

## **COMMITTEE BILL ANALYSIS**

**Bill:** Senate Bill 681

**Printer's No.:** 660

**Sponsor:** Senator Greenleaf

**Prepared by:** Gregg Warner

**Synopsis:** The bill amends the Judicial Code, Title 42 of the Pennsylvania Consolidated Statutes, adding a chapter relating to sexual violence victim protection. It authorizes the court to issue an order that requires the assailant to keep away from a sexual assault victim.

**Summary:** The legislation authorizes a sexual assault victim (the plaintiff) to petition the court requesting protection from the defendant. Once a protection order is issued, there are penalties for violating the order.

### **Sexual violence**

The bill defines “sexual violence” as conduct constituting a crime under an enumerated list of sexual crimes under the Crimes Code, Title 18, between persons who are not family or household members, who are not sexual or intimate partners, or who do not share biological parenthood.

### **Proceedings**

An action for a sexual violence victim protection order may be commenced by filing a petition with the court requesting protection from the defendant. An adult or emancipated minor may seek relief for that person, or any parent, adult household member or guardian ad litem may seek relief on behalf of a minor child, or the guardian of an incapacitated person may seek relief on behalf of the incapacitated adult.

The petition shall be filed and service made on the defendant without the prepayment of fees. The plaintiff shall not be charged any fees or costs associated with a protection order issued under this chapter. When an order is granted under this chapter, the defendant shall pay the fees and costs unless the court determines that the defendant is unable to pay the fees and costs and waives them.

The defendant has the right to be represented by counsel. The court shall hold an expedited hearing at which the plaintiff must prove the need for protection from the defendant by a preponderance of the evidence.

A protection order may include:

- Prohibiting the defendant from having any contact with the plaintiff.
- Directing the defendant to refrain from harassing or stalking the plaintiff or other designated persons.
- Granting any other appropriate relief.

A protection order shall be for a fixed period of time not to exceed 36 months. Following a hearing a court may grant an extension if the court finds that protection is necessary because the defendant engaged in one or more acts indicating a continued risk of harm to the plaintiff. In situations where the defendant is incarcerated and about to be released or has been recently released, the plaintiff does not have to show that the defendant engaged in acts indicating a continued risk of harm.

A copy of the protection order shall be issued to the plaintiff, the defendant and the police department with appropriate jurisdiction to enforce the order.

A sexual assault counselor may accompany and provide assistance to a party in any legal proceeding under this chapter. The court may issue an order that the plaintiff's address and telephone number not be disclosed. The address of a rape crisis center may not be disclosed.

### **Enforcement**

An arrest for a violation of a protection order may be without warrant upon probable cause. An expedited hearing shall be scheduled on the criminal contempt complaint. A sentence for criminal contempt under this act may include imprisonment for up to six months and a fine of not less than \$300 or more than \$1,000. The court may substitute probation for up to six months for the term of imprisonment. The victim shall be notified in advance of when the offender is released.

A plaintiff may file a petition for civil contempt alleging that the defendant has violated any provision of an order. A sentence for civil contempt may include imprisonment until the defendant complies with the order but in no case shall the imprisonment exceed six months.

### **Other provisions**

Unless a victim waives the privilege, a sexual assault counselor who is present during sexual assault counseling shall not be competent to testify or to otherwise disclose confidential communications.

Municipal police departments, the State Police and sheriffs shall ensure that all of their officers, deputies and employees are familiar with the provisions of this chapter. Each municipal police department and the State Police shall make a reasonable effort to notify any person protected by an order that the defendant has been arrested for violating the order.

Section 6302 is amended to include a violation of an order issued under this chapter within the definition of "delinquent act" for the purposes of the Juvenile Act.

### **Effective date**

This act takes effect in 180 days.

**Background:** This legislation has been introduced for several sessions and has passed the Senate three times. The intent of the legislation is to provide sexual assault victims with the same types of protections afforded domestic violence victims.

### **Findings and purpose**

The findings and purpose section of the bill states in part “Victims of sexual violence desire safety and protection from future interactions with their offender, regardless of whether they seek criminal prosecution. This chapter provides the victim with a civil remedy requiring the offender to stay away from the victim, as well as other appropriate relief.”

### **Pennsylvania Coalition Against Rape**

This bill was drafted with the assistance and support of the Pennsylvania Coalition Against Rape (PCAR). Victims of sexual assault are placed in difficult, fearful, and potentially dangerous circumstances if their assailant remains in or returns to the community. These victims should be offered the same measure of protection already in existence for victims of domestic violence.

Today, in Pennsylvania, orders of protection are available to sexual assault victims only if a criminal case has been initiated. But, in fact, only 28% of victims ever report their victimization to law enforcement. Even when victims do choose to report, many cases are not prosecuted because of the burden of proof or problems with evidence. Traumatized and fearful, victims of sexual assault need orders of protection to help keep them safe from perpetrators.

### **Related laws**

This legislation is modeled generally after the provisions of Pennsylvania law relating to domestic violence, the Protection From Abuse Act (23 Pa.C.S. Ch. 61). In past sessions this legislation has been drafted as a free-standing act, the Sexual Violence Victim Protection Act, to avoid confusion with protection from abuse orders in domestic violence cases. Senate Bill 681 has been drafted as a new chapter in the Judicial Code, Title 42 of the Pennsylvania Consolidated Statutes, which makes the legislation part of the consolidated statutes but separates it from the Protection From Abuse Act in Title 23.

As required by the federal Violence Against Women Act and to be consistent with the State’s Protection From Abuse Act, the plaintiff shall not be charged any fees or costs associated with a protection order issued under this legislation. This provision tracks the language added by 2005 Act 66 to the Protection From Abuse Act relating to domestic violence.

When a protection order expires while the defendant is incarcerated, it may be impossible for the plaintiff to show that the defendant has recently engaged in acts that necessitate a continuation or renewal of the protection order. The plaintiff may strongly suspect that the defendant will continue to present a risk when released from prison but may not be able to show the judge actual evidence of threats because the defendant has been incarcerated.

Many states are adding language to their protection statutes stating that in situations where the defendant is incarcerated and about to be released or has been recently released, in order for the plaintiff to obtain an extension of a protection order, the plaintiff does not have to show that the defendant engaged in acts indicating a continued risk of harm. The language in this legislation is modeled after Minnesota’s statute.

The Crime Victims Act (1998 Act 111) provides certain rights to victims who are protected under the Protection From Abuse Act and Senate Bill 681 extends those same rights to victims who are protected under an order issued pursuant to this legislation. Specifically, those rights at least include immediate notice when the defendant has been released on bail and eligibility under the victims’ compensation law.

According to PCAR, this legislation reflects a growing national trend to protect victims of sexual violence. The District of Columbia and 26 states (Alaska, California, Colorado, Florida, Illinois, Indiana, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Mexico, North Carolina, Oklahoma, Rhode Island, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia and Wisconsin) have passed legislation providing protection orders for sexual assault victims.

**Legislative history**

Last session the Senate passed this legislation as Senate Bill 58 by a vote of 50 to 0.

During the 2009-2010 session this legislation was introduced as Senate Bill 432. The Senate Judiciary Committee reported Senate Bill 432 from committee. The Senate tabled Senate Bill 432 because questions were raised whether this legislation expanded the role of sheriffs in enforcing protection orders. As reintroduced the legislation has been revised to make sure that sheriffs only have the same role in regard to these protection orders as they do in regard to protection from abuse orders. There is no intent to expand or reduce their powers.

In the 2005-2006 and 2007-2008 legislative sessions, the Senate passed this legislation unanimously.