

Appendix 1

STOP Grantee Protocol Statutes Last Updated April 2023

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This statute compilation is intended to assist STOP Coordinated Community Response Teams in drafting domestic and sexual violence response protocols. Not all statutes are presented in their entirety and may be outdated. Hyperlinks to complete and updated statutes are provided throughout.

1. Selected STOP Grant Program Statutes

STOP funds should be used serve adult and youth (age 11-24) who are victims of domestic violence, dating violence, sexual assault, or stalking. STOP funds can also be used to assist victims of domestic violence, dating violence, sexual assault, or stalking

who are also victims of [severe forms of trafficking in persons](#); adult survivors of child sexual abuse; and victims of domestic violence, dating violence, sexual assault, or stalking who are also victims of female genital mutilation or cutting, or forced marriage. [34 USC §12291 \(b\) \(14\)](#)

A. STOP Grant Compliance

A1. Forensic Medical Examination Payment Required for Victims of Sexual Assault – [34 U.S.C. § 10449](#)

(a) A state, Indian tribal government, or unit of local government shall not be entitled to funds under the STOP Formula Grant Program unless the state, Indian tribal government, unit of local government, or another governmental entity—

(1) incurs the full out-of-pocket cost of forensic medical exams for victims of sexual assault; and

(2) coordinates with health care providers in the region to notify victims of sexual assault of the availability of rape exams at no cost to the victims.

(2) Redistribution

Funds withheld from a State or unit of local government under paragraph (1) shall be distributed to other States or units of local government pro rata. Funds withheld from an Indian tribal government under paragraph (1) shall be distributed to other Indian tribal governments pro rata.

(b) Medical Costs: A state, Indian tribal government, or unit of local government shall be deemed to incur the full out-of-pocket cost of forensic medical exams for victims of sexual assault if any government entity:

(1) provides such exams to victims free of charge to the victim; or

(2) arranges for victims to obtain such exams free of charge to the victims.

(c) Use of funds: A State or Indian tribal government may use Federal grant funds under this subchapter to pay for forensic medical exams performed by trained examiners for victims of sexual assault, except that such funds may not be used to pay for forensic medical exams by any State, Indian tribal government, or territorial government that requires victims of sexual assault to seek reimbursement for such exams from their insurance carriers.

(d) Noncooperation

(1) In general: To be in compliance with this section, a State, Indian tribal government, or unit of local government shall comply with subsection (b) without regard to whether the victim participates in the criminal justice system or cooperates with law enforcement.

(2) Compliance period

States, territories, and Indian tribal governments shall have 3 years from the date of enactment of this Act ¹ to come into compliance with this section.

(e) Judicial notification

(1) In general

A State or unit of local government shall not be entitled to funds under this subchapter unless the State or unit of local government—

(A) certifies that its judicial administrative policies and practices include notification to domestic violence offenders of the requirements delineated in section 922(g)(8) and (g)(9) of title 18 and any applicable related Federal, State, or local laws; or

(B) gives the Attorney General assurances that its judicial administrative policies and practices will be in compliance with the requirements of subparagraph (A) within the later of—

(i) the period ending on the date on which the next session of the State legislature ends; or

(ii) 2 years.

(2) Redistribution

Funds withheld from a State or unit of local government under subsection (a) shall be distributed to other States and units of local government, pro rata.

A2. Filing Costs for Criminal Charges and Protection Orders – 34
U.S.C. § 10450

(a) In general

A State, Indian tribal government, or unit of local government, shall not be entitled to funds under this subchapter unless the State, Indian tribal government, or unit of local government—

(1) certifies that its laws, policies, and practices do not require, in connection with the prosecution of any misdemeanor or felony domestic violence, dating violence, sexual assault, or stalking offense, or in connection with the filing, issuance, registration, modification, enforcement, dismissal, withdrawal or service of a protection order, or a petition for a protection order, to protect a victim of domestic violence, dating violence, sexual assault, or stalking, that the victim bear the costs associated with the filing of criminal charges against the offender, or the costs associated with the filing, issuance, registration, modification, enforcement, dismissal, withdrawal or service of a warrant, protection order, petition for a protection order, or witness subpoena, whether issued inside or outside the State, tribal, or local jurisdiction; or

(2) gives the Attorney General assurances that its laws, policies and practices will be in compliance with the requirements of paragraph (1) within the later of—

(A) the period ending on the date on which the next session of the State legislature ends; or

(B) 2 years after October 28, 2000.

(b) Redistribution

Funds withheld from a State, unit of local government, or Indian tribal government under subsection (a) shall be distributed to other States, units of local government, and Indian tribal government, respectively, pro rata.

(c) Definition

In this section, the term "protection order" has the meaning given the term in section 2266 of title 18.

A3. Judicial Notification – [28 C.F.R. Section 90.14](#)

A State or unit of local government shall not be entitled to funds under the STOP Formula Grant Program unless the state or unit of local government--

(a) certifies that its judicial administrative policies and practices include notification to domestic violence offenders of the requirements delineated in **section 922(g)(8)** and (g)(9) of title 18, United States Code, and any applicable related federal, state, or local laws; or

(b) A unit of local government shall not be eligible for subgrants from the State unless it complies with the requirements of 42 U.S.C. 3796gg-4(e) with respect to its judicial administrative policies and practices.

[18 USC § 922 \(g\)](#) - It shall be unlawful for any person-

(8) who is subject to a court order that-

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) who has been convicted in any court of a misdemeanor crime of domestic violence, to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(See also [The Lautenberg Amendment](#))

A4. Polygraph Testing Prohibition – 34 U.S.C. § 10451

(a) In general

In order to be eligible for grants under this subchapter, a State, Indian tribal government, territorial government, or unit of local government shall certify that, not later than 3 years after January 5, 2006, their laws, policies, or practices will ensure that no law enforcement officer, prosecuting officer or other government official shall ask or require an adult, youth, or child victim of an alleged sex offense as defined under Federal, tribal, State, territorial, or local law to submit to a polygraph examination or other truth telling device as a condition for proceeding with the investigation of such an offense.

(b) Prosecution

The refusal of a victim to submit to an examination described in subsection (a) shall not prevent the investigation, charging, or prosecution of the offense.

A5. Evidence-Based Prosecution - 34 U.S.C. § 10454

In order for a prosecutor's office to be eligible to receive grant funds under this part, the head of the office shall certify, to the State, Indian Tribal government, or territorial government receiving the grant funding, that the office will, during the 3-year period beginning on the date on which the grant is awarded, engage in planning, developing and implementing—

- (1)** training developed by experts in the field regarding victim-centered approaches in domestic violence, sexual assault, dating violence, and stalking cases;
- (2)** policies that support a victim-centered approach, informed by such training; and
- (3)** a protocol outlining alternative practices and procedures for material witness petitions and bench warrants, consistent with best practices, that shall be exhausted before employing material witness petitions and bench warrants to obtain victim-witness testimony in the investigation, prosecution, and trial of a crime related to domestic violence, sexual assault, dating violence, and stalking of the victim in order to prevent further victimization and trauma to the victim.”.

B. STOP Grant Program Definitions – 34 U.S.C. § 12291(a)

(1) Abuse in later life

The term "abuse in later life"-

(A) means-

- (i) neglect, abandonment, economic abuse, or willful harm of an adult aged 50 or older by an individual in an ongoing relationship of trust with the victim; or
- (ii) domestic violence, dating violence, sexual assault, or stalking of an adult aged 50 or older by any individual; and

(B) does not include self-neglect.

(2) Alaska Native village

The term "Alaska Native village" has the same meaning given such term in the Alaska Native Claims Settlement Act ([43 U.S.C. 1601 et seq.](#)).

(3) Child abuse and neglect

The term "child abuse and neglect" means any recent act or failure to act on the part of a parent or caregiver with intent to cause death, serious physical or emotional harm, sexual abuse, or exploitation, or an act or failure to act which presents an imminent risk of serious harm to an unemancipated minor. This definition shall not be construed to mean that failure to leave an abusive relationship, in the absence of other action constituting abuse or neglect, is itself abuse or neglect.

(4) Child maltreatment

The term "child maltreatment" means the physical or psychological abuse or neglect of a child or youth, including sexual assault and abuse.

(5) Community-based organization

The term "community-based organization" means a nonprofit, nongovernmental, or tribal organization that serves a specific geographic community that-

(A) focuses primarily on domestic violence, dating violence, sexual assault, or stalking;

(B) has established a specialized culturally specific program that addresses domestic violence, dating violence, sexual assault, or stalking;

(C) has a primary focus on underserved populations (and includes representatives of these populations) and domestic violence, dating violence, sexual assault, or stalking; or

(D) obtains expertise, or shows demonstrated capacity to work effectively, on domestic violence, dating violence, sexual assault, and stalking through collaboration.

(6) Court-based personnel; court-related personnel

The terms "court-based personnel" and "court-related personnel" mean individuals working in the court, whether paid or volunteer, including-

(A) clerks, special masters, domestic relations officers, administrators, mediators, custody evaluators, guardians ad litem, lawyers, negotiators, probation, parole, interpreters, victim assistants, victim advocates, and judicial, administrative, or any other professionals or personnel similarly involved in the legal process;

(B) court security personnel;

(C) personnel working in related supplementary offices or programs (such as child support enforcement); and

(D) any other court-based or community-based personnel having responsibilities or authority to address domestic violence, dating violence, sexual assault, or stalking in the court system.

(7) Courts

The term "courts" means any civil or criminal, tribal, and Alaska Native Village, Federal, State, local or territorial court having jurisdiction to address domestic violence, dating violence, sexual assault or stalking, including immigration, family, juvenile, and dependency courts, and the judicial officers serving in those courts, including judges, magistrate judges, commissioners, justices of the peace, or any other person with decision making authority.

(8) Culturally specific

The term "culturally specific" means primarily directed toward racial and ethnic minority groups (as defined in section 1707(g) of the Public Health Service Act ([42 U.S.C. 300u-6\(g\)](#))).¹

(9) Culturally specific services

The term "culturally specific services" means community-based services that include culturally relevant and linguistically specific services and resources to culturally specific communities.

(10) Dating partner

The term "dating partner" refers to a person who is or has been in a social relationship of a romantic or intimate nature with the abuser, and where the existence of such a relationship shall be determined based on a consideration of-

- (A) the length of the relationship;
- (B) the type of relationship; and
- (C) the frequency of interaction between the persons involved in the relationship.

(11) Dating violence

The term "dating violence" means violence committed by a person-

- (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- (B) where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - (i) The length of the relationship.
 - (ii) The type of relationship.
 - (iii) The frequency of interaction between the persons involved in the relationship.

(12) Domestic violence

The term "domestic violence" includes felony or misdemeanor crimes committed by a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction receiving grant funding and, in the case of victim services, includes the use or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior, by a person who-

- (A) is a current or former spouse or intimate partner of the victim, or person similarly situated to a spouse of the victim;
- (B) is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
- (C) shares a child in common with the victim; or
- (D) commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.

(13) Economic abuse

The term "economic abuse", in the context of domestic violence, dating violence, and abuse in later life, means behavior that is coercive, deceptive, or unreasonably controls or restrains a person's ability to acquire, use, or maintain economic resources to which they are entitled, including using coercion, fraud, or manipulation to-

- (A) restrict a person's access to money, assets, credit, or financial information;
- (B) unfairly use a person's personal economic resources, including money, assets, and credit, for one's own advantage; or
- (C) exert undue influence over a person's financial and economic behavior or decisions, including forcing default on joint or other financial obligations, exploiting powers of attorney, guardianship, or conservatorship, or failing or neglecting to act in the best interests of a person to whom one has a fiduciary duty.

(14) Elder abuse

The term "elder abuse" means any action against a person who is 50 years of age or older that constitutes the willful-

(A) infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical harm, pain, or mental anguish; or

(B) deprivation by a person, including a caregiver, of goods or services with intent to cause physical harm, mental anguish, or mental illness.

(15) Female genital mutilation or cutting

The term "female genital mutilation or cutting" has the meaning given such term in [section 116 of title 18](#).

(16) Forced marriage

The term "forced marriage" means a marriage to which 1 or both parties do not or cannot consent, and in which 1 or more elements of force, fraud, or coercion is present. Forced marriage can be both a cause and a consequence of domestic violence, dating violence, sexual assault or stalking.

(17) Homeless

The term "homeless" has the meaning given such term in [section 12473 of this title](#).

(18) Indian

The term "Indian" means a member of an Indian tribe.

(19) Indian country

The term "Indian country" has the same meaning given such term in [section 1151 of title 18](#).

(20) Indian housing

The term "Indian housing" means housing assistance described in the Native American Housing Assistance and Self-Determination Act of 1996 ([25 U.S.C. 4101 et seq.](#), as amended).

(21) Indian law enforcement

The term "Indian law enforcement" means the departments or individuals under the direction of the Indian tribe that maintain public order.

(22) Indian tribe; Indian Tribe

The terms "Indian tribe" and "Indian Tribe" mean a tribe, band, pueblo, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act ([43 U.S.C. 1601 et seq.](#))), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(23) Law enforcement

The term "law enforcement" means a public agency charged with policing functions, including any of its component bureaus (such as governmental victim services programs or Village Public Safety Officers), including those referred to in [section 2802 of title 25](#).

(24) Legal assistance

(A) Definition

The term "legal assistance" means assistance provided by or under the direct supervision of a person described in subparagraph (B) to an adult, youth, or child victim of

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domestic violence, dating violence, sexual assault, or stalking relating to a matter described in subparagraph (C).

(B) Person described

A person described in this subparagraph is-

- (i) a licensed attorney;
- (ii) in immigration proceedings, a Board of Immigration Appeals accredited representative;
- (iii) in claims of the Department of Veterans Affairs, a representative authorized by the Secretary of Veterans Affairs; or
- (iv) any person who functions as an attorney or lay advocate in tribal court.

(C) Matter described

A matter described in this subparagraph is a matter relating to-

- (i) divorce, parental rights, child support, Tribal, territorial, immigration, employment, administrative agency, housing, campus, education, healthcare, privacy, contract, consumer, civil rights, protection or other injunctive proceedings, related enforcement proceedings, and other similar matters;
- (ii) criminal justice investigations, prosecutions, and post-conviction matters (including sentencing, parole, and probation) that impact the victim's safety, privacy, or other interests as a victim;
- (iii) alternative dispute resolution, restorative practices, or other processes intended to promote victim safety, privacy, and autonomy, and offender accountability, regardless of court involvement; or
- (iv) with respect to a conviction of a victim relating to or arising from domestic violence, dating violence, sexual assault, stalking, or sex trafficking victimization of the victim, post-conviction relief proceedings in State, local, Tribal, or territorial court.

(D) Intake or referral

For purposes of this paragraph, intake or referral, by itself, does not constitute legal assistance.

(25) Personally identifying information or personal information

The term "personally identifying information" or "personal information" means individually identifying information for or about an individual including information likely to disclose the location of a victim of domestic violence, dating violence, sexual assault, or stalking, regardless of whether the information is encoded, encrypted, hashed, or otherwise protected, including-

- (A) a first and last name;
- (B) a home or other physical address;
- (C) contact information (including a postal, e-mail or Internet protocol address, or telephone or facsimile number);
- (D) a social security number, driver license number, passport number, or student identification number; and
- (E) any other information, including date of birth, racial or ethnic background, or religious affiliation, that would serve to identify any individual.

(26) Population specific organization

The term "population specific organization" means a nonprofit, nongovernmental organization that primarily serves members of a specific underserved population and has demonstrated experience and expertise providing targeted services to members of that specific underserved population.

(27) Population specific services

The term "population specific services" means victim-centered services that address the safety, health, economic, legal, housing, workplace, immigration, confidentiality, or other needs of victims of domestic violence, dating violence, sexual assault, or stalking, and that are designed primarily for and are targeted to a specific underserved population.

(28) Prosecution

The term "prosecution" means any public agency charged with direct responsibility for prosecuting criminal offenders, including such agency's component bureaus (such as governmental victim assistance programs).

