

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 553 Session of 2005

INTRODUCED BY GREENLEAF, COSTA, LEMMOND, O'PAKE, RAFFERTY,
BOSCOLA, ORIE, ERICKSON, STACK, TARTAGLIONE, KITCHEN, RHOADES
AND WOZNIAK, MARCH 31, 2005

REFERRED TO JUDICIARY, MARCH 31, 2005

AN ACT

1 Relating to the protection of victims of sexual violence.

2 TABLE OF CONTENTS

3 Section 1. Short title.

4 Section 2. Findings and purpose.

5 Section 3. Definitions.

6 Section 4. Responsibilities of law enforcement agencies.

7 Section 5. Commencement of proceedings.

8 Section 6. Hearings.

9 Section 7. Relief.

10 Section 8. Service of orders.

11 Section 9. Emergency relief by minor judiciary.

12 Section 10. Sexual assault counselor.

13 Section 11. Disclosure of addresses.

14 Section 12. Arrest for violation of order.

15 Section 13. Private criminal complaints for violation of
16 order.

17 Section 14. Contempt for violation of order.

1 Section 15. Civil contempt or modification for violation of an
2 order.

3 Section 16. Confidentiality.

4 Section 17. Procedure and other remedies.

5 Section 18. Effective date.

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Short title.

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

11 Section 2. Findings and purpose.

12 The General Assembly finds and declares that:

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

15 (2) Sexual violence inflicts humiliation, degradation
16 and terror on the victim.

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

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

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

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

28 Section 3. Definitions.

29 The following words and phrases when used in this act shall
30 have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

2 "Confidential communications." As defined in 42 Pa.C.S. §
3 5945.1 (relating to confidential communications with sexual
4 assault counselors).

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

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

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

15 "Protection order" or "order." A sexual violence victim
16 protection order issued under this act.

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

20 "Sexual assault counselor." As defined in 42 Pa.C.S. §
21 5945.1 (relating to confidential communications with sexual
22 assault counselors).

23 "Sexual violence." Conduct constituting a crime under 18
24 Pa.C.S. § 2709(a)(4) (relating to harassment), 18 Pa.C.S. Ch.31
25 (relating to sexual offenses) or 18 Pa.C.S. § 5901 (relating to
26 open lewdness) between persons who are not family or household
27 members, sexual or intimate partners or who share biological
28 parenthood.

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

30 Section 4. Responsibilities of law enforcement agencies.

1 (a) General rule.--The police department of each municipal
2 corporation, the Pennsylvania State Police and the sheriff of
3 each county shall ensure that all their officers, deputies and
4 employees are familiar with the provisions of this act.
5 Instruction concerning sexual violence victim protection orders
6 shall be made a part of the training curriculum for all trainee
7 officers and deputies. All law enforcement agencies shall adopt
8 a written policy regarding sexual violence victim protection
9 orders.

10 (b) Notice of services and rights.--Each law enforcement
11 agency shall provide the victim of sexual violence with oral and
12 written notice of sexual assault services in the community,
13 including the hotline number for sexual assault services. The
14 written notice, which shall be in English and Spanish and any
15 additional language required by local rule of court, shall
16 include the following statement:

17 If you are the victim of sexual violence, you have the right
18 to go to court and file a petition requesting a sexual
19 violence victim protection order for protection from
20 harassment pursuant to the Sexual Violence Victim Protection
21 Act, which could include the following, prohibiting the
22 defendant from having any contact with you, including, but
23 not limited to, restraining the defendant from entering your
24 residence, place of employment, business or school.

25 (c) Notice of arrest.--Each law enforcement agency shall
26 make reasonable efforts to notify any person protected by an
27 order issued under this act of the arrest of the defendant for
28 violation of an order as soon as possible. Unless the person
29 cannot be located, notice of the arrest shall be provided not
30 more than 24 hours after preliminary arraignment.

1 Section 5. Commencement of proceedings.

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

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

8 (c) Assessment of fees and costs.--

9 (1) If the plaintiff prevails in the action, fees and
10 costs shall be assigned to the defendant or, should the court
11 determine that the defendant is not able to pay the costs of
12 filing and service, the court shall waive the fees and costs.

13 (2) If the plaintiff does not prevail in the action, the
14 fees and costs of filing and service may be assigned to the
15 plaintiff or, should the court determine that the plaintiff
16 is not able to pay the fees and costs of filing and service,
17 the court shall waive the fees and costs.

18 (d) Service.--

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

27 (2) Failure to serve the police shall not stay the
28 effect of a valid order.

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

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

5 (2) Provide the plaintiff with written and oral
6 referrals, in English and Spanish, to local sexual assault
7 services, to the local legal services office and to the
8 county bar association's lawyer referral service.

