

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT [204 PA. CODE CHS. 89 AND 93]

Amendments to Rules of Organization and Procedure of The Disciplinary Board of the Supreme Court of Pennsylvania; Order No. 65

The Rules of Organization and Procedure of the Board have been drafted to restate in full the substance of the Pennsylvania Rules of Disciplinary Enforcement. By Orders dated October 13, 2005 and November 9, 2005, the Supreme Court of Pennsylvania amended Pa.R.D.E. 208(h) and 219(g) and (i). By this Order, the Board is making conforming changes to its Rules to reflect the adoption of those amendments.

The Disciplinary Board of the Supreme Court of Pennsylvania finds that:

(1) To the extent that 42 Pa.C.S. § 1702 (relating to rule making procedures) and Article II of the act of July 31, 1968 (P. L. 769, No. 240), known as the Commonwealth Documents Law, would otherwise require notice of proposed rulemaking with respect to the amendments adopted hereby, those proposed rulemaking procedures are inapplicable because the amendments adopted hereby relate to agency procedure and are perfunctory in nature.

(2) The amendments to the Rules of Organization and Procedure of the Board adopted hereby are not inconsistent with the Pennsylvania Rules of Disciplinary Enforcement and are necessary and appropriate for the administration of the affairs of the Board.

The Board, acting pursuant to Pa.R.D.E. 205(c)(10), orders:

(1) Title 204 of the *Pennsylvania Code* is hereby amended as set forth in Annex A hereto.

(2) The Secretary of the Board shall duly certify this Order, and deposit the same with the Administrative Office of Pennsylvania Courts as required by Pa.R.J.A. 103(c).

(3) The amendments adopted hereby shall take effect upon publication in the *Pennsylvania Bulletin*.

(4) This Order shall take effect immediately.

By The Disciplinary Board of the Supreme Court of Pennsylvania

ELAINE M. BIXLER,
Secretary

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart C. DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA

CHAPTER 89. FORMAL PROCEEDINGS

Subchapter G. PROBATION

§ 89.292. Violation of probation.

Enforcement Rule 208(h) provides that:

(1) Where it appears that a respondent-attorney who has been placed on probation [pursuant to § 85.8(a)(4) (relating to types of discipline)] has violated the terms of the probation, the Office of Disciplinary Counsel may file a petition with the Board detailing the violation and suggesting appropriate modification of the order imposing the probation, including without limitation immediate suspension of the respondent-attorney.

(2) A hearing on the petition shall be held within ten business days before a member of the Board designated by the [Chairman of the] Board Chair. [The designated Board member shall hear the petition and, if] If the designated Board member finds that the order imposing probation should be modified, the following procedures shall apply:

(i) If the order imposing probation was entered by the Supreme Court, the designated Board member shall submit a transcript of the hearing and a recommendation to the Supreme Court within five business days after the conclusion of the hearing. A copy of the transcript and recommendation shall be personally served upon the respondent-attorney.

[(3)] The Court, or any justice thereof, may enter a rule directing the respondent-attorney to show cause why the order imposing probation should not be modified as set forth in the petition, which rule shall be returnable within ten business days. If the period for response has passed without a response having been filed, or after consideration of any response, the Court may enter an order modifying as appropriate the order imposing probation.

(ii) If the order imposing probation was entered by the Board, the designated Board member shall submit a transcript of the hearing and a recommendation to the Board within five business days after the conclusion of the hearing. A copy of the transcript and recommendation shall be personally served upon the respondent-attorney along with a notice that the respondent-attorney may file a response to the recommendation with the Board within ten business days. If the period for response has passed without a response having been filed, or after consideration of any response, the Board may enter an order modifying as appropriate the probation previously ordered or directing the commencement of a formal proceeding under this chapter.

CHAPTER 93. ORGANIZATION AND ADMINISTRATION

Subchapter G. FINANCIAL MATTERS

TAXATION OF COSTS

§ 93.112. Failure to pay taxed expenses.

* * * * *

(b) *Action by Supreme Court.* Enforcement Rule 219(g) provides that upon certification to the Supreme Court of the name of any attorney pursuant to paragraph (a)(2), the Court shall immediately enter an order transferring such attorney to inactive status; and that the Chief Justice may delegate the processing and entry of orders under this subsection to the Prothonotary.

* * * * *

ANNUAL ASSESSMENT OF ATTORNEYS

§ 93.144. Transfer to inactive status for failure to comply.

* * * * *

(b) *Action by the Supreme Court.* Enforcement Rule 219(g) provides that upon certification to the Supreme Court of the name of any attorney pursuant to paragraph (a)(2), the Court shall immediately enter an order transferring such attorney to inactive status; **and that the Chief Justice may delegate the processing and entry of orders under this subsection to the Prothonotary.**

§ 93.146. Voluntarily retired or inactive attorneys.

(a) *General rule.* Enforcement Rule 219(i) provides that:

(1) an attorney who has retired, is not engaged in practice or who has sold his or her practice pursuant to Rule 1.17 of the Pennsylvania Rules of Professional Conduct shall file with the Administrative Office a notice in writing (Form DB-28) (Notice of Voluntary Assumption of Inactive Status) that the attorney desires voluntarily to assume inactive status and discontinue the practice of law; **[that]**

(2) upon the transmission of such notice from the Administrative Office to the Supreme Court, the Court shall enter an order transferring the attorney to inactive status, and the attorney shall no longer be eligible to practice law but shall continue to file the statement specified in § 93.142(b) (relating to filing of annual statement by attorneys) for six years thereafter in order that the formerly admitted attorney can be located in the event complaints are made about the conduct of such person while such person was engaged in practice; **[that]**

(3) the formerly admitted attorney will be relieved from the payment of the fee specified in § 93.141 (relating to annual assessment); **[and that]**

(4) Chapter 91 Subchapter E (relating to formerly admitted attorneys) shall not be applicable to the formerly admitted attorney unless ordered by the Supreme Court in connection with the entry of an order of suspension or disbarment under another provision of the Enforcement Rules; **and**

(5) **the Chief Justice may delegate the processing and entry of orders under this subsection to the Prothonotary.**

* * * * *

[Pa.B. Doc. No. 06-862. Filed for public inspection May 19, 2006, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1900]

Order Amending Rules 1901, 1901.1, 1901.2, 1901.3, 1901.4, 1901.5, 1901.6, 1901.7 and 1905; No. 454 Civil Procedural Rules; Doc. No. 5

Order

Per Curiam:

And Now, this 2nd day of May, 2006, Rules 1901, 1901.1, 1901.2, 1901.3, 1901.4, 1901.5, 1901.6, 1901.7 and

1905 of the Pennsylvania Rules of Civil Procedure are amended as follows.

This order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective on May 9, 2006.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1900. ACTIONS PURSUANT TO THE PROTECTION FROM ABUSE ACT

Rule 1901. Definitions.

As used in this chapter:

“Act” means “Protection From Abuse Act” No. 206 approved December 19, 1990, 23 Pa.C.S.A. § 6101 et seq.

“Action” means a proceeding for protection from abuse defined in § 6102 of the Act.

“Court” means the court of common pleas.

“Emergency Order” means an order entered by a hearing officer, who is a person meeting the definition set forth at 23 Pa.C.S.A. § 6102.

“Fees” means any costs associated with the filing, issuance, registration, service or appeal of a Protection From Abuse matter, including any foreign protection order.

“Master for Emergency Relief” means an attorney, admitted to the practice of law by the Supreme Court of Pennsylvania and appointed pursuant to 23 Pa.C.S.A. § 6110(e), to hear petitions for emergency protection from abuse.

“Temporary Order” means an ex parte order entered by the court pursuant to 23 Pa.C.S.A. § 6107.

Explanatory Comment—2006

The 2005 amendments to the Protection From Abuse Act, Act 66 of 2005, authorize two methods to secure emergency protection from abuse orders. The first is through a magisterial district judge and the other is through a master for emergency relief. In order for a county to exercise the master for emergency relief option, the county must assume the costs of the master and the Administrative Office of Pennsylvania Courts must approve the master’s selection and appointment. 23 Pa.C.S.A. § 6110 (e).

The 2005 amendments to the Protection From Abuse Act also prohibit the assessment of fees or costs against the plaintiff or petitioner. This prohibition includes fees related to filing, serving, registering or appealing a protection from abuse petition or order. 23 Pa.C.S.A. §§ 6104 (d)(1), 6106(b) and (g.1) and 6113.1(b).

Rule 1901.1. Venue.

(a) Except as provided in subdivision (b), an action for protection from abuse may be brought in a county in which

- (1) the plaintiff resides, either temporarily or permanently, or is employed, or
- (2) the defendant may be served, or
- (3) the abuse occurred.

(b) If the relief sought includes possession of the residence or household to the exclusion of the defendant,

the action shall be brought only in the county in which the residence or household is located.

(c) An action for indirect criminal contempt may be filed in, and heard by, the court in the county in which the order was issued or where the violation occurred.

Explanatory Comment—1991

The statute and rules governing actions for protection from abuse formerly contained no provision for venue. Recommendation No. 84 of the Civil Procedural Rules Committee proposed a new rule to fill that void and the rule has been adopted as Rule 1901.1

Subdivision (a) provides for venue in the following counties: (1) the county in which the abuse occurred, (2) the county in which the defendant may be served, (3) the county in which the plaintiff resides, either permanently or temporarily, and (4) the county in which the plaintiff is employed. These are the counties with which the plaintiff has the most significant contacts and the greatest interest in remaining free from abuse. The county of temporary residence is included because an abused person may have to flee the county of permanent residence to escape further abuse.

The rule imposes limited venue when the relief sought includes the sole possession of the residence or household. In that instance, the action must be brought in the county in which the residence or household is located.

Explanatory Comment—2006

The 2005 amendments to the Protection From Abuse Act grant jurisdiction over indirect criminal contempt complaints in either the county in which the order was issued or the county where the violation occurred. This rule allows for flexible and immediate enforcement of protection from abuse orders. With this amendment, indirect criminal contempt jurisdiction is parallel to prosecution for stalking and harassment. 23 Pa.C.S.A. § 6114 (a.1).

Rule 1901.2. Scheduling.

Each judicial district shall establish times when the court will hear temporary Protection From Abuse matters.

Rule 1901.3. Commencement of Action.

(a) Except as provided in subdivision (b), an action shall be commenced by presenting to the court or filing with the prothonotary a petition setting forth the alleged abuse by the defendant. The petition shall be substantially in the form set forth in Rule 1905(b) and shall have as its first page the Notice of Hearing and Order set forth in Rule 1905(a).

(b) An action may be commenced by filing with the prothonotary a certified copy of an emergency order entered pursuant to 23 Pa.C.S.A. § 6110, **including orders issued by masters for emergency relief.**

(c) Any fees associated with this action shall not be charged to the plaintiff.

(d) The master for emergency relief shall follow the procedures set forth in the Pennsylvania Rules of Civil Procedure Governing Actions and proceedings before magisterial district judges for emergency relief under the Protection From Abuse Act.

Explanatory Comment—2006

New subdivision (c) reflects the 2005 amendments to the Protection From Abuse Act which prohibits charging fees or costs against the plaintiff. 23 Pa.C.S.A. § 6106(b). The 2005 amendments to 23 Pa.C.S.A. § 6110(e) of the Protection From Abuse Act authorize the use of masters for emergency relief which is reflected in new subdivision (d).

