



## HB 2060 pn 3820 – FOAC Review

The foundation of this legislation is based on the need to cease third party safekeeping of firearms and the failure of the current system to more effectively block abusers from possessing firearms. There are many inconsistencies and defects in the legislative language.

The justification of this public policy change is ‘not’ based on clearly identified facts or proof and, in fact, avoids dealing with other critical issues in the PFA process.

There is no effort, in any substantial way, to interdict or punish fraudulent filing of PFA’s or, as some put it, weaponizing domestic violence actions to gain monetary and custodial advantages in court. As an example, of one of thousands, take the case of a Cambria County man who had a Temporary PFA issued against him only to have Judge Leahey revoke the PFA in court. The defendant had his entire gun collection confiscated without a shred of proof offered before he lost his rights and property.

<https://blog.princelaw.com/2015/05/25/cambria-county-to-return-306-guns-to-resident-at-no-cost-after-final-pfa-dismissed-and-temporary-pfa-vacated/>

No punishment (perjury, filing a false report, etc.) was applied to the false accuser in this case or any others that we can find. HB 2060 does ‘not’ address these situations of false accusations. Raising the burden of proof is the only substantial way to bring fairness back to this process.

In an average year, there are roughly 35,000-40,000 temporary PFA’s issued. Of this number, it is important to put in to context the fact that approximately 9 out of 10 Temporary PFA’s **never** transition into a Permanent PFA. A Temporary PFA is already a ‘high velocity loss of rights’, that is ‘not’ changing, and calls for the relinquishment of ‘all’ firearms, other weapons and ammunition, **when ordered by the court**. This action is based on the lowest standard of evidence - “Preponderance of the Evidence”. In approximately 98% of the orders for a Temporary PFA, the relinquishment of firearms and the loss of a Constitutional Right and property is routinely done. (Under ‘**current law**’ relinquishment of firearms, other weapons and ammunition (to the Sheriff) already occurs upon the issuance of a Temporary PFA (Title 23, §6108 Relief (a)(7)).)

Part of this legislation’s heavy-handed focus is to ‘**remove**’ the discretion of the court (Pg. 20, line 23) and order ‘**mandatory**’ relinquishment of all firearms (including certain firearm parts), other weapons and ammunition within a **very narrow and unreasonable 24-hour window**. The end result will be an expansion of ‘unintentional violations’ and more unwarranted actions against individuals. Punitive actions under Indirect Criminal Contempt (ICC) will, most assuredly, increase for unintentional oversights.

It is also important to keep in mind that under federal law, once a permanent PFA is entered, by consent or by court order, a person subject to a permanent PFA is a prohibited person, irrespective of what state law says.

### 3<sup>rd</sup> Party Safe-Keeping of Firearms – Changes/Concerns

The cornerstone of this legislation is the attenuation/elimination of major sections of third-party safekeeping of firearms for those individuals who have been served with a Protection From Abuse (PFA) order (temporary/permanent). There has been no credible presentation of evidence that the current 3<sup>rd</sup> Party Safe-Keeping legal process has failed in ‘**any**’ substantial way. The focus on

eliminating legal avenues to secure firearms with a friend or a family member who is ‘not’ a member of the defendant’s household is questionable at best.

We have already agreed, in working with Senator Killion-SB 501, not to oppose the modification of current law so as to eliminate ‘family’ member from the 3<sup>rd</sup> Party Safe-Keeping process. We do NOT agree with eliminating a friend from the 3<sup>rd</sup> Party Safe-Keeping process. It is important to state that agreeing to be a 3<sup>rd</sup> Party Safe-Keeper is a legal, binding process that has worked nearly flawlessly. It is NOT a process where the ‘defendant’ can just give his/her firearms to someone else to hold. **(See current law-Title 23, §6108.3 (b)(2))**