(29) Protection order or restraining order

The term "protection order" or "restraining order" includes-

(A) any injunction, restraining order, or any other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence or contact or communication with or physical proximity to, another person, including any temporary or final orders issued by civil or criminal courts whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection; and

(B) any support, child custody or visitation provisions, orders, remedies, or relief issued as part of a protection order, restraining order, or stay away injunction pursuant to State, tribal, territorial, or local law authorizing the issuance of protection orders, restraining orders, or injunctions for the protection of victims of domestic violence, dating violence, sexual assault, or stalking.

(30) Rape crisis center

The term "rape crisis center" means a nonprofit, nongovernmental, or tribal organization, or governmental entity in a State other than a Territory that provides intervention and related assistance, as specified in [section 12511\(b\)\(2\)\(C\) of this title](#), to victims of sexual assault without regard to their age. In the case of a governmental entity, the entity may not be part of the criminal justice system (such as a law enforcement agency) and must be able to offer a comparable level of confidentiality as a nonprofit entity that provides similar victim services.

(31) Restorative practice

The term "restorative practice" means a practice relating to a specific harm that-

(A) is community-based and unaffiliated with any civil or criminal legal process;

(B) is initiated by a victim of the harm;

(C) involves, on a voluntary basis and without any evidence of coercion or intimidation of any victim of the harm by any individual who committed the harm or anyone associated with any such individual-

(i) 1 or more individuals who committed the harm;

(ii) 1 or more victims of the harm; and

(iii) the community affected by the harm through 1 or more representatives of the community;

(D) shall include and has the goal of-

(i) collectively seeking accountability from 1 or more individuals who committed the harm;

(ii) developing a written process whereby 1 or more individuals who committed the harm will take responsibility for the actions that caused harm to 1 or more victims of the harm; and

(iii) developing a written course of action plan-

- (I) that is responsive to the needs of 1 or more victims of the harm; and
- (II) upon which 1 or more victims, 1 or more individuals who committed the harm, and the community can agree; and
- (E) is conducted in a victim services framework that protects the safety and supports the autonomy of 1 or more victims of the harm and the community.

(32) Rural area and rural community

The term "rural area" and "rural community" mean-

- (A) any area or community, respectively, no part of which is within an area designated as a standard metropolitan statistical area by the Office of Management and Budget;
- (B) any area or community, respectively, that is-
 - (i) within an area designated as a metropolitan statistical area or considered as part of a metropolitan statistical area; and
 - (ii) located in a rural census tract; or
- (C) any federally recognized Indian tribe.

(33) Rural State

The term "rural State" means a State that has a population density of 57 or fewer persons per square mile or a State in which the largest county has fewer than 250,000 people, based on the most recent decennial census.

(34) Sex trafficking

The term "sex trafficking" means any conduct proscribed by [section 1591 of title 18](#), whether or not the conduct occurs in interstate or foreign commerce or within the special maritime and territorial jurisdiction of the United States.

(35) Sexual assault

The term "sexual assault" means any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.

(36) Stalking

The term "stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to-

- (A) fear for his or her safety or the safety of others; or
- (B) suffer substantial emotional distress.

(37) State

The term "State" means each of the several States and the District of Columbia, and except as otherwise provided, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Northern Mariana Islands.

(38) State domestic violence coalition

The term "State domestic violence coalition" means a program determined by the Administration for Children and Families under [sections 10402 and 10411 of title 42](#).

(39) State sexual assault coalition

The term "State sexual assault coalition" means a program determined by the Center for Injury Prevention and Control of the Centers for Disease Control and Prevention under the Public Health Service Act ([42 U.S.C. 280b et seq.](#)).

(40) Technological abuse

The term "technological abuse" means an act or pattern of behavior that occurs within domestic violence, sexual assault, dating violence or stalking and is intended to harm, threaten, intimidate, control, stalk, harass, impersonate, exploit, extort, or monitor, except as

otherwise permitted by law, another person, that occurs using any form of technology, including but not limited to: internet enabled devices, online spaces and platforms, computers, mobile devices, cameras and imaging programs, apps, location tracking devices, or communication technologies, or any other emerging technologies.

(41) Territorial domestic violence or sexual assault coalition

The term "territorial domestic violence or sexual assault coalition" means a program addressing domestic or sexual violence that is-

(A) an established nonprofit, nongovernmental territorial coalition addressing domestic violence or sexual assault within the territory; or

(B) a nongovernmental organization with a demonstrated history of addressing domestic violence or sexual assault within the territory that proposes to incorporate as a nonprofit, nongovernmental territorial coalition.

(42) Tribal coalition

The term "tribal coalition" means an established nonprofit, nongovernmental Indian organization, Alaska Native organization, or a Native Hawaiian organization that-

(A) provides education, support, and technical assistance to member Indian service providers, Native Hawaiian organizations, or the Native Hawaiian community in a manner that enables those member providers, organizations, or communities to establish and maintain culturally appropriate services, including shelter and rape crisis services, designed to assist Indian or Native Hawaiian women and the dependents of those women who are victims of domestic violence, dating violence, sexual assault, and stalking; and

(B) is comprised of board and general members that are representative of-

(i) the member service providers, organizations, or communities described in subparagraph (A); and

(ii) the tribal communities or Native Hawaiian communities in which the services are being provided.

(43) Tribal government

The term "tribal government" means-

(A) the governing body of an Indian tribe; or

(B) a tribe, band, pueblo, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act ([43 U.S.C. 1601 et seq.](#))), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(44) Tribal nonprofit organization

The term "tribal nonprofit organization" means-

(A) a victim services provider that has as its primary purpose to assist Native victims of domestic violence, dating violence, sexual assault, or stalking; and

(B) staff and leadership of the organization must include persons with a demonstrated history of assisting American Indian or Alaska Native victims of domestic violence, dating violence, sexual assault, or stalking.

(45) Tribal organization

The term "tribal organization" means-

(A) the governing body of any Indian tribe;

(B) any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body of a tribe or tribes to be served, or which is democratically elected by the adult members of the Indian community to be served by such

organization and which includes the maximum participation of Indians in all phases of its activities; or

(C) any tribal nonprofit organization.

(46) Underserved populations

The term "underserved populations" means populations who face barriers in accessing and using victim services, and includes populations underserved because of geographic location, religion, sexual orientation, gender identity, underserved racial and ethnic populations, populations underserved because of special needs (such as language barriers, disabilities, alienage status, or age), and any other population determined to be underserved by the Attorney General or by the Secretary of Health and Human Services, as appropriate.

(47) Unit of local government

The term "unit of local government" means any city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State.

(48) Victim advocate

The term "victim advocate" means a person, whether paid or serving as a volunteer, who provides services to victims of domestic violence, sexual assault, stalking, or dating violence under the auspices or supervision of a victim services program.

(49) Victim assistant

The term "victim assistant" means a person, whether paid or serving as a volunteer, who provides services to victims of domestic violence, sexual assault, stalking, or dating violence under the auspices or supervision of a court or a law enforcement or prosecution agency.

(50) Victim service provider

The term "victim service provider" means a nonprofit, nongovernmental or tribal organization or rape crisis center, including a State or tribal coalition, that assists or advocates for domestic violence, dating violence, sexual assault, or stalking victims, including domestic violence shelters, faith-based organizations, and other organizations, with a documented history of effective work concerning domestic violence, dating violence, sexual assault, or stalking.

(51) Victim services or services

The terms "victim services" and "services" mean services provided to victims of domestic violence, dating violence, sexual assault, or stalking, including telephonic or web-based hotlines, legal assistance and legal advocacy, economic advocacy, emergency and transitional shelter, accompaniment and advocacy through medical, civil or criminal justice, immigration, and social support systems, crisis intervention, short-term individual and group support services, information and referrals, culturally specific services, population specific services, and other related supportive services.

(52) Youth

The term "youth" means a person who is 11 to 24 years old.

*The most current version of *United States Code Title 34, Chapter 34, Subtitle I – Comprehensive Acts* is [available in its entirety online](#).

2. Related to Confidentiality

A. Selected Violence Against Women Act (“VAWA”) Confidentiality Statutes

Approved activities - [34 USC 12291 \(b\) \(3\)](#)

In carrying out the activities under this subchapter, grantees and subgrantees may collaborate with or provide information to Federal, State, local, tribal, and territorial public officials and agencies to develop and implement policies and develop and promote State, local, or tribal legislation or model codes designed to reduce or eliminate domestic violence, dating violence, sexual assault, and stalking if-

- (A)** the confidentiality and privacy requirements of this subchapter are maintained; and
- (B)** personally identifying information about adult, youth, and child victims of domestic violence, dating violence, sexual assault, and stalking is not requested or included in any such collaboration or information-sharing.

Disclosure of Confidential of Private Information - [34 U.S.C. § 12291\(2\)](#)

(a) In general: In order to ensure the safety of adult, youth, and child victims of domestic violence, dating violence, sexual assault, or stalking, and their families, grantees and subgrantees shall protect the confidentiality and privacy of persons receiving services.

(b) Nondisclosure: Grantees and subgrantees shall not -

(i) disclose, reveal, or release any personally identifying information or individual information collected in connection with services requested, utilized, or denied through grantees’ and subgrantees’ programs, regardless of whether the information has been encoded, encrypted, hashed, or otherwise protected;

(ii) or disclose, reveal, or release individual client information without the informed, written, reasonably time-limited consent of the person (or in the case of an unemancipated minor, the minor and the parent or guardian or in the case of legal incapacity, a court-appointed guardian) about whom information is sought, whether for this program or any other Federal, State, tribal, or territorial grant program, except that consent for release may not be given by the abuser of the minor, incapacitated person, or the abuser of the other parent of the minor. If a minor or a person with a legally appointed guardian is permitted by law to receive services without the parent’s or guardian’s consent, the minor or person with a guardian may release information without additional consent.

(c) Release: If release of confidential or private information is compelled by statutory or court mandate—

(i) grantees and subgrantees shall make reasonable attempts to provide notice to victims affected by the disclosure of information; and

(ii) grantees and subgrantees shall take steps necessary to protect the privacy and safety of the persons affected by the release of the information.

(d) Information sharing:

(i) Grantees and subgrantees may share—

(I) nonpersonally identifying data in the aggregate regarding services to their clients and nonpersonally identifying demographic information in order to comply with Federal, State, tribal, or territorial reporting, evaluation, or data collection requirements;

(II) court-generated information and law enforcement-generated information contained in secure, governmental registries for protection order enforcement purposes; and

(III) law enforcement-generated and prosecution-generated information necessary for law enforcement and prosecution purposes.

(ii) In no circumstances may—

(I) an adult, youth, or child victim of domestic violence, dating violence, sexual assault, or stalking be required to provide a consent to release his or her personally identifying information as a condition of eligibility for the services provided by the grantee or subgrantee;

(II) any personally identifying information be shared in order to comply with Federal, tribal, or State reporting, evaluation, or data collection requirements, whether for this program or any other Federal, tribal, or State grant program.

Personally identifying information or personal information- [34 U.S.C. § 12291](#)

[\(a\)\(2\)](#)

individually identifying information for or about an individual including information likely to disclose the location of a victim of domestic violence, dating violence, sexual assault, or stalking, regardless of whether the information is encoded, encrypted, hashed, or otherwise protected, including—

(A) a first and last name;

(B) a home or other physical address;

(C) contact information (including a postal, e-mail or Internet protocol address, or telephone or facsimile number);

(D) a social security number, driver license number, passport number, or student identification number; and

(E) any other information, including date of birth, racial or ethnic background, or religious affiliation, that would serve to identify any individual.

Statutorily mandated reports of abuse or neglect – [34 U.S.C. § 12291\(2\) \(E\)](#)

grantees or subgrantees must report suspected abuse or neglect, as those terms are defined and specifically mandated by the State or tribe involved.

Confidentiality assessment & assurances – [34 U.S.C. § 12291\(2\) \(G\)](#)

Grantees and subgrantees must document their compliance with the confidentiality and privacy provisions required under this section.

*More information on the STOP Grant Program's confidentiality requirements is [available online](#). The most current version of 23 U.S.C. § 12291 is [available online in its entirety](#).

B. Pennsylvania Confidentiality and Record Keeping

B1. Selected Counselors / Caseworker Confidentiality

Confidentiality – [23 PA.CONS.STAT.ANN. § 6116](#)

Unless a victim waives the privilege in a signed writing prior to testimony or disclosure, a domestic violence counselor/advocate or a coparticipant who is present during domestic violence counseling/advocacy shall not be competent nor permitted to testify or to otherwise disclose confidential communications made to or by the counselor/advocate by or to a victim. The privilege shall terminate upon the death of the victim. Neither the domestic violence counselor/advocate nor the victim shall waive the privilege of confidential communications by reporting facts of physical or sexual assault under Chapter 63 (relating to child protective services), a Federal or State mandatory reporting statute or a local mandatory reporting ordinance.

Domestic violence counselor/advocate: An individual who is engaged in a domestic violence program, the primary purpose of which is the rendering of counseling or assistance to victims of domestic violence, who has undergone 40 hours of training.

Domestic violence program: A nonprofit organization or program whose primary purpose is to provide services to domestic violence victims which include, but are not limited to, crisis hotline; safe homes or shelters; community education; counseling systems intervention and interface; transportation, information and referral; and victim assistance.

Confidential Communication to Sexual Assault Counselors - [42 PA.CONS.STAT.ANN. § 5945.1](#)

(a) Definitions: As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

Confidential communication: All information, oral or written, transmitted between a victim of sexual assault and a sexual assault counselor in the course of their relationship, including, but not limited to, any advice, reports, statistical data, memoranda, working papers, records or the like, given or made during that relationship, including matters transmitted between the sexual assault counselor and the victim through the use of an interpreter.

Coparticipant: A victim participating in group counseling.

Interpreter: A person who translates communications between a sexual assault counselor and a victim through the use of sign language, visual, oral or written translation.

Rape crisis center: Any office, institution or center offering assistance to victims of sexual assault and their families through crisis intervention, medical and legal accompaniment and follow-up counseling.

Sexual assault counselor: A person who is engaged in any office, institution or center defined as a rape crisis center under this section, who has undergone 40 hours of sexual assault training and is under the control of a direct services supervisor of a rape crisis center, whose primary purpose is the rendering of advice, counseling or assistance to victims of sexual assault.

Victim: A person who consults a sexual assault counselor for the purpose of securing advice, counseling or assistance concerning a mental, physical or emotional condition caused or reasonably believed to be caused by a sexual assault. The term shall also include those persons who have a significant relationship with a victim of sexual assault and who seek advice, counseling or assistance from a sexual assault counselor concerning a mental, physical or emotional condition caused or reasonably believed to be caused by a sexual assault of a victim.

(b) Privilege:

(1) No sexual assault counselor or an interpreter translating the communication between a sexual assault counselor and a victim may, without the written consent of the victim, disclose the victim's confidential oral or written communications to the counselor nor consent to be examined in any court or criminal proceeding.

(2) No coparticipant who is present during counseling may disclose a victim's confidential communication made during the counseling session nor consent to be examined in any civil or criminal proceeding without the written consent of the victim.

Confidential Communications with Human Trafficking Caseworkers - [42](#)

[PA.CONS.STAT.ANN. § 5945.3](#)

(a) Sexual assault counselors.--An individual qualified as a sexual assault counselor under section 5945.1(a) (relating to confidential communications with sexual assault counselors) may serve as a human trafficking counselor under this section.

(b) Privilege:

(1) This subsection applies to all of the following:

(i) A human trafficking caseworker.

(ii) An interpreter.

(2) An individual designated in paragraph (1) may not disclose a confidential communication without the written consent of the victim of human trafficking who made the confidential communication.

(c) Definitions: As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Confidential communication." All information, oral or written, transmitted between a victim of human trafficking and a human trafficking caseworker in the course of their relationship. The term includes advice, reports, statistical data, memoranda, working papers and records, given or made during that relationship, including matters transmitted between the human trafficking caseworker and the victim through the use of an interpreter.