Rule 1901.4. Service and Registration of Order.

(a) Service of the petition and temporary order shall be in accordance with Rule 1930.4.

(b) An Affidavit of Service substantially in the form set forth in Rule 1905(d) shall be filed with the prothonotary.

(c) Upon the filing of a protection order with the prothonotary, the prothonotary shall transmit a copy of the order to the State Police PFA Registry in the manner prescribed by the Pennsylvania State Police.

Official Note: This provision also applies to an order denying a plaintiff's request for a final protection order.

(d) No fee shall be charged to the plaintiff or petitioner for service of any protection from abuse order or pleading or for the registration, filing or service of any foreign protection order.

Explanatory Comment—1997

Subdivision (c) reflects the prothonotary's role in ensuring that all protection orders reach the new statewide PFA Registry. Pursuant to the 1994 amendments to the Protection From Abuse Act, the Pennsylvania State Police Department is mandated to establish this registry for all protection orders issued or registered in the commonwealth. Once it becomes fully operational, it will be available at all times to inform law enforcement officers, dispatchers and courts of the existence and terms of protection orders. The registry represents a major improvement in the manner in which protections orders are registered and verified by not only eliminating the need to register the order in every county where the victim believes enforcement is necessary, but also enabling the police to immediately verify the order for purposes of enforcement. In order to ensure that the information in the registry remains current, subdivision (c) requires the prothonotary to transmit all protection orders issued or registered in the commonwealth, including temporary, final, modified and consent orders, as well as any orders withdrawing, extending or denying the plaintiff's request for a protection order.

Explanatory Comment—2006

New subdivision (d) reflects the prohibition against charging fees to the plaintiff, even those related to foreign protection orders, as set forth in the 2005 amendments to the Protection From Abuse Act. 23 Pa.C.S.A. § 6106(b) and (g.1).

Rule 1901.5. Enforcement.

(a) When an arrest is made for violation of an order, a complaint for indirect criminal contempt shall be completed and signed by either a police officer, **the sheriff** or the plaintiff. When the complaint is filed by a police officer **or sheriff**, neither **the** plaintiff's presence nor signature is required.

(b) If an arrest is not effected, a complaint for indirect criminal contempt may be completed and signed by the plaintiff pursuant to 23 Pa.C.S.A. § 6113.1.

Explanatory Comment—2006

The 2005 amendments to the Protection From Abuse Act authorize the sheriff to arrest the defendant for violations of a protection from abuse order. In addition, the sheriff is authorized to exercise a search and seizure of any firearm, other weapon and ammunition subsequent to arrest. 23 Pa.C.S.A. § 6113(a) and (b).

Rule 1901.6. No responsive pleading required.

No pleading need be filed in response to the petition or the certified order and all averments not admitted shall be deemed denied.

Official Note: For [**procedure**] **procedures** as to the time and manner of hearings and issuance of orders, see 23 Pa.C.S.A. § 6107. For provisions as to the scope of relief available, see 23 Pa.C.S.A. § 6108. For provisions as to contempt for violation of an order, see 23 Pa.C.S.A. § 6114.

Rule 1901.7. Decision. Post-trial relief.

(a) The decision of the court may consist of only general findings of abuse but shall dispose of all claims for relief. The court's **final** order shall be rendered substantially in the form set forth in Rule 1905(e).

(b) No motion for post-trial relief may be filed to the final order.

Official Note: The procedure relating to Motions for Reconsideration is set forth in Rule 1930.2.

Explanatory [Note] Comment—1977

New Rules 1901, et seq. promulgated March 9, 1977 and effective 15 days after publication in the *Pennsylvania Bulletin* implement the Protection [**from**] **From Abuse Act No. 218 of 1976** which became effective December 6, 1976.

The Act introduces a new civil remedy authorizing protective orders to bring about cessation of abuse of the plaintiff or minor children, which relief includes, inter alia, exclusion of the errant spouse from the household, the award of temporary custody and visitation rights with regard to minor children and support.

The Act also authorizes temporary ex parte orders when the exigency of the situation requires immediate relief before process can be served on a defendant.

Jurisdiction is also conferred on the magisterial district judges over the weekend if and when a judge of the court of common pleas is not available, but any temporary order of a magisterial district judge expires at the resumption of business of the common pleas court at the beginning of the week or within seventy-two (72) hours, whichever occurs first. The magisterial district judge is required immediately to certify his or her order to the common pleas court and the certification under the Act has the effect of commencing a proceeding in the common pleas court and invoking the other provisions of the Act.

Section 9 of the Act provides that all proceedings shall be in accordance with Rules of Civil Procedure and shall be in addition to any other available civil or criminal remedies.

Explanatory Comment—2005

Act 207-2004 amended numerous titles of the *Pennsylvania Consolidated Statutes* changing the title of "district justice" to "magisterial district judge." The amendments to Rule 1901.7's Explanatory Comment—1977 reflect the change in title, make the comment gender-neutral and delete outdated material.

Rule 1905. Forms for Use in PFA Actions. Notice and Hearing. Petition. Temporary Protection Order. Final Protection Order.

(a) The Notice of Hearing and Order required by Rule 1901.3 shall be substantially in the following form:

(Caption)
NOTICE OF HEARING AND ORDER

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following papers, you must appear at the hearing scheduled herein. If you fail to do so, the case may proceed against you and a **FINAL [Order] order** may be entered against you granting the relief requested in the [**Petition**] **petition**. In particular, you may be evicted from your residence, **be prohibited from possessing any firearm, other weapon, ammunition or any firearm license**, and lose other important rights, **including custody of your children**. Any protection order granted by a court may be considered in subsequent proceedings under Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, including child custody proceedings under Chapter 53 (relating to custody).

A hearing on the matter is scheduled for the _____ day of _____, 20____, at _____ .m., in Courtroom _____ at _____ Courthouse, _____, Pennsylvania.

You **MUST** obey the [**Order**] **order** that is attached until it is modified or terminated by the court after notice and hearing. If you disobey this [**Order**] **order**, the police **or sheriff** may arrest you. Violation of this [**Order**] **order** may subject you to a charge of indirect criminal contempt which is punishable by a fine of up to \$1,000.00 and/or up to six months in jail under 23 Pa.C.S.A. § 6114. Violation may also subject you to prosecution and criminal penalties under the Pennsylvania Crimes Code. Under federal law, 18 U.S.C. § 2265, this [**Order**] **order** is enforceable anywhere in the United States, tribal lands, U.S. Territories and the Commonwealth of Puerto Rico. If you travel outside of the state and intentionally violate this [**Order**] **order**, you may be subject to federal criminal proceedings under the Violence Against Women Act, 18 U.S.C. §§ 2261—2262.

If this order directs you to relinquish any firearm, other weapon, ammunition or any firearm license to the sheriff, you may do so upon service of this order. As an alternative, you may relinquish any firearm, other weapon, or ammunition listed herein to a third party provided you and the third party first comply with all requirements to obtain a safekeeping permit. You must relinquish any firearm, other weapon, ammunition or any firearm license listed herein no later than 24 hours after service of the order. Failure to timely relinquish any firearm, other weapon, ammunition or any firearm license shall result in a violation of this order and may result in criminal conviction under the Uniform Firearms Act, 18 Pa.C.S.A. § 6105.

9. Plaintiff and Defendant are the parents of the following minor child/ren:

Name(s)	Age(s)	who reside at (list address unless confidential)
_____	_____	_____
_____	_____	_____

10. If Plaintiff and Defendant are parents of any minor child/ren together, is there an existing court **[Order] order** regarding their custody? _____

If you answered Yes, describe the terms of the **[Order] order** (e.g., primary, shared, legal and/or physical custody):

If you answered Yes, in what county and state was the order issued? _____

If you are now seeking an **[Order] order** of child custody as part of this petition, list the following information:

(a) Where has each child resided during the past five years?

Child's name	Person(s) child lived with	Address, unless confidential	When
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

(b) List any other persons who are known to have or claim a right to custody of each child listed above.

Name	Address	Basis of Claim
_____	_____	_____
_____	_____	_____
_____	_____	_____

11. The following other minor child/ren presently live with Plaintiff:

Name(s)	Age(s)	Plaintiff's relationship to child/ren
_____	_____	_____
_____	_____	_____
_____	_____	_____

12. The facts of the most recent incident of abuse are as follows:

Approximate Date: _____ Approximate Time: _____ Place: _____

Describe in detail what happened, including any physical or sexual abuse, threats, injury, incidents of stalking, medical treatment sought, and/or calls to law enforcement (attach additional sheets of paper if necessary):

13. If **[the]** Defendant has committed prior acts of abuse against Plaintiff or the minor child/ren, describe these prior incidents, including any threats, injuries, or incidents of stalking, and indicate approximately when such acts of abuse occurred (attach additional sheets of paper if necessary):

14. (a) **[List the weapon(s) that] Has** Defendant **[has]** used or threatened to use **any firearms or other weapons** against Plaintiff or the minor child/ren? **If so, please describe:**

(b) **To the best of your knowledge or belief, does Defendant own or possess any firearm, other weapon, ammunition or any firearm license?**

(c) **If the answer to (b) above is "yes," list any firearm, other weapon or ammunition owned by or in the possession of Defendant on Attachment A, which is incorporated by reference into this petition.**

15. Identify the **sheriff**, police department or law enforcement agency in the area in which Plaintiff lives that should be provided with a copy of the protection order:

16. There is an immediate and present danger further abuse from [**the**] Defendant.

CHECK THE FOLLOWING BOXES ONLY IF THEY APPLY TO YOUR CASE AND PROVIDE THE REQUESTED INFORMATION

Plaintiff is asking the court to evict and exclude [**the**] Defendant from the following residence: _____

owned by (list owners, if known): _____

rented by (list all names, if known): _____

Defendant owes a duty of support to Plaintiff and/or the minor child/ren.

Plaintiff has suffered out-of-pocket financial losses as a result of the abuse described above. Those losses are: _____

FOR THE REASONS SET FORTH ABOVE, I REQUEST THAT THE COURT ENTER A TEMPORARY ORDER, and AFTER HEARING, A FINAL ORDER THAT WOULD DO THE FOLLOWING (CHECK ALL FORMS OF RELIEF REQUESTED):

A. Restrain Defendant from abusing, threatening, harassing, or stalking Plaintiff and/or minor child/ren in any place where Plaintiff may be found.

B. Evict/exclude Defendant from Plaintiff's residence and prohibit Defendant from attempting to enter any temporary or permanent residence of the Plaintiff.

C. Require Defendant to provide Plaintiff and/or minor child/ren with other suitable housing.

D. Award Plaintiff temporary custody of the minor child/ren and place the following restrictions on contact between Defendant and child/ren: _____

E. Prohibit Defendant from having any contact with Plaintiff and/or minor child/ren, either in person, by telephone, or in writing, personally or through third persons, including but not limited to any contact at Plaintiff's school, business, or place of employment, except as the court may find necessary with respect to partial custody and/or visitation with the minor child/ren.

F. Prohibit Defendant from having any contact with Plaintiff's relatives and Plaintiff's children listed in this [**Petition**] **petition**, except as the court may find necessary with respect to partial custody and/or visitation with the minor child/ren.

