

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2525 Session of 2022

INTRODUCED BY KAUFER, COOK, MILLARD, DeLUCA AND MOUL, APRIL 5, 2022

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF REPRESENTATIVES, AS AMENDED, APRIL 12, 2022

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, in criminal history record
3 information, providing for crime victim right of access.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Chapter 91 of Title 18 of the Pennsylvania
7 Consolidated Statutes is amended by adding a subchapter to read:

8 SUBCHAPTER F.1

9 CRIME VICTIM RIGHT OF ACCESS

10 Sec.

11 9158. Definitions.

12 9158.1. Right to access.

13 9158.2. Access.

14 9158.3. Denial.

15 9158.4. Judicial review.

16 9158.5. Protection of information.

17 9158.6. Current dissemination not limited.

18 9158.7. Rules and regulations.

1 § 9158. Definitions.

2 The following words and phrases when used in this subchapter  
3 shall have the meanings given to them in this section unless the  
4 context clearly indicates otherwise:

5 "Child abuse." As defined in 23 Pa.C.S. § 6303(b.1)  
6 (relating to definitions).

7 "Crime victim." As defined as "direct victim" in section 103  
8 of the act of November 24, 1998 (P.L.882, No.111), known as the  
9 Crime Victims Act.

10 "Domestic violence." An offense under section 2701 (relating  
11 to simple assault), 2702 (relating to aggravated assault),  
12 2709.1 (relating to stalking) or 2718 (relating to  
13 strangulation) perpetrated against a family or household member,  
14 as defined in 23 Pa.C.S. § 6102 (relating to definitions).

15 "EMOTIONAL DISTRESS." A TEMPORARY OR PERMANENT STATE OF <--  
16 MENTAL ANGUISH.

17 "Records information officer." The head of the criminal  
18 justice agency or designee.

19 "Request for dissemination." A request under section 9158.2  
20 (relating to access).

21 "REQUESTING PARTY." A CRIME VICTIM OR A DEFENDANT IN A CIVIL <--  
22 ACTION IN WHICH A CRIME VICTIM IS A PARTY.

23 "Sexual abuse." Conduct which occurs in this Commonwealth  
24 and would constitute an offense under any of the following  
25 provisions:

26 Section 3011(a) (1) or (2) or (b) (relating to trafficking  
27 in individuals).

28 Section 3012 (relating to involuntary servitude) as it  
29 relates to sexual servitude.

30 Section 3121 (relating to rape).

1 Section 3122.1 (relating to statutory sexual assault).

2 Section 3123 (relating to involuntary deviate sexual  
3 intercourse).

4 Section 3124.1 (relating to sexual assault).

5 Section 3124.2 (relating to institutional sexual  
6 assault).

7 Section 3125 (relating to aggravated indecent assault).

8 Section 3126 (relating to indecent assault).

9 Section 3127 (relating to indecent exposure).

10 Section 4302 (relating to incest).

11 Section 6312 (relating to sexual abuse of children).

12 Section 6320 (relating to sexual exploitation of  
13 children).

14 "Third-party victim." A crime victim other than the crime  
15 victim making a request for dissemination.

16 § 9158.1. Right to access.

17 A ~~crime victim or the crime victim's~~ REQUESTING PARTY OR A <--  
18 REQUESTING PARTY'S legal representative may obtain criminal  
19 history investigative information under this subchapter for use  
20 in or investigation of an actual or potential civil action  
21 relating to that criminal history investigative information.

22 § 9158.2. Access.

23 (a) General rule.--A ~~crime victim may request the~~ <--  
24 ~~dissemination of criminal history investigative information that~~  
25 ~~is:~~

26 ~~(1) directly related to a civil action pending in a~~  
27 ~~court in this Commonwealth; or~~

28 ~~(2) material and necessary to the investigation or~~  
29 ~~preparation of a civil action.~~

30 (1) A REQUESTING PARTY MAY REQUEST THE DISSEMINATION OF <--

1 CRIMINAL HISTORY INVESTIGATIVE INFORMATION THAT IS DIRECTLY  
2 RELATED TO A CIVIL ACTION PENDING IN A COURT IN THIS  
3 COMMONWEALTH.

4 (2) A CRIME VICTIM MAY REQUEST THE DISSEMINATION OF  
5 CRIMINAL HISTORY INVESTIGATIVE INFORMATION THAT IS MATERIAL  
6 AND NECESSARY TO THE INVESTIGATION OR PREPARATION OF A CIVIL  
7 ACTION.