B3. Related to Minors

Confidentiality of Reports - [23 PA.CONS.STAT.ANN. § 6339](#)

Reports made pursuant to this chapter, including, but not limited to, report summaries of child abuse and reports made pursuant to section 6313 (relating to reporting procedure) as well as any other information obtained, reports written or photographs or x-rays taken concerning alleged instances of child abuse in the possession of the department or a county agency shall be confidential.

Victims of Sexual or Physical Abuse – [42 PA.CONS.STAT.ANN. § 5988](#)

In a prosecution involving a minor victim of sexual or physical abuse, the minor's name shall not be disclosed by officers or court employees to the public, and any records revealing the minor victim's name shall not be available for public inspection.

B4. Related to Mandated Reporting

Suspected Child Abuse

Reporting Procedure – [23 PA.CONS.STAT.ANN. § 6313](#)

(1) A mandated reporter shall immediately make an oral report of suspected child abuse to the department via the Statewide toll-free telephone number under section 6332 (relating to establishment of Statewide toll-free telephone number) or a written report using electronic technologies under section 6305 (relating to electronic reporting).

(2) A mandated reporter making an oral report under paragraph (1) of suspected child abuse shall also make a written report, which may be submitted electronically, within 48 hours to the department or county agency assigned to the case in a manner and format prescribed by the department.

(3) The failure of the mandated reporter to file the report under paragraph (2) shall not relieve the county agency from any duty under this chapter, and the county agency shall proceed as though the mandated reporter complied with paragraph (2).

(b) Contents of report: A written report of suspected child abuse, which may be submitted electronically, shall include the following information, if known:

- (1) The names and addresses of the child, the child's parents and any other person responsible for the child's welfare.
- (2) Where the suspected abuse occurred.
- (3) The age and sex of each subject of the report.
- (4) The nature and extent of the suspected child abuse, including any evidence of prior abuse to the child or any sibling of the child.
- (5) The name and relationship of each individual responsible for causing the suspected abuse and any evidence of prior abuse by each individual.
- (6) Family composition.
- (7) The source of the report.
- (8) The name, telephone number and e-mail address of the person making the report.
- (9) The actions taken by the person making the report, including those actions taken under section 6314 (relating to photographs, medical tests and X-rays of child subject to report), 6315 (relating to taking child into protective custody), 6316 (relating to admission to private and public hospitals) or 6317 (relating to mandatory reporting and postmortem investigation of deaths).
- (10) Any other information required by Federal law or regulation.
- (11) Any other information that the department requires by regulation.

(e) Applicability of Mental Health Procedures Act.-- Notwithstanding any other provision of law, a mandated reporter enumerated under 6311 (relating to persons required to report suspected child abuse) who makes a report of suspected child abuse pursuant to this section, or who makes a report of a crime against a child to law enforcement officials, shall not be in violation of the act of July 9, 1976 (P.L.817, No.143), known as the Mental Health Procedures Act, by releasing information necessary to complete the report.

Persons Required to Report Suspected Child Abuse – [23 PA.CON.S.TAT.ANN. § 6311](#)

The following adults shall make a report of suspected child abuse, subject to subsection (b), if the person has reasonable cause to suspect that a child is a victim of child abuse:

- (1) A person licensed or certified to practice in any health-related field under the jurisdiction of the Department of State.
- (2) A medical examiner, coroner or funeral director.
- (3) An employee of a health care facility or provider licensed by the Department of Health, who is engaged in the admission, examination, care or treatment of individuals.
- (4) A school employee.
- (5) An employee of a child care service, who has direct contact with children in the course of employment.
- (6) A clergyman, priest, rabbi, minister, Christian Science practitioner, religious healer or spiritual leader of any regularly established church or other religious organization.

- (7) An individual paid or unpaid, who, on the basis of the individual's role as an integral part of a regularly scheduled program, activity or service, is a person responsible for the child's welfare or has direct contact with children.
- (8) An employee of a social services agency, who has direct contact with children in the course of employment.
- (9) A peace officer or law enforcement official.
- (10) An emergency medical services provider certified by the department of health.
- (11) An employee of a public library, who has direct contact with children in the course of employment.
- (12) An individual supervised or managed by a person listed under paragraphs (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11) and (13), who has direct contact with children in the course of employment.
- (13) An independent contractor.
- (14) [Deleted by 2014 Amendment.]
- (15) A foster parent
- (16) An adult family member who is a person responsible for the child's welfare and provides services to a child in a family living home, community home for individuals with an intellectual disability or host home for children which are subject to supervision or licensure by the department under Articles IX and X of the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code.

*The most current version of *Pennsylvania Title 23, Chapter 63 – Child Protective Services* is available in its entirety online.

Suspected Abuse of Adults – 2010 Act 70

Reporting by employees – [Adult Protective Services Act, Section 302](#)

(a) General rule: A person having reasonable cause to believe that an adult is in need of protective services may report such information to the agency. Where applicable, reports shall comply with the provisions of Chapter 5.

(b) Receiving reports: The agency shall be capable of receiving reports of adults in need of protective services 24 hours a day, seven days a week, including holidays. This capability may include the use of a local emergency response system or a crisis intervention agency, provided that access can be made to a protective services caseworker in appropriate emergency situations as set forth in regulations promulgated by the department. All reports received orally under this section shall be reduced to writing immediately by the person who receives the report.

(c) Screening: A person who receives a report shall screen the report during and immediately following receipt of the report to assign it to one of the following referral categories:

(1) Priority: A report placed in this category shall require immediate attention because specific details in the report indicate the possibility that the adult reported to

need protective services is at imminent risk of death or serious injury or serious bodily injury. The person receiving a priority report shall immediately contact a protective services caseworker and provide the caseworker with the information contained in the report.

(2) Nonpriority: A report shall be placed in this category when it does not appropriately fall within the priority category and, therefore, does not require immediate attention by the agency. A report in this category shall be referred to a protective services caseworker of an agency within the normal business hours of the agency's current or next day of business under the agency's established procedures for referring these reports.

(3) Another planning and service area. A report in which the adult who is the subject of the report does not reside in the planning and service area of the agency or, at that time, is not in the planning and service area shall be placed in this category. The report shall be referred to the agency that has the designated responsibility for protective services in the planning and service area in which the adult reported to be in need of protective services is located at the time of the report. A report in this category shall also meet the criteria for placement in one of the other categories in this subsection. The provisions for referral for the other category shall apply to a referral to another planning and service area.

(4) No need for protective services. A report shall be placed in this category when the person reported to be in need of protective services meets either of the following criteria:

(i) has the capacity to perform or obtain, without help, services necessary to maintain physical or mental health;

(ii) is not at imminent risk or danger to his person or property. A report in this category shall be referred to a protective services caseworker of the agency within the normal business hours of the agency's current or next day of business. The protective services caseworker shall review the details of the report and take all steps necessary to confirm or reject the categorization of no need for protective services. If the caseworker confirms the screening categorization, and upon the request of any interested party and without objection by the adult, appropriate referrals shall be made to other entities. The protective services case shall then be closed. If the caseworker rejects the categorization, the report shall be placed in the appropriate category and shall be handled accordingly. A report may not be placed in this category if the adult is temporarily relocated to a safe environment and will return to the original abusive situation or to a new location which has not been determined to be safe.

(d) Retaliatory action:

(1) Any person who makes a report or cooperates with the agency, including providing testimony in any administrative or judicial proceeding, and any adult in need of protective services shall not be subject to any discriminatory, retaliatory or disciplinary action by an employer or by any other person or entity.

(2) Any person who violates this subsection is subject to a civil action by the reporter or the adult in need of protective services, in which action the reporter or adult in need of protective services shall recover treble compensatory damages, compensatory and punitive damages or \$5,000, whichever is greater.

(e) Intimidation:

(1) A person, including an adult in need of protective services, with knowledge sufficient to justify making a report or cooperating with an agency, including possibly providing testimony in an administrative or judicial proceeding, shall not be subject to any intimidation by an employer or by any other person or entity.

(2) A person who violates this subsection is subject to civil action by the reporter or the adult in need of protective services, in which action the reporter or adult in need of protective services shall recover treble compensatory damages, compensatory and punitive damages or \$5,000, whichever is greater.

(f) Immunity:

(1) A person who participates in the making of a report or who provides testimony in an administrative or judicial proceeding arising out of a report shall be immune from any civil or criminal liability, subject to paragraph (2), on account of the report or testimony, unless the person acted in bad faith or with malicious purpose.

(2) The immunity established under paragraph (1) shall not extend to liability for an act of abuse, neglect, exploitation or abandonment even if such act is the subject of the report or testimony.

*The most current version of the Adult Protective Services Act [is available in its entirety online](#).

Suspected Elder Abuse

General reporting provisions – 6 Pa. Code § 15.21

(a) A person who has reasonable cause to believe that an older adult needs protective services may report this to the local provider of protective services. An area agency on aging shall publicize, on an ongoing basis, the name, address and phone number of the agency where reports are to be made.

(b) When applicable, reports shall comply with § § 15.151—15.157 (relating to reporting suspected abuse).

General Requirements - 6 Pa. Code § 15.151

(a) Administrators or employees who have reasonable cause to suspect that a recipient is a victim of abuse shall:

(1) Immediately make an oral report to the agency.

(2) Make a written report to the agency within 48 hours.

(b) Employees making oral or written reports shall immediately notify the administrator or designee of these reports.

(c) Agencies shall notify administrators, or their designees, and State agencies with facility licensing responsibilities immediately when written reports of abuse are received.

(d) Employees required to report abuse may request administrators or their designees to make, or assist the employees to make, oral or written reports.

*The most current version of Title 6, Chapter 15 Protective Services for [Older Adults is available in its entirety online.](#)

C. The Health Insurance Portability and Accountability Act (HIPAA)

The Health Insurance Portability and Accountability Act of 1996 (“[HIPAA](#)”) establishes national standards for the protection of individually identifiable health information created or held by health care providers, health insurance companies, and health clearinghouses.

The HIPAA [Privacy rule](#) was published in December 2000, and was modified in August 2002. This Rule set national standards for the protection of individually identifiable health information by three types of covered entities: health plans, health care clearinghouses, and health care providers who conduct the standard health care transactions electronically.

C1. Is a sexual assault program a “covered entity” under HIPAA?

A sexual assault program may be considered a health care provider under HIPAA. To be considered a health care provider, a program must do all of the following: (1) furnish, bill, or receive payment for health care or health services in the normal course of business; (2) conduct covered transactions; and (3) transmit those transactions in electronic form.

(1) Furnish, Bill, or Receive Payment for Health Care or Health Services in the Normal Course of Business:

24-hour hotlines; crisis intervention; advocacy and accompaniment to medical facilities, law enforcement offices and prosecutor’s offices; community and professional education; and volunteer training may be considered “counseling”. Thus, sexual assault programs may “furnish...health care services in the normal course of business” to survivors of sexual assault as contemplated in the Privacy Rule.

(2) Conduct Covered Transactions:

The provision of health care services is not enough to bring sexual assault programs within the definition of “health care provider” and within the scope of the Privacy Rule’s regulation of covered entities; advocates, as providers, also must conduct covered transactions. Covered transactions include health care claims transaction; eligibility for a health plan transaction; referral certification and authorization transaction; health care claim status transaction; enrollment and disenrollment in health care plan transaction; health care payment and remittance advice transaction; health care premium payment transaction; and coordination of benefits transaction.

(3) Transmit those Transactions in Electronic Form:

To be considered a covered entity health care provider, a sexual assault program must electronically transmit any information in connection with these transactions. Programs that bill insurance companies, Medicaid, or Medicare for their services are most likely to fall into the health care provider category.

If a program determines it is a covered entity, it must comply with the Privacy Rule.

C2. Disclosures

Standard: Disclosures about victims of abuse, neglect or domestic violence - [45 CFR 164.512 \(c\)](#)

This section of HIPAA governs disclosure of information about domestic violence victims. A covered entity may disclose protected health information about a victim of abuse (other than child abuse), neglect, or domestic violence to an authorized government authority if **(1)** the individual agrees, or **(2)** the disclosure is **(a)** required by state law (mandatory reporting law) or **(b)** expressly authorized by statute or regulation.

When disclosing information, regardless of the basis for the disclosure, a provider must promptly inform the individual or their personal representative (either orally or in writing) that such a report has been made or will be made. For example, in order to comply with the regulation, health plans and providers should establish policies that require prompt notice to the individual when reporting domestic violence to law enforcement.

This regulation does not create a mandatory reporting law. In states that have mandatory reporting laws, the Privacy Rule requires that a disclosing provider to consider the circumstances of the victim prior to reporting any information to the appropriate authority.

For disclosures expressly authorized by statute or regulation (as opposed to required), the provider may only disclose that which is authorized under the law and must believe that the disclosure is necessary to prevent serious harm to the individual or other victim.

Covered entities are not required to inform an individual of the disclosure if: **(1)** they believe that informing the individual would place the individual at serious risk of harm, **(2)** or the entity would be informing a personal representative (such as the abusive partner) and the entity reasonably believes that the personal representative is responsible for the abuse, neglect or other injury. The entity also must believe that informing the personal representative would not be in the interest of the individual.

Standard: Disclosures for law enforcement purposes – [45 CFR 164.512 \(f\)](#)

This section explains under what circumstances a covered entity may disclose protected health information to law enforcement officials. Limited information may be disclosed to law enforcement officials in compliance with and as limited by: a court order or court ordered warrant, or a subpoena or summons issued by a judicial officer, a grand jury subpoena, or an administrative request that states that the information sought is relevant and material to a legitimate inquiry and the request is specific and limited in scope.

All other disclosures about victims of domestic violence are subject to the notice and disclosure requirement of Section 164.512(c)

The most up to date version of [45 CFR 164.512 – Uses and disclosures for which an authorization or opportunity to agree or object is not required](#) is available in its entirety online.

*For more information about HIPAA, visit NCJRS.org.

3. Domestic Violence

A. Selected Federal Domestic Violence Offenses

Interstate Travel to Commit Domestic Violence - [18 U.S.C. § 2261](#)

(a)(1) Travel or conduct of the offender: A person who travels in interstate or foreign commerce or enters or leaves Indian country or is present within the special maritime and territorial jurisdiction of the United States with the intent to kill, injure, harass, or intimidate a spouse, intimate partner, or dating partner, and who, in the course of or as a result of such travel or presence, commits or attempts to commit a crime of violence against that spouse, intimate partner, or dating partner, shall be punished as provided in subsection (b).

(a)(2) Causing travel of the victim: A person who causes a spouse, intimate partner, or dating partner to travel in interstate or foreign commerce or to enter or leave Indian country by force, coercion, duress, or fraud, and who, in the course of, as a result of, or to facilitate such conduct or travel, commits or attempts to commit a crime of violence against that spouse, intimate partner, or dating partner, shall be punished as provided in subsection (b).

Interstate Stalking - [18 U.S.C. § 2261A](#)

Whoever—**(1)** travels in interstate or foreign commerce or within the special maritime and territorial jurisdiction of the United States, or enters or leaves Indian country, with the intent to kill, injure, harass, or place under surveillance with intent to kill, injure, harass, or intimidate another person, and in the course of, or as a result of, such travel places that person in reasonable fear of the death of, or serious bodily injury to, or causes substantial emotional distress to that person, a member of the immediate family (as defined in section 115) of that person, or the spouse or intimate partner of that person; or

(2) with the intent—

(A) to kill, injure, harass, or place under surveillance with intent to kill, injure, harass, or intimidate, or cause substantial emotional distress to a person in another State or tribal jurisdiction or within the special maritime and territorial jurisdiction of the United States; or

(B) to place a person in another State or tribal jurisdiction, or within the special maritime and territorial jurisdiction of the United States, in reasonable fear of the death of, or serious bodily injury to—

(i) that person;

(ii) a member of the immediate family (as defined in section 115 ¹ of that person; or

(iii) a spouse or intimate partner of that person;

uses the mail, any interactive computer service, or any facility of interstate or foreign commerce to engage in a course of conduct that causes substantial emotional distress to that person or places that person in reasonable fear of the death of, or serious bodily injury to, any of the persons described in clauses (i) through (iii) of subparagraph (B); shall be punished as provided in section 2261(b) of this title.