G. Order Defendant to temporarily [**turn over weapons**] **relinquish any firearm, other weapon, ammunition and any firearm license** to the [**Sheriff**] **sheriff** of this [**County**] **county** and prohibit Defendant from transferring, acquiring or possessing any [**such weapons**] **firearm, other weapon, ammunition or any firearm license** for the duration of the [**Order**] **order**.

H. Order Defendant to pay temporary support for Plaintiff and/or the minor child/ren, including medical support and payment of the rent or mortgage on the residence.

I. Direct Defendant to pay Plaintiff for the reasonable financial losses suffered as the result of the abuse, to be determined at the hearing.

J. Order Defendant to pay the costs of this action, including filing and service fees.

K. Order Defendant to pay Plaintiff's reasonable attorney's fees.

L. Order the following additional relief, not listed above: _____

M. Grant such other relief as **Plaintiff requests and/or** the court deems appropriate.

N. Order the police, **sheriff** or other law enforcement agency to serve [**the**] Defendant with a copy of this [**Petition**] **petition**, any [**Order**] **order** issued, and the [**Order**] **order** for [**Hearing**] **hearing**. [**The petitioner**] **Plaintiff** will inform the designated authority of any addresses, other than Defendant's residence, where Defendant can be served.

VERIFICATION

I verify that I am the petitioner as designated in the present action and that the facts and statements contained in the above [Petition] petition are true and correct to the best of my knowledge. I understand that any false statements are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Signature

Date

(Caption)

PETITIONER'S ATTACHMENT A
FIREARMS, OTHER WEAPONS AND AMMUNITION INVENTORY

I, _____, Plaintiff in this Protection From Abuse Action, hereby request the court order Defendant to relinquish the following firearms, other weapons, ammunition, and firearm licenses to the sheriff:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.

If more space is needed, more sheets may be attached to this document.

I believe the above items are located at: _____ .
_____ (List all relevant addresses where they may be found)

Name _____

Date _____

Notice: This attachment will be withheld from public inspection in accordance with 23 Pa.C.S.A. § 6108 (a)(7)(v).

(c) The Temporary Order of Court entered pursuant to the Act shall be substantially in the following form:

(Caption)
TEMPORARY PROTECTION FROM ABUSE ORDER

Defendant's Name: _____

Defendant's Date of Birth: _____

Defendant's Social Security Number: _____

Names of All Protected Persons, including Plaintiff and minor child/ren: _____

AND NOW, this ____ day of _____, _____, upon consideration of the attached Petition for Protection [from] From Abuse, the court hereby enters the following Temporary Order:

- 1. Defendant shall not abuse, harass, stalk or threaten any of the above persons in any place where they might be found.
- 2. Defendant is evicted and excluded from the residence at [NONCONFIDENTIAL ADDRESS FROM WHICH DEFENDANT IS EXCLUDED] or any other permanent or temporary residence where Plaintiff or any other person protected under this [Order] order may live. Plaintiff is granted exclusive possession of the residence. Defendant shall have no right or privilege to enter or be present on the premises of Plaintiff or any other person protected under this [Order] order.
- 3. Except for such contact with the minor child/ren as may be permitted under Paragraph 5 of this [Order] order, Defendant is prohibited from having ANY CONTACT with Plaintiff, or any other protected person under this [Order] order, either directly or indirectly, at any location, including but not limited to any contact at Plaintiff's school, business, or place of employment. Defendant is specifically ordered to stay away from the following locations for the duration of this [Order] order: _____

4. Except for such contact with the minor child/ren as may be permitted under Paragraph 5 of this [**Order**] order, Defendant shall not contact Plaintiff, or any other person protected under this [**Order**] order, by telephone or by any other means, including through third persons.

5. Pending the outcome of the final hearing in this matter, Plaintiff is awarded temporary custody of the following minor child/ren: _____

Until the final hearing, all contact between Defendant and the child/ren shall be limited to the following: _____

THIS ORDER SUPERSEDES ANY PRIOR ORDER RELATING TO CHILD CUSTODY.

The local law enforcement agency **and the sheriff** in the jurisdiction where the child/ren are located shall ensure that the child/ren are placed in the care and control of [**the**] Plaintiff in accordance with the terms of this [**Order**] order.

6. [**Defendant shall immediately relinquish the following weapons to the Sheriff's Office or a designated local law enforcement agency for delivery to the Sheriff's office:**

_____]

Defendant is prohibited from possessing, transferring or acquiring any [**other weapons**] firearms for the duration of this order.

Check all that apply:

Defendant shall relinquish to the sheriff all firearms and firearms licenses owned or possessed by Defendant.

Defendant is directed to relinquish to the sheriff any firearm, other weapon or ammunition listed in Petitioner's Attachment A, and any firearms license Defendant may possess.

Defendant may relinquish any firearms, other weapons or ammunition to the sheriff. As an alternative, Defendant may relinquish firearms, other weapons and ammunition to a third party provided Defendant and the third party first comply with all the requirements to obtain a safekeeping permit. Defendant must relinquish any firearm, other weapon, ammunition or firearms license ordered to be relinquished no later than 24 hours after service of this order. Failure to timely relinquish any firearm, other weapon, ammunition or any firearm license shall result in a violation of this order and may result in criminal conviction under the Uniform Firearms Act, 18 Pa.C.S.A. § 6105.

7. The following additional relief is granted:

8. A certified copy of this [**Order**] order shall be provided to the **sheriff or** police department where Plaintiff resides and any other agency specified hereafter: [insert name of agency]

9. **THIS ORDER SUPERSEDES [] ANY PRIOR [PFA] PROTECTION FROM ABUSE ORDER [AND ANY PRIOR ORDER RELATING TO CHILD CUSTODY].**

10. **THIS ORDER APPLIES IMMEDIATELY TO DEFENDANT AND SHALL REMAIN IN EFFECT UNTIL [insert expiration date] OR UNTIL OTHERWISE MODIFIED OR TERMINATED BY THIS COURT AFTER NOTICE AND HEARING.**

NOTICE TO THE DEFENDANT

Defendant is hereby notified that violation of this [**Order**] order may result in arrest for indirect criminal contempt, which is punishable by a fine of up to \$1,000.00 and/or up to six months in jail. 23 Pa.C.S.A. § 6114. Consent of [**the**] Plaintiff to Defendant's return to the residence shall not invalidate this [**Order**] order, which can only be changed or modified through the filing of appropriate court papers for that purpose. 23 Pa.C.S.A. § 6113. **If Defendant is required to relinquish any firearms, other weapons or ammunition or any firearms license, those items must be relinquished to the sheriff within 24 hours of the service of this order. As an alternative, Defendant may relinquish any firearm, other weapon or ammunition listed herein to a third party provided Defendant and the third party first comply with all requirements to obtain a safekeeping permit.** Defendant is further notified that violation of this [**Order**] order may subject him/her to state charges and penalties under the Pennsylvania Crimes Code and to federal charges and penalties under the Violence Against Women Act, 18 U.S.C. §§ 2261—2262.

NOTICE TO SHERIFF, POLICE AND LAW ENFORCEMENT OFFICIALS

This [Order] order shall be enforced by the police department or sheriff who [have] has jurisdiction over [the plaintiff's] Plaintiff's residence OR any location where a violation of this order occurs OR where [the defendant] Defendant may be located. If [defendant] Defendant violates Paragraphs 1 through 6 of this [Order, defendant] order, Defendant shall be arrested on the charge of [Indirect Criminal Contempt] indirect criminal contempt. An arrest for violation of this [Order] order may be made without warrant, based solely on probable cause, whether or not the violation is committed in the presence of [law enforcement] a police officer or sheriff.

Subsequent to an arrest, the law enforcement officer or sheriff shall seize all firearms, other weapons [used or threatened to be used during the violation of this Order OR during prior incidents of abuse] and ammunition in Defendant's possession. [Weapons] Any firearm, other weapon, ammunition or any firearm license must [forthwith] be delivered to the [Sheriff] sheriff's office of the county which issued this [Order] order, which office shall maintain possession of the firearms, other weapons and ammunition until further [Order] order of this court, unless the weapon/s are evidence of a crime, in which case, they shall remain with the law enforcement agency whose officer or sheriff made the arrest.

BY THE COURT:

Judge

Date

(d) The form of the Affidavit of Service in a Protection From Abuse matter shall be substantially in the following form:

(Caption)
AFFIDAVIT OF SERVICE

I, _____, the undersigned, hereby state that I served a copy of the Petition and Temporary Order in the above-captioned action upon [the] Defendant by handing the papers to _____ at the following address: _____ on the ____ day of _____, [19] 20 ____, at approximately ____ o'clock ____ .m.

I verify that the statements made in this Affidavit are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities.

(Signature)
(Title)
(Address)
(Date)

(e) The Final Order of Court entered pursuant to the Act shall be substantially in the following form:

(Caption)
FINAL ORDER OF COURT

Defendant's Name: _____
Defendant's Date of Birth: _____
Defendant's Social Security Number: _____

Names and Dates of Birth of All Protected Persons, including Plaintiff and minor children:

Names	Dates of Birth
_____	_____
_____	_____
_____	_____

CHECK ALL THAT APPLY:

Plaintiff or Protected Person(s) is/are:

- spouse or former spouse of Defendant
- parent of a common child with Defendant
- current or former sexual or intimate partner with Defendant
- child of Plaintiff
- child of Defendant
- family member related by blood (consanguinity) to Defendant
- family member related by marriage or affinity to Defendant
- sibling (person who shares biological parenthood) of Defendant
- current or former cohabitant (person who lives with) Defendant

Defendant was served in accordance with Pa.R.C.P. 1930.4 and provided notice of the time, date and location of the hearing scheduled in this matter.

AND NOW, this ____ day of _____, 20____, the court having jurisdiction over the parties and the subject-matter, it is ORDERED, ADJUDGED [and] AND DECREED as follows:

Note: Space is provided to allow for 1) the court's general findings of abuse; 2) inclusion of the terms under which the order was entered (e.g., that the order was entered with the consent of the parties, or that the defendant, though properly served, failed to appear for the hearing, or the reasons why the plaintiff's request for a final PFA order was denied); and/or 3) information that may be helpful to law enforcement or the sheriff (e.g., whether a firearm or other weapon was involved in the incident of abuse and/or whether the defendant is believed to be armed and dangerous).

Plaintiff's request for a final protection order is denied.

OR

Plaintiff's request for a final protection order is granted.

1. Defendant shall not abuse, stalk, harass, threaten or attempt to use physical force that would reasonably be expected to cause bodily injury to [the] Plaintiff or any other protected person in any place where they might be found.

2. Defendant is completely evicted and excluded from the residence at (NONCONFIDENTIAL ADDRESS FROM WHICH DEFENDANT IS EXCLUDED) or any other residence where Plaintiff or any other person protected under this [Order] order may live. Exclusive possession of the residence is granted to Plaintiff. Defendant shall have no right or privilege to enter or be present on the premises of Plaintiff or any other person protected under this [Order] order.

On [insert date and time], Defendant may enter the residence to retrieve his/her clothing and other personal effects, provided that Defendant is in the company of a law enforcement officer or sheriff when such retrieval is made and [insert any other conditions] _____

3. Except as provided in [Paragraph] paragraph 5 of this [Order] order, Defendant is prohibited from having ANY CONTACT with [the] Plaintiff, either directly or indirectly, or any other person protected under this [Order] order, at any location, including but not limited to any contact at [the] Plaintiff's school, business, or place of employment. Defendant is specifically ordered to stay away from the following locations for the duration of this [Order] order: _____

4. Except as provided in [Paragraph] paragraph 5 of this [Order] order, Defendant shall not contact [the] Plaintiff, or any other person protected under this [Order] order, by telephone or by any other means, including through third persons.