8 (b) Request.--A request for dissemination shall include an  
9 unsworn statement by the ~~crime victim or the crime victim's~~ <--  
10 REQUESTING PARTY OR THE REQUESTING PARTY'S legal representative, <--  
11 made subject to the penalties of section 4904 (relating to  
12 unsworn falsification to authorities), that the requested  
13 information is directly related to a civil action pending in a  
14 court in this Commonwealth or, IF THE REQUESTING PARTY IS A <--  
15 CRIME VICTIM OR THE CRIME VICTIM'S LEGAL REPRESENTATIVE,  
16 material and necessary to the investigation or preparation of a  
17 civil action. A request for dissemination shall identify or  
18 describe the information sought with sufficient specificity to  
19 enable the criminal justice agency to ascertain which  
20 information is being requested.

21 (c) Service.--A request for dissemination shall be served on  
22 the records information officer. Service shall be effective upon  
23 receipt of the request by the records information officer or  
24 head of the criminal justice agency via personal service or  
25 certified mail with receipt.

26 (d) Dissemination.--Subject to section 9158.3 (relating to  
27 denial), a criminal justice agency shall disseminate criminal  
28 history investigative information in response to a request for  
29 dissemination within 30 days of receipt of the request for  
30 dissemination or by the date returnable on the request for

1 dissemination, whichever is later. The criminal justice agency  
2 may impose reasonable fees for costs incurred to comply with the  
3 request.

4 (e) Receipt of information.--Dissemination of information  
5 under this section may be made to the ~~crime victim or the crime~~ <--  
6 ~~victim's~~ REQUESTING PARTY OR THE REQUESTING PARTY'S legal <--  
7 ~~representative, or the attorney for the crime victim or crime~~ <--  
8 ~~victim's~~ REQUESTING PARTY OR THE REQUESTING PARTY'S legal <--  
9 representative, as directed by the request for information.

10 Criminal history investigative ~~information~~ DISSEMINATION <--  
11 ~~obtained by a crime victim~~ UNDER THIS SUBCHAPTER shall be <--  
12 discoverable in a civil action directly related to the crime,  
13 unless otherwise NONDISCOVERABLE OR privileged from discovery. <--

14 (f) Subpoenas.--A criminal justice agency may, in its sole  
15 discretion, respond to a subpoena in a pending civil action  
16 seeking disclosure of criminal history investigative information  
17 as a request for dissemination under this subchapter. Nothing  
18 under this subchapter shall relieve a criminal justice agency of  
19 ALSO responding to a subpoena as otherwise required by law or <--  
20 court rule.

21 ~~(g) Civil action. Upon written demand by a defendant in a <--~~  
22 ~~civil action in which the crime victim is a party, the crime~~  
23 ~~victim shall request dissemination of criminal history~~  
24 ~~investigative information directly related to the civil action~~  
25 ~~pending in a court in this Commonwealth.~~

26 § 9158.3. Denial.

27 (a) Grounds.--A criminal justice agency shall deny a request  
28 for dissemination if the criminal justice agency determines:

29 (1) That dissemination of the requested information:

30 (i) endangers a person or public safety;

1           (ii) adversely affects an investigation or ongoing  
2 prosecution; or

3           (iii) relates to law enforcement's use of  
4 confidential informants or discloses investigative  
5 techniques and procedures, unless reasonable redaction  
6 will prevent the disclosure of this information.

7           (2) Either that:

8           (i) The criminal history investigative information  
9 is not:

10           (A) directly relating to a civil action pending  
11 in a court in this Commonwealth; or

12           (B) material and necessary to the investigation  
13 or preparation of a civil action.

14           (ii) Dissemination of the requested information will  
15 cause substantial emotional distress to a third-party  
16 victim of child abuse, domestic ~~abuse~~ VIOLENCE or sexual <--  
17 abuse, unless:

18           (A) reasonable redaction of the information will  
19 prevent substantial emotional distress to the third-  
20 party victim; or

21           (B) the third-party victim consents to  
22 dissemination of the requested information.

23           (b) Contact and consent.--Prior to issuing a denial under  
24 subsection (a) (2), a criminal justice agency shall make  
25 reasonable efforts to contact the third-party victim, describe  
26 the request for information and request the third-party victim's  
27 consent to dissemination of the information.

28           (c) Service of denial.--The criminal justice agency shall  
29 serve a denial in writing to the requesting party within 30 days  
30 of receipt of the request for dissemination or by the date

1 returnable on the request for dissemination, whichever is later,  
2 identifying the grounds for denial.

