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Every so often family law practitioners are faced with a situation that leaves us without any good answer for our clients; the law either falls short or does not make sense. Our reaction is, "That just isn't right." Recently the Pennsylvania legislature addressed one of these situations—and made things right—with the passage of HB-983, which along with Pennsylvania Gov. Tom Wolf's signature on Oct. 24, became Act 102 of 2018.

Many Pennsylvania family law practitioners have been confronted with a fact pattern that leaves us feeling helpless and wishing there was more we could do. The fact pattern goes something like this: The wife is the primary bread winner and doing her best to keep the family together. The husband is either unemployed or under-employed, with a substance abuse or a mental health issue, or both. One night the husband is physically abusive to the wife. The police are called and the husband is arrested. Depending on the seriousness of the violence, the husband is charged with a number of criminal offenses. Let's assume he is charged with simple assault, terroristic threats and harassment.

The husband is released on bail and the wife files a petition under the Protection from Abuse Act. The husband, at first temporarily and then more permanently, is barred from entering the marital residence. The wife has also decided that the husband's latest violent outburst is the last straw. She files for divorce.

The husband goes to his local Domestic Relations Office and files for spousal support. After retaining a lawyer, he files a counterclaim and raises alimony pendente lite.

Every family law practitioner presented with this factual scenario has questioned what he can do about such an unfair situation, where an abused woman will be required to pay support money to the person who beat her up. Until now, the answer was nothing; other than discouraging the wife's husband from abusing her, the wife's attorney was powerless to protect the wife from some form of support claim by the husband.

Entitlement has always been a defense to spousal support but entitlement is not a defense to alimony pendente lite. Furthermore, entitlement relates back to what gives rise to a fault-based divorce. The scenario described above, assuming it was a single episode, does not give rise to "indignities" as defined in 23 Pa.C.S.A. Section 3301(a)(6), since a single act is not sufficient to establish a claim for indignities. Similarly, while a single act may constitute "cruel and barbarous treatment" under 23 Pa.C.S.A. Section 3301(a)(3), in the given scenario the husband was charged with simple, as opposed to aggravated assault, so there likely are not sufficient facts to establish divorce grounds through that avenue either. Additionally, in Chester County where I primarily practice, if there is a Chester County divorce action pending, a temporary spousal support order will be entered at the initial support conference even if entitlement is raised, see C.C.R.C.P. 1910.12.A(e)(4).

As is noted above, Act 102 of 2018 offers relief for the wife in the given example. The act amends 23 Pa.C.S.A. Section 3702 to add a part (b). That new subsection states:

"Except where the court finds that an order for alimony pendente lite or spousal support is necessary to prevent manifest injustice, a party who has been convicted of committing a personal injury crime against the other party shall not be entitled to spousal support or alimony pendente lite. Any amount paid by the injured party after the commission of the offense but before the conviction of the other party shall be recoverable by the injured party upon petition.

There are two important aspects to this new legislation. First, there has to be a “conviction;” pending charges are not enough. There needs to be a plea of guilty or nolo contendere or a guilty verdict after trial. Second, the conviction has to be for a “personal injury crime.” However, the definition of personal injury crime is somewhat ambiguous.

In 2016 23 Pa.C.S.A. Section 3301(c) was amended to add subsection (c)(2), which states that a party shall be presumed to consent to a divorce if that party has been convicted of a personal injury crime against the other party. In conjunction with that amendment to Section 3301(c), the legislature also amended the definitions contained in 23 Pa.C.S.A. Section 3103 to specify what constitutes a personal injury crime. In Section 3103, personal injury crime is defined as: An act that constitutes a misdemeanor or felony under any of the following, or criminal contempt, solicitation or conspiracy to commit any of the following:

- 18 Pa.C.S. Ch. 25 (relating to criminal homicide);
- 18 Pa.C.S. Ch. 27 (relating to assault);
- 18 Pa.C.S. Ch. 29 (relating to kidnapping);
- 18 Pa.C.S. Ch. 30 (relating to human trafficking);
- 18 Pa.C.S. Ch. 31 (relating to sexual offenses);
- [18 Pa.C.S. Section 3301](#) (relating to arson and related offenses);
- 18 Pa.C.S. Ch. 37 (relating to robbery);
- 18 Pa.C.S. Ch. 49 Subch. B (relating to victim and witness intimidation);
- [75 Pa.C.S. Section 3732](#) (relating to homicide by vehicle); and
- [75 Pa.C.S. Section 3742](#) (relating to accidents involving death or personal injury).

This same definition applies to the new legislation creating the entitlement defense to spousal support and alimony pendente lite.

Going back to the example above, if the husband pleads guilty to simple assault, he is not entitled to spousal support or alimony pendente lite. The same is true if he pleads guilty to making terroristic threats, as that crime, too, is considered a personal injury crime under Chapter 27 of the Crimes Code, specifically 18 Pa.C.S.A. Section 3706. A guilty plea to harassment is a little more complicated since harassment is a personal injury crime under 18 Pa.C.S.A. Ch. 27 (Section 2709), but it can be graded as either a summary offense or a misdemeanor and a misdemeanor or felony is necessary to trigger the entitlement issue.

Practitioners who handle both family law and criminal law cases should be mindful of the above. If you represent the husband in this scenario, plead if possible, the criminal case out on either harassment or another summary offense. If you represent the wife, make sure she and the assigned district attorney know that the wife will be financially prejudiced if the husband is permitted to plead to anything less than a misdemeanor.

Finally, the new statutory language is applicable to spousal support or alimony pendente lite payments made after conviction of the enumerated offenses, so it is possible that the husband above could be receiving payments between the offense date and the date of conviction. If any spousal support or alimony pendente lite payments were made during that time, the wife will be required to go back to either support court, or move as part of equitable distribution, to recover the payments she made.

Act 102 of 2018 goes into effect on Dec. 23.

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