

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

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ALLOWAY, BRUBAKER, PILEGGI, BREWSTER AND BOSCOLA,
JANUARY 12, 2011

REFERRED TO JUDICIARY, JANUARY 12, 2011

AN ACT

1 Providing for the protection of victims of sexual violence, for
2 duties of law enforcement agencies, for procedure and for
3 penalties.

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8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 Section 1. Short title.

11 This act shall be known and may be cited as the Sexual
12 Violence Victim Protection Act.

13 Section 2. Findings and purpose.

14 The General Assembly finds and declares that:

15 (1) Sexual violence is the most heinous crime against a
16 person other than murder.

17 (2) Sexual violence inflicts humiliation, degradation
18 and terror on the victim.

19 (3) According to the Department of Justice, someone is
20 sexually assaulted every two minutes in the United States.

21 (4) Rape is recognized as one of the most underreported
22 crimes, and studies indicate that only one in three rapes is
23 reported to law enforcement.

24 (5) Victims of sexual violence desire safety and
25 protection from future interactions with their offender,
26 regardless of whether they seek criminal prosecution.

27 (6) This act provides the victim with a civil remedy
28 requiring the offender to stay away from the victim, as well
29 as other appropriate relief.

30 Section 3. Definitions.

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

4 "Confidential communications." As defined in 42 Pa.C.S. §
5 5945.1 (relating to confidential communications with sexual
6 assault counselors).

7 "Coparticipant." As defined in 42 Pa.C.S. § 5945.1 (relating
8 to confidential communications with sexual assault counselors).

9 "Court." The court or magisterial district judge having
10 jurisdiction over the matter under 42 Pa.C.S. (relating to
11 judiciary and judicial procedure) exercised as provided in 42
12 Pa.C.S. or as otherwise provided or prescribed by law.

13 "Hearing officer." A magisterial district judge, judge of
14 the Philadelphia Municipal Court, bail commissioner appointed
15 under 42 Pa.C.S. § 1123 (relating to jurisdiction and venue) or
16 master appointed under 42 Pa.C.S. § 1126 (relating to masters).

17 "Master for emergency relief." A member of the bar of the
18 Commonwealth appointed under section 9(e).

19 "Protection order" or "order." A sexual violence victim
20 protection order issued under this act.

21 "Rape crisis center." As defined in 42 Pa.C.S. § 5945.1
22 (relating to confidential communications with sexual assault
23 counselors).

24 "Sexual assault counselor." As defined in 42 Pa.C.S. §
25 5945.1 (relating to confidential communications with sexual
26 assault counselors).

27 "Sexual violence." Conduct constituting a crime under 18
28 Pa.C.S. § 2709(a)(4) (relating to harassment), 18 Pa.C.S. Ch.31
29 (relating to sexual offenses) or 18 Pa.C.S. § 5901 (relating to
30 open lewdness) between persons who are not family or household

members, who are not sexual or intimate partners, or who do not share biological parenthood.

"Sheriff." The sheriff of a county or in a city of the first class, the chief or head of the police department.

"Victim." A person who is the victim of sexual violence.

Section 4. Responsibilities of law enforcement agencies.

(a) General rule.--The police department of each municipal corporation, the Pennsylvania State Police and the sheriff of each county shall ensure that all their officers, deputies and employees are familiar with the provisions of this act.

Instruction concerning sexual violence victim protection orders shall be made a part of the training curriculum for all trainee officers and deputies. All law enforcement agencies shall adopt a written policy regarding sexual violence victim protection orders.

(b) Notice of arrest.--The police department of each municipal corporation and the Pennsylvania State Police shall make reasonable efforts to notify any person protected by an order issued under this act of the arrest of the defendant for violation of an order as soon as possible. Unless the person cannot be located, notice of the arrest shall be provided not more than 24 hours after preliminary arraignment.

Section 5. Commencement of proceedings.

(a) General rule.--An action for a sexual violence victim protection order may be commenced by filing a petition with the court requesting protection from the defendant. A parent or guardian may file on behalf of a victim.

(b) No prepayment of fees.--The petition shall be filed and service shall be made without the prepayment of fees.

(c) Assessment of fees and costs.--

1 (1) (i) No plaintiff seeking relief under this act
2 shall be charged any fees or costs associated with the
3 filing, issuance, registration or service of a petition,
4 motion, complaint, order or any other filing. Prohibited
5 fees or costs shall include, but are not limited to,
6 those associated with modifying, withdrawing, dismissing
7 or certifying copies of a petition, motion, complaint,
8 order or any other filing, as well as any judicial
9 surcharge or computer system fee.