3 § 9158.4. Judicial review.

4 (a) Petition for review.--Subject to subsection (c), a  
5 requesting party may file a petition for review appealing a  
6 denial under section 9158.3(a)(2) (relating to denial), which  
7 shall include the following:

8 (1) The request for ~~information~~ DISSEMINATION. <--

9 (2) Proof of service of the request for ~~information~~ <--  
10 DISSEMINATION. <--

11 (3) The denial.

12 (4) Other information necessary to determine whether the  
13 criminal history investigative information should be  
14 disseminated under this subchapter.

15 (b) Time for petition.--A petition for review shall be filed  
16 within 45 days of service of a denial of a request for  
17 dissemination of information.

18 (c) Location of filing.--A petition for review shall be  
19 filed before the court of common pleas in any judicial district  
20 in which the criminal justice agency that issued the denial is  
21 located. For a criminal justice agency with Statewide  
22 jurisdiction, the petition for review shall be filed in  
23 Commonwealth Court.

24 (d) Judicial review.--A denial under section 9158.3(a)(1)  
25 shall not be subject to judicial review.

26 (e) Relief.--In a proceeding under this section, a court may  
27 award declaratory and injunctive relief only. The court shall  
28 direct a criminal justice agency to produce the requested  
29 information if the requesting party proves entitlement to access  
30 under this subchapter by a preponderance of the evidence.

1 § 9158.5. Protection of information.

2 (a) General rule.--Nothing under this subchapter shall be  
3 construed to permit the dissemination of otherwise

4 NONDISCOVERABLE OR privileged information, including: <--

5 (1) Grand jury investigative materials.

6 (2) Medical, mental health or treatment records.

7 (3) Materials protected by an applicable attorney-client  
8 or work product privilege.

9 (4) Materials protected by 42 Pa.C.S. Ch. 63 (relating  
10 to juvenile matters).

11 (5) Materials subject to 42 Pa.C.S. Ch. 67A (relating to  
12 recordings by law enforcement officers).

13 (6) Information that is otherwise prohibited or  
14 protected from disclosure or dissemination by Federal or  
15 State law.

16 (b) Protection.--A criminal justice agency shall be subject  
17 to protection under 1 Pa.C.S. § 2310 (relating to sovereign  
18 immunity reaffirmed; specific waiver) and 42 Pa.C.S. §§ 8541  
19 (relating to governmental immunity generally) and 8545 (relating  
20 to official liability generally) for dissemination of CRIMINAL <--  
21 HISTORY INVESTIGATIVE information under this subchapter.

22 (c) Use of information.--Information obtained under this  
23 subchapter shall be used only in furtherance of CONNECTION WITH <--  
24 an actual or potential civil action DIRECTLY relating to that <--  
25 criminal history investigative information.

26 (d) Violation.--Use of information obtained under this  
27 subchapter to harass, intimidate or threaten another shall  
28 constitute a misdemeanor of the second degree.

29 § 9158.6. Current dissemination not limited.

30 Nothing in this chapter shall:

1 ~~(1) Prohibit a police department from furnishing, upon~~ <--  
2 ~~request, a crime victim or the crime victim's legal~~  
3 ~~representative a certified copy of a full report of the~~  
4 ~~police investigation of a crime reported by a victim to an~~  
5 ~~insurance company for purposes of seeking coverage under an~~  
6 ~~applicable policy.~~

7 (1) PROHIBIT A POLICE DEPARTMENT FROM FURNISHING, UPON <--  
8 REQUEST, A CERTIFIED COPY OF A FULL REPORT OF A POLICE  
9 INVESTIGATION TO AN INSURANCE COMPANY FOR THE PURPOSE OF  
10 PROCESSING A CLAIM FOR COVERAGE UNDER AN APPLICABLE POLICY.

11 (2) Prohibit notifications authorized by the act of  
12 November 24, 1998 (P.L.882, No.111), known as the Crime  
13 Victims Act.

14 § 9158.7. Rules and regulations.

15 (a) Attorney General.--The Attorney General, in cooperation  
16 with appropriate criminal justice agencies, shall promulgate  
17 rules and regulations as necessary to implement this subchapter  
18 and establish reasonable fees.

19 (b) Supreme Court.--The Supreme Court shall promulgate rules  
20 as necessary to implement this subchapter.

21 Section 2. This act shall take effect in 120 days.