It is important to understand the incongruities and inconsistencies that are contained in this legislation. The many defects in HB 2060 can be found beginning with the conflicting definitions in numerous sections. As an example, under this legislation who can lawfully accept a relinquished firearm? There is no provision for relinquishment to an attorney ‘or’ commercial armory, see **6105.2 (Pg. 5, line 30)** and **only lists ‘appropriate law enforcement agency’ and an FFL** as legal recipients for relinquished firearms, other weapons and ammunition. Yet on Pg. 26 (of HB 2060 pn3820) under section 6108.3, on line 28 the lawyer representing the defendant is acknowledged as a lawful recipient of relinquish firearms yet the definitions of this section of current law are not being changed. The definitions in Title 23, §6108.3 (i) of ‘current’ law are as follows:

**"Third party."** A person, other than the defendant, who:

- (1) Is not a member of the defendant's household.
- (2) Is not prohibited from possessing firearms pursuant to any Federal or State law.

There is no attempt in HB 2060 to modify current law (as represented above) to add **‘appropriate law enforcement agency’** or Pennsylvania State Police or attorney or commercial armory as legal recipients of relinquished firearms. Further, this language still provides for the definition of third-party safe keeper who “is not a member of the defendant’s household”.

What is the legal effect of this conflict? If a court were to determine that the statute was internally conflicted (particularly with regard to FFL’s), it might refuse to enforce and dismiss the case, but our guess is that the plaintiff would have standing only if he had attempted to use an FFL (or anyone other than an attorney) and been refused.

In short, this drafting appears to set up a conflict within the bill and at the very least it would cause mischief in the courts. Exactly what would happen would depend on the judge. But regardless of what it is, it will be needless and unwarranted trouble for the defendant.

### **24 Hour Window for Relinquishment of Firearms-Unacceptable**

Under current Pennsylvania Law (Title 18, §6105 (a)(2)) a person has 60 days to dispose of firearms once they become disqualified from firearms ownership. This legislation will constrict the time period to relinquish firearms to 24 hours for defendants served with a permanent PFA. This is unacceptable ‘and’ contravenes our work with the PA Senate.

#### **Relevant 24 hour language sections in HB 2060**

- Pg. 7, Line 1
- Pg. 8, Line 6
- Pg. 17, Line 2
- Pg. 18, Line 5
- Pg. 19, Line 16

The procedures for relinquishing firearms make it nearly impossible for many to comply with the requirements in HB 2060. Further, failure to comply can result in Misdemeanor criminal charges with jail time. We believe a more appropriate time period is for a minimum of 72 hours or three business days once served with the PFA.

### **More Relinquishment Concerns**

1. A commercial armory isn't defined anywhere within Title 18, especially the changes to 6105.2. Thus, the two statutes don't provide for the same allowances and thus, the courts will take the most restrictive approach.
2. Another problem is that in HB 2060 - §6108.3 (b)(O)(I) (Pg. 27, line 8) the definition of a third-party there is no identification of the concept of a "commercial armory" identifies an entity that does 'not' legally exist in either federal or state law.
3. There is **no basis in federal law** for an FFL to generally act as a storage facility.
4. Relinquishment of licenses section – Pg. 2, Line 21 and Pg. 21, Line 2 - which mandates the relinquishment of an LTCF, in the absence of notice, whereby, the individual would seemingly commit an M2, even though he/she was never informed of the requirement to relinquish it. This legislation will be setting a trap to file additional charges against the defendants.
5. The dealer language, in practical reality, is only there to allow the FFL to accept the guns... without it the defendant wouldn't even have the option to SELL them to the dealer. This legislation would force a "fire sale" of the defendant's guns.
6. The definitions on Pg. 9, line 25 treat the 'frame or receiver' of a firearm the same as a firearm without regard to relic status or age or functionality ignoring historical non-functioning firearms and heirlooms.
7. There is 'no' inclusion of lawyer under the penalty section – Pg. 9, line 20.
8. What attorney would accept the potential risk and liability for something that would likely not be covered by insurance?
9. This legislation would restrict the right of the person to only "once" be able to have firearms transferred from a law enforcement agency to an FFL and it must occur within 6 months. This language essentially a stranglehold on the defendant and is completely unjustifiable nor constitutional. (Pg. 9, Line 26 – Pg. 12, Line 22)
10. Further, this legislation will permit the charging of a fee for transfer of the firearms from a law enforcement agency and there is no limit to a "reasonable" fee? (Pg. 8, Line 24)
11. This legislation establishes a vague condition on the 'return of firearms, other weapons or ammunition, without any prior notice and requires the defendant to petition the court. (Pg. 23, line 21)

