
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1768 Session of
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STURLA, SWANGER, TAYLOR, VULAKOVICH, WAGNER, WATSON AND
YOUNGBLOOD, JUNE 30, 2011

REFERRED TO COMMITTEE ON JUDICIARY, JUNE 30, 2011

AN ACT

1 Providing for the protection of victims of sexual violence, for
2 duties of law enforcement agencies, for procedure and for
3 penalties.

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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 "Master for emergency relief." A member of the bar of the
19 Commonwealth appointed under section 9(e).

20 "Protection order" or "order." A sexual violence victim
21 protection order issued under this act.

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

25 "Sexual assault counselor." As defined in 42 Pa.C.S. §
26 5945.1 (relating to confidential communications with sexual
27 assault counselors).

28 "Sexual violence." Conduct constituting a crime under 18
29 Pa.C.S. § 2709(a)(4) (relating to harassment), 18 Pa.C.S. Ch.31
30 (relating to sexual offenses) or 18 Pa.C.S. § 5901 (relating to

1 open lewdness) between persons who are not family or household
2 members, who are not sexual or intimate partners, or who do not
3 share biological parenthood.

4 "Sheriff." The sheriff of a county or in a city of the first
5 class, the chief or head of the police department.

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

7 Section 4. Responsibilities of law enforcement agencies.

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

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

17 (b) Notice of arrest.--The police department of each
18 municipal corporation and the Pennsylvania State Police shall
19 make reasonable efforts to notify any person protected by an
20 order issued under this act of the arrest of the defendant for
21 violation of an order as soon as possible. Unless the person
22 cannot be located, notice of the arrest shall be provided not
23 more than 24 hours after preliminary arraignment.

24 Section 5. Commencement of proceedings.

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

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

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

2 (1) (i) No plaintiff seeking relief under this act
3 shall be charged any fees or costs associated with the
4 filing, issuance, registration or service of a petition,
5 motion, complaint, order or any other filing. Prohibited
6 fees or costs shall include, but are not limited to,
7 those associated with modifying, withdrawing, dismissing
8 or certifying copies of a petition, motion, complaint,
9 order or any other filing, as well as any judicial
10 surcharge or computer system fee.

11 (ii) No plaintiff seeking relief under this act
12 shall be charged any fees or costs associated with filing
13 a motion for reconsideration or an appeal from any order
14 or action taken under this act.

15 (2) When an order is granted under this act, fees and
16 costs shall be assessed against the defendant. The court
17 shall waive fees and costs upon a showing of good cause or
18 when the court makes a finding that the defendant is not able
19 to pay the fees and costs.

20 (3) Nothing in this subsection is intended to expand or
21 diminish the court's authority to enter an order under
22 Pa.R.C.P. No. 1023.1 (relating to Scope. Signing of
23 Documents. Representations to the Court. Violation).

24 (d) Service.--

25 (1) The court shall adopt a means of prompt and
26 effective service. If the court so orders, the sheriff or
27 another court-designated agency or individual shall serve the
28 petition and protection order. The petition and protection
29 order shall be served upon the defendant, and the order shall
30 be served upon the police departments and sheriff with

1 appropriate jurisdiction to enforce the order. An order also
2 shall be promptly served on the district attorney's office.

3 (2) Failure to serve the police department, sheriff or
4 district attorney's office shall not stay the effect of a
5 valid order.

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

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

12 (2) Provide the plaintiff with written and oral
13 referrals, in English and Spanish, to local sexual assault
14 services, to the local legal services office and to the
15 county bar association's lawyer referral service.

16 Section 6. Hearings.

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

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

1 and hearing.

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

6 Section 7. Relief.

7 (a) Order or consent agreement.--The court may issue a
8 protection order or approve a consent agreement to protect the
9 plaintiff from the defendant.

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

12 (1) Prohibiting the defendant from having any contact
13 with the plaintiff, including, but not limited to,
14 restraining the defendant from entering the plaintiff's
15 residence, place of employment, business or school. This may
16 include prohibiting indirect contact through third parties.

17 (2) Directing the defendant to refrain from harassing or
18 stalking the plaintiff and other designated persons as
19 defined in 18 Pa.C.S. §§ 2709 (relating to harassment) and
20 2709.1 (relating to stalking).

21 (3) Granting any other appropriate relief sought by the
22 plaintiff.

23 (c) Duration and amendment of order or agreement.--A
24 protection order or an approved consent agreement shall be for a
25 fixed period of time not to exceed 36 months.