9 Section 6. Hearings.

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

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

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

29 Section 7. Relief.

30 (a) Order or consent agreement.--The court may issue a

1 protection order or approve a consent agreement to protect the
2 plaintiff from the defendant.

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

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

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

13 (3) Ordering the defendant to temporarily relinquish to
14 the sheriff the defendant's weapons which have been used or
15 have been threatened to be used against the plaintiff and
16 prohibiting the defendant from acquiring or possessing any
17 other weapons for the duration of the order and requiring the
18 defendant to relinquish to the sheriff any firearm license
19 the defendant may possess. The order shall provide for the
20 return of the weapons and any firearm license to the
21 defendant subject to any restrictions and conditions as the
22 court shall deem appropriate to protect the plaintiff from
23 further violence through use of the weapons. A certified copy
24 of the order shall be transmitted to the police department of
25 the municipality and the sheriff of the county in which the
26 defendant is a resident.

27 (4) Granting any other appropriate relief sought by the
28 plaintiff.

29 (c) Duration and amendment of order or agreement.--A
30 protection order or an approved consent agreement shall be for a

1 fixed period of time not to exceed 18 months.

2 (d) Extension of protection orders.--

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

4 (i) Where the court finds, after a duly filed
5 petition, notice to the defendant and a hearing, in
6 accordance with the procedures set forth in sections 5
7 (relating to commencement of proceedings) and 6 (relating
8 to hearings), that the protection is necessary because
9 the defendant engaged in one or more acts that indicate
10 continued risk of harm to the plaintiff.

11 (ii) When a contempt petition or charge has been
12 filed, but the hearing has not occurred before the
13 expiration of the protection order, the order shall be
14 extended, at a minimum, until the disposition of the
15 contempt petition.

16 (2) Service of an extended protection order shall be
17 made in accordance with sections 5(d) and 8 (relating to
18 service of orders).

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

21 (e) Notice.--Notice shall be given to the defendant stating
22 that violations of the protection order will subject the
23 defendant to arrest under section 12 (relating to arrest for
24 violation of order) or contempt of court under section 14
25 (relating to contempt for violation of order).

26 Section 8. Service of orders.

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

1 officer.

2 Section 9. Emergency relief by minor judiciary.

3 (a) General rule.--When:

4 (1) in counties with less than four judges, the court is
5 unavailable:

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

8 (ii) from the end of the business week to the
9 beginning of the business week; and

10 (iii) during the business day by reason of duties
11 outside the county, illness or vacation.

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

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

16 (ii) from the end of the business week to the
17 beginning of the business week;

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

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

1 order from the court.

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

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

24 Section 10. Sexual assault counselor.

25 A sexual assault counselor may accompany and provide
26 assistance to a party in any legal proceeding or hearing under
27 this act.

28 Section 11. Disclosure of addresses.

29 (a) General rule.--During the course of a proceeding under
30 this act, the court or hearing officer may consider whether the

1 plaintiff is endangered by disclosure of the permanent or
2 temporary address of the plaintiff. The court shall consider the
3 wishes of the plaintiff regarding the disclosure of the address.
4 Neither in the pleadings nor during proceedings or hearings
5 under this act shall the court or hearing officer require
6 disclosure of the address of a rape crisis center.

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

17 Section 12. Arrest for violation of order.

18 (a) General rule.--An arrest for a violation of a protection
19 order or court-approved consent agreement issued pursuant to
20 this act may be without warrant upon probable cause, whether or
21 not the violation is committed in the presence of the police
22 officer, in circumstances where the defendant has violated a
23 provision of a protection order consistent with section 7
24 (relating to relief). The police officer may verify the
25 existence of a protection order by telephone, radio or other
26 electronic communication with the appropriate police department
27 or issuing authority. A police officer shall arrest a defendant
28 for violating a protection order by a court within the judicial
29 district or issued by a court in another judicial district
30 within this Commonwealth.

1 (b) Seizure of weapons.--Subsequent to an arrest, the police
2 officer shall seize all weapons used or threatened to be used
3 during the violation of the order or during prior incidents of
4 sexual violence. As soon as it is reasonably possible, the
5 arresting officer shall deliver the confiscated weapons to the
6 office of the sheriff. The sheriff shall maintain possession of
7 the weapons until the court issues an order specifying the
8 weapons to be relinquished and the persons to whom the weapons
9 shall be relinquished.

10 (c) Procedure following arrest.--

11 (1) Subsequent to an arrest, the defendant shall be
12 taken by the police officer without unnecessary delay before
13 the court in the judicial district where the contempt is
14 alleged to have occurred.