Interstate Travel to Violate an Order of Protection - [18 U.S.C. § 2262](#)

(1) A person who travels in interstate or foreign commerce, or enters or leaves Indian country or is present within the special maritime and territorial jurisdiction of the United States, with the intent to engage in conduct that violates the portion of a protection order that prohibits or provides protection against violence, threats, or harassment against, contact or communication with, or physical proximity to, another person or the pet, service animal, emotional support animal, or horse of that person, or that would violate such a portion of a protection order in the jurisdiction in which the order was issued, and subsequently engages in such conduct, shall be punished as provided in subsection (b).

(2) A person who causes another person to travel in interstate or foreign commerce or to enter or leave Indian country by force, coercion, duress, or fraud, and in the course of, as a result of, or to facilitate such conduct or travel engages in conduct that violates the portion of a protection order that prohibits or provides protection against violence, threats, or harassment against, contact or communication with, or physical proximity to, another person or the pet, service animal, emotional support animal, or horse of that person, or that would violate such a portion of a protection order in the jurisdiction in which the order was issued, shall be punished as provided in subsection (b).

(b) Penalties: A person who violates this section shall be fined under this title, imprisoned—

(1) for life or any term of years, if death of the victim results;

(2) for not more than 20 years if permanent disfigurement or life-threatening bodily injury to the victim results;

(3) for not more than 10 years, if serious bodily injury to the victim results or if the offender uses a dangerous weapon during the offense;

(4) as provided for the applicable conduct under chapter 109A if the offense would constitute an offense under chapter 109A (without regard to whether the offense was

committed in the special maritime and territorial jurisdiction of the United States or in a Federal prison); and

(5) for not more than 5 years, in any other case, or both fined and imprisoned.

Possession of Firearm While Subject to Order of Protection - [18 U.S.C. § 922\(d\)\(9\)](#)

It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person has been convicted in any court of a misdemeanor crime of domestic violence.

Possession of Firearm After Conviction of Misdemeanor Crime of Domestic Violence - [18 U.S.C. § 922\(g\)\(9\)](#)

It shall be unlawful for any person who has been convicted in any court of a misdemeanor crime of domestic violence, to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

Full Faith and Credit to Orders of Protection - [18 U.S.C. § 2265](#)

Any protection order issued that is consistent with subsection (b) of this section by the court of one State, Indian tribe, or territory (the issuing State, Indian tribe, or territory) shall be accorded full faith and credit by the court of another State, Indian tribe, or territory (the enforcing State, Indian tribe, or territory) and enforced by the court and law enforcement personnel of the other State, Indian tribal government or Territory 1 as if it were the order of the enforcing State or tribe.

(b) A protection order issued by a State, tribal, or territorial court is consistent with this subsection if-

- (1) such court has jurisdiction over the parties and matter under the law of such State, Indian tribe, or territory; and
- (2) reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by State, tribal, or territorial law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.

*The most current version of *United States Title 18 – Crimes and Criminal Procedure* is [available in its entirety online](#).

B. Selected Pennsylvania Domestic Violence Offenses

Use of Force Justifiable for Protection of the Person - 18 PA.CON.S.TAT.ANN. § 505(a)
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The use of force upon or toward another person is justifiable when the actor believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by such other person on the present occasion.

Simple Assault - [18 PA.CONS.STAT.ANN. § 2701](#)

(a) Offense Defined: a person is guilty of assault if he:

- (1) attempts to cause or intentionally, knowingly or recklessly causes bodily injury to another;
- (2) negligently causes bodily injury to another with a deadly weapon;
- (3) attempts by physical menace to put another in fear of imminent serious bodily injury; or
- (4) conceals or attempts to conceal a hypodermic needle on his person and intentionally or knowingly penetrates a law enforcement officer or an officer or an employee of a correctional institution, county jail or prison, detention facility or mental hospital during the course of an arrest or any search of the person.

(b) Grading: Simple assault is a misdemeanor of the second degree unless committed:

- (1) in a fight or scuffle entered into by mutual consent, in which case it is a misdemeanor of the third degree; or
- (2) against a child under 12 years of age by a person 18 years of age or older, in which case it is a misdemeanor of the first degree.

Recklessly endangering another person - [18 PA.CONS.STAT.ANN. § 2705](#)

A person recklessly engages in conduct which places or may place another person in danger of death or serious bodily injury.

Grading: Misdemeanor of the second degree

Terroristic Threats - [18 PA.CONS.STAT.ANN. § 2706](#)

(a) Offense Defined: A person commits the crime of terroristic threats if the person communicates, either directly or indirectly, a threat to:

- (1) commit any crime of violence with intent to terrorize another;
- (2) cause evacuation of a building, place of assembly or facility of public transportation; or
- (3) otherwise cause serious public inconvenience, or cause terror or serious public inconvenience with reckless disregard of the risk of causing such terror or inconvenience.

(b) Restitution: A person convicted of violating this section shall, in addition to any other sentence imposed or restitution ordered under 42 Pa.C.S. § 9721(c) (relating to sentencing generally), be sentenced to pay restitution in an amount equal to the cost of the evacuation, including, but not limited to, fire and police response; emergency medical service or emergency preparedness response; and transportation of an individual from the building, place of assembly or facility.

(c) Preservation of private remedies: No judgment or order of restitution shall debar a person, by appropriate action, to recover from the offender as otherwise provided by law, provided that any civil award shall be reduced by the amount paid under the criminal judgment.

(d) Grading: An offense under subsection (a) constitutes a misdemeanor of the first degree unless the threat causes the occupants of the building, place of assembly or facility of public transportation to be diverted from their normal or customary operations, in which case the offense constitutes a felony of the third degree.

(e) Definition: As used in this section, the term "communicates" means conveys in person or by written or electronic means, including telephone, electronic mail, Internet, facsimile, telex and similar transmissions.

Stalking – [18 PA.CONS.STAT.ANN § 2709.1](#)

(a) Offense Defined: A person commits the crime of stalking when the person either:

- (1)** engages in a course of conduct or repeatedly commits acts toward another person, including following the person without proper authority, under circumstances which demonstrate either an intent to place such other person in reasonable fear of bodily injury or to cause substantial emotional distress to such other person; or
- (2)** engages in a course of conduct or repeatedly communicates to another person under circumstances which demonstrate or communicate either an intent to place such other person in reasonable fear of bodily injury or to cause substantial emotional distress to such other person.

(b) Venue:

- (1)** An offense committed under this section may be deemed to have been committed at either the place at which the communication or communications were made or at the place where the communication or communications were received.
- (2)** Acts indicating a course of conduct which occur in more than one jurisdiction may be used by any other jurisdiction in which an act occurred as evidence of a continuing pattern of conduct or a course of conduct.

(c) Grading:

- (1)** Except as otherwise provided for in paragraph (2), a first offense under this section shall constitute a misdemeanor of the first degree.
- (2)** A second or subsequent offense under this section or a first offense under subsection (a) if the person has been previously convicted of a crime of violence involving the same victim, family or household member, including, but not limited to, a violation of section 2701 (relating to simple assault), 2702 (relating to aggravated assault), 2705 (relating to recklessly endangering another person), 2718 (relating to strangulation), 2901 (relating to kidnapping), 3121 (relating to

rape) or 3123 (relating to involuntary deviate sexual intercourse), an order issued under section 4954 (relating to protective orders) or an order issued under 23 Pa.C.S. § 6108 (relating to relief) shall constitute a felony of the third degree.

(d) False reports: A person who knowingly gives false information to any law enforcement officer with the intent to implicate another under this section commits an offense under section 4906 (relating to false reports to law enforcement authorities).

(e) Application of section: This section shall not apply to constitutionally protected activity.

(f) Definitions: As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Communicates." To convey a message without intent of legitimate communication or address by oral, nonverbal, written or electronic means, including telephone, electronic mail, Internet, facsimile, telex, wireless communication or similar transmission.

"Course of conduct." A pattern of actions composed of more than one act over a period of time, however short, evidencing a continuity of conduct. The term includes lewd, lascivious, threatening or obscene words, language, drawings, caricatures or actions, either in person or anonymously. Acts indicating a course of conduct which occur in more than one jurisdiction may be used by any other jurisdiction in which an act occurred as evidence of a continuing pattern of conduct or a course of conduct.

"Emotional distress." A temporary or permanent state of mental anguish.

"Family or household member." Spouses or persons who have been spouses, persons living as spouses or who lived as spouses, parents and children, other persons related by consanguinity or affinity, current or former sexual or intimate partners or persons who share biological parenthood.

Probable Cause Arrests in Domestic Violence - [18 PA.CON.S.STAT.ANN. § 2711](#)

(a) General Rule: A police officer shall have the same right of arrest without a warrant as in a felony whenever he has probable cause to believe the defendant has violated section 2504 (relating to involuntary manslaughter), 2701 (relating to simple assault), 2702(a)(3), (4) and (5) (relating to aggravated assault), 2705 (relating to recklessly endangering another person), 2706 (relating to terroristic threats), 2709.1 (relating to stalking) or 2718 (relating to strangulation) against a family or household member although the offense did not take place in the presence of the police officer. A police officer may not arrest a person pursuant to this section without first observing recent physical injury to the victim or other corroborative evidence.

(b) Seizure of Weapons: The arresting police officer shall seize all weapons used by the defendant in the commission of the alleged offense.

(c) Bail:

- (1)** A defendant arrested pursuant to this section shall be afforded a preliminary arraignment by the proper issuing authority without unnecessary delay. In no case shall the arresting officer release the defendant from custody rather than taking the defendant before the issuing authority.
- (2)** In determining whether to admit the defendant to bail, the issuing authority shall consider whether the defendant poses a threat of danger to the victim. In making a determination whether the defendant poses a threat of danger to the victim in cases under this section, the issuing authority may use a pretrial risk assessment tool as set forth in subsection (c.1). If the issuing authority makes such a determination, it shall require as a condition of bail that the defendant shall refrain from entering the residence or household of the victim and the victim's place of employment and shall refrain from committing any further criminal conduct against the victim and shall so notify the defendant thereof at the time the defendant is admitted to bail. Such condition shall expire at the time of the preliminary hearing or upon the entry or the denial of the protection of abuse order by the court, whichever occurs first. A violation of this condition may be punishable by the revocation of any form of pretrial release or the forfeiture of bail and the issuance of a bench warrant for the defendant's arrest or remanding him to custody or a modification of the terms of the bail. The defendant shall be provided a hearing on this matter.

...

(d) Notice of rights: Upon responding to a domestic violence case, the police officer shall, orally or in writing, notify the victim of the availability of a shelter, including its telephone number, or other services in the community. Said notice shall include the following statement: "If you are the victim of domestic violence, you have the right to go to court and file a petition requesting an order for protection from domestic abuse pursuant to 23 Pa.C.S. Ch. 61 (relating to protection from abuse) which could include the following:

- (1)** An order restraining the abuser from further acts of abuse.
- (2)** An order directing the abuser to leave your household.
- (3)** An order preventing the abuser from entering your residence, school, business or place of employment.
- (4)** An order awarding you or the other parent temporary custody of or temporary visitation with your child or children.
- (5)** An order directing the abuser to pay support to you and the minor children if the abuser has a legal obligation to do so."

Harassment - [18 PA.CON.S.STAT.ANN. § 2709 \(a\)](#)

(a) Offense defined: A person commits the crime of harassment when, with intent to harass, annoy or alarm another, the person:

- (1)** strikes, shoves, kicks or otherwise subjects the other person to physical contact, or attempts or threatens to do the same;

- (2) Follows the other person in or about a public place or places;
- (3) engages in a course of conduct or repeatedly commits acts which serve no legitimate purpose;
- (4) communicates to or about such other person any lewd, lascivious, threatening or obscene words, language, drawings or caricatures;
- (5) communicates repeatedly in an anonymous manner;
- (6) communicates repeatedly at extremely inconvenient hours; or
- (7) communicates repeatedly in a manner other than specified in paragraphs (4), (5) and (6).

(a.1) Cyber harassment of a child:

- (1) A person commits the crime of cyber harassment of a child if, with intent to harass, annoy or alarm, the person engages in a continuing course of conduct of making any of the following by electronic means directly to a child or by publication through an electronic social media service:
 - (i) seriously disparaging statement or opinion about the child's physical characteristics, sexuality, sexual activity or mental or physical health or condition; or
 - (ii) threat to inflict harm.
- (2)
 - (i) If a juvenile is charged with a violation of paragraph (1), the judicial authority with jurisdiction over the violation shall give first consideration to referring the juvenile charged with the violation to a diversionary program under Pa.R.J.C.P. No. 312 (relating to Informal Adjustment) or No. 370 (relating to Consent Decree). As part of the diversionary program, the judicial authority may order the juvenile to participate in an educational program which includes the legal and nonlegal consequences of cyber harassment.
 - (ii) If the person successfully completes the diversionary program, the juvenile's records of the charge of violating paragraph (1) shall be expunged as provided for under section 9123 (relating to juvenile records).

(b.1) Venue:

- (1) An offense committed under this section may be deemed to have been committed at either the place at which the communication or communications were made or at the place where the communication or communications were received.
- (2) Acts indicating a course of conduct which occur in more than one jurisdiction may be used by any other jurisdiction in which an act occurred as evidence of a continuing pattern of conduct or a course of conduct.
- (3) In addition to paragraphs (1) and (2), an offense under subsection (a.1) may be deemed to have been committed at the place where the child who is the subject of the communication resides.

(c) Grading:

- (1) Except as provided under paragraph (3), an offense under subsection (a)(1), (2) or (3) shall constitute a summary offense.
- (2) An offense under subsection (a)(4), (5), (6) or (7) or (a.1) shall constitute a misdemeanor of the third degree.

(3) The grading of an offense under subsection (a)(1), (2) or (3) shall be enhanced one degree if the person has previously violated an order issued under 23 Pa.C.S. § 6108 (relating to relief) involving the same victim, family or household member.

(d) False reports: A person who knowingly gives false information to any law enforcement officer with the intent to implicate another under this section commits an offense under section 4906 (relating to false reports to law enforcement authorities).

(e) Application of section: This section shall not apply to constitutionally protected activity.

(e.1) Course of conduct: (Deleted by amendment).

(f) Definitions: As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Communicates." Conveys a message without intent of legitimate communication or address by oral, nonverbal, written or electronic means, including telephone, electronic mail, Internet, facsimile, telex, wireless communication or similar transmission.

"Course of conduct." A pattern of actions composed of more than one act over a period of time, however short, evidencing a continuity of conduct. The term includes lewd, lascivious, threatening or obscene words, language, drawings, caricatures or actions, either in person or anonymously. Acts indicating a course of conduct which occur in more than one jurisdiction may be used by any other jurisdiction in which an act occurred as evidence of a continuing pattern of conduct or a course of conduct.

"Emotional distress." A temporary or permanent state of mental anguish.

"Family or household member." Spouses or persons who have been spouses, persons living as spouses or who lived as spouses, parents and children, other persons related by consanguinity or affinity, current or former sexual or intimate partners or persons who share biological parenthood.

"Seriously disparaging statement or opinion." A statement or opinion which is intended to and under the circumstances is reasonably likely to cause substantial emotional distress to a child of the victim's age and which produces some physical manifestation of the distress.

Strangulation – [18 PA.CONS.STAT.ANN. § 2718](#)

(a) Offense defined: A person commits the offense of strangulation if the person knowingly or intentionally impedes the breathing or circulation of the blood of another person by:

- (1)** applying pressure to the throat or neck; or
- (2)** blocking the nose and mouth of the person.

(b) Physical Injury: Infliction of a physical injury to a victim shall not be an element of the offense. The lack of physical injury to a victim shall not be a defense in a prosecution under this section.

(c) Affirmative defense: It shall be an affirmative defense to a charge under this section that the victim consented to the defendant's actions as provided under 18 Pa. C.S.A § 311 (section 4 of this document).

(d) Grading:

(1) Except as provided in paragraph (2) or (3), a violation of this section shall constitute a misdemeanor of the second degree.