26 (d) Extension of protection orders.--

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

28 (i) Where the court finds, after a duly filed
29 petition, notice to the defendant and a hearing, in
30 accordance with the procedures set forth in sections 5

1 and 6, that the protection is necessary because the
2 defendant engaged in one or more acts that indicate
3 continued risk of harm to the plaintiff.

4 (ii) When a contempt petition or charge has been
5 filed with the court or, in a county of the first class,
6 a hearing officer, but the hearing has not occurred
7 before the expiration of the protection order, the order
8 shall be extended, at a minimum, until the disposition of
9 the contempt petition.

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

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

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

18 (f) Incarceration.--When the defendant is incarcerated and
19 about to be released or has recently been released from
20 incarceration, a plaintiff does not need to show that the
21 defendant engaged in one or more acts that indicate continued
22 risk of harm to the plaintiff in order to obtain an extension or
23 a subsequent protection order under this act.

24 Section 8. Service of orders.

25 A copy of a protection order shall be issued to the
26 plaintiff, the defendant and the police department with
27 appropriate jurisdiction to enforce the order in accordance with
28 the provisions of this act or as ordered by the court or hearing
29 officer.

30 Section 9. Emergency relief by minor judiciary.

1 (a) General rule.--When:

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

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

6 (ii) from the end of the business week to the
7 beginning of the business week; and

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

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

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

14 (ii) from the end of the business week to the
15 beginning of the business week;

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

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

30 (c) Certification of order to court.--An emergency

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

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

21 (e) Master of emergency relief.--The president judge of a
22 court of common pleas of a judicial district may, with the
23 approval of the Administrative Office of Pennsylvania Courts,
24 provide for the selection and appointment of a master for
25 emergency relief on a full-time or part-time basis. The number
26 of masters for emergency relief shall be fixed by the president
27 judge with the approval of the Administrative Office of
28 Pennsylvania Courts. The compensation of a master for emergency
29 relief shall be fixed and paid by the county.

30 Section 10. Sexual assault counselor.

1 A sexual assault counselor may accompany and provide
2 assistance to a plaintiff in any legal proceeding or hearing
3 under this act.

4 Section 11. Disclosure of addresses.

5 (a) General rule.--During the course of a proceeding under
6 this act, the court or hearing officer may consider whether the
7 plaintiff is endangered by disclosure of the permanent or
8 temporary address of the plaintiff. The court shall consider the
9 wishes of the plaintiff regarding the disclosure of the address.
10 Neither in the pleadings nor during proceedings or hearings
11 under this act shall the court or hearing officer require
12 disclosure of the address of a rape crisis center.

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

23 Section 12. Arrest for violation of order.

24 (a) General rule.--An arrest for a violation of a protection
25 order or court-approved consent agreement issued under this act
26 may be without warrant upon probable cause, whether or not the
27 violation is committed in the presence of the police officer or
28 sheriff, in circumstances where the defendant has violated a
29 provision of a protection order consistent with section 7. The
30 police officer or sheriff may verify the existence of a

1 protection order by telephone, radio or other electronic
2 communication with the appropriate police department or issuing
3 authority. A police officer or sheriff shall arrest a defendant
4 for violating a protection order by a court within the judicial
5 district or issued by a court in another judicial district
6 within this Commonwealth.

7 (b) Procedure following arrest.--

8 (1) Subsequent to an arrest, the defendant shall be
9 taken by the police officer or sheriff without unnecessary
10 delay before the court in the judicial district where the
11 contempt is alleged to have occurred.

12 (2) When that court is unavailable, the police officer
13 or sheriff shall convey the defendant to a magisterial
14 district judge designated as appropriate by local rules of
15 court or, in counties of the first class, to the appropriate
16 hearing officer.

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

19 (d) Other emergency powers unaffected.--This section shall
20 not be construed to in any way limit any of the other powers for
21 emergency relief provided under this act.

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

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

30 (a) General rule.--A plaintiff may file a private criminal

1 complaint against a defendant, alleging indirect criminal
2 contempt for a violation of any provision of a protection order
3 or court-approved consent agreement issued under this act, with
4 the court, the office of the district attorney or the
5 magisterial district judge in the jurisdiction or county where
6 the violation occurred.

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

10 (c) Fees and costs.--

11 (1) No fees or costs associated with the prosecution of
12 the private criminal complaint shall be assigned to the
13 plaintiff, including, but not limited to, filing, service,
14 failure to prosecute, withdrawal or dismissal.