15 (2) When that court is unavailable, the police officer
16 shall convey the defendant to a magisterial district judge
17 designated as appropriate by local rules of court or, in the
18 City of Pittsburgh, to a magistrate of the Pittsburgh
19 Magistrates Court or, in counties of the first class, to the
20 appropriate hearing officer. For the purpose of procedures
21 relating to arraignments for arrest for violation of an order
22 issued under this act, the judges of Pittsburgh Magistrates
23 Court shall be deemed to be magisterial district judges.

24 (d) Preliminary arraignment.--The defendant shall be
25 afforded a preliminary arraignment without unnecessary delay.

26 (e) Other emergency powers unaffected.--This section shall
27 not be construed to in any way limit any of the other powers for
28 emergency relief provided in this act.

29 (f) Hearing.--An expedited hearing shall be scheduled within
30 ten days of the filing of the charge or complaint of indirect

1 criminal contempt. The hearing and any adjudication shall not
2 preclude a hearing on other criminal charges underlying the
3 contempt, nor shall a hearing or adjudication on other criminal
4 charges preclude a hearing on a charge of indirect criminal
5 contempt.

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

7 (a) General rule.--A plaintiff may file a private criminal
8 complaint against a defendant, alleging indirect criminal
9 contempt for a violation of any provision of a protection order
10 or court-approved consent agreement issued under this act, with
11 the court, the office of the district attorney or the
12 magisterial district judge in the jurisdiction or county where
13 the violation occurred.

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

17 Section 14. Contempt for violation of order.

18 (a) General rule.--Where the police or the plaintiff have
19 filed charges of indirect criminal contempt against a defendant
20 for violation of a protection order or court-approved agreement
21 entered into under this act, the court may hold the defendant in
22 indirect criminal contempt and punish the defendant in
23 accordance with law.

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

27 (c) Minor defendant.--Any defendant who is a minor and who
28 is charged with indirect criminal contempt for allegedly
29 violating a protection order shall be considered to have
30 committed an alleged delinquent act as that term is defined in

1 42 Pa.C.S. § 6302 (relating to definitions) and shall be treated
2 as provided in 42 Pa.C.S. Ch. 63 (relating to juvenile matters).

3 (d) Trial and punishment.--A sentence for contempt under
4 this act may include imprisonment for up to six months or a fine
5 of not less than \$100 nor more than \$1,000, or both, and may
6 include other relief set forth in this act. The defendant shall
7 not have a right to a jury trial on such a charge; however, the
8 defendant shall be entitled to counsel.

9 (e) Notification upon release.--

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

19 (2) The plaintiff must keep the appropriate releasing
20 authority or other official as designated by local rule
21 advised of contact information; failure to do so will
22 constitute waiver of any right to notification under this
23 section.

24 (f) Multiple remedies.--Disposition of a charge of indirect
25 criminal contempt shall not preclude the prosecution of other
26 criminal charges associated with the incident giving rise to the
27 contempt, nor shall disposition of other criminal charges
28 preclude prosecution of indirect criminal contempt associated
29 with the criminal conduct giving rise to the charges.

30 Section 15. Civil contempt or modification for violation of an

1 order.

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

6 (b) Civil contempt order.--Upon finding of a violation of a
7 protection order, the court, either pursuant to petition for
8 civil contempt or on its own accord, may hold the defendant in
9 civil contempt and constrain the defendant in accordance with
10 law.

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

16 (d) Jury trial and counsel.--The defendant shall not have a
17 right to a jury trial; however, the defendant shall be entitled
18 to counsel.

19 Section 16. Confidentiality.

20 (a) Nature of privilege.--

21 (1) Unless a victim waives the privilege in a signed
22 writing prior to testimony or disclosure, a sexual assault
23 counselor or a coparticipant who is present during sexual
24 assault counseling or advocacy shall not be competent nor
25 permitted to testify or to otherwise disclose confidential
26 communications made to or by the counselor by or to a victim.

27 (2) Neither the sexual assault counselor nor the victim
28 shall waive the privilege of confidential communications by
29 reporting facts of physical or sexual violence under 23

30 Pa.C.S. Ch. 63 (relating to child protective services), a

1 Federal or State mandatory reporting statute or a local
2 mandatory reporting ordinance.

3 (b) Definition.--As used in this section, the term "victim"
4 is a person against whom sexual violence is committed who
5 consults a sexual assault counselor for the purpose of securing
6 advice, counseling or assistance. The term also includes a
7 person who has a significant relationship with the victim and
8 who seeks advice, counseling or assistance from a sexual assault
9 counselor regarding the victim.

10 Section 17. Procedure and other remedies.

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

20 Section 18. Effective date.

21 This act shall take effect in 60 days.