometimes found it difficult to obtain police assistance for service and were faced with having their hearings rescheduled repeatedly until they could make service; many women could not afford to pay a process server. Allowing a plaintiff or other private individual to make service gave plaintiffs more options to achieve service and obtain the relief they needed.

As I will discuss, the police have made it a priority to assist with service and police records indicate that police respond to 7,000 - 8,500 requests for assistance in serving petitions each year. However, the sheer number of petitions filed in Philadelphia — more than 13,000 annually — supports preserving multiple options for making service, including the option for a party to arrange for service for herself.

In instances when the plaintiff believes that service cannot be safely made except by law enforcement, the PFA Act authorizes the court to adopt a means of prompt and effective service,

including ordering the Philadelphia Police Department to serve the petition and order. 23 Pa. C.S.A. § 6106 (e), (f).

In addition, Rule 1930.4 (b) also permits a court to authorize service by another means including, but not limited to, service by regular and certified mail to the defendant's last known address if personal service cannot be completed within forty-eight (48) hours after a Protection From Abuse petition is filed. We do not know whether litigants are aware of this option or how often it is used.

Philadelphia's local Protection From Abuse rules supplement the state civil procedure rules on service. Adopted in 1989, these rules provide for Philadelphia Police Department assistance for the service of petitions and emergency orders. Phila. City Ct. R. 1902.3(k). The local rules also reiterate the state rule providing for service of process by the sheriff or other competent adult, including the plaintiff, or by any other means authorized by the Pennsylvania Rules of Civil Procedure and further provide that a plaintiff who cannot safely effectuate service by an adult other than a law enforcement officer may request that the court provide prompt and effective service. Phila. City Ct. R. 1903.1 (a)-(d).

Service comes into play once the Family Court or Emergency Protection From Abuse site schedules a hearing on a Protection From Abuse petition. The Philadelphia Police Department has been assisting litigants with the service of PFAs for many years. Under a protocol agreed upon between the court system and the Philadelphia Police Department, the court notifies the plaintiff that the defendant must be served with the petition and notice of hearing, informs the plaintiff that the Police Department is available to assist with service, and encourages the plaintiff to avail herself of police assistance by going to the police district where the defendant can be found.

In February 2005, the Philadelphia Police Department worked with Philadelphia Family Court personnel to prepare a video to train its officers. We believe the impetus for the development of this video was the need to clarify the procedure for the patrol officers, in particular to make clear that there was no limit to the number of times a plaintiff could request assistance to accomplish service and that assistance was to be obtained by going to the police district rather than using the 911 call system. This video is available for viewing by city council.

Since the training was developed, there has been improvement in the police handling of requests to assist with service. That doesn't mean we don't periodically encounter problems. For example, we recently talked to a woman who was faced with serving the defendant either at the defendant's home, which was located in one police district, or at the defendant's work, which was in another. The officers in the home district referred her to the police district in which the defendant's workplace was located, but instead of giving her the district address, suggested she go to a location near the worksite and call 911. This was not consistent with police protocol. This woman's fear of waiting alone on the street for an undeterminable time for police assistance near where the defendant work prevented her from pursuing this option.

In light of the concerns raised by City Council about how service of PFA petitions and orders is accomplished in Philadelphia, we have researched how service of process for civil

protection petitions was accomplished both inside and outside Pennsylvania. For all other jurisdictions in Pennsylvania other than Philadelphia, service of a temporary order and petition is accomplished through the sheriff's office or local police. In some of these counties, the plaintiff completes a form providing the sheriff's office with identifying characteristics to help them verify the identity of the defendant. In at least one county, when the petition is denied and only a hearing is scheduled, service of the petition and scheduling of the order is done by certified mail.

None of the other Pennsylvania counties, however, compare to Philadelphia in terms of overall population or PFA filings. An unusually high number of PFA petitions are filed in Philadelphia, approximately 13,000 per year in a population of 1.4 million. Allegheny county is second highest to Philadelphia with approximately 3000 petitions filed annually and the other 65 counties range from a high of 1700 to a low of about 30 per year.

For jurisdictions outside of Pennsylvania, we obtained information in two ways. First we solicited information from attorneys who participate on a listserve sponsored by the American Bar Association's Commission on Domestic Violence. Then we identified a number of jurisdictions which compared to Philadelphia in population served. We ended up with information from 24 other jurisdictions in 15 other states.

We found a number of different practices, but Pennsylvania appears to be unique in permitting the plaintiff to serve the petition herself. All of the jurisdictions examined outside of Pennsylvania explicitly prohibit a party to a matter from serving process in a domestic violence matter. Some permit an adult other than the plaintiff to serve the papers, but often this is only by court order. Many *require* service be done only by law enforcement.

In addition:

- The only time the plaintiff accompanies the sheriff or police when making service was when the defendant is evicted from the home and the plaintiff wants immediate access to the home. This is not typical.
- Many of these jurisdictions have a system to transmit the service package to the sheriff or other law enforcement. Typically, the sheriff's office is located in the courthouse and the sheriff's office either picks up the service packets on a daily basis or the court clerk's office delivers them to the sheriff daily. In Westchester County, New York, there is a pilot project involving electronic transmission of the papers to serve to the local police department.
- Petitioners are asked to fill out a service form which provides identifying and other helpful information about the defendant to aid law enforcement in making service. Sometimes the sheriff meets with the plaintiff before attempting service.
- One (District of Columbia) system is set up to allow the plaintiff the option of service by law enforcement or by another adult of her choosing.

- In some counties the sheriff's office has a special unit for service of PFAs. See e.g., <http://constable5.com/depts/family.html> (Austin, Texas Constable website).
- The courts also may send copies of the petitions and orders to local law enforcement.

To the extent that we were able to determine how many petitions were filed in the jurisdictions outside of Pennsylvania, we could only find two that had filings near the number filed in Philadelphia: Suffolk Co., NY, and Wayne Co., Michigan. We are concerned that, if service were placed solely in the hands of the Philadelphia Police Department, the police would be unable to timely serve the volume of PFA petitions annually filed in Philadelphia. This would result in repeated continuances of hearings, the need for plaintiffs to repeatedly miss work, find day care, and do all the other things required to show up in court, and delays in obtaining necessary protection for families.

At the same time, we believe systems can be put in place that would both better address the safety of litigants in connection with service of PFAs as well as accomplish service in a more effective and efficient manner, while preserving as many options for service as possible for plaintiffs.

As you will hear from other witnesses today, intervention in domestic violence is both complex and dangerous, including potentially dangerous to law enforcement. Service of petitions is just one element of a complicated legal and social framework. Changes in one element may have unintended consequences in another. We believe that this issue should now be on the agenda of the Domestic Violence Law Enforcement Committee that is composed of police, prosecutors, probation officials, court personnel and advocates where we can thoroughly review our research and develop recommendations for improvement.

We thank you again for the opportunity to present testimony today.