### **Abandonment of Property Concerns**

1. The abandoned property provision is, in our view, unconstitutional and unacceptable. (Pg. 9, line 26)
2. No accountability for improper handling of firearm abandonment procedures. (Pg. 9, line 26 – Pg. 12, line 22)
3. There is 'no' inclusion of 'lawyer' or 'commercial armory' under the definition of 'custodian'. (Pg. 12, line 16)
4. The procedure for redress for the lawful owner of any/all property that was the result Illegal Seizure and Destruction of firearms, weapons and ammunition makes no sense. HB 2060 requires the lawful owner to obtain an estimate of value from a licensed firearms dealer for firearms that have already been destroyed. There is 'no way' this estimate can be obtained without the dealer being able to inspect the firearm, a picture will NOT be sufficient. So any decision will be left up to the courts to decide. (Pg. 12, line 2)

## Other Issues in HB 2060

1. The hearing continuance provision is unacceptable. (Pg. 15, line 22)
2. The private service of PFAs must end. HB 2060 does 'not' end that practice. (Pg. 13, line 12-25) The language in SB 501 pn1551 (Pg. 17, line 5) was our agreed upon compromise with Sen. Killion.
3. The language on Pg. 3, lines 23-29 is not only a legal trap but also duplicative and confusing.
4. HB 2060 would expand the term of a prohibition of firearms ownership to **5 YEARS AFTER** the release of the accused from the terms of the conviction. (Pg. 5, line 15)
5. The language on Pg. 7, line 22 is unconstitutional as it is a tacit gun ban for anyone in the defendant's household. Further it ignores the fact that a member of the household can acquire firearms otherwise. This makes no sense and we oppose this language.
6. Language mistake – Pg. 5, line 28 – other weapons and ammunition missing.
7. Language mistake – Pg. 5, line 29 – Sheriff is missing.
8. Language mistake – Pg. 5, line 30 – Lawyer is missing
9. Language mistake – Pg. 6, line 4 – Sheriff is missing
10. Language mistake – Pg. 6, line 6 – other weapons and ammunition missing
11. Language mistake – Pg. 6, line 23 – other weapons and ammunition missing
12. Language mistake – Pg. 6, line 14 – Sheriff is missing
13. Language mistake – Pg. 6, line 29 – 'local law enforcement agency' should be 'Sheriff and/or appropriate law enforcement agency'
14. Language mistake – Pg. 8, line 1 – 'law enforcement agency' should be 'appropriate law enforcement agency'
15. Language mistake – Pg. 22, line 8 – add 'friend'
16. Language mistake – Pg. 22, line 15 – after Sheriff 'add' or 'appropriate law enforcement agency'
17. Language mistake – Pg. 25, line 8 – add 'lawyer'
18. Extension of PFAs do not require evidence. (Pg. 21, line 12)
19. There is no cap or limitation to 'reasonable fee' in HB 2060.
20. A request to seal one's record requires the evidentiary standard of 'Clear and Convincing' and a 10-year interval period after the expiration of the consent decree. This standard of evidence should be 'Preponderance of the Evidence, the same level as for issuance of a PFA.

## Other Issues that should be Dealt With in HB 2060 but are NOT

1. The standard of evidence for the issuance of a PFA must be raised to the 'Clear and Convincing' Standard to remediate the weaponizing of the PFA process. Preponderance of the Evidence (the current standard) is too low and leads to abuses of the system and the rights of the accused.
2. No definition in HB 2060 or current law as to what the term 'other weapons' covers.
3. Does not address concerns that a PFA in a household on one person prohibits others in the same household from possessing firearms.
4. While seizing and/or confiscating the firearms, **and prior to transport**, the law should require firearms to be immediately fully photographed, along with other seized items, so to fully document the condition of the firearms. We constantly see LEOs declare firearms to be in far lesser condition than they actually are.