10 (ii) No plaintiff seeking relief under this act
11 shall be charged any fees or costs associated with filing
12 a motion for reconsideration or an appeal from any order
13 or action taken under this act.

14 (2) When an order is granted under this act, fees and
15 costs shall be assessed against the defendant. The court
16 shall waive fees and costs upon a showing of good cause or
17 when the court makes a finding that the defendant is not able
18 to pay the fees and costs.

19 (3) Nothing in this subsection is intended to expand or
20 diminish the court's authority to enter an order under
21 Pa.R.C.P. No. 1023.1 (relating to Scope. Signing of
22 Documents. Representations to the Court. Violation).

23 (d) Service.--

24 (1) The court shall adopt a means of prompt and
25 effective service. If the court so orders, the sheriff or
26 another court-designated agency or individual shall serve the
27 petition and protection order. The petition and protection
28 order shall be served upon the defendant, and the order shall
29 be served upon the police departments and sheriff with
30 appropriate jurisdiction to enforce the order. An order also

1 shall be promptly served on the district attorney's office.

2 (2) Failure to serve the police department, sheriff or
3 district attorney's office shall not stay the effect of a
4 valid order.

5 (e) Assistance and advice to plaintiff.--The courts and
6 hearing officers shall:

7 (1) Provide simplified forms and clerical assistance in
8 English and Spanish to help with the writing and filing of
9 the petition for a sexual violence protection order for an
10 individual not represented by counsel.

11 (2) Provide the plaintiff with written and oral
12 referrals, in English and Spanish, to local sexual assault
13 services, to the local legal services office and to the
14 county bar association's lawyer referral service.

15 Section 6. Hearings.

16 (a) General rule.--Within ten days of the filing of a
17 petition under this act, an expedited hearing shall be held
18 before the court, at which the plaintiff must prove the need for
19 protection from the defendant by a preponderance of the
20 evidence. The court shall, at the time the defendant is given
21 notice of the hearing, advise the defendant of the right to be
22 represented by counsel.

23 (b) Temporary orders.--If a plaintiff petitions for a
24 temporary protection order for protection from an immediate and
25 present danger, the court shall conduct an ex parte proceeding.
26 The court may enter such a temporary order as it deems necessary
27 to protect the plaintiff when it finds the plaintiff is in
28 immediate and present danger. The temporary order shall remain
29 in effect until modified or terminated by the court after notice
30 and hearing.

(c) Continued hearings.--If a hearing under subsection (a) is continued and no temporary protection order is issued, the court may make ex parte temporary orders under subsection (b), as it deems necessary.

Section 7. Relief.

(a) Order or consent agreement.--The court may issue a protection order or approve a consent agreement to protect the plaintiff from the defendant.

(b) General rule.--A protection order or consent agreement may include:

(1) Prohibiting the defendant from having any contact with the plaintiff, including, but not limited to, restraining the defendant from entering the plaintiff's residence, place of employment, business or school. This may include prohibiting indirect contact through third parties.

(2) Directing the defendant to refrain from harassing or stalking the plaintiff and other designated persons as defined in 18 Pa.C.S. §§ 2709 (relating to harassment) and 2709.1 (relating to stalking).

(3) Granting any other appropriate relief sought by the plaintiff.

(c) Duration and amendment of order or agreement.--A protection order or an approved consent agreement shall be for a fixed period of time not to exceed 36 months.

(d) Extension of protection orders.--

(1) An extension of a protection order may be granted:

(i) Where the court finds, after a duly filed petition, notice to the defendant and a hearing, in accordance with the procedures set forth in sections 5 and 6, that the protection is necessary because the

defendant engaged in one or more acts that indicate continued risk of harm to the plaintiff.

(ii) When a contempt petition or charge has been filed with the court or, in a county of the first class, a hearing officer, but the hearing has not occurred before the expiration of the protection order, the order shall be extended, at a minimum, until the disposition of the contempt petition.

(2) Service of an extended protection order shall be made in accordance with sections 5(d) and 8.

(3) There shall be no limitation on the number of extensions that may be granted.

(e) Notice.--Notice shall be given to the defendant stating that violations of the protection order will subject the defendant to arrest under section 12 or contempt of court under section 14.