5. Custody of the minor children, [NAMES OF THE CHILDREN SUBJECT TO THE PROVISION OF THIS PARAGRAPH] shall be as follows: [STATE TO WHOM PRIMARY PHYSICAL CUSTODY IS AWARDED; STATE TERMS OF PARTIAL CUSTODY OR VISITATION, IF ANY.]

THIS ORDER SUPERSEDES ANY PRIOR ORDER RELATING TO CUSTODY.

6. [Defendant shall immediately turn over to the Sheriff's Office, or to a local law enforcement agency for delivery to the Sheriff's office, the following weapons used or threatened to be used by Defendant in an act of abuse against Plaintiff and/or the minor child/ren: _____]

Defendant is prohibited from possessing, transferring or acquiring any firearms for the duration of this order.

Check all that apply:

Defendant shall relinquish to the sheriff all firearms and firearm licenses owned or possessed by Defendant.

Defendant is directed to relinquish to the sheriff any firearm, other weapon or ammunition listed in Petitioner's Attachment A, and any firearms license Defendant may possess.

Defendant may relinquish any firearms, other weapons or ammunition to the sheriff. As an alternative, Defendant may relinquish firearms, other weapons and ammunition to a third party provided Defendant and the third party first comply with all the requirements to obtain a safekeeping permit. Defendant must relinquish any firearm, other weapon, ammunition or firearms license ordered to be relinquished no later than 24 hours after service of this order. Failure to timely relinquish any firearm, other weapon, ammunition or any firearm license shall result in a violation of this order and may result in criminal conviction under the Uniform Firearms Act, 18 Pa.C.S.A. § 6105

7. **[Defendant is prohibited from possessing, transferring or acquiring any other weapons for the duration of this Order.]** Any **[weapons]** firearm delivered to the sheriff **[under Paragraph 6 of]** or transferred to a licensed firearm dealer, or a qualified third party who satisfies the procedural and substantive requirements to obtain a safekeeping permit issued under 23 Pa.C.S.A. § 6108.3 pursuant to this **[Order or under Paragraph 6 of the Temporary Order]** order or the temporary order shall not be returned to Defendant until further order of court.

8. The following additional relief is granted as authorized by § 6108 of the Act:

9. Defendant is directed to pay temporary support for: [INSERT THE NAMES OF THE PERSONS FOR WHOM SUPPORT IS TO BE PAID] as follows: [INSERT AMOUNT, FREQUENCY AND OTHER TERMS AND CONDITIONS OF THE SUPPORT ORDER]. This order for support shall remain in effect until a final order is entered by this **[Court]** court. However, this order shall lapse automatically if **[the]** Plaintiff does not file a complaint for support with the Domestic Relations Section of the court within two weeks of the date of this order. The amount of this temporary order does not necessarily reflect Defendant's correct support obligation, which shall be determined in accordance with the guidelines at the support hearing. Any adjustments in the final amount of support shall be credited, retroactive to this date, to the appropriate party.

10. (a) The costs of this action are **[waived as to the Plaintiff and]** imposed on Defendant.

(b) **Because this order followed a contested proceeding, Defendant is ordered to pay an additional \$100 surcharge to the court, which shall be distributed in the manner set forth in 23 Pa.C.S.A. § 6106(d).**

11. Defendant shall pay \$ _____ to Plaintiff by _____ (insert date) as compensation for Plaintiff's out-of-pocket losses, which are as follows:

OR

Plaintiff is granted leave to present a petition, with appropriate notice to Defendant, to [INSERT THE NAME OF THE JUDGE OR COURT TO WHICH THE PETITION SHOULD BE PRESENTED] requesting recovery of out-of-pocket losses. The petition shall include an exhibit itemizing all claimed out-of-pocket losses, copies of all bills and estimates of repair, and an order scheduling a hearing. No fee shall be required by the **[Prothonotary's]** prothonotary's office for the filing of this petition.

12. THIS ORDER SUPERSEDES ANY PRIOR **[PFA]** PROTECTION FROM ABUSE ORDER **[AND ANY PRIOR ORDER RELATING TO CHILD CUSTODY]**.

13. All provisions of this order shall expire in **[eighteen months]** three years, on [INSERT EXPIRATION DATE].

NOTICE TO THE DEFENDANT

VIOLATION OF THIS ORDER MAY RESULT IN YOUR ARREST ON THE CHARGE OF INDIRECT CRIMINAL CONTEMPT WHICH IS PUNISHABLE BY A FINE OF UP TO \$1,000 AND/OR A JAIL SENTENCE OF UP TO SIX MONTHS. 23 PA.C.S.A. § 6114. VIOLATION MAY ALSO SUBJECT YOU TO PROSECUTION AND CRIMINAL PENALTIES UNDER THE PENNSYLVANIA CRIMES CODE. A VIOLATION OF THIS ORDER MAY RESULT IN THE REVOCATION OF THE SAFEKEEPING PERMIT, WHICH WILL REQUIRE THE IMMEDIATE RELINQUISHMENT OF YOUR FIREARMS, OTHER WEAPONS AND AMMUNITION TO THE SHERIFF.

THIS ORDER IS ENFORCEABLE IN ALL FIFTY (50) STATES, THE DISTRICT OF COLUMBIA, TRIBAL LANDS, U.S. TERRITORIES AND THE COMMONWEALTH OF PUERTO RICO UNDER THE VIOLENCE AGAINST WOMEN ACT, 18 U.S.C. § 2265. IF YOU TRAVEL OUTSIDE OF THE STATE AND INTENTIONALLY VIOLATE THIS ORDER, YOU MAY BE SUBJECT TO FEDERAL CRIMINAL PROCEEDINGS UNDER THAT ACT, [.], 18 U.S.C. §§ 2261—2262. IF YOU POSSESS A FIREARM OR ANY AMMUNITION WHILE THIS ORDER IS IN EFFECT, YOU MAY BE CHARGED WITH A FEDERAL OFFENSE EVEN IF THIS PENNSYLVANIA ORDER DOES NOT EXPRESSLY PROHIBIT YOU FROM POSSESSING FIREARMS OR AMMUNITION. 18 U.S.C. § 922(g)(8).

NOTICE TO SHERIFF, POLICE AND LAW ENFORCEMENT OFFICIALS

The police and sheriff who have jurisdiction over **[the plaintiff's]** Plaintiff's residence OR any location where a violation of this order occurs OR where **[the defendant]** Defendant may be located, shall enforce this order. **The court shall have jurisdiction over any indirect criminal contempt proceeding, either in the county where the violation occurred or where this protective order was entered.** An arrest for violation of **[Paragraphs]** paragraphs 1 through 7 of this order may be without warrant, based solely on probable cause, whether or not the violation is committed in the presence of the police or any sheriff. 23 Pa.C.S.A. § 6113.

Subsequent to an arrest, and without the necessity of a warrant, the police officer or sheriff shall seize all **firearms, other weapons and ammunition in Defendant's possession that were used or threatened to be used during the violation of the protection order or during prior incidents of abuse.** The [insert the appropriate name or title] shall maintain possession of the **firearms, other weapons or ammunition** until further order of this **[Court]** court.

When [**the defendant**] **Defendant** is placed under arrest for violation of the order, [**the defendant**] **Defendant** shall be taken to the appropriate authority or authorities before whom [**defendant**] **Defendant** is to be arraigned. A "Complaint for Indirect Criminal Contempt" shall then be completed and signed by the police officer, **sheriff** OR [**the plaintiff**] **Plaintiff**. Plaintiff's presence and signature are not required to file this complaint.

If sufficient grounds for violation of this order are alleged, [**the defendant**] **Defendant** shall be arraigned, bond set, if **appropriate** and both parties given notice of the date of hearing.

BY THE COURT:

Judge

Date

If entered pursuant to the consent of plaintiff and defendant:

(Plaintiff's signature)

(Defendant's signature)

Explanatory Comment—1977

The use of standardized forms provides uniformity and is also critical to the enforcement of protection orders both inside and outside of the commonwealth. These forms are substantially based on those proposed by members of the Pennsylvania Coalition Against Domestic Violence and have been further refined to accommodate the litigants' need for simplicity, the court's need for flexibility and law enforcements' need for certain identifying information necessary to enforce the protection order.

The forms must be used so that all protection orders can be properly registered with the statewide PFA Registry and the federal Protection Order File (POF) established by the National Crime Information Center (NCIC) for the collection of information that is necessary for nationwide enforcement of protection orders. Entering a protection order into the Registry and NCIC file enables law enforcement to immediately verify the existence and terms of the order. It is important, therefore, that all protection orders be registered with these two files. To this end, the forms capture all of the information that is required for data entry and the form orders are further structured to present that information in the order and sequence that is most helpful to the various law enforcement agencies responsible for entering the information into the files. Once the information reaches the Registry and is accepted by the NCIC file, it becomes immediately accessible to law enforcement agencies, dispatchers and courts throughout the country.

The provisions in the form petition and orders reflect the most common forms of relief available under the Protection From Abuse Act. Plenty of space, however, is provided for the plaintiff to request additional relief, and for courts to fashion appropriate relief, based on the individual circumstances of the litigants. Since all of the provisions will not necessarily apply in every case, the forms adopt a checkbox method that requires the user to affirmatively check only those provisions which are applicable to his or her situation.

In cases where a provision is generally applicable but its terms do not correspond precisely to the relief being requested or granted, the user should not check the standard provision but instead should use the blank spaces provided in the forms to specify the relief. For example, while the final order contains a standard provision permitting the defendant to retrieve personal belongings only in the company of a police officer, there may be more suitable methods of retrieval available in some

cases. If so, then the plaintiff or court should use the blank spaces provided in the form petition or order (rather than the standard provision) to specify the alternative manner of retrieval.

Explanatory Comment—2000

Paragraph 2 of the final order has been amended to enable courts to include additional conditions for the retrieval of personalty by the defendant in a section of the final order which permits arrest without a warrant if the conditions are violated. Paragraph 9 of the final order has been amended to require the filing of a support complaint within two weeks, rather than fifteen days, of the entry of a final order under the Protection From Abuse Act to prevent the automatic lapse of any temporary support provisions included in the order. This change is consistent with the statutory provisions at 23 Pa.C.S.A. § 6108(a)(5).

Explanatory Comment—2006

The Notice to Defend in subdivision (a) was amended to include three notice requirements of the 2005 Protection From Abuse Act amendments, Act 66 of 2005. 23 Pa.C.S.A. § 6107 (a). The amendments provide that sheriffs may arrest defendants for violations of protective orders. In addition, defendants have the option to turn firearms, other weapons and ammunition over to a qualified third party instead of the sheriff, and federal firearms prohibitions and penalties are more clearly stated.

