

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2525 Session of
2022

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

SENATOR BAKER, JUDICIARY, IN SENATE, AS AMENDED, JUNE 21, 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).

Section 3122.1 (relating to statutory sexual assault).

Section 3123 (relating to involuntary deviate sexual intercourse).

Section 3124.1 (relating to sexual assault).

Section 3124.2 (relating to institutional sexual assault).

Section 3125 (relating to aggravated indecent assault).

Section 3126 (relating to indecent assault).

Section 3127 (relating to indecent exposure).

Section 4302 (relating to incest).

Section 6312 (relating to sexual abuse of children).

Section 6320 (relating to sexual exploitation of children).

"Third-party victim." A crime victim other than the crime victim making a request for dissemination AND OTHER THAN THE CRIME VICTIM WHO IS THE PLAINTIFF IN THE UNDERLYING CIVIL ACTION.

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§ 9158.1. Right to access.

A requesting party or a requesting party's legal representative may obtain criminal history investigative information under this subchapter for use in or investigation of an actual or potential civil action IN THIS COMMONWEALTH relating to that criminal history investigative information.

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§ 9158.2. Access.

(a) General rule.--

(1) A requesting party may request the dissemination of criminal history investigative information that is directly related to a civil action pending in a court in this Commonwealth.

(2) A crime victim OR THE CRIME VICTIM'S REPRESENTATIVE

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1 may request the dissemination of criminal history
2 investigative information that is material and necessary to
3 the investigation or preparation of a civil action IN THIS <--
4 COMMONWEALTH.

5 (b) Request.--A request for dissemination shall include an
6 unsworn statement by the requesting party or the requesting
7 party's legal representative, made subject to the penalties of
8 section 4904 (relating to unsworn falsification to authorities),
9 that the requested information is directly related to a civil
10 action pending in a court in this Commonwealth or, if the
11 requesting party is a crime victim or the crime victim's legal
12 representative, material and necessary to the investigation or
13 preparation of a civil action IN THIS COMMONWEALTH. A request <--
14 for dissemination shall identify or describe the information
15 sought with sufficient specificity to enable the criminal
16 justice agency to ascertain which information is being
17 requested.

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

23 (d) Dissemination.--Subject to section 9158.3 (relating to
24 denial), a criminal justice agency shall disseminate criminal
25 history investigative information in response to a request for
26 dissemination within ~~30~~ 60 days of receipt of the request for <--
27 dissemination or by the date returnable on the request for
28 dissemination, whichever is later. The criminal justice agency
29 may impose reasonable fees for costs incurred to comply with the
30 request.

1 (e) Receipt of information.--Dissemination of information
2 under this section may be made to the requesting party or the
3 requesting party's legal representative, or the attorney for the
4 requesting party or the requesting party's legal representative,
5 as directed by the request for information. Criminal history
6 investigative dissemination obtained under this subchapter shall
7 be discoverable in a civil action directly related to the crime,
8 unless otherwise nondiscoverable or privileged from discovery.

9 (f) Subpoenas.--A criminal justice agency may, in its sole
10 discretion, respond to a subpoena in a pending civil action
11 seeking disclosure of criminal history investigative information
12 as a request for dissemination under this subchapter. Nothing
13 under this subchapter shall relieve a criminal justice agency of
14 also responding to a subpoena as otherwise required by law or
15 court rule.

16 § 9158.3. Denial.

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

19 (1) That, ABSENT REASONABLE REDACTIONS, THE
20 dissemination of the requested information:

21 (i) endangers a person or public safety;

22 (ii) adversely affects an investigation or ongoing
23 prosecution; or

24 (iii) relates to law enforcement's use of

25 confidential informants or discloses investigative
26 techniques and procedures, unless reasonable redaction
27 will prevent the disclosure of this information.

28 (2) Either that:

29 (i) The criminal history investigative information
30 is not:

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

3 (B) material and necessary to the investigation
4 or preparation of a civil action IN THIS <--
5 COMMONWEALTH.