(f) Incarceration.--When the defendant is incarcerated and about to be released or has recently been released from incarceration, a plaintiff does not need to show that the defendant engaged in one or more acts that indicate continued risk of harm to the plaintiff in order to obtain an extension or a subsequent protection order under this act.

Section 8. Service of orders.

A copy of a protection order shall be issued to the plaintiff, the defendant and the police department with appropriate jurisdiction to enforce the order in accordance with the provisions of this act or as ordered by the court or hearing officer.

Section 9. Emergency relief by minor judiciary.

(a) General rule.--When:

1 (1) in counties with fewer than four judges, the court
2 is unavailable:

3 (i) from the close of business at the end of each
4 day to the resumption of business the next morning;

5 (ii) from the end of the business week to the
6 beginning of the business week; and

7 (iii) during the business day by reason of duties
8 outside the county, illness or vacation;

9 (2) in counties with at least four judges, the court is
10 unavailable:

11 (i) from the close of business at the end of each
12 day to the resumption of business the next morning; and

13 (ii) from the end of the business week to the
14 beginning of the business week;

15 a petition may be filed before a hearing officer who may grant
16 relief in accordance with section 7 if the hearing officer deems
17 it necessary to protect the plaintiff upon good cause shown in
18 an ex parte proceeding. Immediate and present danger to the
19 plaintiff shall constitute good cause for the purposes of this
20 subsection.

21 (b) Expiration of order.--A protection order issued under
22 subsection (a) shall expire at the end of the next business day
23 the court deems itself available. The court shall schedule
24 hearings on orders entered by hearing officers under subsection
25 (a) and shall review and continue in effect protection orders
26 that are necessary to protect the plaintiff until the hearing,
27 at which time the plaintiff may seek a temporary protection
28 order from the court.

29 (c) Certification of order to court.--An emergency
30 protection order issued under this section and any documentation

1 in support thereof shall be immediately certified to the court.
2 The certification to the court shall have the effect of
3 commencing proceedings under section 5 and invoking the other
4 provisions of this act. If it is not already alleged in a
5 petition for an emergency order, the plaintiff shall file a
6 verified statement setting forth the reasons for the need for
7 protection at least five days prior to the hearing. Service of
8 the verified statement shall be made subject to section 5(d).

9 (d) Instructions regarding the commencement of
10 proceedings.--Upon issuance of an emergency protection order,
11 the hearing officer shall provide the plaintiff instructions
12 regarding the commencement of proceedings in the court at the
13 beginning of the next business day and regarding the procedures
14 for initiating a contempt charge should the defendant violate
15 the emergency protection order. The hearing officer shall also
16 advise the plaintiff of the existence of rape crisis centers in
17 the county or in nearby counties and inform the plaintiff of the
18 availability of legal assistance without cost if the plaintiff
19 is unable to pay for them.

20 (e) Master of emergency relief.--The president judge of a
21 court of common pleas of a judicial district may, with the
22 approval of the Administrative Office of Pennsylvania Courts,
23 provide for the selection and appointment of a master for
24 emergency relief on a full-time or part-time basis. The number
25 of masters for emergency relief shall be fixed by the president
26 judge with the approval of the Administrative Office of
27 Pennsylvania Courts. The compensation of a master for emergency
28 relief shall be fixed and paid by the county.

29 Section 10. Sexual assault counselor.

30 A sexual assault counselor may accompany and provide

1 assistance to a plaintiff in any legal proceeding or hearing
2 under this act.

3 Section 11. Disclosure of addresses.

4 (a) General rule.--During the course of a proceeding under
5 this act, the court or hearing officer may consider whether the
6 plaintiff is endangered by disclosure of the permanent or
7 temporary address of the plaintiff. The court shall consider the
8 wishes of the plaintiff regarding the disclosure of the address.
9 Neither in the pleadings nor during proceedings or hearings
10 under this act shall the court or hearing officer require
11 disclosure of the address of a rape crisis center.

12 (b) Order.--Where the court concludes that the defendant
13 poses a threat of continued danger to the plaintiff and where
14 the plaintiff requests that the address, telephone number and
15 information about the plaintiff's whereabouts not be disclosed,
16 the court shall enter an order directing that law enforcement
17 agencies, human service agencies and school districts shall not
18 disclose the presence of the plaintiff in the jurisdiction or
19 district or furnish any address, telephone number or any other
20 demographic information about the plaintiff except by further
21 order of the court.