The 2005 amendments to the Protection From Abuse Act require several changes to the form petition at subdivision (b). The plaintiff is required to inform the court if the defendant works in a job that requires the handling of firearms. This provision was included to allow courts to exercise appropriate discretion when a defendant is exempt from federal firearm prohibitions and penalties. Federal law prohibits possession of firearms and penalizes defendants who possess them if they are subject to an order prohibiting abuse, stalking or harassment. However, certain law enforcement officials are exempt from this prohibition and penalty. Under 18 U.S.C. § 925(a)(1), a person performing an official duty on behalf of the federal, state or local law enforcement agency may possess a firearm as long as the officer is required to possess the firearm in his or her official capacity. The Bureau of Alcohol, Tobacco and Firearms requires the official posses-

sion of the firearm to be authorized by statute, regulation or official department policy. The new notice requirement is found in 23 Pa.C.S.A. § 6106 (a.2).

Paragraph 14 of the form petition was amended to address the manner in which the firearms and other weapons were used against the plaintiff or minor children and to remove the listing of firearms in the petition itself. The amended statute prohibits public access to any list or inventory of the defendant's firearms. Thus, a separate Attachment A is included at the end of the petition for purposes of listing the firearms at issue. This will allow the prothonotary to more easily redact the list from public access, while at the same time permitting the court, the parties and law enforcement agencies to enforce the order. 23 Pa.C.S. § 6108 (a)(7)(v).

The form petition also was amended to address the court's authority to order the defendant to relinquish any and all firearms, other weapons and ammunition, whether they were used or threatened to be used in an act of abuse or not. Any one of several circumstances authorizes the court to grant this relief, including, but not limited to, abuse involving a firearm or weapon or an immediate and present danger of abuse. The amended statute provides the court with multiple examples of what may constitute proof of immediate and present danger for the purposes of ordering the relinquishment of any or all of the defendant's firearms. 23 Pa.C.S.A. § 6107(b)(3).

In subdivisions (c) and (e), paragraph three in the form temporary and final orders is amended to clarify that even indirect contact with a protected person may be prohibited. This clarification reflects the Pennsylvania Supreme Court's holding in *Commonwealth v. Baker*, 564 Pa. 192, 766 A.2d 328 (2001), that the order must be "definite, clear, specific and leave no doubt or uncertainty in the mind of the person to whom it was addressed of the prohibited conduct."

The 2005 amendments to the Protection From Abuse Act provide that the court may order the defendant to relinquish ammunition and firearm licenses, in addition to firearms and other weapons. 23 Pa.C.S.A. § 6108(a)(7). These items were added to paragraph six of the temporary and final order forms, the notices to the defendant and the notices to the sheriff, police and law enforcement.

The amendments to paragraph six of the form orders also provide the court with two options if firearms, weapons or ammunition are prohibited. The court may order only certain firearms, weapons and ammunition to be relinquished as listed by Plaintiff on Attachment A, or the court may order that all firearms, weapons and ammunition be relinquished. The amended paragraphs and the notices to the defendant inform the parties that if the defendant is ordered to relinquish firearms, weapons or ammunition, they must be relinquished to the sheriff or, in the alternative, they may be relinquished to a third party who complies with the substantive and procedural requirements for a third party safekeeping permit. 23 Pa.C.S.A. § 6107(a). No matter which option Defendant chooses, if firearms and weapons are ordered to be relinquished, any firearm license possessed must be

relinquished to the sheriff. The aforementioned items may be relinquished at the time of service, but no later than 24 hours after service. 23 Pa.C.S.A. § 6108 (a)(7)(i). The notice to the defendant in the final order was expanded to advise the defendant that violation of the order may result in the revocation of the third-party safekeeping permit.

Paragraph seven of the final order form was amended to reflect 23 Pa.C.S.A. § 6108.1(a). The process for return of firearms is within the discretion of the court in each judicial district.

Paragraph ten of the final order form was amended to reflect the statute's prohibition against charging the plaintiff fees or costs related to filing, service, registration or appeal in any Protection From Abuse matter. A new subparagraph (b) in paragraph ten of the final order reflects the 2005 amendments to the Protection From Abuse Act which increased the surcharge a court may order a defendant to pay when an action is contested and directs the disbursement of the collected surcharges. 23 Pa.C.S.A. § 6106(d).

Paragraph fourteen of the final order form was amended to reflect the increased period of protection the court may grant. The maximum period of protection was increased from eighteen months to three years.

The amended notice to the sheriff, police and law enforcement in the final order clarifies that the defendant may be arrested anywhere a violation occurs, and that the court has jurisdiction to hear the issue of indirect criminal contempt either where the order was issued or where the violation occurred. With this amendment, jurisdiction for indirect criminal contempt is parallel to prosecution for stalking and harassment. 23 Pa.C.S.A. § 6114(a.1). The notice also makes it clear that a search and seizure of firearms may occur without a warrant when incident to arrest. 23 Pa.C.S.A. § 6113(b) and 6121.

Other amendments to the order forms reflect that the sheriff is authorized to arrest for violations of the order under the Protection From Abuse Act. 23 Pa.C.S.A. § 6113. The references to a protective order superseding provisions of a prior custody order were moved to paragraph five, which deals with custody, in both the temporary and final orders.

[Pa.B. Doc. No. 06-863. Filed for public inspection May 19, 2006, 9:00 a.m.]

Title 25—LOCAL COURT RULES

CARBON COUNTY

Intermediate Punishment Plan; No. CP-13-AD-000003-2006 (Old No. 057 MI 93)

Administrative Order 10-2006

And Now, this 8th day of May, 2006, in order to modify policy and procedure for the Carbon County Intermediate Punishment Plan, it is hereby

Ordered and Decreed that, effective July 1, 2006, the Court hereby *Revises* its Intermediate Punishment Plan that is attached hereto.

The Carbon County District Court Administrator is *Ordered and Directed* to do the following:

1. File seven (7) certified copies of this Administrative Order with the Administrative Office of Pennsylvania Courts.
2. File two (2) certified copies and one (1) diskette with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
3. File one (1) certified copy with the Pennsylvania Criminal Procedural Rules Committee.
4. Forward one (1) copy for publication in the *Carbon County Law Journal*.
5. Forward one (1) copy to the Carbon County Law Library.
6. Keep continuously available for public inspection copies of the Order and Rule in the Clerk of Court's Office.

By the Court

ROGER N. NANOVIC,
President Judge

Purpose

To establish policy and procedure governing the administration of Carbon County's Intermediate Punishment Programs of Intensive Supervision Services, House Arrest/Home Electronic Monitoring and Residential Inpatient Treatment; and to establish a process whereby the intermediate punishment officer and/or presentence investigator can recommend innovative sentencing alternatives to the court that may permit a better balance between the dual needs of community protection and the welfare of the defendant.

Applicability

To the Carbon County Court of Common Pleas, Carbon County's Criminal Justice Advisory Board, all adult probation staff and all offenders under the jurisdiction of the department.

Definitions

As utilized in this document, the following definitions shall apply:

1. **Collateral Contact:** Communication with another person having regular contact with the offender, such as law enforcement personnel or treatment specialists.
2. **Criminal Justice Advisory Board:** A collective body of County officials that is responsible for the oversight of the County's Intermediate Punishment Plan and Programs.
3. **Home:** The actual living area of the temporary or permanent residence of an offender, which will only include "inside the confines" of the established home or apartment.
4. **Home Electronic Monitoring Program:** A sentence in which the offender is required to wear or carry an electronic device which transmits the offender's location to a receiver maintained by criminal justice personnel.
5. **House Arrest Program:** A sentence which orders offenders confined to their own residence except for preapproved excursions for medical treatment, employment, performance of community service work, drug/

alcohol treatment or counseling and religious functions. House arrest may be combined with electronic monitoring to detect violations.

6. **Ignition Interlock System:** A system approved by the Department of Transportation which prevents a vehicle from being started or operated unless the operator first provides a breath sample indicating that the operator has an alcohol level less than .025%.

7. **Intensive Supervision Services:** A sentence with increased supervision, surveillance and control; reduced caseloads for probation officers; increased number of contacts per month; and mandated activities for the offender, including work or vocational training, community service work or drug/alcohol treatment.

8. **Intermediate Punishment Investigation:** An investigation completed by the intermediate punishment officer, which is provided to the court, that recommends whether an offender is eligible for participation in an intermediate punishment program.

9. **Intermediate Punishment Plan:** A document, which describes a proposed intermediate punishment program.

10. **Intermediate Punishment Programs:** A punishment option that is considered on a continuum to fall between traditional probation and traditional incarceration.

11. **Presentence Investigation:** A concise document provided to the sentencing court that includes socioeconomic data, prior criminal record, demographic data and other background information on the defendant.

12. **Residential Rehabilitative Center:** A community-based facility to which offenders can be sentenced directly where a range of rehabilitative services is available, including drug and alcohol treatment and counseling.

Authority and Policy Statement

Authority: This policy statement has been developed pursuant to and in accordance with statutory requirements, local rules established by the Carbon County Adult Probation/Parole Department and the formal adoption by the Carbon County Court of Common Pleas through administrative court order.

Policy Statement: The Carbon County Adult Probation/Parole Department and Carbon County Court of Common Pleas recognizes that "innovative sentencing" or "alternatives to incarceration" for low-risk, non-violent offenders is essential as a legitimate sentencing option available to the court. Offenders that demonstrate "special needs" or exhibit "low-risk, non-violent" tendencies shall be considered for diversion from exposure to confinement and placement in an intermediate punishment program. This approach will permit offenders to remain in the community to support themselves and their legal dependents. Certain restrictions shall be placed on the defendant that will ensure a better balance between the punishment and rehabilitation of the offender, which approach will not compromise the safety and the security of the community.

Criminal Justice Advisory Board

In accordance with 42 Pa.C.S.A. § 9802, the Criminal Justice Advisory Board shall oversee the functions of the County's Intermediate Punishment Board. The Criminal Justice Advisory Board meets monthly and shall periodically assess available county-wide correctional services and future needs; shall work with the county office of probation and parole in developing the Intermediate

Punishment Plan; shall adopt a county intermediate punishment plan, including program policies for administration; shall monitor the effectiveness of county correctional services and shall identify needed modifications.

Primary Goals and Objectives

The County's Intermediate Punishment Programs shall embrace the primary purposes for the development of Intermediate Punishment Programs established by the Pennsylvania Commission on Crime and Delinquency, which are as follows:

1. To protect society and promote efficiency and economy in the delivery of corrections services.
2. To promote accountability of offenders to the community.
3. To fill gaps in local correctional systems and address local needs through expansion of punishment and services available to the Court, and,
4. To provide opportunities for offenders who demonstrate special needs to receive services, which enhance their ability to become contributing members of the community.

Secondary Goals and Objectives

Secondary objectives established and adopted by the Carbon County Criminal Justice Advisory Board, the Carbon County Court of Common Pleas and the Carbon County Adult Probation/Parole Department are as follows:

1. To divert low risk, non-violent and special need offenders from exposure to incarceration and to provide a degree of punishment to an offender, which is less severe than incarceration, yet more punitive than existing probation.
2. To establish viable sentencing alternatives for the Court.
3. To reduce the incidence of criminal behavior through increased surveillance and to promote a more structured environment conducive to fostering improved work habits, family life and treatment of social or behavioral problems.
4. To provide counseling, education and treatment for targeted offenders.

