

ADMINISTRATIVE CODE - AMEND CRIME VICTIMS' RIGHTS

Act of Dec. 16, 1992, P.L. 1203, No. 155

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No. 1992-155

HB 90

AN ACT

Amending the act of April 9, 1929 (P.L.177, No.175), entitled "An act providing for and reorganizing the conduct of the executive and administrative work of the Commonwealth by the Executive Department thereof and the administrative departments, boards, commissions, and officers thereof, including the boards of trustees of State Normal Schools, or Teachers Colleges; abolishing, creating, reorganizing or authorizing the reorganization of certain administrative departments, boards, and commissions; defining the powers and duties of the Governor and other executive and administrative officers, and of the several administrative departments, boards, commissions, and officers; fixing the salaries of the Governor, Lieutenant Governor, and certain other executive and administrative officers; providing for the appointment of certain administrative officers, and of all deputies and other assistants and employes in certain departments, boards, and commissions; and prescribing the manner in which the number and compensation of the deputies and all other assistants and employes of certain departments, boards and commissions shall be determined," further providing for the rights of crime victims.

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

Section 1. Section 479.1 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, amended or added June 30, 1984 (P.L.458, No.96) and August 14, 1991 (P.L.331, No.35), is amended to read:

Section 479.1. Definitions.--The following words and phrases when used in sections 479 through [479.5] **479.11** shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Board" means the Pennsylvania Board of Probation and Parole.

"Commission" means the Pennsylvania Commission on Crime and Delinquency.

["Crime" means an act resulting in injury, including an act intentionally inflicted through the use of a motor vehicle, which was committed by a person in Pennsylvania, without regard to legal exemption or defense, which would constitute a crime only as defined in, proscribed by or enumerated in:

(1) 18 Pa.C.S. (relating to crimes and offenses), 30 Pa.C.S. § 5502 (relating to operating watercraft under influence of alcohol or controlled substance) or 5502.1 (relating to homicide by watercraft while operating under influence) and 75 Pa.C.S. § 3731 (relating to driving under influence of alcohol or controlled substance) or 3735 (relating to homicide by vehicle while driving under influence);

(2) the act of April 14, 1972 (P.L.233, No.64), known as "The Controlled Substance, Drug, Device and Cosmetic Act"; or

(3) the laws of the United States.]

"Crime" means an act committed in this Commonwealth by a person, without regard to legal exemption or defense, which would constitute

a crime under 18 Pa.C.S. (relating to crimes and offenses), 30 Pa.C.S. § 5502 (relating to operating watercraft under influence of alcohol or controlled substance) or 5502.1 (relating to homicide by watercraft while operating under influence) or 75 Pa.C.S. § 3731 (relating to driving under influence of alcohol or controlled substance) or 3735 (relating to homicide by vehicle while driving under influence).

"Dispositional proceeding" means any proceeding which occurs in open common pleas court which potentially could dispose of the case, including, but not limited to, Accelerated Rehabilitative Disposition, pleas, trial and sentence.

"Family" means when used in reference to a person:

(1) anyone related to that person within the third degree of consanguinity or affinity;

(2) anyone maintaining a common-law relationship with that person; or

(3) anyone residing in the same household with that person.

["Feloniously assaultive crime" means an act committed in this Commonwealth which, if it had been committed by a mentally competent, criminally responsible adult who had no legal exemption or defense, would constitute a felony as defined in and proscribed by Chapter 25, 27, 29, 31 or 37 of Title 18 of the Pennsylvania Consolidated Statutes (relating to crimes and offenses). No act involving the operation of a motor vehicle which results in injury shall constitute a feloniously assaultive crime for the purpose of this act unless the injury was intentionally inflicted through the use of a motor vehicle.]

"Law enforcement agency" means the Pennsylvania State Police and municipal police departments.

"Personal injury crime" means an act, attempt or threat to commit an act which would constitute a misdemeanor or felony as defined in and proscribed by the following:

18 Pa.C.S. Ch. 25 (relating to criminal homicide).

18 Pa.C.S. Ch. 27 (relating to assault).

18 Pa.C.S. Ch. 29 (relating to kidnapping).

18 Pa.C.S. Ch. 31 (relating to sexual offenses).

18 Pa.C.S. § 3301 (relating to arson and related offenses).

18 Pa.C.S. Ch. 37 (relating to robbery).

18 Pa.C.S. Ch. 49 Subch. B (relating to victim and witness intimidation).

75 Pa.C.S. § 3735 (relating to homicide by vehicle while driving under influence).

"Prosecutor's office" means the Office of Attorney General or the office of a district attorney of a county.

