

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

SENATOR WENGER, APPROPRIATIONS, RE-REPORTED AS AMENDED,
SEPTEMBER 25, 2006

AN ACT

1 Relating to the protection of victims of sexual violence.

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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, ~~sexual or intimate partners or who~~ WHO ARE NOT SEXUAL
29 OR INTIMATE PARTNERS, OR WHO DO NOT 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 the following, prohibiting the
23 defendant from having any contact with you, including, but
24 not limited to, restraining the defendant from entering your
25 residence, place of employment, business 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 upon 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) Ordering the defendant to temporarily relinquish to~~ <—
15 ~~the sheriff the defendant's weapons which have been used or~~
16 ~~have been threatened to be used against the plaintiff and~~
17 ~~prohibiting the defendant from acquiring or possessing any~~
18 ~~other weapons for the duration of the order and requiring the~~
19 ~~defendant to relinquish to the sheriff any firearm license~~
20 ~~the defendant may possess. The order shall provide for the~~
21 ~~return of the weapons and any firearm license to the~~
22 ~~defendant subject to any restrictions and conditions as the~~
23 ~~court shall deem appropriate to protect the plaintiff from~~
24 ~~further violence through use of the weapons. A certified copy~~
25 ~~of the order shall be transmitted to the police department of~~
26 ~~the municipality and the sheriff of the county in which the~~
27 ~~defendant is a resident.~~

28 ~~(4)~~ (3) Granting any other appropriate relief sought by <—
29 the plaintiff.

30 (c) Duration and amendment of order or agreement.--A

1 protection order or an approved consent agreement shall be for a
2 fixed period of time not to exceed 18 months.

3 (d) Extension of protection orders.--

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

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

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

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

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

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

27 Section 8. Service of orders.

28 A copy of a protection order shall be issued to the
29 plaintiff, the defendant and the police department with
30 appropriate jurisdiction to enforce the order in accordance with

1 the provisions of this act or as ordered by the court or hearing
2 officer.

3 Section 9. Emergency relief by minor judiciary.

4 (a) General rule.--When:

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

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

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

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

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

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

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

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

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

1 at which time the plaintiff may seek a temporary protection
2 order from the court.

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

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

25 Section 10. Sexual assault counselor.

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

29 Section 11. Disclosure of addresses.

30 (a) General rule.--During the course of a proceeding under

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

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

18 Section 12. Arrest for violation of order.

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

1 within this Commonwealth.

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

11 ~~(c)~~ (B) Procedure following arrest.-- <—

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

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

25 ~~(d)~~ (C) Preliminary arraignment.--The defendant shall be <—
26 afforded a preliminary arraignment without unnecessary delay.

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

30 ~~(f)~~ (E) Hearing.--An expedited hearing shall be scheduled <—

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

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

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

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

18 Section 14. Contempt for violation of order.

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

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

28 (c) Minor defendant.--Any defendant who is a minor and who
29 is charged with indirect criminal contempt for allegedly
30 violating a protection order shall be considered to have

1 committed an alleged delinquent act as that term is defined in
2 42 Pa.C.S. § 6302 (relating to definitions) and shall be treated
3 as provided in 42 Pa.C.S. Ch. 63 (relating to juvenile matters).

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

10 (e) Notification upon release.--

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

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

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

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

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

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

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

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

20 Section 16. Confidentiality.

21 (a) Nature of privilege.--

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

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

1 Pa.C.S. Ch. 63 (relating to child protective services), a
2 Federal or State mandatory reporting statute or a local
3 mandatory reporting ordinance.

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

11 Section 17. Procedure and other remedies.

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

21 Section 18. Effective date.

22 This act shall take effect in ~~60~~ 180 days.

<—