Minimum Guidelines for Intermediate Punishment Programs

The Pennsylvania Commission on Crime and Delinquency has adopted the following minimum guidelines. These guidelines shall be incorporated into the County's Intermediate Punishment Programs as follows:

1. **Intensive Supervision Services:** The Carbon County Criminal Justice Advisory Board shall approve and implement written policies and procedures for the Intensive Supervision Services Program (See 37 Pa. Code § 451.119). This program shall include the following elements:
 - a. A drug testing capability for appropriate offenders.
 - b. A monitoring component, which defines the frequency and method of face-to-face and collateral contacts to ensure offender's compliance with the conditions of the program.
 - c. Limitation of caseloads of program supervising officers consistent with the supervisory component as described in this policy statement.

d. A minimum requirement that eight (8) to twelve (12) face-to-face and four (4) to six (6) collateral contacts be made by the supervising officer each month.

e. A requirement that face-to-face and telephone contacts with offenders be made at all hours, seven (7) days per week.

f. A requirement that there be additional qualifications for participating offenders, such as work or vocational training, community service, drug treatment, and, in appropriate cases, a curfew.

g. Policy and procedure for responding to major and minor violations of the program.

2. **House Arrest Program:** The Carbon County Criminal Justice Advisory Board shall approve and implement written policies and procedures for the House Arrest Program (See 37 Pa. Code § 451.117). This program shall include the following elements:

- a. A drug testing capability for appropriate offenders.
- b. A requirement that offenders be employed or actively seeking employment or enrolled in educational program/vocational training or participating in community service, unless an offender is physically or mentally incapable of performing the same, and have fixed residences.
- c. A monitoring component, which defines the frequency of face-to-face and collateral contacts to ensure offender's compliance with the conditions of the program.

d. Limitation of the caseloads of program supervising officers consistent with the supervisory plan as described in this policy statement.

e. A requirement that a minimum of two (2) face-to-face and three (3) collateral contacts be made by the supervising officers each month.

f. A policy and procedure for responding to major and minor violations of program conditions.

g. If utilized in conjunction with the home electronic monitoring program, the minimum standards relating to home electronic monitoring shall be met.

h. A program for eligible DUI offenders shall be combined with an electronic monitoring program in accordance with the statutory requirements relating to sentencing restrictions.

3. **Home Electronic Monitoring:** The Carbon County Criminal Justice Advisory Board shall approve and implement written policies and procedures for the Home Electronic Monitoring program (See 37 Pa. Code § 451.114). This program shall include the following elements:

- a. A drug testing capability for appropriate offenders.
- b. The timely detection of violations.
- c. The maintenance of a 24-hour-per-day response to detected violations.
- d. A monitoring component to ensure offender's compliance with the conditions of the program.
- e. A policy and procedure for responding to major and minor violations of program conditions.

4. **Residential Inpatient Drug and Alcohol Program:** The Carbon County Criminal Justice Advisory Board shall approve and implement written policies and procedures for the Residential Inpatient Drug and Alcohol Program. The board shall document that the services are provided by a licensee of the Department of Health, Office of Drug and Alcohol Programs (ODAP) for residential

inpatient drug and alcohol treatment (See 37 Pa. Code § 451.121). This program shall include the following elements:

- a. A drug testing capability.
- b. Establishment of services based on an assessment of the offender's needs and available community resources.
- c. Establishment of aftercare and follow-up services involving sustained and frequent interaction with recovering individuals who have progressed from the intensive or primary phase of treatment.
- d. Efforts to recruit, screen and select service providers.
- e. Guidelines to monitor the purchase of services for offenders.
- f. A monitoring component to ensure the offender's compliance with the conditions of the residential inpatient drug and alcohol program.
- g. Policy and procedure for responding to major and minor violations of residential inpatient drug and alcohol program conditions.

Method of Supervision

Generally, an offender sentenced to an intermediate punishment sanction shall be supervised in the community. However, office contacts will be permitted, but should not be relied upon by the officer. Supervision of program participants shall occur as follows:

1. **Intensive Supervision Program:** Offenders placed in this program will be supervised in the community setting by the assigned officer as follows:

- a. **Community Supervision:** The officer shall maintain two (2) face-to-face contacts with the offender on a weekly basis. Office contacts can be utilized for personal contacts, however, office contacts are discouraged and should not be relied upon by the officer.
- b. **Collateral Contacts:** The officer shall maintain a minimum of one (1) collateral contact per week with an individual who has direct contact with the offender on a regular basis. One (1) collateral contact per month must be with a law enforcement official.

c. **Urine Screens:** The officer shall refer all offenders to the Carbon-Monroe-Pike Drug/Alcohol Commission for urine testing; however, it is recommended that random urine samples be secured to enhance the drug testing component of this sanction.

2. **House Arrest/Home Electronic Monitoring:** Offenders placed in this program will be supervised in the community setting by the assigned officer as follows:

- a. **Community Supervision:** The officer shall maintain one (1) face-to-face contact with the offender on a weekly basis. Office contacts can be utilized for personal contacts, however, office contacts are discouraged and should not be relied upon by the officer.
- b. **Collateral Contacts:** The officer shall maintain a minimum of three (3) collateral contacts per month with an individual who has direct contact with the offender on a regular basis. One (1) collateral contact must be with a law enforcement official.

c. **Urine Screens:** The officer shall refer all offenders to the Carbon-Monroe-Pike Drug and Alcohol Commission for urine testing; however, it is recommended that random urine samples be secured to enhance the drug testing component of this sanction.

3. **Residential Inpatient Drug and Alcohol Program:** Offenders placed in this program will be supervised in the community setting by the assigned officer as follows:

a. **Community Supervision:** The officer shall maintain contact with the inpatient facility to ensure that the offender is compliant with the requirements of the treatment program. The officer shall maintain one (1) monthly contact with the offender while in the treatment program.

b. **Collateral Contacts:** The officer shall maintain weekly contact with the treatment counselor.

c. **Urine Screens:** The offender shall undergo random urinalysis testing as per the requirements of the inpatient treatment facility.

d. **Referral Process:** Offenders selected for the residential inpatient treatment program shall be referred to the Carbon-Monroe-Pike Drug/Alcohol Commission in order to locate a suitable facility accredited by the Office of Drug and Alcohol Programs. An assessment shall be conducted on the offender to determine his/her level of care.

e. **Credit for Time Served:** Offenders who successfully complete inpatient treatment, may receive credit towards mandatory minimum provisions of the Drunk Driving Law or other total or partial confinement sentences.

f. **Probation, Parole or Intermediate Punishment Violators:** These violators will be considered for an early discharge from their recommitment sentence, to a residential inpatient treatment program, when the violations are for drug and/or alcohol technical violations.

g. **Treatment Documentation:** The assigned officer shall execute a release of information form to secure all treatment documentation on the offender's progress while in the program.

h. **After-Care/Follow-up Recommendations:** The offender will be required to follow all after-care recommendations made by the treatment facility.

Intermediate Punishment Requirements

An order for an intermediate punishment program for an offender may be continuous or intermittent. The participant will be required to remain within the confines of his/her residence, except when the offender is participating in any of the following:

1. Working at acceptable employment approved by the Court or the Adult Probation/Parole Department or traveling to and from approved employment.
2. Unemployed and actively seeking employment.
3. Undergoing medical, psychiatric, mental health treatment, counseling or other treatment programs approved by the Court or the Adult Probation/Parole Department.
4. Attending a vocational or educational program approved by the Court or the Adult Probation/Parole Department.
5. Attending a regularly scheduled religious service at a place of worship.
6. Participating in a community work release or community service program.
7. Sentenced to the intensive supervision program without a curfew restriction.

8. Engaging in other activities specifically approved by the Court or the Adult Probation/Parole Department.

Sentence of Intermediate Punishment

In imposing a sentence of intermediate punishment, the court shall specify at the time of sentencing the length of the term for which the defendant is to be in an intermediate punishment program or a combination of intermediate punishment programs. The term may not exceed the maximum term for which the defendant could be confined and the program to which the defendant is sentenced. The court may order a defendant to serve a portion of the sentence under 42 Pa.C.S.A. § 9755 (relating to partial confinement) or total confinement pursuant to 42 Pa.C.S.A. § 9756 (relating to total confinement) and to serve a portion in an intermediate punishment program or a combination of intermediate punishment programs pursuant to 42 Pa.C.S.A. § 9763 (sentence of intermediate punishment).

Eligible Offenders

Pursuant to 42 Pa.C.S.A. § 9802 (relating to intermediate punishment) for purposes of sentencing, an eligible offender shall be defined as follows:

1. A person convicted of an offense who would have otherwise been sentenced to a county correctional facility to a period of partial confinement pursuant to 42 Pa.C.S.A. § 9724 (relating to partial confinement) or total confinement pursuant to 42 Pa.C.S.A. § 9725 (relating to total confinement).

2. An offender who does not demonstrate a present or past history of violent or assaultive behavior.

Eligible DUI Offender

Any person convicted under 75 Pa.C.S.A. § 3802 (relating to driving under the influence of alcohol or controlled substance) and receiving a penalty imposed pursuant 75 Pa.C.S.A. § 3804 (relating to penalties) may only be sentenced to an intermediate punishment program in:

1. A residential inpatient treatment program or a residential rehabilitative center.

2. A house arrest program coupled with a home electronic monitoring program combined with drug and alcohol treatment.

Eligible Driving Under Suspension—DUI Related Offender: Any person receiving a penalty imposed pursuant to 75 Pa.C.S. § 1543(b) (relating to driving while operating privileges is suspended or revoked), 3804 (relating to penalties) or 3808(a)(2) (relating to illegally operating a motor vehicle not equipped with ignition interlock) may only be sentenced to an intermediate punishment program in:

1. A house arrest program coupled with a home electronic monitoring program, combined with drug and alcohol treatment, if recommended.

Other Eligible Offenses: An offender convicted of Fleeing or Attempting to Elude Police Officer pursuant to 75 Pa.C.S.A. § 3733, Habitual Offenders pursuant to 75 Pa.C.S.A. § 6503.1, Driving Under Suspension-DUI Related pursuant to 75 Pa.C.S.A. § 1543(b)(1) and Illegally Operating a Motor Vehicle Not Equipped with Ignition Interlock pursuant to 75 Pa.C.S.A. § 3808 are eligible for home electronic monitoring under the following circumstance:

- a. When there is no accident involved in the incident.
- b. When there is no alcohol related offenses involved with the incident.

c. When the safety of the community was not placed at great risk during the incident.

d. See Miscellaneous Eligibility Criteria.

Ineligible Offenders

Pennsylvania law states that any person with a current conviction or a prior conviction within the past ten years of certain targeted offenses shall be ineligible under a sentence of intermediate punishment (See 42 Pa.C.S.A. § 9802).

Ineligible DUI Offenders

Unless otherwise court ordered, the following DUI offenders are declared ineligible for participation in Carbon County's home electronic monitoring program pursuant to 75 Pa.C.S. § 3804 (relating to penalties):

1. An offender with a BAC of .08% to .099%, second and third offense.

2. An offender with a BAC of .10% to .159% (High Rate of Alcohol), first offense.

3. An offender with a BAC of .16% or higher (Highest Rate of Alcohol), first and third offense.

4. All fourth time offenders, regardless of the BAC.

Ineligible Driving Under Suspension—DUI Related Offenders

Unless otherwise court ordered, the following Driving Under Suspension—DUI Related offenders are declared ineligible for participation in Carbon County's home electronic monitoring program:

1. 75 Pa.C.S.A. § 1543 (b)(1.1)(ii) (relating to second violation).

2. 75 Pa.C.S.A. § 1543 (b)(1.1)(iii) (relating to third or subsequent violation).