["Victim" means a person against whom a crime is being or has been perpetrated or attempted.]

"Victim" means any of the following:

(1) A person against whom a crime is being or has been perpetrated or attempted.

(2) A parent or legal guardian of a child so victimized, except when the parent or legal guardian of the child is the alleged offender.

(3) A family member of a homicide victim, including stepbrothers or stepsisters, stepchildren, stepparents or a fiancé, one of whom is to be identified to receive communication as provided for in this act.

Section 2. Section 479.3 of the act, amended August 14, 1991 (P.L.331, No.35), is amended to read:

Section 479.3. Basic Bill of Rights for Victims.-- Victims of crime have the following rights:

[(1) To have included in any presentence report information concerning the effect that the crime committed by the defendant has had upon the victim, including any physical or psychological

harm or financial loss suffered by the victim, to the extent that such information is available from the victim or other sources.

(2) To have restitution ordered as a condition of probation whenever feasible.

(3) Upon request of the victim of a feloniously assaultive crime, to be promptly informed by the district attorney whenever the assailant is to be released on parole, furlough or any other form of supervised or unsupervised release from full incarceration.

(4) To have assistance in the preparation of, submission of and follow-up on financial assistance claims to the board.]

(1) To receive basic information concerning the services available for victims of crime.

(2) To be notified of certain significant actions and proceedings within the criminal justice system pertaining to their case, as provided in sections 479.6 through 479.9.

(3) To be accompanied at all public criminal proceedings by a family member, a victim advocate or another person.

(4) In cases involving personal injury crimes, burglary or violations of 75 Pa.C.S. § 3731 (relating to driving under influence of alcohol or controlled substance) which involve bodily injury, to submit prior comment to the prosecutor's office on the potential reduction or dropping of any charge or changing of a plea.

(5) To have opportunity to offer prior comment on the sentencing of a defendant to include the submission of a written victim impact statement detailing the physical, psychological and economic effects of the crime on the victim and the victim's family, which statement shall be considered by the judge when determining the defendant's sentence.

(6) To be restored, to the extent possible, to the precrime economic status through the provision of restitution, compensation as provided under the crime victims' compensation program pursuant to sections 477 through 477.19 and the expeditious return of property which is seized as evidence in the case when, in the judgment of the prosecutor, the evidence is no longer needed for prosecution of the case.

(7) In personal injury crimes where the offender is sentenced to a State correctional facility, to be given the opportunity to provide prior comment on and to receive State postsentencing release decisions, including work release, furlough, parole, pardon or community treatment center placement and to be provided immediate notice of an escape of the offender.

(8) To receive notice when an offender is committed to a mental health facility from a State correctional institution and of the discharge, transfer or escape of the offender from the mental health facility.

(9) To have assistance in the preparation of, submission of and follow-up on financial assistance claims to the Crime Victim's Compensation Board.

Section 3. The act is amended by adding sections to read:

Section 479.6. Responsibilities of Law Enforcement Agencies under Basic Bill of Rights.--(a) All law enforcement agencies are responsible for providing basic information on services available for crime victims. The information shall be in writing and shall be provided to the victim within twenty-four hours of the agency's first contact with the victim in a form to be developed by the Pennsylvania Commission on Crime and Delinquency within one year of the effective date of this act.

(b) The form developed by the Pennsylvania Commission on Crime and Delinquency shall be attached to the police report and include a victim checkoff signifying that the information has been provided to the crime victim.

(c) In personal injury crimes, law enforcement agencies shall make reasonable efforts to notify the victim of the arrest of the

suspect as soon as possible. Unless the victim cannot be located, notice of the arrest shall be provided not more than twenty-four hours after the preliminary arraignment.

(d) In personal injury crimes, all law enforcement agencies, sheriffs, deputy sheriffs and constables shall notify the victim of an inmate's escape from the custody of the law enforcement agency, sheriff, deputy sheriff or constable.

