
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 150 Session of
2007

INTRODUCED BY GREENLEAF, COSTA, ORIE, STOUT, O'PAKE, STACK,
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BROWNE, REGOLA, MELLOW, PILEGGI, LOGAN AND VANCE,
FEBRUARY 9, 2007

SENATOR ARMSTRONG, APPROPRIATIONS, RE-REPORTED AS AMENDED,
MARCH 19, 2007

AN ACT

1 Relating to the protection of victims of sexual violence.

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

11 Section 1. Short title.

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

14 Section 2. Findings and purpose.

15 The General Assembly finds and declares that:

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

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

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

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

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

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

1 Section 3. Definitions.

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

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

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

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

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

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

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

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

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

1 share biological parenthood.

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

3 Section 4. Responsibilities of law enforcement agencies.

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

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

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

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

28 (c) Notice of arrest.--Each law enforcement agency shall
29 make reasonable efforts to notify any person protected by an
30 order issued under this act of the arrest of the defendant for

1 violation of an order as soon as possible. Unless the person
2 cannot be located, notice of the arrest shall be provided not
3 more than 24 hours after preliminary arraignment.

4 Section 5. Commencement of proceedings.

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

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

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

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

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

21 (1) (I) NO PLAINTIFF SEEKING RELIEF UNDER THIS ACT <—
22 SHALL BE CHARGED ANY FEES OR COSTS ASSOCIATED WITH THE
23 FILING, ISSUANCE, REGISTRATION OR SERVICE OF A PETITION,
24 MOTION, COMPLAINT, ORDER OR ANY OTHER FILING. PROHIBITED
25 FEES OR COSTS SHALL INCLUDE, BUT ARE NOT LIMITED TO,
26 THOSE ASSOCIATED WITH MODIFYING, WITHDRAWING, DISMISSING
27 OR CERTIFYING COPIES OF A PETITION, MOTION, COMPLAINT,
28 ORDER OR ANY OTHER FILING, AS WELL AS ANY JUDICIAL
29 SURCHARGE OR COMPUTER SYSTEM FEE.

30 (II) NO PLAINTIFF SEEKING RELIEF UNDER THIS ACT

1 SHALL BE CHARGED ANY FEES OR COSTS ASSOCIATED WITH FILING
2 A MOTION FOR RECONSIDERATION OR AN APPEAL FROM ANY ORDER
3 OR ACTION TAKEN PURSUANT TO THIS ACT.

4 (2) WHEN AN ORDER IS GRANTED PURSUANT TO THIS ACT, FEES
5 AND COSTS SHALL BE ASSESSED AGAINST THE DEFENDANT. THE COURT
6 SHALL WAIVE FEES AND COSTS UPON A SHOWING OF GOOD CAUSE OR
7 WHEN THE COURT MAKES A FINDING THAT THE DEFENDANT IS NOT ABLE
8 TO PAY THE FEES AND COSTS.

9 (3) NOTHING IN THIS SUBSECTION IS INTENDED TO EXPAND OR
10 DIMINISH THE COURT'S AUTHORITY TO ENTER AN ORDER PURSUANT TO
11 P.A.R.C.P. NO. 1023.1 (RELATING TO SCOPE. SIGNING OF
12 DOCUMENTS. REPRESENTATIONS TO THE COURT. VIOLATION).

13 (d) Service.--

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

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

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

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

30 (2) Provide the plaintiff with written and oral

1 referrals, in English and Spanish, to local sexual assault
2 services, to the local legal services office and to the
3 county bar association's lawyer referral service.

4 Section 6. Hearings.

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

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

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

24 Section 7. Relief.

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

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

30 (1) Prohibiting the defendant from having any contact

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

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

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

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

13 (d) Extension of protection orders.--

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

15 (i) Where the court finds, after a duly filed
16 petition, notice to the defendant and a hearing, in
17 accordance with the procedures set forth in sections 5
18 and 6, that the protection is necessary because the
19 defendant engaged in one or more acts that indicate
20 continued risk of harm to the plaintiff.

21 (ii) When a contempt petition or charge has been
22 filed, but the hearing has not occurred before the
23 expiration of the protection order, the order shall be
24 extended, at a minimum, until the disposition of the
25 contempt petition.

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

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

30 (e) Notice.--Notice shall be given to the defendant stating

1 that violations of the protection order will subject the
2 defendant to arrest under section 12 or contempt of court under
3 section 14.

4 (F) INCARCERATION.--WHEN THE DEFENDANT IS INCARCERATED AND <—
5 ABOUT TO BE RELEASED OR HAS RECENTLY BEEN RELEASED FROM
6 INCARCERATION, A PLAINTIFF DOES NOT NEED TO SHOW THAT THE
7 DEFENDANT ENGAGED IN ONE OR MORE ACTS THAT INDICATE CONTINUED
8 RISK OF HARM TO THE PLAINTIFF IN ORDER TO OBTAIN AN EXTENSION OR
9 A SUBSEQUENT PROTECTION ORDER UNDER THIS ACT.

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. APPLICABILITY. <—

24 THE PROVISIONS OF THE ACT OF NOVEMBER 24, 1998 (P.L.882,
25 NO.111), KNOWN AS THE CRIME VICTIMS ACT, RELATING TO VICTIMS WHO
26 ARE PROTECTED BY AN ORDER ISSUED UNDER 23 PA.C.S. CH. 61
27 (RELATING TO PROTECTION FROM ABUSE), SHALL APPLY ALSO TO VICTIMS
28 WHO ARE PROTECTED BY AN ORDER ISSUED UNDER THIS ACT.

29 Section ~~18~~ 19. Effective date. <—

30 This act shall take effect in 180 days.