(2) A violation of this section shall constitute a felony of the second degree if committed:

(i) against a family or household member as defined in 23 Pa.C.S. § 6102 (relating to definitions);

(ii) by a caretaker against a care-dependent person; or

(iii) in conjunction with sexual violence as defined in 42 Pa.C.S. § 62A03 (relating to definitions) or conduct constituting a crime under section 2709.1 (relating to stalking) or Subchapter B of Chapter 30 (relating to prosecution of human trafficking).

(3) A violation of this section shall constitute a felony of the first degree if:

(i) at the time of commission of the offense, the defendant is subject to an active protection from abuse order under 23 Pa.C.S. Ch. 61 (relating to protection from abuse) or a sexual violence or intimidation protection order under 42 Pa.C.S. Ch. 62A (relating to protection of victims of sexual violence or intimidation) that covers the victim;

(ii) the defendant uses an instrument of crime as defined in section 907 (relating to possessing instruments of crime) in commission of the offense under this section; or

(iii) the defendant has previously been convicted of an offense under paragraph (2) or a substantially similar offense in another jurisdiction.

(e) Definitions: As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Care-dependent person." An adult who, due to physical or cognitive disability or impairment, requires assistance to meet his needs for food, shelter, clothing, personal care or health care.

"Caretaker." Any person who:

(1) Is an owner, operator, manager or employee of any of the following:

(i) A nursing home, personal care home, assisted living facility, private care residence or domiciliary home.

(ii) A community residential facility or intermediate care facility for a person with mental disabilities.

- (iii) An adult daily living center.
- (iv) A home health service provider whether licensed or unlicensed.
- (v) An entity licensed under the act of July 19, 1979 (P.L.130, No.48), known as the Health Care Facilities Act.

(2) Provides care to a care-dependent person in the settings described under paragraph (1).

(3) Has an obligation to care for a care-dependent person for monetary consideration in the settings described under paragraph (1).

(4) Is an adult who resides with a care-dependent person and who has a legal duty to provide care or who has voluntarily assumed an obligation to provide care because of a familial relationship, contract or court order.

(5) Is an adult who does not reside with a care-dependent person but who has a legal duty to provide care or who has affirmatively assumed a responsibility for care or who has responsibility by contract or court order.

"Legal entity." An individual, partnership, unincorporated association, corporation or governing authority.

"Private care residence."

(1) A private residence:

- (i) in which the owner of the residence or the legal entity responsible for the operation of the residence, for monetary consideration, provides or assists with or arranges for the provision of food, room, shelter, clothing, personal care or health care in the residence, for a period exceeding 24 hours, to fewer than four care-dependent persons who are not relatives of the owner; and
- (ii) which is not required to be licensed as a long-term care nursing facility, as defined in section 802.1 of the Health Care Facilities Act.

(2) The term does not include:

- (i) Domiciliary care as defined in section 2202-A of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.
- (ii) A facility which provides residential care for fewer than four care-dependent adults and which is regulated by the Department of Human Services.

False imprisonment - [18 Pa.Cons.Stat.Ann. § 2903](#)

(a) Offense defined: Except as provided under subsection (b) or (c), a person commits a misdemeanor of the second degree if he knowingly restrains another unlawfully so as to interfere substantially with his liberty.

(b) False imprisonment of a minor where offender is not victim's parent: If the victim is a person under 18 years of age, a person who is not the victim's parent

commits a felony of the second degree if he knowingly restrains another unlawfully so as to interfere substantially with his liberty.

(c) False imprisonment of a minor where offender is victim's parent: If the victim is a person under 18 years of age, a parent of the victim commits a felony of the second degree if he knowingly restrains another unlawfully so as to interfere substantially with his liberty.

(d) Definition: As used in this section the term "**parent**" means a natural parent, stepparent, adoptive parent or guardian of a minor.

*The most current version of *Pennsylvania Title 18 – Crimes and Offenses* is [available in its entirety online](#).

C. Selected Pennsylvania Protection from Abuse Act Statutes

Domestic violence counselor/advocate – [23 Pa.Cons.Stat.Ann. § 6111](#)

A domestic violence counselor/advocate may accompany a party to any legal proceeding or hearing under this chapter.

Full faith and credit and foreign protection orders - [23 Pa.Cons.Stat.Ann. § 6104](#)

(a) General rule: A court shall recognize and enforce a valid foreign protection order issued by a comparable court. The validity of a foreign protection order shall only be determined by a court.

(b) Affirmative defense: Failure by a comparable court to provide reasonable notice and opportunity to be heard shall be an affirmative defense to any charge or process filed seeking enforcement of a foreign protection order. A comparable court shall have complied with that court's notice requirements and shall have given the defendant the opportunity to be heard before the foreign order was issued. In the case of ex parte orders, the comparable court shall have complied with that court's notice requirements and have given the defendant an opportunity to be heard within a reasonable period of time after the order was issued, consistent with due process.

(c) Invalid orders: A foreign protection order issued by a comparable court against a party who has filed a petition, complaint or other written pleading for a protection order is not valid and not entitled to full faith and credit if:

(1) no cross or counter petition, complaint or other written pleading was filed seeking the protection order; or

(2) a cross or counter petition, complaint or other written pleading was filed and the court did not make a specific finding that each party was entitled to a protection order.

(d) Filing a foreign protection order: A plaintiff may file a certified copy of a foreign protection order with the prothonotary in any county within this Commonwealth where

the plaintiff believes enforcement may be necessary. The following provisions shall apply:

(1) No costs or fees associated with filing a foreign protection order shall be assigned to the plaintiff, including the cost of obtaining certified copies of the order. Costs and fees associated with filing a foreign protection order may be assessed against the defendant.

(2) Upon filing of a foreign protection order, a prothonotary shall transmit, in a manner prescribed by the Pennsylvania State Police, a copy of the order to the Pennsylvania State Police registry of protection orders.

(3) Filing of a foreign protection order shall not be a prerequisite for service and enforcement.

(e) Orders issued in another judicial district within this Commonwealth: The filing of an order issued in another judicial district within this Commonwealth is not required for enforcement purposes.

Commencement of Proceedings – [23 PA.CONS.STAT.ANN. § 6106](#)

(a) General rule: An adult or an emancipated minor may seek relief under this chapter for that person or any parent, adult household member or guardian ad litem may seek relief under this chapter on behalf of minor children, or a guardian of the person of an adult who has been declared incompetent under 20 Pa.C.S. Ch. 51 Subch. B (relating to appointment of guardian) may seek relief on behalf of the incompetent adult, by filing a petition with the court alleging abuse by the defendant.

(a.1) False reports: A person who knowingly gives false information to any law enforcement officer with the intent to implicate another under this chapter commits an offense under 18 Pa.C.S. § 4906 (relating to false reports to law enforcement authorities).

(a.2) Notification of defendant's occupation: The plaintiff shall notify the court if the plaintiff has reason to believe that the defendant is a licensed firearms dealer, is employed by a licensed firearms dealer or manufacturer, is employed as a writer, researcher or technician in the firearms or hunting industry or is required to carry a firearm as a condition of employment.

(a.3) Notification of need to protect plaintiff: The plaintiff shall notify the court anytime during the period commencing upon filing the petition and granting of an order or approving a consent agreement at a hearing held under section 6107(a) (relating to hearings) if the plaintiff has reason to believe the plaintiff's safety is at risk. In such a case, the court shall direct the Pennsylvania State Police, the municipal police or the sheriff to accompany the plaintiff to the plaintiff's residence to retrieve personal belongings or to accompany the plaintiff while the petition or order is served upon the defendant by the sheriff or competent adult, as set forth in the Pennsylvania Rules of Civil Procedure.

(a.4) Notification regarding child abuse investigation:

(1) If the plaintiff has knowledge of a founded or indicated report of child abuse under Chapter 63 (relating to child protective services) involving the defendant, the petition shall include that information together with the name of the investigative agency.

(2) The notice of hearing and order shall include notice to the defendant that an order issued under this chapter may have an impact on the defendant under Chapter 63. The court shall develop procedures to implement the provisions of this paragraph.

(b) Plaintiff fees not permitted: No plaintiff seeking relief under this chapter shall be charged any fees or costs associated with the filing, issuance, registration or service of a petition, motion, complaint, order or any other filing. Prohibited fees or costs shall include, but are not limited to, those associated with modifying, withdrawing, dismissing or certifying copies of a petition, motion, complaint, order or any other filing, as well as any judicial surcharge or computer system fee. No plaintiff seeking relief under this chapter shall be charged any fees or costs associated with filing a motion for reconsideration or an appeal from any order or action taken pursuant to this chapter. Nothing in this subsection is intended to expand or diminish the court's authority to enter an order pursuant to Pa.R.C.P. No. 1023.1 (relating to Scope. Signing of Documents. Representations to the Court. Violation).

(c) Assessment of fees and costs against the defendant: When an order is granted pursuant to this chapter, fees and costs shall be assessed against the defendant. The court shall waive fees and costs upon a showing of good cause or when the court makes a finding that the defendant is not able to pay the costs. Nothing in this subsection is intended to expand or diminish the court's authority to enter an order pursuant to Pa.R.C.P. No. 1023.1.

(d) Surcharge on order: When a protection order is granted under section 6107(a), other than pursuant to an agreement of the parties, a surcharge of \$100 shall be assessed against the defendant. All moneys received from surcharges shall be distributed in the following order of priority:

(1) \$25 shall be forwarded to the Commonwealth and shall be appropriated to the Pennsylvania State Police to establish and maintain the Statewide registry of protection orders provided for in section 6105.

(2) \$50 shall be retained by the county and shall be used to carry out the provisions of this chapter as follows:

(i) \$25 shall be used by the sheriff.

(ii) \$25 shall be used by the court.

(3) \$25 shall be forwarded to the Department of Public Welfare for use for victims of domestic violence in accordance with the provisions of section 2333 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

(d.1) Limitation: The surcharge allocated under subsection (d)(1) and (3) shall be used to supplement and not to supplant any other source of funds received for the purpose of carrying out the provisions of this chapter.

(e) Court to adopt means of service: The court shall adopt a means of prompt and effective service in those instances where the plaintiff avers that service cannot be safely effected by an adult individual other than a law enforcement officer or where the court so orders.

(f) Service by sheriff: If the court so orders, the sheriff or other designated agency or individual shall serve the petition and order.

(g) Service of petition and orders: The petition and orders shall be served upon the defendant, and orders shall be served upon the police departments and sheriff with appropriate jurisdiction to enforce the orders. Orders shall be promptly served on the police and sheriff. Failure to serve shall not stay the effect of a valid order.

(g.1) Service of original process of a foreign protection order: No plaintiff or petitioner shall be charged any costs or fees associated with the service of original process of a foreign protection order. Costs or fees associated with the service of original process of a foreign protection order may be assessed against the defendant.

(h) Assistance and advice to plaintiff: The courts and hearing officers shall:

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

(2) Provide the plaintiff with written and oral referrals, in English and Spanish, to the local domestic violence program, to the local legal services office and to the county bar association's lawyer referral service.

Hearings - [23 PA.CON.S. STAT.ANN. § 6107](#)

(a) General rule: Within ten business days of the filing of a petition under this chapter, a hearing shall be held before the court, at which the plaintiff must prove the allegation of abuse by a preponderance of the evidence. The court shall, at the time the defendant is given notice of the hearing, advise the defendant of the right to be represented by counsel, of the right to present evidence, of the right to compel attendance of witnesses, of the method by which witnesses may be compelled, of the possibility that any firearm, other weapon or ammunition owned and any firearm license possessed may be ordered temporarily relinquished, of the options for relinquishment of a firearm pursuant to this chapter, of the possibility that Federal or State law may prohibit the possession of firearms, including an explanation of 18 U.S.C. § 922(g)(8) (relating to unlawful acts) and 18 Pa.C.S. § 6105 (relating to persons not to possess, use, manufacture, control, sell or transfer firearms), and that any protection order granted by a court may be considered in any subsequent proceedings under this title. This notice shall be printed and delivered in a manner which easily attracts attention to its content and shall specify

that child custody is one of the proceedings where prior protection orders may be considered.

(b) Temporary orders:

(1) If a plaintiff petitions for temporary order for protection from abuse and alleges immediate and present danger of abuse to the plaintiff or minor children, the court shall conduct an ex parte proceeding.

(2) The court may enter such a temporary order as it deems necessary to protect the plaintiff or minor children when it finds they are in immediate and present danger of abuse. The order shall remain in effect until modified or terminated by the court after notice and hearing.

(3) In addition to any other relief, the court may, pursuant to section 6108 (relating to relief), direct that the defendant temporarily relinquish to the sheriff any firearms, other weapons or ammunition for the duration of the temporary order if the petition demonstrates any of the following:

(i) Abuse which involves a firearm or other weapon.

(ii) An immediate and present danger of abuse. In determining whether an immediate and present danger of abuse exists, the court shall consider a number of factors, including, but not limited to:

(A) Whether the temporary order of protection from abuse is not likely to achieve its purpose in the absence of such a condition.

(B) Whether the defendant has previously violated a protection from abuse order.

(C) Whether past or present abuse to the plaintiff or any of the plaintiff's minor children resulted in injury.

(D) Whether the abuse occurred in public.

(E) Whether the abuse includes:

(I) threats of abuse or suicide;

(II) killing or threatening to kill pets;

(III) an escalation of violence;

(IV) stalking or obsessive behavior;

(V) sexual violence; or

(VI) drug or excessive alcohol use.

(4) If the court orders the defendant to temporarily relinquish any firearm, other weapon or ammunition pursuant to paragraph (3), the defendant shall decide in what manner the defendant is going to relinquish any firearm, other weapon or ammunition listed in the order. Relinquishment may be to the sheriff pursuant to section 6108(a)(7) or to a third party for safekeeping pursuant to section 6108.3 (relating to relinquishment to third party for safekeeping).

(c) Continued hearings:

(1) If a hearing under subsection (a) is continued and no temporary order is issued, the court may make ex parte temporary orders under subsection (b) as it deems necessary.

(2) If a hearing is scheduled to take place within three business days after a defendant is served under section 6106 (relating to commencement of

proceedings), the court shall grant a continuance until the three-business-day period has elapsed, if requested by the defendant.

(3) The court shall notify the defendant of the right to such continuance.

Relief - [23 PA.CONS.STAT.ANN. § 6108](#)

(a) General rule: Subject to subsection (a.1), the court may grant any protection order or approve any consent agreement to bring about a cessation of abuse of the plaintiff or minor children. The order or agreement may include:

(1) Directing the defendant to refrain from abusing the plaintiff or minor children.

(2) Granting possession to the plaintiff of the residence or household to the exclusion of the defendant by evicting the defendant or restoring possession to the plaintiff if the residence or household is jointly owned or leased by the parties, is owned or leased by the entireties or is owned or leased solely by the plaintiff.

(3) If the defendant has a duty to support the plaintiff or minor children living in the residence or household and the defendant is the sole owner or lessee, granting possession to the plaintiff of the residence or household to the exclusion of the defendant by evicting the defendant or restoring possession to the plaintiff or, with the consent of the plaintiff, ordering the defendant to provide suitable alternate housing.

(4) Awarding temporary custody of or establishing temporary visitation rights with regard to minor children. In determining whether to award temporary custody or establish temporary visitation rights pursuant to this paragraph, the court shall consider any risk posed by the defendant to the children as well as risk to the plaintiff. The following shall apply:

(i) A defendant shall not be granted custody, partial custody or unsupervised visitation where it is alleged in the petition, and the court finds after a hearing under this chapter, that the defendant:

(A) abused the minor children of the parties or poses a risk of abuse toward the minor children of the parties; or

(B) has been convicted of violating 18 Pa.C.S. § 2904 (relating to interference with custody of children) within two calendar years prior to the filing of the petition for protection order or that the defendant poses a risk of violating 18 Pa.C.S. § 2904.

