

No. 150 Session of 2007

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

1 Section 14. Contempt for violation of order.

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

4 Section 16. Confidentiality.

5 Section 17. Procedure and other remedies.

6 Section 18. Effective date.

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

9 Section 1. Short title.

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

12 Section 2. Findings and purpose.

13 The General Assembly finds and declares that:

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

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

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

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

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

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

29 Section 3. Definitions.

30 The following words and phrases when used in this act shall

1 have the meanings given to them in this section unless the  
2 context clearly indicates otherwise:

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

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

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

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

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

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

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

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

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

1 Section 4. Responsibilities of law enforcement agencies.

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

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

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

18 If you are the victim of sexual violence, you have the right  
19 to go to court and file a petition requesting a sexual  
20 violence victim protection order for protection from  
21 harassment pursuant to the Sexual Violence Victim Protection  
22 Act, which could include prohibiting the defendant from  
23 having any contact with you, and restraining the defendant  
24 from entering your residence, place of employment, business  
25 or school.

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

1 more than 24 hours after preliminary arraignment.

2 Section 5. Commencement of proceedings.

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

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

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

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

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

19 (d) Service.--

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

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

30 (e) Assistance and advice to plaintiff.--The courts and

1 hearing officers shall:

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

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

10 Section 6. Hearings.

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

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

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

30 Section 7. Relief.

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

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

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

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

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

16 (c) Duration and amendment of order or agreement.--A  
17 protection order or an approved consent agreement shall be for a  
18 fixed period of time not to exceed 18 months.

19 (d) Extension of protection orders.--

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

21 (i) Where the court finds, after a duly filed  
22 petition, notice to the defendant and a hearing, in  
23 accordance with the procedures set forth in sections 5  
24 and 6, that the protection is necessary because the  
25 defendant engaged in one or more acts that indicate  
26 continued risk of harm to the plaintiff.

27 (ii) When a contempt petition or charge has been  
28 filed, but the hearing has not occurred before the  
29 expiration of the protection order, the order shall be  
30 extended, at a minimum, until the disposition of the

1 contempt petition.

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

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

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

10 Section 8. Service of orders.

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

16 Section 9. Emergency relief by minor judiciary.

17 (a) General rule.--When:

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

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

22 (ii) from the end of the business week to the  
23 beginning of the business week; and

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

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

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

30 (ii) from the end of the business week to the



1           beginning of the business week;  
2   a petition may be filed before a hearing officer who may grant  
3   relief in accordance with section 7 if the hearing officer deems  
4   it necessary to protect the plaintiff upon good cause shown in  
5   an ex parte proceeding. Immediate and present danger to the  
6   plaintiff shall constitute good cause for the purposes of this  
7   subsection.

8       (b)   Expiration of order.--A protection order issued under  
9   subsection (a) shall expire at the end of the next business day  
10   the court deems itself available. The court shall schedule  
11   hearings on orders entered by hearing officers under subsection  
12   (a) and shall review and continue in effect protection orders  
13   that are necessary to protect the plaintiff until the hearing,  
14   at which time the plaintiff may seek a temporary protection  
15   order from the court.

16       (c)   Certification of order to court.--An emergency  
17   protection order issued under this section and any documentation  
18   in support thereof shall be immediately certified to the court.  
19   The certification to the court shall have the effect of  
20   commencing proceedings under section 5 and invoking the other  
21   provisions of this act. If it is not already alleged in a  
22   petition for an emergency order, the plaintiff shall file a  
23   verified statement setting forth the reasons for the need for  
24   protection at least five days prior to the hearing. Service of  
25   the verified statement shall be made subject to section 5(d).

26       (d)   Instructions regarding the commencement of  
27   proceedings.--Upon issuance of an emergency protection order,  
28   the hearing officer shall provide the plaintiff instructions  
29   regarding the commencement of proceedings in the court at the  
30   beginning of the next business day and regarding the procedures

1 for initiating a contempt charge should the defendant violate  
2 the emergency protection order. The hearing officer shall also  
3 advise the plaintiff of the existence of rape crisis centers in  
4 the county or in nearby counties and inform the plaintiff of the  
5 availability of legal assistance without cost if the plaintiff  
6 is unable to pay for them.