Miscellaneous Eligibility Criteria

In addition to statutory eligibility requirements and the requirements of this policy statement, any offender who meets any of the following additional criteria shall not be recommended for participation under an order of intermediate punishment:

1. An offender who exhibits a present or past history of violent or assaultive conduct.

2. An offender who is being held under a detainer, warrant or process issued by this Court or a Court of another jurisdiction.

3. An offender who has been revoked from a period of supervision on two (2) or more separate occasions.

4. An offender who has an extensive criminal or driving record.

5. An offender who resides in the Commonwealth, but outside the geographical boundaries of Carbon County, unless the resident jurisdiction has a comparable intermediate punishment program.

6. No serious bodily injury or death resulted from the incident and/or the victim suffered serious psychological harm as a result of the offender's actions.

7. An offender who has a history of prison escape.

8. An offender who has a history of chronic mental health or psychotic behavior, which would interfere with the operation of the program.

9. An offender who does not have a telephone in the residence.

10. An offender who does not desire to participate in these programs.

11. An offender who has been afforded home electronic monitoring within the past ten (10) years from date of instant offense.

12. An offender who did not possess a valid driver's license at the time of the arrest and is under suspension pursuant to 75 Pa.C.S.A. § 1543(b).

13. An offender who received an early discharge from the ARD Program and committed his/her DUI offense while in the ARD Program, but did not report the new arrest to his probation officer.

14. An offender who does not make restitution to the victim(s) for out-of-pocket losses that were not covered by an insurance company, prior to acceptance into an intermediate punishment program.

15. An offender who resides outside the Commonwealth of Pennsylvania.

16. An offender who due to "exigent circumstances" or "deemed inappropriate" for inclusion in the program by the investigative officer.

Requirements for Driving Under Influence Offenders

Evaluation Using Court Reporting Network: Pursuant to the requirements of 75 Pa.C.S.A. § 3816 (requirements for driving under influence offenders) any offender convicted of 75 Pa.C.S.A. § 3802 (relating to driving under the influence of alcohol or controlled substance) recommended for participation in an intermediate punishment program shall, prior to sentencing be evaluated using Court Reporting Network (CRN) instruments.

Drug and Alcohol Assessments: Pursuant to the requirements of 75 Pa.C.S.A. § 3814 (drug and alcohol assessments) any offender convicted of 75 Pa.C.S.A. § 3802 (relating to driving under the influence of alcohol or controlled substance) recommended for participation in an intermediate punishment program shall, prior to sentencing be subject to a full assessment for alcohol and drug addiction when,

1. The defendant, within ten years prior to the offense for which sentence is being imposed, has been sentenced for an offense under:

- a. 75 Pa.C.S.A. § 3802
- b. former section 75 Pa.C.S.A. § 3731
- c. an equivalent offense in another jurisdiction

2. Either:

- a. The evaluation under paragraph (1) of 75 Pa.C.S.A. § 3814 (drug and alcohol assessments) indicates there is a need for counseling or treatment; or
- b. The defendant's blood alcohol content at the time of the offense was at least .16%.

Failure to Obtain Necessary Evaluations: Any offender who fails to obtain the necessary evaluations, prior to sentencing and placement in an intermediate punishment program, shall be declared ineligible for participation, unless otherwise court ordered.

Requirements for Driving While Operating Privilege is Suspended or Revoked—DUI Related

Drug and Alcohol Assessments: Any person receiving a penalty imposed pursuant to 75 Pa.C.S. § 1543(b) (relating to driving while operating privileges is suspended or revoked), 3804 (relating to penalties) or 3808

(a)(2) (relating to illegally operating a motor vehicle not equipped with ignition interlock) shall undergo an assessment under 75 Pa.C.S. § 3814 (relating to drug and alcohol assessments) and is recommended for participation in an intermediate punishment program shall, prior to sentencing be subject to a full assessment for alcohol and drug addiction.

Drug and Alcohol Treatment: If the defendant is determined to be in need of drug and alcohol treatment, a sentence to intermediate punishment shall include participation in drug and alcohol treatment under 75 Pa.C.S. § 3815(c) (relating to mandatory sentencing). If the defendant is determined not to be in need of drug and alcohol treatment, then the defendant may only be sentenced to house arrest with electronic monitoring.

Failure to Obtain Necessary Evaluations: Any offender who fails to obtain the necessary evaluations, prior to sentencing and placement in an intermediate punishment program, shall be declared ineligible for participation, unless otherwise court ordered.

Target Population

The following population of DUI offenders shall be specifically targeted for inclusion in Carbon County's Home Electronic Monitoring Program.

High Rate of Alcohol—Second Offense: Pursuant to 75 Pa.C.S.A. § 3804 (relating to penalties) an offender with a BAC of .10% to .159%, second offense shall be eligible for participation in Carbon County's home electronic monitoring program, provided the offender successfully completes an intermediate punishment investigation as described in this policy statement. If declared eligible, the defendant shall be sentenced as follows:

1. The defendant shall be remanded to prison to serve the mandatory minimum sentence of thirty (30) days, however;

2. The offender shall serve only two (2) days of incarceration, which period of imprisonment shall be served on consecutive days.

3. After completion of the two (2) days of imprisonment, the defendant shall serve the remaining twenty-three (23) days on home electronic monitoring.

Highest Rate of Alcohol—Second Offense: Pursuant to 75 Pa.C.S.A. § 3804 (relating to penalties) an offender with a BAC of .16% or higher, second offense shall be eligible for participation in Carbon County's home electronic monitoring program, provided the offender successfully completes an intermediate punishment investigation as described in this policy statement. If declared eligible, the defendant shall be sentenced as follows:

1. The defendant shall be remanded to prison to serve the mandatory minimum sentence of ninety (90) days, however;

2. The offender shall serve only thirty (30) days of incarceration, which period of imprisonment shall be served on consecutive days.

3. After completion of the thirty (30) days of imprisonment, the defendant shall serve the remaining sixty (60) days on home electronic monitoring.

High Rate of Alcohol—Third Offense: Pursuant to 75 Pa.C.S.A. § 3804 (relating to penalties) an offender with a BAC of .10% to .159%, third offense shall be eligible for participation in Carbon County's home electronic monitoring program, provided the offender successfully completes an intermediate punishment investigation

as described in this policy statement and successfully completes the following additional requirement:

1. The offender successfully completes a residential inpatient treatment program provided by a current licensee of the Department of Health, Office of Drug and Alcohol Programs for outpatient services.

Upon a determination of eligibility for participation in the home electronic monitoring program, the defendant shall be sentenced as follows:

1. The defendant shall receive credit for all time spent in a residential inpatient treatment program towards the mandatory minimum sentence of ninety (90) days, unless otherwise court ordered.

2. The defendant shall serve the remaining portion of the mandatory minimum sentence of ninety (90) days on home electronic monitoring.

Driving While Operating Privilege is Suspended or Revoked—Driving Under the Influence Related: An offender with a first conviction pursuant to 75 Pa.C.S.A. § 1543(b)(1) and 75 Pa.C.S.A. § 1543(1.1)(i) shall be eligible for participation in Carbon County's home electronic monitoring program, provided the offender successfully completes an intermediate punishment investigation as described in this policy statement. If declared eligible, the defendant shall be sentenced as follows:

1. The defendant shall be remanded to prison to serve the mandatory minimum sentence of ninety (90) days, however;

2. The offender shall serve only thirty (30) days of incarceration, which period of imprisonment shall be served on consecutive days.

3. After completion of the thirty (30) days of imprisonment, the defendant shall serve the remaining sixty (60) days on home electronic monitoring.

Residential Inpatient Drug and Alcohol Program

Any offender who is declared eligible for participation in Carbon County's home electronic monitoring program pursuant to this policy statement (High Rate of Alcohol-Second Offense and Highest Rate of Alcohol—Second Offense) and successfully completes an inpatient treatment program shall have his/her required period of incarceration waived, unless otherwise court ordered. The defendant shall receive credit towards the mandatory minimum sentence for all time spent at an inpatient treatment program with the remaining balance of the mandatory minimum sentence served on home electronic monitoring.

Work Release Privileges

Pursuant to this policy statement, all offenders required to serve a portion of the mandatory minimum sentence incarcerated shall be eligible for participation in the work release program, provided they meet the eligibility requirements of the Carbon County Work Release Program. It is recommended that the intermediate punishment officer and work release director coordinate efforts to ensure that no interruption occurs in the offender's employment status and to ensure that a smooth transition occurs from incarceration to the home electronic monitoring program.

Service and Completion of Period of Confinement

Upon successfully serving the period of incarceration imposed by the court and without further order of court, the defendant shall be automatically released from prison

and immediately report to the Carbon County Adult Probation for installation of the home electronic monitoring equipment.

Prison Infractions

An offender who violates any rules and regulations of the prison while serving his/her prison sentence and is awaiting release to the home electronic monitoring program shall be declared ineligible for participation in an intermediate punishment program. Upon order of court, the defendant shall remain incarcerated to serve the remaining balance of his/her mandatory minimum sentence. However, if the offender violates another rule or regulation after being declared ineligible for participation in the home electronic monitoring program, then the offender will not be released upon reaching his/her minimum sentence and must petition the court for parole consideration.

Screening Process

An offender may be declared eligible upon the recommendation of the Adult Probation/Parole Department upon the successful completion of any of the following or combination thereof:

1. A presentence investigation.
2. An intermediate punishment investigation.
3. Any offender placed in these programs by an Order of Court.

Intermediate Punishment Investigations and Presentence Investigations

During the investigative phase and prior to sentencing, the presentence investigator shall identify prospective participants for possible consideration in an intermediate punishment program. During the preparation of guilty plea reports or a presentence report, the investigator shall refer all plea agreements and sentencing recommendations that suggest a sentence of intermediate punishment to the intermediate punishment officer for investigation. This investigation shall include the following:

1. Completion of an intermediate punishment eligibility application, which application is available at the Carbon County Adult Probation/Parole Office.
2. An interview of the defendant and other occupants of the residence, when applicable.
3. Explanation of program requirements to the offender and all occupants of the residence, when applicable.
4. Completion of all appropriate forms, which include:
 - a. Occupant's Approval Form, if applicable.
 - b. Explanation of the conditions of the home electronic monitoring program.
 - c. Equipment Responsibility Form.
 - d. New Client Installation Form, if applicable.
5. Inspection of offender's residence to determine if conducive for participation in the electronic monitoring program.
6. Written memorandum to the court with sentence recommendation.

Conditions of Home Electronic Monitoring

The court shall attach such reasonable conditions upon the defendant for participation in the electronic monitoring program pursuant to 42 Pa.C.S.A. § 9763(b).

Voluntary Participation

Participation in these programs shall be strictly on a voluntary basis. Offenders who do not desire to participate in these programs will be declared ineligible.

Program Explanation

All program requirements shall be explained prior to admission of the offender into an intermediate punishment program. Also, all occupants of the approved residence shall be advised of the restrictions and requirements of the program. If a resident objects to the program, then the offender may be declared ineligible.

Post Sentencing Orientation

After placement into the home electronic monitoring program, the participant shall be advised of the date and time that the equipment will be installed in the residence and other program requirements.

Intake Process

Upon an Order of Intermediate Punishment, the offender shall immediately report to the adult probation/parole department for an intake. During the intake process, the following paperwork shall be completed:

1. Execution of the conditions of the intermediate punishment program.
2. Completion of facesheet and photograph of offender.
3. Completion of risk/needs assessment form.
4. Completion of Supervision Plan.
5. Execution of Release of Information Form.