22 Section 12. Arrest for violation of order.

23 (a) General rule.--An arrest for a violation of a protection
24 order or court-approved consent agreement issued under this act
25 may be without warrant upon probable cause, whether or not the
26 violation is committed in the presence of the police officer or
27 sheriff, in circumstances where the defendant has violated a
28 provision of a protection order consistent with section 7. The
29 police officer or sheriff may verify the existence of a
30 protection order by telephone, radio or other electronic

1 communication with the appropriate police department or issuing
2 authority. A police officer or sheriff shall arrest a defendant
3 for violating a protection order by a court within the judicial
4 district or issued by a court in another judicial district
5 within this Commonwealth.

6 (b) Procedure following arrest.--

7 (1) Subsequent to an arrest, the defendant shall be
8 taken by the police officer or sheriff without unnecessary
9 delay before the court in the judicial district where the
10 contempt is alleged to have occurred.

11 (2) When that court is unavailable, the police officer
12 or sheriff shall convey the defendant to a magisterial
13 district judge designated as appropriate by local rules of
14 court or, in counties of the first class, to the appropriate
15 hearing officer.

16 (c) Preliminary arraignment.--The defendant shall be
17 afforded a preliminary arraignment without unnecessary delay.

18 (d) Other emergency powers unaffected.--This section shall
19 not be construed to in any way limit any of the other powers for
20 emergency relief provided under this act.

21 (e) Hearing.--An expedited hearing shall be scheduled within
22 ten days of the filing of the charge or complaint of indirect
23 criminal contempt. The hearing and any adjudication shall not
24 preclude a hearing on other criminal charges underlying the
25 contempt, nor shall a hearing or adjudication on other criminal
26 charges preclude a hearing on a charge of indirect criminal
27 contempt.

28 Section 13. Private criminal complaints for violation of order.

29 (a) General rule.--A plaintiff may file a private criminal
30 complaint against a defendant, alleging indirect criminal

1 contempt for a violation of any provision of a protection order
2 or court-approved consent agreement issued under this act, with
3 the court, the office of the district attorney or the
4 magisterial district judge in the jurisdiction or county where
5 the violation occurred.

6 (b) Procedure service.--Procedure for filing and service of
7 a private criminal complaint shall be provided as set forth by
8 local rule.

9 (c) Fees and costs.--

10 (1) No fees or costs associated with the prosecution of
11 the private criminal complaint shall be assigned to the
12 plaintiff, including, but not limited to, filing, service,
13 failure to prosecute, withdrawal or dismissal.

14 (2) (i) After a finding of indirect criminal contempt,
15 fees and costs may be assigned against the defendant.

16 (ii) The court shall waive fees and costs imposed
17 under this act upon a showing of good cause or if the
18 court makes a finding that the defendant is not able to
19 pay the costs associated with the indirect criminal
20 contempt action.

21 (3) Nothing in this subsection shall be construed to
22 expand or diminish the court's authority to enter an order
23 under Pa.R.C.P. No.1023.1 (relating to Scope. Signing of
24 Documents. Representation to Court. Violation).

25 Section 14. Contempt for violation of order.

26 (a) General rule.--Where the police department, sheriff or
27 the plaintiff has filed charges of indirect criminal contempt
28 against a defendant for violation of a protection order or
29 court-approved agreement entered into under this act, the court
30 may hold the defendant in indirect criminal contempt and punish

1 the defendant in accordance with law.

2 (b) Jurisdiction.--A court shall have jurisdiction over
3 indirect criminal contempt charges for violation of a protection
4 order in the county where the violation occurred.

5 (c) Minor defendant.--Any defendant who is a minor and who
6 is charged with indirect criminal contempt for allegedly
7 violating a protection order shall be considered to have
8 committed an alleged delinquent act as that term is defined in
9 42 Pa.C.S. § 6302 (relating to definitions) and shall be treated
10 as provided in 42 Pa.C.S. Ch. 63 (relating to juvenile matters).

11 (d) Trial and punishment.--

12 (1) Notwithstanding 42 Pa.C.S. § 4136(a) (relating to
13 rights of persons charged with certain indirect criminal
14 contempts), the defendant shall not have the right to a jury
15 trial; however, the defendant shall be entitled to counsel.

16 (2) A sentence for indirect criminal contempt under this
17 act may include:

18 (i) A fine of not less than \$300 nor more than
19 \$1,000 or imprisonment for a period not exceeding six
20 months, or both.