Section 479.7. Responsibilities of Prosecutor's Office.--(a)

The prosecutor's office shall provide the victim of a personal injury crime with all forms developed pursuant to sections 479.8 and 479.9.

(b) In personal injury crimes, burglary or violations of 75 Pa.C.S. § 3731 (relating to driving under influence of alcohol or controlled substance), the prosecutor's office shall provide notice of the opportunity to submit prior comment on the potential reduction or dropping of any charge or changing of a plea if the victim so requests.

(c) The prosecutor's office shall provide notice of the opportunity to offer prior comment on the sentencing of a defendant to include the submission of a written victim-impact statement. The prosecutor's office shall assist a victim who requests assistance to prepare the input.

(d) In personal injury crimes, the prosecutor's office shall provide notice of the opportunity to submit input into State correctional release decisions and to receive notice of the commitment to a mental health institution from a State correctional institution.

(e) In personal injury crimes when the prosecutor's office has advance notice of any dispositional proceeding, the prosecutor shall make reasonable efforts to notify a victim who has requested notice of the time and place of the proceeding.

(f) When the victim has so requested, the prosecutor's office shall provide notice of the disposition and sentence of the defendant, including any sentence modifications. In personal injury crimes, when the victim has so requested, the prosecutor's office shall make reasonable efforts to notify the victim as soon as possible when the defendant is released from incarceration at sentencing.

(g) The prosecutor's office shall provide assistance to the victim in the preparation of, submission of and follow-up on financial assistance claims filed with the Crime Victim's Compensation Board.

Section 479.8. Responsibilities of Department of Corrections and Board.--(a) Within one year of the effective date of this act, the Department of Corrections and the board shall develop standardized forms regarding victim notification. The form shall include the address where the form is to be sent.

(b) Where the department and board have received notice of a victim's desire to have input pursuant to section 479.3(7), the appropriate agency shall notify the victim sufficiently in advance of a pending release decision to extend an opportunity for prior comment.

(c) The victim's prior comment may be oral or written and shall be considered by the department or the board as to the advisability of release and any conditions of release which may be imposed.

(d) Where the department has received notice of a victim's desire to receive notification regarding escape of the offender, the superintendent of the State correctional institution shall immediately notify the victim of the escape.

(e) Where the department has received notice of a victim's desire to receive notification as provided for in section 479.3(8), the superintendent of the State correctional institution shall notify the victim of the commitment of the offender to a mental

health facility and the location of the facility within twenty-four hours of the commitment.

(f) All records maintained by the department and the board pertaining to victims shall be kept separate, and current address, telephone number and any other personal information of the victim and family members shall be deemed confidential.

(g) The department or the board shall notify the victim of the final decision rendered and relevant conditions imposed prior to the release of the offender.

Section 479.9. Responsibilities of Department of Public Welfare and Mental Health Institutions under Basic Bill of Rights.--(a)

Within one year of the effective date of this act, the Department of Public Welfare shall develop standardized forms, which shall include the address where the completed form is to be sent, for the receipt of notice from the victim concerning the victim's interest in discharge decisions and notification of an escape. Sufficient copies of the forms shall be provided to the office of the district attorney for distribution to victims upon court-ordered commitment of the offender to a mental health institution in the State system.

(b) Where the Department of Public Welfare has received notice of a victim's desire to receive notification as provided for in section 479.3(8) regarding release, placement or escape of the offender, the Department of Public Welfare shall designate the appropriate official to notify the victim of the discharge of the offender from the mental health institution and the facility to which the offender was discharged within twenty-four hours of the discharge. The Department of Public Welfare or the designated official shall immediately notify the victim of an escape of the offender from the mental health institution.

Section 479.10. Responsibilities of Victims of Crime under Basic Bill of Rights.--A victim shall provide a valid address and telephone number and any other required information to all agencies responsible for providing information and notice to the victim. The victim shall be responsible for providing timely notice of any changes in the status of such information. The information provided shall not be disclosed to any person other than a law enforcement agency, corrections agency or prosecutor's office without the prior written consent of the victim.

Section 479.11. Effect on Legal Actions.--Nothing in sections 479 through 479.10 creates a cause of action or defense in favor of any person arising out of the failure to comply with any of the provisions of sections 479 through 479.10.

Section 4. This act shall take effect in 180 days.

APPROVED--The 16th day of December, A. D. 1992.

ROBERT P. CASEY