(ii) Where the court finds after a hearing under this chapter that the defendant has inflicted abuse upon the plaintiff or a child, the court may require supervised custodial access by a third party. The third party must agree to be accountable to the court for supervision and execute an affidavit of accountability.

(iii) Where the court finds after a hearing under this chapter that the defendant has inflicted serious abuse upon the plaintiff or a child or poses a risk of abuse toward the plaintiff or a child, the court may:

(A) award supervised visitation in a secure visitation facility; or

(B) deny the defendant custodial access to a child.

(iv) If a plaintiff petitions for a temporary order under section 6107(b) (relating to hearings) and the defendant has partial, shared or full custody of the minor children of the parties by order of court or written agreement of the parties, the custody shall not be disturbed or changed unless the court finds that the defendant is likely to inflict abuse upon the children or to remove the children from the jurisdiction of the court prior to the hearing under section 6107(a). Where the defendant has forcibly or fraudulently removed any minor child from the care and custody of a plaintiff, the court shall order the return of the child to the plaintiff unless the child would be endangered by restoration to the plaintiff.

(v) Nothing in this paragraph shall bar either party from filing a petition for custody under Chapter 53 (relating to custody) or under the Pennsylvania Rules of Civil Procedure.

(vi) In order to prevent further abuse during periods of access to the plaintiff and child during the exercise of custodial rights, the court shall consider, and may impose on a custody award, conditions necessary to assure the safety of the plaintiff and minor children from abuse.

(5) After a hearing in accordance with section 6107(a), directing the defendant to pay financial support to those persons the defendant has a duty to support, requiring the defendant, under sections 4324 (relating to inclusion of medical support) and 4326 (relating to mandatory inclusion of child medical support), to provide health coverage for the minor child and spouse, directing the defendant to pay all of the unreimbursed medical expenses of a spouse or minor child of the defendant to the provider or to the plaintiff when he or she has paid for the medical treatment, and directing the defendant to make or continue to make rent or mortgage payments on the residence of the plaintiff to the extent that the defendant has a duty to support the plaintiff or other dependent household members. The support order shall be temporary, and any beneficiary of the order must file a complaint for support under the provisions of Chapters 43 (relating to support matters generally) and 45 (relating to reciprocal enforcement of support orders) within two weeks of the date of the issuance of the protection order. If a complaint for support is not filed, that portion of the protection order requiring the defendant to pay support is void. When there is a subsequent ruling on a complaint for support, the portion of the protection order requiring the defendant to pay support expires.

(6) Prohibiting the defendant from having any contact with the plaintiff or minor children, including, but not limited to, restraining the defendant from entering the place of employment or business or school of the plaintiff or minor children and from harassing the plaintiff or plaintiff's relatives or minor children.

(7) Prohibiting the defendant from acquiring or possessing any firearm for the duration of the order, ordering the defendant to temporarily relinquish to the sheriff or the appropriate law enforcement agency any firearms under the defendant's possession or control, and requiring the defendant to relinquish to the sheriff or the appropriate law enforcement agency any firearm license issued under section 6108.3 (relating to

relinquishment to third party for safekeeping) or 18 Pa.C.S. § 6106 (relating to firearms not to be carried without a license) or 6109 (relating to licenses) the defendant may possess. The court may also order the defendant to relinquish the defendant's other weapons or ammunition that have been used or been threatened to be used in an incident of abuse against the plaintiff or the minor children. A copy of the court's order shall be transmitted to the chief or head of the appropriate law enforcement agency and to the sheriff of the county of which the defendant is a resident. When relinquishment is **ordered, the following shall apply:**

(i) (A) The court's order shall require the defendant to relinquish such firearms, other weapons, ammunition and any firearm license pursuant to the provisions of this chapter within 24 hours of service of a temporary order or the entry of a final order or the close of the next business day as necessary by closure of the sheriffs' offices, except for cause shown at the hearing, in which case the court shall specify the time for relinquishment of any or all of the defendant's firearms.

(B) A defendant subject to a temporary order requiring the relinquishment of firearms, other weapons or ammunition shall, in lieu of relinquishing specific firearms, other weapons or ammunition which cannot reasonably be retrieved within the time for relinquishment in clause (A) due to their current location, provide the sheriff or the appropriate law enforcement agency with an affidavit listing the firearms, other weapons or ammunition and their current location. If the defendant, within the time for relinquishment in clause (A), fails to provide the affidavit or fails to relinquish, pursuant to this chapter, any firearms, other weapons or ammunition ordered to be relinquished which are not specified in the affidavit, the sheriff or the appropriate law enforcement agency shall, at a minimum, provide immediate notice to the court, the plaintiff and appropriate law enforcement authorities. The defendant shall not possess any firearms, other weapons or ammunition specifically listed in the affidavit provided to the sheriff or the appropriate law enforcement agency pursuant to this clause for the duration of the temporary order.

(C) As used in this subparagraph, the term "cause" shall be limited to facts relating to the inability of the defendant to retrieve a specific firearm within 24 hours due to the current location of the firearm.

(ii) The court's order shall contain a list of any firearm, other weapon or ammunition ordered relinquished. Upon the entry of a final order, the defendant shall inform the court in what manner the defendant is going to relinquish any firearm, other weapon or ammunition ordered relinquished. Relinquishment may occur pursuant to section 6108.2 (relating to relinquishment for consignment sale, lawful transfer or safekeeping) or 6108.3 or to the sheriff or the appropriate law enforcement agency pursuant to this paragraph. Where the sheriff or the appropriate law enforcement agency is designated, the sheriff or the appropriate law enforcement agency shall secure custody of the defendant's firearms, other weapons or ammunition and any firearm license listed in the court's order for the duration of the order or until otherwise directed by court order. In securing

custody of the defendant's relinquished firearms, the sheriff or the appropriate law enforcement agency shall comply with 18 Pa.C.S. § 6105(f)(4) (relating to persons not to possess, use, manufacture, control, sell or transfer firearms). In securing custody of the defendant's other weapons and ammunition, the sheriff or the appropriate law enforcement agency shall provide the defendant with a signed and dated written receipt which shall include a detailed description of the other weapon or ammunition and its condition. The court shall inform the defendant that firearms, other weapons or ammunition shall be deemed abandoned when the conditions under 18 Pa.C.S. § 6128(a) (relating to abandonment of firearms, weapons or ammunition) are satisfied and may then be disposed of in accordance with 18 Pa.C.S. § 6128.

(iii) The sheriff or the appropriate law enforcement agency shall provide the plaintiff with the name of the person to which any firearm, other weapon or ammunition was relinquished.

(iv) Unless the defendant has complied with subparagraph (i)(B) or section 6108.2 or 6108.3, if the defendant fails to relinquish any firearm, other weapon, ammunition or firearm license within 24 hours or upon the close of the next business day due to closure of sheriffs' or appropriate law enforcement agencies' offices or within the time ordered by the court upon cause being shown at the hearing, the sheriff or the appropriate law enforcement agency shall, at a minimum, provide immediate notice to the court, the plaintiff and appropriate law enforcement agencies, as appropriate.

(v) Any portion of any order or any petition or other paper which includes a list of any firearm, other weapon or ammunition ordered relinquished shall be kept in the files of the court as a permanent record thereof and withheld from public inspection except:

- (A)** upon an order of the court granted upon cause shown;
- (B)** as necessary, by law enforcement and court personnel; or
- (C)** after redaction of information listing any firearm, other weapon or ammunition.

(vi) As used in this paragraph, the term "defendant's firearms" shall, if the defendant is a licensed firearms dealer, only include firearms in the defendant's personal firearms collection pursuant to 27 CFR § 478.125a (relating to personal firearms collection).

(7.1) If the defendant is a licensed firearms dealer, ordering the defendant to follow such restrictions as the court may require concerning the conduct of his business, which may include ordering the defendant to relinquish any Federal or State license for the sale, manufacture or importation of firearms as well as firearms in the defendant's business inventory. In restricting the defendant pursuant to this paragraph, the court shall make a reasonable effort to preserve the financial assets of the defendant's business while fulfilling the goals of this chapter.

(8) Directing the defendant to pay the plaintiff for reasonable losses suffered as a result of the abuse, including medical, dental, relocation and moving expenses; counseling; loss of earnings or support; costs of repair or replacement of real or personal property damaged, destroyed or taken by the defendant or at the direction of the defendant; and other out-of-pocket losses for injuries sustained. In addition to out-of-pocket losses, the court may direct the defendant to pay reasonable attorney fees. An award under this chapter shall not constitute a bar to litigation for civil damages for injuries sustained from the acts of abuse giving rise to the award or a finding of contempt under this chapter.

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

(10) Granting any other appropriate relief sought by the plaintiff.

(a.1) Final order or agreement: The following apply:

(1) Any final order must direct the defendant to refrain from abusing, harassing, stalking, threatening or attempting or threatening to use physical force against the plaintiff or minor children and must order that the defendant is subject to the firearms, other weapons or ammunition and firearms license prohibition relinquishment provisions under subsection (a)(7).

(2) A final agreement may direct the defendant to refrain from abusing, harassing, stalking, threatening or attempting or threatening to use physical force against the plaintiff or minor children and may order that the defendant is subject to the firearms, other weapons or ammunition and firearms license prohibition and relinquishment provisions under subsection (a)(7).

(b) Identifying information: Any order issued under this section shall, where furnished by either party, specify the Social Security number and date of birth of the defendant.

(c) Mutual orders of protection: Mutual orders of protection shall not be awarded unless both parties have filed timely written petitions, complied with service requirements under section 6106 (relating to commencement of proceedings) and are eligible for protection under this chapter. The court shall make separate findings and, where issuing orders on behalf of both petitioners, enter separate orders.

(d) Duration and amendment of order or agreement: A protection order or approved consent agreement shall be for a fixed period of time not to exceed three years. The court may amend its order or agreement at any time upon subsequent petition filed by either party.

(e) Extension of protection orders:

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

(i) Where the court finds, after a duly filed petition, notice to the defendant and a hearing, in accordance with the procedures set forth in sections 6106 and 6107, that the defendant committed one or more acts of abuse subsequent to the entry of the final order or that the defendant engaged in a pattern or practice that indicates continued risk of harm to the plaintiff or minor child.

(ii) When a contempt petition or charge has been filed with the court or with a hearing officer in Philadelphia County, but the hearing has not occurred before the expiration of the protection order, the order shall be extended, at a minimum, until the disposition of the contempt petition and may be extended for another term beyond the disposition of the contempt petition.

(iii) If the plaintiff files a petition for an extension of the order and the defendant is or was incarcerated and will be released from custody in the next 90 days or has been released from custody within the past 90 days. The plaintiff does not need to show that the defendant committed one or more acts of abuse subsequent to the entry of the order or that the defendant engaged in a pattern or practice that indicates continued risk of harm to the plaintiff or minor children as set forth in subparagraph (i).

(2) Service of an extended order shall be made in accordance with section 6109 (relating to service of orders).

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

(f) Support procedure: The domestic relations section shall enforce any support award in a protection order where the plaintiff files a complaint for support under subsection (a)(5).

(g) Notice: Notice shall be given to the defendant, in orders issued under this section, stating that violations of an order will subject the defendant to arrest under section 6113 (relating to arrest for violation of order) or contempt of court under section 6114 (relating to contempt for violation of order or agreement). Resumption of coresidency on the part of the plaintiff and defendant shall not nullify the provisions of the court order.

(h) Title to real property unaffected: No order or agreement under this chapter shall in any manner affect title to any real property.

(i) Third parties and affidavits: A court requiring relinquishment of firearms under this section shall provide for the hearing of petitions by third parties who request the return of a firearm relinquished by the defendant under subsection (a)(7). The following apply:

(1) A third party claiming to be the lawful owner of a firearm relinquished by the defendant under subsection (a)(7) may request the return of the firearm by providing proof of ownership and a sworn affidavit.

(2) The affidavit under paragraph (1) must affirm all of the following:

- (i) The third party who is the lawful owner will not intentionally or knowingly return to the defendant the firearm or allow access to the firearm by the defendant.
- (ii) The third party who is the lawful owner understands that violating subparagraph (i) constitutes a misdemeanor of the second degree under 18 Pa.C.S. Ch. 61 (relating to firearms and other dangerous articles).
- (iii) If the third party who is the lawful owner is a family or household member of the defendant, any firearm returned under this section must be stored in a gun safe to which the defendant does not have access and will not be permitted to access, or stored in a location outside the third party's home to which the defendant does not have access.

(3) If the court orders the return of a firearm under this section, prior to the return of the firearm, the sheriff shall independently confirm that the person seeking relief under this section is legally eligible to possess firearms under Federal and State law. The sheriff shall conduct the background check as soon as practicable after the court enters an order under this section.

Contempt for violation of order or agreement - [23 PA.CON.S.TAT.ANN. § 6114](#)

(a) General rule: Where the police, sheriff or the plaintiff have filed charges of indirect criminal contempt against a defendant for violation of a protection order issued under this chapter, a foreign protection order or a court-approved consent agreement, the court may hold the defendant in indirect criminal contempt and punish the defendant in accordance with law.

(a.1) Jurisdiction: A court shall have jurisdiction over indirect criminal contempt charges for violation of a protection order issued pursuant to this chapter in the county where the violation occurred and in the county where the protection order was granted. A court shall have jurisdiction over indirect criminal contempt charges for violation of a foreign protection order in the county where the violation occurred.

(a.2) Minor defendant: Any defendant who is a minor and who is charged with indirect criminal contempt for allegedly violating a protection from abuse order shall be considered to have committed an alleged delinquent act as that term is defined in 42 Pa.C.S. § 6302 (relating to definitions) and shall be treated as provided in 42 Pa.C.S. Ch. 63 (relating to juvenile matters).

(b) Trial and punishment:

(1) A sentence for contempt under this chapter may include:

- (i) **(A)** a fine of not less than \$300 nor more than \$1,000 and imprisonment up to six months; or
- (B)** a fine of not less than \$300 nor more than \$1,000 and supervised probation not to exceed six months; and
- (ii) an order for other relief set forth in this chapter.

(2) All money received under this section shall be distributed in the following order of priority:

(i) \$100 shall be forwarded to the Commonwealth and shall be appropriated to the Pennsylvania State Police to establish and maintain the Statewide registry of protection orders provided for in section 6105 (relating to responsibilities of law enforcement agencies).

(ii) \$100 shall be retained by the county and shall be used to carry out the provisions of this chapter as follows:

(A) \$50 shall be used by the sheriff.

(B) \$50 shall be used by the court.

(iii) \$100 shall be forwarded to the Department of Public Welfare for use for victims of domestic violence in accordance with the provisions of section 2333 of the act of April 9, 1929 (P.L. 177, No. 175), known as The Administrative Code of 1929.

(iv) Any additional money shall be forwarded to the Commonwealth and shall be used by the Pennsylvania State Police to establish and maintain the Statewide registry of protection orders provided for in section 6105.

(3) The defendant shall not have a right to a jury trial on a charge of indirect criminal contempt. However, the defendant shall be entitled to counsel.

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

(5) Upon conviction for indirect criminal contempt, the court shall notify the sheriff of the jurisdiction which issued the protection order of the conviction.

(6) The minimum fine required by subsection (b)(1) allocated pursuant to subsection (b)(2)(i) and (iii) shall be used to supplement and not to supplant any other source of funds received for the purpose of carrying out the provisions of this chapter.

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

(d) Multiple remedies: Disposition of a charge of indirect criminal contempt shall not preclude the prosecution of other criminal charges associated with the incident giving rise to the contempt, nor shall disposition of other criminal charges preclude prosecution of indirect criminal contempt associated with the criminal conduct giving rise to the charges.

*The most current version of Pennsylvania Title 23, Chapter 61 – Protection from Abuse is [available in its entirety online](#).

4. Sexual Violence

A. Selected Pennsylvania Crimes of Sexual Violence

Consent – [18 PA.CON.S.TAT.ANN. § 311](#)

(a) General rule: The consent of the victim to conduct charged to constitute an offense or to the result thereof is a defense if such consent negatives an element of the offense or precludes the infliction of the harm or evil sought to be prevented by the law defining the offense.

