
THE GENERAL ASSEMBLY OF PENNSYLVANIA

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REICHLEY, RUBLEY, ROSS AND YOUNGBLOOD, OCTOBER 1, 2003

REFERRED TO COMMITTEE ON JUDICIARY, OCTOBER 1, 2003

AN ACT

1 Relating to the protection of victims of sexual violence.

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

10 Section 1. Short title.

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

13 Section 2. Findings and purpose.

14 Sexual violence is the most heinous crime against a person
15 other than murder. Sexual violence inflicts humiliation,
16 degradation and terror on the victim. According to the
17 Department of Justice, someone is sexually assaulted every two
18 minutes in the United States. Rape is recognized as one of the
19 most underreported crimes; studies indicate that only one in
20 three rapes is reported to law enforcement. Victims of sexual
21 violence desire safety and protection from future interactions
22 with their offender, regardless of whether they seek criminal
23 prosecution. This legislation provides the victim with a civil
24 remedy requiring the offender to stay away from the victim, as
25 well as other appropriate relief.

26 Section 3. Definitions.

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

30 "Confidential communications." As defined in 42 Pa.C.S. §

1 5945.1 (relating to confidential communications with sexual
2 assault counselors).

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

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

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

13 "Protection order" or "order." A sexual violence victim
14 protection order issued under this act.

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

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

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

27 "Victim." A person who is the victim of sexual violence.
28 Section 4. Responsibilities of law enforcement agencies.

29 (a) General rule.--The police department of each municipal
30 corporation, the Pennsylvania State Police and the sheriff of

1 each county shall ensure that all their officers, deputies and
2 employees are familiar with the provisions of this act.
3 Instruction concerning sexual violence victim protection orders
4 shall be made a part of the training curriculum for all trainee
5 officers and deputies. All law enforcement agencies within this
6 Commonwealth shall adopt a written policy regarding sexual
7 violence victim protection orders.

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

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

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

29 Section 5. Commencement of proceedings.

30 (a) General rule.--An action for a sexual violence victim

1 protection order may be commenced by filing a petition with the
2 court requesting protection from the defendant. A parent or
3 guardian may file on behalf of a victim.

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

6 (c) Assessment of fees and costs.--If the plaintiff prevails
7 in the action, fees and costs shall be assigned to the defendant
8 or, should the court determine that the defendant is not able to
9 pay the costs of filing and service, the court shall waive the
10 fees and costs. If the plaintiff does not prevail, costs of
11 filing and service may be assigned to the plaintiff or, should
12 the court determine that the plaintiff is not able to pay the
13 costs of filing and service, the court shall waive the fees and
14 costs.

15 (d) Service.--The court shall adopt a means of prompt and
16 effective service. If the court so orders, the sheriff or
17 another court-designated agency or individual shall serve the
18 petition and order. The petition and order shall be served upon
19 the defendant, and the order shall be served upon the police
20 departments with appropriate jurisdiction to enforce the order.
21 An order shall be promptly served on the police. Failure to
22 serve on the police shall not stay the effect of a valid order.

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

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

29 (2) Provide the plaintiff with written and oral
30 referrals, in English and Spanish, to local sexual assault

1 services, to the local legal services office and to the
2 county bar association's lawyer referral service.

3 Section 6. Hearings.

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

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

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

23 Section 7. Relief.

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

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

29 (1) Prohibiting the defendant from having any contact
30 with the plaintiff, including, but not limited to,

1 restraining the defendant from entering the plaintiff's
2 residence, place of employment, business or school. This may
3 include prohibiting indirect contact through third parties.

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

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

21 (4) Directing the defendant to pay the plaintiff for
22 reasonable losses suffered as a result of the sexual
23 violence, including, but not limited to, medical, dental and
24 other out-of-pocket losses for the injuries sustained. In
25 addition to the out-of-pocket losses, the court may direct
26 the defendant to pay reasonable attorney fees. An award under
27 this act shall not constitute a bar to litigation for civil
28 damages for injuries sustained from the acts of violence
29 giving rise to the award or a finding of contempt under this
30 act.