21 (ii) A fine of not less than \$300 nor more than
22 \$1,000 or supervised probation for a period not exceeding
23 six months, or both.

24 (iii) An order for any other relief provided for
25 under this act.

26 (3) Upon conviction for indirect criminal contempt and
27 at the request of the plaintiff, the court shall also grant
28 an extension of the protection order for an additional term.

29 (4) Upon conviction for indirect criminal contempt, the
30 court shall notify the sheriff of the jurisdiction which

1 issued the protection order of the conviction.

2 (e) Notification upon release.--

3 (1) The appropriate releasing authority or other
4 official as designated by local rule shall use all reasonable
5 means to notify the victim sufficiently in advance of the
6 release of the offender from any incarceration imposed under
7 subsection (d). Notification shall be required for work
8 release, furlough, medical leave, community service,
9 discharge, escape and recapture. Notification shall include
10 the terms and conditions imposed on any temporary release
11 from custody.

12 (2) The plaintiff must keep the appropriate releasing
13 authority or other official as designated by local rule
14 advised of contact information; failure to do so will
15 constitute waiver of any right to notification under this
16 section.

17 (f) Multiple remedies.--Disposition of a charge of indirect
18 criminal contempt shall not preclude the prosecution of other
19 criminal charges associated with the incident giving rise to the
20 contempt, nor shall disposition of other criminal charges
21 preclude prosecution of indirect criminal contempt associated
22 with the criminal conduct giving rise to the charges.

23 Section 15. Civil contempt or modification for violation of an
24 order.

25 (a) General rule.--A plaintiff may file a petition for civil
26 contempt with the issuing court alleging that the defendant has
27 violated any provision of a protection order or court-approved
28 agreement entered into under this act.

29 (b) Civil contempt order.--Upon finding of a violation of a
30 protection order, the court, either pursuant to petition for

1 civil contempt or on its own accord, may hold the defendant in
2 civil contempt and constrain the defendant in accordance with
3 law.

4 (c) Sentencing.--A sentence for civil contempt under this
5 act may include imprisonment until the defendant complies with
6 provisions of the order or demonstrates the intent to do so, but
7 in no case shall a term of imprisonment under this section
8 exceed a period of six months.

9 (d) Jury trial and counsel.--Notwithstanding 42 Pa.C.S. §
10 4136(a) (relating to rights of persons charged with certain
11 indirect criminal contempts), the defendant shall not have a
12 right to a jury trial; however, the defendant shall be entitled
13 to counsel.

14 Section 16. Confidentiality.

15 (a) Nature of privilege.--

16 (1) Unless a victim waives the privilege in a signed
17 writing prior to testimony or disclosure, a sexual assault
18 counselor or a coparticipant who is present during sexual
19 assault counseling or advocacy shall not be competent nor
20 permitted to testify, release the records of or to otherwise
21 disclose confidential communications made to or by the
22 counselor by or to a victim.

23 (2) Neither the sexual assault counselor nor the victim
24 shall waive the privilege of confidential communications by
25 reporting facts of physical or sexual violence under 23
26 Pa.C.S. Ch. 63 (relating to child protective services), a
27 Federal or State mandatory reporting statute or a local
28 mandatory reporting ordinance.

29 (b) Definition.--As used in this section, the term "victim"
30 is a person against whom sexual violence is committed who

1 consults a sexual assault counselor for the purpose of securing
2 advice, counseling or assistance. The term also includes a
3 person who has a significant relationship with the victim and
4 who seeks advice, counseling or assistance from a sexual assault
5 counselor regarding the victim.

6 Section 17. Procedure and other remedies.

7 Unless otherwise indicated under this act, a proceeding under
8 this act shall be in accordance with applicable general rules
9 and shall be in addition to any other available civil or
10 criminal remedies. The plaintiff may seek modification of a
11 protection order issued under section 7 at any time during the
12 pendency of the order, but a court may not sua sponte modify the
13 order. Modification may be ordered after the filing of a
14 petition for modification, service of the petition, and a
15 hearing on the petition.

16 Section 18. Applicability.

17 The provisions of the following acts relating to victims who
18 are protected by an order issued under 23 Pa.C.S. Ch. 61 shall
19 apply also to victims who are protected by an order issued under
20 this act:

21 (1) The act of November 24, 1998 (P.L.882, No.111),
22 known as the Crime Victims Act.

23 (2) 23 Pa.C.S. Ch. 67.

24 Section 19. Effective date.

25 This act shall take effect in 180 days.