(b) Consent to bodily injury: When conduct is charged to constitute an offense because it causes or threatens bodily injury, consent to such conduct or to the infliction of such injury is a defense if:

(1) the conduct and the injury are reasonably foreseeable hazards of joint participation in a lawful athletic contest or competitive sport; or

(2) the consent establishes a justification for the conduct under Chapter 5 of this title (relating to general principles of justification).

(c) Ineffective consent: Unless otherwise provided by this title or by the law defining the offense, assent does not constitute consent if:

(1) it is given by a person who is legally incapacitated to authorize the conduct charged to constitute the offense;

(2) it is given by a person who by reason of youth, mental disease or defect or intoxication is manifestly unable or known by the actor to be unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense;

(3) it is given by a person whose improvident consent is sought to be prevented by the law defining the offense; or

(4) it is induced by force, duress or deception of a kind sought to be prevented by the law defining the offense.

Invasion of Privacy - [18 PA.CON.S.TAT.ANN. § 7507.1](#)

(a) Offense defined: A defendant commits the offense of invasion of privacy if he, for the purpose of arousing or gratifying the sexual desire of any person, knowingly does any of the following:

(1) Views, photographs, videotapes, electronically depicts, films or otherwise records another person without that person's knowledge and consent while that person is in a state of full or partial nudity and is in a place where that person would have a reasonable expectation of privacy.

(2) Photographs, videotapes, electronically depicts, films or otherwise records or personally views the intimate parts, whether or not covered by clothing, of another person without that person's knowledge and consent and which intimate parts that person does not intend to be visible by normal public observation.

(3) Transfers or transmits an image obtained in violation of paragraph (1) or (2) by live or recorded telephone message, electronic mail or the Internet or by any other transfer of the medium on which the image is stored.

(a.1) Separate violations: A separate violation of this section shall occur:

(1) for each victim of an offense under subsection (a) under the same or similar circumstances pursuant to one scheme or course of conduct whether at the same or different times; or

(2) if a person is a victim of an offense under subsection (a) on more than one occasion during a separate course of conduct either individually or otherwise

(b) Grading: Invasion of privacy is a misdemeanor of the second degree if there is more than one violation. Otherwise, a violation of this section is a misdemeanor of the third degree.

(c) Commencement of prosecution: Notwithstanding the provisions of 42 Pa.C.S. Ch. 55 Subch. C (relating to criminal proceedings), a prosecution under this section must be commenced within the following periods of limitation:

(1) two years from the date the offense occurred; or

(2) if the victim did not realize at the time that there was an offense, within three years of the time the victim first learns of the offense.

(d) Exceptions: Subsection (a) shall not apply if the conduct proscribed by subsection (a) is done by any of the following:

(1) Law enforcement officers during a lawful criminal investigation.

(2) Law enforcement officers or by personnel of the Department of Corrections or a local correctional facility, prison or jail for security purposes or during investigation of alleged misconduct by a person in the custody of the department or local authorities.

(e) Definitions.: As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Full or partial nudity." Display of all or any part of the human genitals or pubic area or buttocks, or any part of the nipple of the breast of any female person, with less than a fully opaque covering.

"Intimate part." Any part of:

(1) the human genitals, pubic area or buttocks; and

(2) the nipple of a female breast.

"Photographs" or "films." Making any photograph, motion picture film, videotape or any other recording or transmission of the image of a person.

"Place where a person would have a reasonable expectation of privacy." A location where a reasonable person would believe that he could disrobe in privacy without being concerned that his undressing was being viewed, photographed or filmed by another.

"Views." Looking upon another person with the unaided eye or with any device designed or intended to improve visual acuity.

Rape - [18 PA.CON.S.TAT.Ann § 3121](#)

(a) Offense defined: Engaging in sexual intercourse with a complainant in one of the following circumstances:

- (1)** By forcible compulsion
- (2)** By threat of forcible compulsion that would prevent resistance by a person of reasonable resolution
- (3)** Who is unconscious or where the person knows that the complainant is unaware that the sexual intercourse is occurring.
- (4)** Where the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance.
- (5)** Who suffers from a mental disability which renders the complainant incapable of consent.

(b) Additional penalties: In addition to the penalty provided for by subsection (a), a person may be sentenced to an additional term not to exceed ten years' confinement and an additional amount not to exceed \$100,000 where the person engages in sexual intercourse with a complainant and has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, any substance for the purpose of preventing resistance through the inducement of euphoria, memory loss and any other effect of this substance.

(c) Rape of a child: A person commits the offense of rape of a child, a felony of the first degree, when the person engages in sexual intercourse with a complainant who is less than 13 years of age.

(d) Rape of a child with serious bodily injury: A person commits the offense of rape of a child resulting in serious bodily injury, a felony of the first degree, when the person violates this section and the complainant is under 13 years of age and suffers serious bodily injury in the course of the offense.

(e) Sentences: Notwithstanding the provisions of section 1103 (relating to sentence of imprisonment for felony), a person convicted of an offense under:

- (1)** Subsection (c) shall be sentenced to a term of imprisonment which shall be fixed by the court at not more than 40 years.
- (2)** Subsection (d) shall be sentenced up to a maximum term of life imprisonment.

Statutory Sexual Assault - [18 PA.CONS.STAT.ANN. § 3122.1](#)

(a) Felony of the second degree: Except as provided in section 3121 (relating to rape), a person commits a felony of the second degree when that person engages in sexual intercourse with a complainant to whom the person is not married who is under the age of 16 years and that person is either:

- (1)** four years older but less than eight years older than the complainant; or
- (2)** eight years older but less than 11 years older than the complainant.

(b) Felony of the first degree: A person commits a felony of the first degree when that person engages in sexual intercourse with a complainant under the age of 16 years and that person is 11 or more years older than the complainant and the complainant and the person are not married to each other.

Involuntary Deviate Sexual Intercourse - [18 PA.CONS.STAT.ANN. § 3123](#)

(a) Offense defined: A person commits a felony of the first degree when the person engages in deviate sexual intercourse with a complainant:

- (1)** by forcible compulsion;
- (2)** by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution;
- (3)** who is unconscious or where the person knows that the complainant is unaware that the sexual intercourse is occurring;
- (4)** where the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance;
- (5)** who suffers from a mental disability which renders him or her incapable of consent; or
- (6)** (Deleted by amendment).
- (7)** who is less than 16 years of age and the person is four or more years older than the complainant and the complainant and person are not married to each other.

(b) Involuntary deviate sexual intercourse with a child: A person commits involuntary deviate sexual intercourse with a child, a felony of the first degree, when the person engages in deviate sexual intercourse with a complainant who is less than 13 years of age.

(c) Involuntary deviate sexual intercourse with a child with serious bodily injury.-
-A person commits an offense under this section with a child resulting in serious bodily injury, a felony of the first degree, when the person violates this section and the complainant is less than 13 years of age and the complainant suffers serious bodily injury in the course of the offense.

(d) Sentences: Notwithstanding the provisions of section 1103 (relating to sentence of imprisonment for felony), a person convicted of an offense under:

(1) Subsection (b) shall be sentenced to a term of imprisonment which shall be fixed by the court at not more than 40 years.

(2) Subsection (c) shall be sentenced up to a maximum term of life imprisonment.

(e) Definition: As used in this section, the term "**forcible compulsion**" includes, but is not limited to, compulsion resulting in another person's death, whether the death occurred before, during or after the sexual intercourse.

Sexual Assault – [18 PA.CON.S.TAT.ANN. § 3124.1](#)

Except as provided in section 3121 (relating to rape) or 3123 (relating to involuntary deviate sexual intercourse), a person commits a felony of the second degree when that person engages in sexual intercourse or deviate sexual intercourse with a complainant without the complainant's consent.

Institutional Sexual Assault - [18 PA.CON.S.TAT.ANN. § 3124.2](#)

(a) General rule: Except as provided under subsection (a.1) and in sections 3121 (relating to rape), 3122.1 (relating to statutory sexual assault), 3123 (relating to involuntary deviate sexual intercourse), 3124.1 (relating to sexual assault) and 3125 (relating to aggravated indecent assault), a person who is an employee or agent of the Department of Corrections or a county correctional authority, youth development center, youth forestry camp, State or county juvenile detention facility, other licensed residential facility serving children and youth, or mental health or mental retardation facility or institution commits a felony of the third degree when that person engages in sexual intercourse, deviate sexual intercourse or indecent contact with an inmate, detainee, another person being supervised by that person under probation or parole supervision, patient or resident.

(a.1) Institutional sexual assault of a minor: A person who is an employee or agent of the Department of Corrections or a county correctional authority, youth development center, youth forestry camp, State or county juvenile detention facility, other licensed residential facility serving children and youth or mental health or mental retardation facility or institution commits a felony of the third degree when that person engages in sexual intercourse, deviate sexual intercourse or indecent contact with an inmate, another person being supervised by that person under probation or parole supervision, detainee, patient or resident who is under 18 years of age.

(a.2) Schools:

(1) Except as provided in sections 3121, 3122.1, 3123, 3124.1 and 3125, a person who is a volunteer or an employee of a school or any other person who has direct contact with a student at a school commits a felony of the third degree when he engages in sexual intercourse, deviate sexual intercourse or indecent contact with a student of the school.

(2) As used in this subsection, the following terms shall have the meanings given to them in this paragraph:

(i) "Direct contact." Care, supervision, guidance or control.

(ii) "Employee."

(A) Includes:

(I) A teacher, a supervisor, a supervising principal, a principal, an assistant principal, a vice principal, a director of vocational education, a dental hygienist, a visiting teacher, a home and school visitor, a school counselor, a child nutrition program specialist, a school librarian, a school secretary the selection of whom is on the basis of merit as determined by eligibility lists, a school nurse, a substitute teacher, a janitor, a cafeteria worker, a bus driver, a teacher aide and any other employee who has direct contact with school students.

(II) An independent contractor who has a contract with a school for the purpose of performing a service for the school, a coach, an athletic trainer, a coach hired as an independent contractor by the Pennsylvania Interscholastic Athletic Association or an athletic trainer hired as an independent contractor by the Pennsylvania Interscholastic Athletic Association.

(B) The term does not include:

(I) A student employed at the school.

(II) An independent contractor or any employee of an independent contractor who has no direct contact with school students.

(iii) "School." A public or private school, intermediate unit or area vocational-technical school.

(iv) "Volunteer." The term does not include a school student.

(a.3) Child care: Except as provided in sections 3121, 3122.1, 3123, 3124.1 and 3125, a person who is a volunteer or an employee of a center for children commits a felony of the third degree when he engages in sexual intercourse, deviate sexual intercourse or indecent contact with a child who is receiving services at the center.

(a.4) Peace officers:

(1) Except as provided under sections 3121, 3122.1, 3123, 3124.1 and 3125, a person who is a peace officer or employee of an agency employing a peace officer in his official capacity commits a felony of the third degree when the person engages in sexual intercourse, deviate sexual intercourse or indecent contact with another person who is under official detention or in the custody of the person or is a confidential informant of the person.

(2) A person who is a peace officer commits a felony of the third degree when the person engages in sexual intercourse, deviate sexual intercourse or indecent contact with a child who is under official detention or in the custody of the person or is a confidential informant of the person.

(a.5) Consent not a defense: Consent is not a defense to a violation of subsection (a), (a.1), (a.2), (a.3), (a.4) or (a.6).

(a.6) Caretakers:

(1) Except as provided in paragraph (2) and in sections 3121, 3122.1, 3123, 3124.1 and 3125, a caretaker commits a felony of the third degree if the caretaker engages in sexual intercourse, deviate sexual intercourse or indecent contact with a care-dependent person who receives care, services or treatment in or from a facility.

(2) Paragraph (1) does not apply if the victim and defendant are spouses, persons living as spouses or current sexual or intimate partners whose relationship preexisted the caretaker relationship.

(3) As used in this subsection, the following terms shall have the meanings given to them in this paragraph:

(i) **"Care-dependent person."** An adult who, due to physical or cognitive disability or impairment, requires assistance to meet the needs for food, shelter, clothing, personal care or health care.

(ii) **"Caretaker."** A person who is any of the following:

(A) An owner, operator, manager or employee of a facility.

(B) An individual who provides care to a care-dependent person in a facility.

(C) An individual who has an obligation to provide care to a care-dependent person for monetary consideration in a facility.

(D) An individual who does not reside with a care-dependent person but who, with respect to the care-dependent person, has:

(I) a legal duty to provide care;

(II) affirmatively assumed a responsibility to provide care; or

(III) responsibility by contract or court order to provide care.

(iii) **"Facility."** Any of the following:

(A) A nursing home, personal care home, assisted living facility, private care residence or the care-dependent person's residence.

(B) A community residential facility or intermediate care facility for an individual with a mental disability.

(C) An adult daily living center.

(D) A home health care agency.

(E) A health care facility, as defined in section 802.1 of the act of July 19, 1979 (P.L.130, No.48), known as the Health Care Facilities Act.

(iv) **"Private care residence."** A private residence, including a domiciliary care home:

(A) In which the owner of the residence or the legal entity responsible for the operation of the residence, for monetary consideration, provides or assists with or arranges for the provision of food, room, shelter, clothing, personal care or health care in the residence, for a period exceeding 24 hours, to fewer than four care-dependent persons who are not relatives of the owner.

(B) That is not:

(I) required to be licensed as a long-term care nursing facility, as defined in section 802.1 of the Health Care Facilities Act; and

(II) specified in subparagraph (iii)(A).

(b) Definitions: As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Agent." A person who is assigned to work in a State or county correctional or juvenile detention facility, a youth development center, youth forestry camp, other licensed residential facility serving children and youth or mental health or mental retardation facility or institution, who is employed by any State or county agency or any person employed by an entity providing contract services to the agency.

"Center for children." Includes a child day-care center, group and family day-care home, boarding home for children, a center providing early intervention and drug and alcohol services for children or other facility which provides child-care services which are subject to approval, licensure, registration or certification by the Department of Public Welfare or a county social services agency or which are provided pursuant to a contract with the department or a county social services agency. The term does not include a youth development center, youth forestry camp, State or county juvenile detention facility and other licensed residential facility serving children and youth.

"Child." An individual who is less than 18 years of age.

"Confidential informant." An individual who engages in the activity of associating with persons engaged in criminal activity for the purpose of furnishing information to or acting as an agent for a law enforcement agency.

"Custody." The term includes a traffic stop, a custodial interrogation or an interview conducted in connection with an investigation.

"Official detention." As that term is defined in section 5121 (relating to escape).

Sexual Assault by Sports Official, Volunteer or Employee of Nonprofit Association
– [18 PA.CON.S.TAT.ANN. § 3124.3](#)

(a) Sports official: Except as provided in sections 3121 (relating to rape), 3122.1 (relating to statutory sexual assault), 3123 (relating to involuntary deviate sexual intercourse), 3124.1 (relating to sexual assault) and 3125 (relating to aggravated indecent assault), a person who serves as a sports official in a sports program of a nonprofit association or a for-profit association commits a felony of the third degree when that person engages in sexual intercourse, deviate sexual intercourse or indecent contact with a child under 18 years of age who is participating in a sports program of the nonprofit association or for-profit association.

(b) Volunteer or employee of a nonprofit association: Except as provided in sections 3121, 3122.1, 3123, 3124.1 and 3125, a volunteer or an employee of a nonprofit association having direct contact with a child under 18 years of age who participates in a program or activity of the nonprofit association commits a felony of the third degree if

the volunteer or employee engages in sexual intercourse, deviate sexual intercourse or indecent contact with that child.

(c) Definitions: As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Direct contact." Care, supervision, guidance or control.

"Nonprofit association." As defined in 42 Pa.C.S. § 8332.1 (relating to manager, coach, umpire or referee and nonprofit association negligence standard).

"Sports official." A person who supervises children participating in a sports program of a nonprofit association or a for-profit association, including, but not limited to, a coach, assistant coach, athletic trainer, team attendant, game manager, instructor or a person at a sports program who enforces the rules of a sporting event sponsored by a sports program of a nonprofit association or a for-profit association, including, but not limited to, an umpire or referee, whether receiving remuneration or holding the position as a volunteer.