1 (5) Granting any other appropriate relief sought by the
2 plaintiff.

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

6 (d) Extension of protection orders.--

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

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

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

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

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

23 (e) Notice.--In orders issued under this act, notice shall
24 be given to the defendant stating that violations of an order
25 will subject the defendant to arrest under section 12 or
26 contempt of court under section 14.

27 Section 8. Service of orders.

28 A copy of a protection order under this act shall be issued
29 to the 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 if the hearing officer deems
21 it necessary to protect the plaintiff upon good cause shown in
22 an ex parte proceeding. Immediate and present danger to the
23 plaintiff shall constitute good cause for the purposes of this
24 subsection.

25 (b) Expiration of order.--An order issued under subsection

26 (a) shall expire at the end of the next business day the court
27 deems itself available. The court shall schedule hearings on
28 protection 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 order from the
2 court.

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

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

1 endangered by disclosure of the permanent or temporary address
2 of the plaintiff. The court shall consider the wishes of the
3 plaintiff regarding the disclosure of the address. Neither in
4 the pleadings nor during proceedings or hearings under this act
5 shall the court or hearing officer require disclosure of the
6 address of a rape crisis center. Where the court concludes that
7 the defendant poses a threat of continued danger to the
8 plaintiff and where the plaintiff requests that the address,
9 telephone number and information about the plaintiff's
10 whereabouts not be disclosed, the court shall enter an order
11 directing that law enforcement agencies, human service agencies
12 and school districts shall not disclose the presence of the
13 plaintiff in the jurisdiction or district or furnish any
14 address, telephone number or any other demographic information
15 about the plaintiff except by further order of the court.
16 Section 12. Arrest for violation of order.

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

29 (b) Seizure of weapons.--Subsequent to an arrest, the police
30 officer shall seize all weapons used or threatened to be used

1 during the violation of the order or during prior incidents of
2 sexual violence. As soon as it is reasonably possible, the
3 arresting officer shall deliver the confiscated weapons to the
4 office of the sheriff. The sheriff shall maintain possession of
5 the weapons until the court issues an order specifying the
6 weapons to be relinquished and the persons to whom the weapons
7 shall be relinquished.

8 (c) Procedure following arrest.--Subsequent to an arrest,
9 the defendant shall be taken by the police officer without
10 unnecessary delay before the court in the judicial district
11 where the contempt is alleged to have occurred. When that court
12 is unavailable, the police officer shall convey the defendant to
13 a district justice designated as appropriate by local rules of
14 court or, in the City of Pittsburgh, to a magistrate of the
15 Pittsburgh Magistrates Court or, in counties of the first class,
16 to the appropriate hearing officer. For the purpose of
17 procedures relating to arraignments for arrest for violation of
18 an order issued under this act, the judges of Pittsburgh
19 Magistrates Court shall be deemed to be district justices.

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

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

25 (f) Hearing.--An expedited hearing shall be scheduled within
26 ten days of the filing of the charge or complaint of indirect
27 criminal contempt. The hearing and any adjudication shall not
28 preclude a hearing on other criminal charges underlying the
29 contempt, nor shall a hearing or adjudication on other criminal
30 charges preclude a hearing on a charge of indirect criminal

1 contempt.

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

3 (a) General rule.--A plaintiff may file a private criminal
4 complaint against a defendant, alleging indirect criminal
5 contempt for a violation of any provision of an order or court-
6 approved consent agreement issued under this act, with the
7 court, the office of the district attorney or the district
8 justice in the jurisdiction or county where the violation
9 occurred.

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

13 Section 14. Contempt for violation of order.

14 (a) General rule.--Where the police or the plaintiff have
15 filed charges of indirect criminal contempt against a defendant
16 for violation of an order or court-approved agreement issued
17 under this act, the court may hold the defendant in indirect
18 criminal contempt and punish the defendant in accordance with
19 law.