6 ~~(ii) Dissemination of the requested information will~~ <--
7 ~~cause substantial emotional distress to a third party~~
8 ~~victim of child abuse, domestic violence or sexual abuse,~~
9 ~~unless:~~

10 ~~(A) reasonable redaction of the information will~~
11 ~~prevent substantial emotional distress to the third~~
12 ~~party victim; or~~

13 ~~(B) the third party victim consents to~~
14 ~~dissemination of the requested information.~~

15 ~~(b) Contact and consent. Prior to issuing a denial under~~
16 ~~subsection (a) (2), a criminal justice agency shall make~~
17 ~~reasonable efforts to contact the third party victim, describe~~
18 ~~the request for information and request the third party victim's~~
19 ~~consent to dissemination of the information.~~

20 ~~(e) (II) DISSEMINATION OF THE REQUESTED INFORMATION WOULD~~ <--
21 ~~IDENTIFY A THIRD-PARTY VICTIM OF CHILD ABUSE, DOMESTIC VIOLENCE~~
22 ~~OR SEXUAL ABUSE, UNLESS THE CRIMINAL JUSTICE AGENCY DETERMINES~~
23 ~~THAT REASONABLE REDACTION OF THE INFORMATION WILL PREVENT~~
24 ~~IDENTIFICATION OF THE THIRD-PARTY VICTIM.~~

25 (B) Service of denial.--The criminal justice agency shall
26 serve a denial in writing to the requesting party within 30 60 <--
27 days of receipt of the request for dissemination or by the date
28 returnable on the request for dissemination, whichever is later,
29 identifying the grounds for denial.

30 § 9158.4. Judicial review.

1 (a) Petition for review.--Subject to subsection ~~(e)~~ (D), a <--
2 requesting party may file a petition for review appealing a
3 denial under section 9158.3(a)(2) (relating to denial), which
4 shall include the following:

5 (1) The request for dissemination.

6 (2) Proof of service of the request for dissemination.

7 (3) The denial.

8 (4) Other information necessary to determine whether the
9 criminal history investigative information should be
10 disseminated under this subchapter.

11 (b) Time for petition.--A petition for review shall be filed
12 within 45 days of service of a denial of a request for
13 dissemination of information.

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

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

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

27 § 9158.5. Protection of information.

28 (a) General rule.--Nothing under this subchapter shall be
29 construed to permit the dissemination of otherwise
30 nondiscoverable or privileged information, including:

1 (1) Grand jury investigative materials.
2 (2) Medical, mental health or treatment records <--
3 INFORMATION. <--
4 (3) Materials protected by an applicable attorney-client
5 or work product privilege.
6 (4) Materials protected by 42 Pa.C.S. Ch. 63 (relating
7 to juvenile matters).
8 (5) Materials subject to 42 Pa.C.S. Ch. 67A (relating to
9 recordings by law enforcement officers).
10 (6) Information that is otherwise prohibited or
11 protected from disclosure or dissemination by Federal or
12 State law.
13 (B) EXEMPTION.--THE FOLLOWING PERSONAL IDENTIFICATION <--
14 INFORMATION WITH RESPECT TO AN INDIVIDUAL OTHER THAN A
15 REQUESTING PARTY SHALL BE EXEMPT FROM DISSEMINATION:
16 (1) A PERSON'S SOCIAL SECURITY NUMBER.
17 (2) A PERSON'S DRIVER'S LICENSE NUMBER.
18 (3) PERSONAL FINANCE INFORMATION.
19 (4) A PERSON'S HOME, CELLULAR OR PERSONAL TELEPHONE
20 NUMBERS.
21 (5) A PERSON'S E-MAIL ADDRESS, EMPLOYEE NUMBER OR OTHER
22 CONFIDENTIAL PERSONAL IDENTIFICATION NUMBER.
23 ~~(b)~~ (C) Protection.--A criminal justice agency shall be <--
24 subject to protection under 1 Pa.C.S. § 2310 (relating to
25 sovereign immunity reaffirmed; specific waiver) and 42 Pa.C.S.
26 §§ 8541 (relating to governmental immunity generally) and 8545
27 (relating to official liability generally) for dissemination of
28 criminal history investigative information under this
29 subchapter.
30 ~~(e)~~ (D) Use of information.--Information obtained under this <--

1 subchapter shall be used only in connection with an actual or
2 potential civil action directly relating to that criminal
3 history investigative information.

4 ~~(d)~~ (E) Violation.--Use of information obtained under this <--
5 subchapter to harass, intimidate or threaten another shall
6 constitute a misdemeanor of the second degree.

7 § 9158.6. Current dissemination not limited.

8 Nothing in this chapter shall:

9 (1) Prohibit a police department from furnishing, upon
10 request, a certified copy of a full report of a police
11 investigation to an insurance company for the purpose of
12 processing a claim for coverage under an applicable policy.

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

16 § 9158.7. Rules and regulations.

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

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

23 Section 2. This act shall take effect in ~~120~~ 180 days. <--