15 (2) (i) After a finding of indirect criminal contempt,
16 fees and costs may be assigned against the defendant.

17 (ii) The court shall waive fees and costs imposed
18 under this act upon a showing of good cause or if the
19 court makes a finding that the defendant is not able to
20 pay the costs associated with the indirect criminal
21 contempt action.

22 (3) Nothing in this subsection shall be construed to
23 expand or diminish the court's authority to enter an order
24 under Pa.R.C.P. No.1023.1 (relating to Scope. Signing of
25 Documents. Representation to Court. Violation).

26 Section 14. Contempt for violation of order.

27 (a) General rule.--Where the police department, sheriff or
28 the plaintiff has filed charges of indirect criminal contempt
29 against a defendant for violation of a protection order or
30 court-approved agreement entered into under this act, the court

1 may hold the defendant in indirect criminal contempt and punish
2 the defendant in accordance with law.

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

6 (c) Minor defendant.--Any defendant who is a minor and who
7 is charged with indirect criminal contempt for allegedly
8 violating a protection order shall be considered to have
9 committed an alleged delinquent act as that term is defined in
10 42 Pa.C.S. § 6302 (relating to definitions) and shall be treated
11 as provided in 42 Pa.C.S. Ch. 63 (relating to juvenile matters).

12 (d) Trial and punishment.--

13 (1) Notwithstanding 42 Pa.C.S. § 4136(a) (relating to
14 rights of persons charged with certain indirect criminal
15 contempts), the defendant shall not have the right to a jury
16 trial; however, the defendant shall be entitled to counsel.

17 (2) A sentence for indirect criminal contempt under this
18 act may include:

19 (i) A fine of not less than \$300 nor more than
20 \$1,000 or imprisonment for a period not exceeding six
21 months, or both.

22 (ii) A fine of not less than \$300 nor more than
23 \$1,000 or supervised probation for a period not exceeding
24 six months, or both.

25 (iii) An order for any other relief provided for
26 under this act.

27 (3) Upon conviction for indirect criminal contempt and
28 at the request of the plaintiff, the court shall also grant
29 an extension of the protection order for an additional term.

30 (4) Upon conviction for indirect criminal contempt, the

1 court shall notify the sheriff of the jurisdiction which
2 issued the protection order of the conviction.

3 (e) Notification upon release.--

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

13 (2) The plaintiff must keep the appropriate releasing
14 authority or other official as designated by local rule
15 advised of contact information; failure to do so will
16 constitute waiver of any right to notification under this
17 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 a protection order or court-approved
29 agreement entered into under this act.

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

1 protection order, the court, either pursuant to petition for
2 civil contempt or on its own accord, may hold the defendant in
3 civil contempt and constrain the defendant 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.--Notwithstanding 42 Pa.C.S. §
11 4136(a) (relating to rights of persons charged with certain
12 indirect criminal contempts), the defendant shall not have a
13 right to a jury trial; however, the defendant shall be entitled
14 to counsel.

15 Section 16. Confidentiality.

16 (a) Nature of privilege.--

17 (1) Unless a victim waives the privilege in a signed
18 writing prior to testimony or disclosure, a sexual assault
19 counselor or a coparticipant who is present during sexual
20 assault counseling or advocacy shall not be competent nor
21 permitted to testify, release the records of or to otherwise
22 disclose confidential communications made to or by the
23 counselor by or to a victim.

24 (2) Neither the sexual assault counselor nor the victim
25 shall waive the privilege of confidential communications by
26 reporting facts of physical or sexual violence under 23
27 Pa.C.S. Ch. 63 (relating to child protective services), a
28 Federal or State mandatory reporting statute or a local
29 mandatory reporting ordinance.

30 (b) Definition.--As used in this section, the term "victim"

1 is a person against whom sexual violence is committed who
2 consults a sexual assault counselor for the purpose of securing
3 advice, counseling or assistance. The term also includes a
4 person who has a significant relationship with the victim and
5 who seeks advice, counseling or assistance from a sexual assault
6 counselor regarding the victim.

7 Section 17. Procedure and other remedies.

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

17 Section 18. Applicability.

18 The provisions of the following acts relating to victims who
19 are protected by an order issued under 23 Pa.C.S. Ch. 61 shall
20 apply also to victims who are protected by an order issued under
21 this act:

22 (1) The act of November 24, 1998 (P.L.882, No.111),
23 known as the Crime Victims Act.

24 (2) 23 Pa.C.S. Ch. 67.

25 Section 19. Effective date.

26 This act shall take effect in 180 days.