20 (b) Jurisdiction.--A court shall have jurisdiction over
21 indirect criminal contempt charges for violation of an order
22 issued pursuant to this act in the county where the violation
23 occurred.

24 (c) Minor defendant.--Any defendant who is a minor and who
25 is charged with indirect criminal contempt for allegedly
26 violating an order shall be considered to have committed an
27 alleged delinquent act as that term is defined in 42 Pa.C.S. §
28 6302 (relating to definitions) and shall be treated as provided
29 in 42 Pa.C.S. Ch. 63 (relating to juvenile matters).

30 (d) Trial and punishment.--A sentence for contempt under

1 this act may include imprisonment for up to six months or a fine
2 of not less than \$100 nor more than \$1,000, or both, and may
3 include other relief set forth in this act. The defendant shall
4 not have a right to a jury trial on such a charge; however, the
5 defendant shall be entitled to counsel.

6 (e) Notification upon release.--The appropriate releasing
7 authority or other official as designated by local rule shall
8 use all reasonable means to notify the victim sufficiently in
9 advance of the release of the offender from any incarceration
10 imposed under subsection (d). Notification shall be required for
11 work release, furlough, medical leave, community service,
12 discharge, escape and recapture. Notification shall include the
13 terms and conditions imposed on any temporary release from
14 custody. The plaintiff must keep the appropriate releasing
15 authority or other official as designated by local rule advised
16 of contact information; failure to do so will constitute waiver
17 of any right to notification under this section.

18 (f) Multiple remedies.--Disposition of a charge of indirect
19 criminal contempt shall not preclude the prosecution of other
20 criminal charges associated with the incident giving rise to the
21 contempt, nor shall disposition of other criminal charges
22 preclude prosecution of indirect criminal contempt associated
23 with the criminal conduct giving rise to the charges.

24 Section 15. Civil contempt or modification for violation of an
25 order.

26 (a) General rule.--A plaintiff may file a petition for civil
27 contempt with the issuing court alleging that the defendant has
28 violated any provision of an order or court-approved agreement
29 issued under this act.

30 (b) Civil contempt order.--Upon finding of a violation of an

1 order issued under this act, the court, either pursuant to
2 petition for civil contempt or on its own accord, may hold the
3 defendant in civil contempt and constrain him in accordance with
4 law.

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

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

13 Section 16. Confidentiality.

14 (a) General rule.--Unless a victim waives the privilege in a
15 signed writing prior to testimony or disclosure, a sexual
16 assault counselor or a coparticipant who is present during
17 sexual assault counseling or advocacy shall not be competent nor
18 permitted to testify or to otherwise disclose confidential
19 communications made to or by the counselor by or to a victim.
20 Neither the sexual assault counselor nor the victim shall waive
21 the privilege of confidential communications by reporting facts
22 of physical or sexual violence under 23 Pa.C.S. Ch. 63 (relating
23 to child protective services), a Federal or State mandatory
24 reporting statute or a local mandatory reporting ordinance.

25 (b) Definition.--As used in this section, the term "victim"
26 is a person against whom sexual violence is committed who
27 consults a sexual assault counselor for the purpose of securing
28 advice, counseling or assistance. The term shall also include
29 persons who have a significant relationship with the victim and
30 who seek advice, counseling or assistance from a sexual assault

1 counselor regarding the victim.

2 Section 17. Procedure and other remedies.

3 Unless otherwise indicated in this act, a proceeding under
4 this act shall be in accordance with applicable general rules
5 and shall be in addition to any other available civil or
6 criminal remedies. The plaintiff may seek modification of an
7 order issued under section 7 at any time during the pendency of
8 an order, but a court may not sua sponte modify the order.
9 Modification may be ordered after the filing of a petition for
10 modification, service of the petition, and a hearing on the
11 petition.

12 Section 18. Effective date.

13 This act shall take effect in 60 days.