Enrollment and Initial Home Contact

During the initial home contact with the offender, the assigned officer shall:

1. Review the terms and conditions of the program.
2. Explain program requirements to all residents.
3. Read, explain and obtain signatures on all forms.
4. Explain parameters of home electronic monitoring program.
5. Explain consequences of program violations.
6. Explain payment of daily monitoring fees.
7. Explain responsibility and maintenance of equipment.
8. Install equipment.
9. Confirm with the monitoring center that equipment is operational.
10. Obtain a layout of the residence.

Offender Enrollment Forms and Schedule Change Forms

The intermediate punishment officer shall be responsible for the completion of all forms associated with the enrollment of the offender and other changes or modifications to the offender's schedule. All completed forms shall be faxed to the monitoring center.

Daily Activity Reports

All daily activity forms will be faxed to the agency and the intermediate punishment officer shall review these reports for conformity and compliance with the approved offender schedule.

Ankle Bracelets and Monitoring Equipment

Offenders placed on a home electronic monitoring unit will be required to wear ankle bracelets at all times. The bracelet emits a continuous signal to a receiver installed in the residence. Upon every field visit by the probation officer, a visual inspection of all monitoring equipment shall be conducted to ensure proper functioning.

Equipment Responsibility

All electronic monitoring equipment installed in the offender's residence shall be the exclusive responsibility of the participant to maintain its proper functioning and operation. Any tampering, theft or destruction of the equipment by the offender may result in the filing of criminal charges, being held financially responsible for the cost of the equipment and being immediately terminated from the program. Also, every participant must read and sign the equipment responsibility form.

Equipment Inventory After Installation

All equipment placed in the residence must be inventoried at the time of installation.

Offender Subsistence

Every offender placed in an intermediate punishment program will be responsible for their own subsistence, which includes, housing, clothing, medical care or other treatment or household expenses. Every participant shall be afforded a designated time during the week for grocery shopping, medical appointments or other basic necessities. All departures from the approved schedule must receive prior approval by the intermediate punishment officer or Chief Adult Probation Officer.

Verification of Compliance With Court Imposed Sanctions

The assigned officer shall secure and verify employment via pay stubs or interviews with the employer. Also, if the offender is undergoing treatment or counseling, the officer shall verify all sessions with the counselor. Verification is an important aspect of supervision, for it ensures compliance with the conditions of the program.

Program Violations

The following system for program violations shall be utilized to determine the level of compliance with the conditions of Intermediate Punishment Programs.

Minor Violations

The following violations shall be considered minor in nature:

1. Failure to report as scheduled.
2. Failure to notify staff of changes in work status.
3. Failure to comply with rules and regulations of the program or Court order.
4. Unauthorized individuals within the residence.
5. Departure from schedule, such as leaving early or returning late.

Minor Violation Process

When "minor" violations are detected, the following corrective action may be initiated by the assigned officer:

1. Verbal reprimand.
2. Written violation report.
3. Administrative conference.

4. Increase in sanctions, such as, curfews; additional counseling or reporting, which changes shall be provided to the offender in writing.

Major Violations

The following violations shall be considered major in nature:

1. Possession of firearms, deadly weapons or offensive weapons.
2. Possession or consumption of alcoholic beverages.
3. Possession or positive urine test for a controlled substances.
4. Possession of drug paraphernalia.
5. Relocation from the approved residence without the prior approval of the assigned Officer.
6. A new arrest for violation of Municipal, County, State and Federal laws, as well as, provisions of the Liquor Code and the Vehicle Code.
7. Escape, which shall be defined as a period of one (1) hour or longer in which the participant has left the approved residence and is unaccounted for.
8. Repeated minor violations.
9. Destruction, theft or tampering with electronic monitoring equipment.
10. Operating a motor vehicle on a public highway while license is suspended.
11. Failure to maintain the scheduled drug/alcohol treatment plan.
12. Termination of offender's telephone service.

Major Violation Process

When "major" violations are detected, the assigned officer may initiate the following corrective action:

1. Written violation report.
2. Administrative conference.
3. Increase in sanctions, such as, curfews; additional counseling or reporting, which changes shall be provided to the offender in writing.
4. File a petition to revoke intermediate punishment sentence requesting a hearing and/or a warrant for arrest and detention of offender.

Investigation of Detected Program Violations

All violations of any intermediate punishment program shall be investigated by the assigned officer or on-call officer immediately after detection. All relevant information and documentation concerning electronic monitoring violations shall be obtained from the central monitoring station with all persons involved being interviewed. Upon determination of the specific violation, the officer shall follow the violation process as described in this policy statement.

Investigation of Program Violations (After Normal Business Hours)

Response to program violations after normal business hours shall occur as follows:

1. **On-Call Schedule:** The Chief Adult Probation/Parole Officer shall prepare and post an on-call schedule. All Adult Probation/Parole Officers will be scheduled and rotated on a weekly basis and shall be responsible for the following:

a. The on-call officer must wear the digitized pager at all times. Failure to respond to a page will result in appropriate disciplinary action.

b. The on-call officer will be responsible for the pager. If the pager is damaged or lost, the cost of the pager may be assessed to the officer.

c. Modifications to the on-call schedule are permitted. Prior arrangements shall be made with the Chief and the Carbon County Communications Center to ensure proper coverage.

2. **Home Electronic Monitoring Violations:** In the event that an electronic monitoring violation occurs, the following procedures shall be utilized:

a. The central monitoring station has been provided a procedure to notify the Carbon County Communications Center for program violations.

b. The Carbon County Communications Center shall be provided all officer pager numbers and personal telephone numbers.

c. An intermediate punishment program manual will be provided to all officers as a reference guide. All telephone numbers will be available within the manual.

d. When the on-call officer is notified of a program violation, the officer shall respond to the page immediately. If the violation is for home electronic monitoring, the officer shall contact the central monitoring station to determine the nature of the violation. If the monitoring center cannot correct the problem, then the officer shall contact the offender to resolve the problem. If the problem cannot be rectified over the telephone, then, the on-call officer must respond to the residence to investigate the violation. However, before conducting the field investigation, the on-call officer shall contact the back-up on-call officer for authorization and then contact the pretrial services on-call officer for possible assistance. The on-call officer shall not conduct a field investigation alone and without proper authorization from a supervisor.

e. The following home electronic monitoring violations must be investigated by the on-call officer after normal business hours. All other program violations will be investigated by the assigned probation officer the next available working day.

1. Band Tamper (absolute response)
2. Out-of-Range
3. Power Outage or Loss
4. Transmitter not found (dead battery)

f. When it is determined by the on-call officer that immediate termination is justified for the violation, the officer shall:

1. Immediately notify the back-up on-call supervisor.
2. Contact the bail officer for possible assistance.
3. Contact other adult probation staff for possible assistance.
4. Contact the Carbon County Communications Center for possible assistance from the Carbon County Sheriff's Department.

5. If the Sheriff's Department is unavailable, then contact the local police department for possible assistance.

6. Under no circumstances shall a probation officer attempt to arrest the offender without proper authoriza-

tion from the back-up on-call supervisor and proper presence of other adult probation staff or law enforcement personnel.

7. The offender shall be transported to prison by adult probation staff or the Sheriff's Department. A Warrant to Commit and Detain Form shall be executed and provided to prison officials for admission of the offender.

8. If the offender is immediately terminated from the program, then all home electronic monitoring equipment shall be removed from the residence and inventoried. The monitoring center shall be immediately notified of the termination.

Petition to Revoke an Order of Intermediate Punishment

When the intermediate punishment officer determines that the offender violated the conditions of the program in such a manner that requires termination from the program, then a petition to revoke intermediate punishment shall be filed with the Clerk of Courts Office outlining all program violations.

Modification or Revocation of Intermediate Punishment Sentence

The court may at any time terminate a sentence of intermediate punishment or increase or decrease the conditions of the sentence pursuant to 42 Pa.C.S. § 9763 (sentence of intermediate punishment) or 42 Pa.C.S. § 9773 (modification or revocation of intermediate punishment sentence).

Termination From an Intermediate Punishment Program

The following criteria shall be utilized to determine when an offender should be terminated from an intermediate punishment program:

1. The participant has successfully completed all conditions of the program.
2. The participant has committed "major" violations of the program and was returned to prison.
3. The participant has served the minimum sentence imposed by the Court and has been legally discharged.

Termination Order

Upon successful completion of the minimum sentence, an order of court shall be prepared discharging the offender from the home electronic monitoring program. Afterwards, the officer shall review and have the offender sign the standard conditions of release, with the offender being reassigned to another probation officer.

Equipment Inventory After Termination

Upon termination from the program, the officer shall inventory and visibly inspect all equipment to ensure that no damage occurred during the program.

Cleaning of Equipment

It shall be the responsibility of the intermediate punishment officer to properly clean and sanitize all electronic monitoring equipment after an offender has been discharged from the program. No equipment shall be installed on another offender until the bracelet and home unit has been properly cleaned.

Monitoring Fees

An offender placed in the home electronic monitoring program shall be responsible for all costs associated with

the monitoring aspect of the program. All fees collected will be deposited into an account to be utilized for the operation of the home electronic monitoring program or other departmental operations. Finally, all fees shall be made part of the order of sentence and the certificate of costs sheet.

Local Law Enforcement Notification

Local law enforcement agencies will be provided with all information concerning program participants.

Case Records

After placement into an intermediate punishment program, a case record folder shall be prepared by the secretary and a completed facesheet provided to the assigned officer. Also, a complete roster of intermediate punishment participants shall be maintained by the project coordinator.

Transfer Cases

The Intermediate Punishment Officer shall coordinate efforts with other jurisdictions when appropriate candidates are identified. When an offender resides in another jurisdiction, the intermediate punishment officer shall confer with the resident county to determine whether that jurisdiction has an intermediate punishment program. All arrangements shall be made by the intermediate punishment officer and forwarded to the Court for review. All costs associated with other county's programs will be absorbed by the offender. Failure to cooperate and comply with the rules and regulations of the other jurisdiction's program will result in the offender being declared ineligible for participation.

Courtesy Cases

The department will accept intermediate punishment cases from other jurisdictions. Requesting counties shall coordinate with the intermediate punishment officer to determine eligibility. The officer will conduct an investigation pursuant to this policy statement and advise the requesting county whether the offender qualifies. If the department accepts an offender for supervision, then an effective date shall be established. Prior to enrollment in the program, the offender will be required to pay the current daily monitoring fee established by the court, for the entire period of supervision, in full. No personal checks will be accepted, only cash or money orders. A receipt will be provided to the offender.

Caseload Limits

The Chief will periodically review the caseloads of the Intermediate Punishment Officer to ensure that the officer has a manageable caseload and proper resources. This review process will ensure that the minimum standards adopted by the State and the Court are not compromised.

Project Coordination

The Chief Adult Probation/Parole Officer or his designee shall be responsible for the preparation, completion and submission of all sub-grant reports, progress reports, budget modification forms and related documentation to the Pennsylvania Commission on Crime and Delinquency. The Project Coordinator and the intermediate punishment officer, in conjunction with the Carbon County Criminal Justice Advisory Board, shall evaluate program goals and effectiveness on a regular basis.

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