7 Section 10. Sexual assault counselor.

8 A sexual assault counselor may accompany and provide  
9 assistance to a party in any legal proceeding or hearing under  
10 this act.

11 Section 11. Disclosure of addresses.

12 (a) General rule.--During the course of a proceeding under  
13 this act, the court or hearing officer may consider whether the  
14 plaintiff is endangered by disclosure of the permanent or  
15 temporary address of the plaintiff. The court shall consider the  
16 wishes of the plaintiff regarding the disclosure of the address.  
17 Neither in the pleadings nor during proceedings or hearings  
18 under this act shall the court or hearing officer require  
19 disclosure of the address of a rape crisis center.

20 (b) Order.--Where the court concludes that the defendant  
21 poses a threat of continued danger to the plaintiff and where  
22 the plaintiff requests that the address, telephone number and  
23 information about the plaintiff's whereabouts not be disclosed,  
24 the court shall enter an order directing that law enforcement  
25 agencies, human service agencies and school districts shall not  
26 disclose the presence of the plaintiff in the jurisdiction or  
27 district or furnish any address, telephone number or any other  
28 demographic information about the plaintiff except by further  
29 order of the court.

30 Section 12. Arrest for violation of order.

1 (a) General rule.--An arrest for a violation of a protection  
2 order or court-approved consent agreement issued pursuant to  
3 this act may be without warrant upon probable cause, whether or  
4 not the violation is committed in the presence of the police  
5 officer, in circumstances where the defendant has violated a  
6 provision of a protection order consistent with section 7. The  
7 police officer may verify the existence of a protection order by  
8 telephone, radio or other electronic communication with the  
9 appropriate police department or issuing authority. A police  
10 officer shall arrest a defendant for violating a protection  
11 order by a court within the judicial district or issued by a  
12 court in another judicial district within this Commonwealth.

13 (b) Procedure following arrest.--

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

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

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

29 (d) Other emergency powers unaffected.--This section shall  
30 not be construed to in any way limit any of the other powers for

1 emergency relief provided in this act.

2 (e) Hearing.--An expedited hearing shall be scheduled within  
3 ten days of the filing of the charge or complaint of indirect  
4 criminal contempt. The hearing and any adjudication shall not  
5 preclude a hearing on other criminal charges underlying the  
6 contempt, nor shall a hearing or adjudication on other criminal  
7 charges preclude a hearing on a charge of indirect criminal  
8 contempt.

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

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

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

20 Section 14. Contempt for violation of order.

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

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

30 (c) Minor defendant.--Any defendant who is a minor and who

1 is charged with indirect criminal contempt for allegedly  
2 violating a protection order shall be considered to have  
3 committed an alleged delinquent act as that term is defined in  
4 42 Pa.C.S. § 6302 (relating to definitions) and shall be treated  
5 as provided in 42 Pa.C.S. Ch. 63 (relating to juvenile matters).

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

12 (e) Notification upon release.--

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

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

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

1 preclude prosecution of indirect criminal contempt associated  
2 with the criminal conduct giving rise to the charges.

3 Section 15. Civil contempt or modification for violation of an  
4 order.

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

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

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

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

22 Section 16. Confidentiality.

23 (a) Nature of privilege.--

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

30 (2) Neither the sexual assault counselor nor the victim

1 shall waive the privilege of confidential communications by  
2 reporting facts of physical or sexual violence under 23  
3 Pa.C.S. Ch. 63 (relating to child protective services), a  
4 Federal or State mandatory reporting statute or a local  
5 mandatory reporting ordinance.

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

13 Section 17. Procedure and other remedies.

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

23 Section 18. Effective date.

24 This act shall take effect in 180 days.