"Sports program." As defined in 42 Pa.C.S. § 8332.1.

Aggravated Indecent Assault - [18 PA.CONS.STAT.ANN. § 3125](#)

(a) Offense defined: Except as provided in sections 3121 (relating to rape), 3122.1 (relating to statutory sexual assault), 3123 (relating to involuntary deviate sexual intercourse) and 3124.1 (relating to sexual assault), a person who engages in penetration, however slight, of the genitals or anus of a complainant with a part of the person's body for any purpose other than good faith medical, hygienic or law enforcement procedures commits aggravated indecent assault if:

- (1)** the person does so without the complainant's consent;
- (2)** the person does so by forcible compulsion;
- (3)** the person does so by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution;
- (4)** the complainant is unconscious or the person knows that the complainant is unaware that the penetration is occurring;
- (5)** the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance;
- (6)** the complainant suffers from a mental disability which renders him or her incapable of consent;
- (7)** the complainant is less than 13 years of age; or
- (8)** the complainant is less than 16 years of age and the person is four or more years older than the complainant and the complainant and the person are not married to each other.

(b) Aggravated Indecent Assault of a Child: A person commits aggravated indecent assault of a child when the person violates subsection (a)(1), (2), (3), (4), (5) or (6) and the complainant is less than 13 years of age.

(c) Grading and sentences:

- (1)** An offense under subsection (a) is a felony of the second degree.
- (2)** An offense under subsection (b) is a felony of the first degree.

Indecent Assault - [18 PA.CON.S.TAT.ANN. § 3126](#)

(a) Offense defined: A person is guilty of indecent assault if the person has indecent contact with the complainant, causes the complainant to have indecent contact with the person or intentionally causes the complainant to come into contact with seminal fluid, urine or feces for the purpose of arousing sexual desire in the person or the complainant and:

- (1)** the person does so without the complainant's consent;
- (2)** the person does so by forcible compulsion;
- (3)** the person does so by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution;
- (4)** the complainant is unconscious or the person knows that the complainant is unaware that the indecent contact is occurring;
- (5)** the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance;
- (6)** the complainant suffers from a mental disability which renders the complainant incapable of consent;
- (7)** the complainant is less than 13 years of age; or
- (8)** the complainant is less than 16 years of age and the person is four or more years older than the complainant and the complainant and the person are not married to each other.

(b) Grading: Indecent assault shall be graded as follows:

- (1)** An offense under subsection (a)(1) or (8) is a misdemeanor of the second degree.
- (2)** An offense under subsection (a)(2), (3), (4), (5) or (6) is a misdemeanor of the first degree.
- (3)** An offense under subsection (a)(7) is a misdemeanor of the first degree unless any of the following apply, in which case it is a felony of the third degree:
 - (i)** It is a second or subsequent offense.
 - (ii)** There has been a course of conduct of indecent assault by the person.
 - (iii)** The indecent assault was committed by touching the complainant's sexual or intimate parts with sexual or intimate parts of the person.
 - (iv)** The indecent assault is committed by touching the person's sexual or intimate parts with the complainant's sexual or intimate parts.

Indecent Exposure - [18 PA.CON.S.TAT.ANN. § 3127](#)

(a) Offense defined: A person commits indecent exposure if that person exposes his or her genitals in any public place or in any place where there are present other persons under circumstances in which he or she knows or should know that this conduct is likely to offend, affront or alarm.

(b) Grading: If the person knows or should have known that any of the persons present are less than 16 years of age, indecent exposure under subsection (a) is a misdemeanor of the first degree. Otherwise, indecent exposure under subsection (a) is a misdemeanor of the second degree.

Unlawful Dissemination of an Intimate Image - [18 PA.CON.S. STAT.ANN. § 3131](#)

(a) Offense defined: Except as provided in sections 5903 (relating to obscene and other sexual materials and performances), 6312 (relating to sexual abuse of children) and 6321 (relating to transmission of sexually explicit images by minor), a person commits the offense of unlawful dissemination of intimate image if, with intent to harass, annoy or alarm a current or former sexual or intimate partner, the person disseminates a visual depiction of the current or former sexual or intimate partner in a state of nudity or engaged in sexual conduct.

(b) Defense: It is a defense to a prosecution under this section that the actor disseminated the visual depiction with the consent of the person depicted.

(c) Grading: An offense under subsection (a) shall be:

- (1)** A misdemeanor of the first degree, when the person depicted is a minor.
- (2)** A misdemeanor of the second degree, when the person depicted is not a minor.

(d) Territorial applicability: A person may be convicted under the provisions of this section if the victim or the offender is located within this Commonwealth.

(e) Nonapplicability: Nothing in this section shall be construed to apply to a law enforcement officer engaged in the performance of the law enforcement officer's official duties.

(f) Concurrent jurisdiction to prosecute: In addition to the authority conferred upon the Attorney General by the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act, the Attorney General shall have the authority to investigate and to institute criminal proceedings for any violation of this section or any series of violations involving more than one county of this Commonwealth or another state. No person charged with a violation of this section by the Attorney General shall have standing to challenge the authority of the Attorney General to investigate or prosecute the case, and, if a challenge is made, the challenge shall be dismissed, and no relief shall be made available in the courts of this Commonwealth to the person making the challenge.

(g) Definitions: As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Law enforcement officer." Any officer of the United States, of the Commonwealth or political subdivision thereof, or of another state or subdivision thereof, who is empowered to conduct investigations of or to make arrests for offenses enumerated in this title or an equivalent crime in another jurisdiction, and any attorney authorized by law to prosecute or participate in the prosecution of such offense.

"Minor." An individual under 18 years of age.

"Nudity." As defined in section 5903(e).

"Sexual conduct." As defined in section 5903(e).

"Visual depiction." As defined in section 6321.

Sexual Extortion - [18 Pa.Cons.Stat.Ann. § 3133](#)

(a) Offense defined: A person commits the offense of sexual extortion if the person knowingly or intentionally coerces or causes a complainant, through any of the means set forth in subsection (b), to

(1) engage in sexual conduct, the simulation of sexual conduct or a state of nudity; or

(2) Making, producing, disseminating, transmitting or distributing any image, video, recording or other material depicting the complainant in a state of nudity or engaging in sexual conduct or in the simulation of sexual conduct.

(b) Means of subjecting complainant to sexual extortion: A person subjects a complainant to sexual extortion through any of the following means:

(1) Harming or threatening to harm the complainant or the property of the complainant, the reputation of the complainant or any other thing of value of the complainant.

(2) Making, producing, disseminating, transmitting or distributing or threatening to make, produce, disseminate, transmit or distribute any image, video, recording or other material depicting the complainant in a state of nudity or engaged in sexual conduct or in the simulation of sexual conduct.

(3) Exposing or threatening to expose any fact or piece of information that, if revealed, would tend to subject the complainant to criminal proceedings, a civil action, hatred, contempt, embarrassment or ridicule.

(4) Holding out, withholding or threatening to withhold a service, employment, position or other thing of value.

(5) Threatening to cause or causing a loss, disadvantage or injury, including a loss, disadvantage or injury to a family or household member.

(c) Demanding Property: A person commits the offense of sexual extortion if they knowingly or intentionally:

(1) solicits or demands the payment of money, property or services or any other thing of value from the complainant or a family or household member of the complainant in exchange for removing from public view or preventing the disclosure of any image, video, recording or other material obtained through a violation of subsection (a)(2); or

(2) disseminates, transmits or distributes, or threatens to disseminate, transmit or distribute, an image, video, recording or other material depicting the complainant in a state of nudity or engaging in sexual conduct or the simulation of sexual conduct to another person or entity, including a commercial social networking site, and solicits or demands the payment of money, property or services or any other thing of value from the complainant or a family or household member of the complainant in exchange for removing from public view or preventing disclosure of the image, video, recording or other material.

(d) Grading:

(1) Except as otherwise provided in paragraphs (2) and (3), a violation of this section shall constitute a misdemeanor of the first degree.

(2) A violation of this section shall constitute a felony of the third degree if the actor is at least 18 years of age and:

(i) the complainant is under 18 years of age;

(ii) the complainant has an intellectual disability; or

(iii) the actor holds a position of trust or supervisory or disciplinary power over the complainant by virtue of the actor's legal, professional or occupational status.

(3) A violation of this section shall constitute a felony of the third degree if:

(i) the violation is part of a course of conduct of sexual extortion by the actor; or

(ii) the actor was previously convicted or adjudicated delinquent of a violation of this section or of a similar offense in another jurisdiction.

(e) Sentencing: The Pennsylvania Commission on Sentencing, in accordance with 42 Pa.C.S. § 2154 (relating to adoption of guidelines for sentencing), shall provide for a sentence enhancement within its guidelines for an offense under this section when:

(1) at the time of the offense the complainant is under 18 years of age or has an intellectual disability or the actor holds a position of trust or supervisory or disciplinary power over the complainant by virtue of the actor's legal, professional or occupational status; or

(2) the complainant attempts suicide resulting in serious bodily injury or dies by suicide, within 90 days of the commission of the offense, as a proximate result of the trauma that the complainant experienced during or following the commission of the offense.

(f) Venue:

- (1)** An offense committed under this section may be deemed to have been committed at either the place at which the communication was made or at the place where the communication was received.
- (2)** Acts indicating a course of conduct which occur in more than one jurisdiction may be used by any other jurisdiction in which an act occurred as evidence of a continuing pattern of conduct or a course of conduct.

(g) Territorial applicability: A person may be convicted under the provisions of this section if the complainant or the offender is located within this Commonwealth.

(h) Concurrent jurisdiction to prosecute: In addition to the authority conferred upon the Attorney General by the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act, the Attorney General shall have the authority to investigate and to institute criminal proceedings for any violation of this section or any series of violations involving more than one county of this Commonwealth or another state. No person charged with a violation of this section by the Attorney General shall have standing to challenge the authority of the Attorney General to investigate or prosecute the case, and, if a challenge is made, the challenge shall be dismissed, and no relief shall be made available in the courts of this Commonwealth to the person making the challenge.

(i) Applicability: Nothing in this section shall be construed to apply to:

- (1)** A person who acts within the legitimate and lawful course of the person's employment.
- (2)** Works of public interest, including commentary, satire or parody.

(j) Definitions: As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Commercial social networking site." A business, organization or other similar entity that operates an Internet website and permits persons to become registered users for the purposes of establishing personal relationships with other users through direct or real-time communication with other users or the creation of web pages or profiles available to the public or to other users. The term does not include an electronic mail program or a message board program.

"Course of conduct." A pattern of actions composed of more than one act over a period of time, however short, evidencing a continuity of conduct.

"Disseminate." To cause or make an electronic or actual communication from one place or electronic communication device to two or more other persons, places or electronic communication devices.

"Distribute." To sell, lend, rent, lease, give, advertise, publish or exhibit in a physical or electronic medium.

"Family or household member." As defined in section 2709.1(f) (relating to stalking).

"Intellectual disability." Regardless of the age of the individual, significantly subaverage general intellectual functioning that is accompanied by significant limitations in adaptive functioning in at least two of the following skill areas: communication; self-care; home living; social and interpersonal skills; use of community resources; self-direction; functional academic skills; work; health; and safety.

"Nudity." As defined in section 5903(e) (relating to obscene and other sexual materials and performances).

"Sexual conduct." Any of the following:

- (1) Intentional touching by the complainant or actor, either directly or through clothing, of the complainant's or actor's intimate parts. Sexual contact of the actor with himself must be in view of the complainant whom the actor knows to be present.
- (2) Sexual intercourse as defined in section 3101 (relating to definitions), masturbation, sadism, masochism, bestiality, fellatio, cunnilingus or lewd exhibition of the genitals.

"Simulation." Conduct engaged in that is depicted in a manner that would cause a reasonable viewer to believe was sexual conduct, even if sexual conduct did not occur.

"Transmit." To cause or make an electronic or actual communication from one place or electronic communication device to another person, place or electronic communication device.

*The most current version of Pennsylvania Title 18, Chapter 31 – Sexual Offenses is [available in its entirety online](#).

B. Pennsylvania's Sexual Assault Testing and Evidence Collection Act ("SATEC")

Pennsylvania's [SATEC](#) Act established a [statewide sexual assault evidence collection program](#) to promote the health and safety of sexual assault victims and to facilitate the prosecution of alleged perpetrators.

Designated phone number

As part of the SATEC Act, Pennsylvania created a designated phone number for health care facilities who have notified local law enforcement or the Pennsylvania State Police to take possession of sexual assault evidence that has not been completed within 72 hours.

The phone number:

- Is staffed by a live person during regular business hours.
- Allows healthcare facilities to leave a voicemail
- After receiving a report by a health care facility, the department contacts local law enforcement or the Pennsylvania State Police to take possession of the sexual assault evidence.

Submission and analysis of sexual assault evidence

The SATEC Act dictates requirements for sexual assault evidence obtained by a healthcare facility at the request or consent of the victim.

- The health care facility shall notify the local law enforcement agency of the jurisdiction where the reported sexual assault occurred or the Pennsylvania State Police if the jurisdiction is unknown, within 12 hours of collecting sexual assault evidence.
- The local law enforcement agency or the Pennsylvania State Police shall take possession of the sexual assault evidence within 72 hours of receiving notice.
 - o If local law enforcement or the Pennsylvania State Police has not taken possession of the sexual assault evidence within 72 hours of notification, the health care facility shall notify the department through the designated telephone number.
- For those cases in which the victim has not yet consented to testing of the evidence, the evidence shall be preserved and stored for a period of no less than the duration of the maximum applicable criminal statute of limitations, unless consent is provided before that period.
- The Pennsylvania State Police, in consultation with the Pennsylvania Chiefs of Police Association and the Pennsylvania District Attorneys Association, shall establish policies for local law enforcement agencies relating to the storage and preservation of the evidence, including, but not limited to, the storage and preservation of evidence with unknown jurisdiction and the provision of anonymous submissions.

Anonymous Submissions

The SATEC Act dictates requirements for sexual assault evidence obtained by a healthcare facility at the request or with the consent of the victim who does not wish to make a report to law enforcement. Act [70 of 2022](#) provides that healthcare facilities DO NOT have to report to law enforcement that a crime occurred for victims who wish to remain anonymous.

- The Pennsylvania State Police shall develop a form for the health care facility to attest that the victim gave consent and wishes to remain anonymous. The Pennsylvania State Police shall also develop a procedure to track the rape kit, which permits the victim to make a report to law enforcement and preserves the evidence for the duration of the maximum applicable criminal statute of limitations.
- Within 15 days of receiving notice on the required form of consent to the testing of the sexual assault evidence, the local law enforcement agency or

Pennsylvania State Police shall submit the evidence awaiting testing to a laboratory approved by the department for testing or analysis.

- A laboratory shall complete the testing or analysis of sexual assault evidence submitted under this section within six months from the date of receipt of the evidence.
- The failure of a health care facility, local law enforcement agency or the Pennsylvania State Police to submit the sexual assault evidence in accordance with this legislation shall not alter the authority of a local law enforcement agency, the Pennsylvania State Police or the authority of a laboratory approved by the department to accept and analyze the evidence.

Victim Rights

The legislation provides a set of rights for sexual assault victims, guardians of sexual assault victims or close relatives of deceased sexual assault victims.

- The right to not be prevented from, or charged for, receiving a medical forensic examination.
- The right to have a sexual assault evidence collection kit or its probative contents relating to the victim preserved, without charge, for the duration of the maximum applicable criminal statute of limitations; and be informed in writing of policies governing the collection and preservation of a sexual assault evidence collection kit.
- The right to, upon written request, receive written notification from the appropriate official with custody of a sexual assault evidence collection kit or its probative contents relating to the victim not later than 60 days before the date of the intended destruction or disposal of the sexual assault evidence collection kit or its probative contents.
- The right to consult with a sexual assault counselor.
- The right to receive information concerning availability of protective orders and policies related to the enforcement of protective orders.
- The right to receive information about the availability of, and eligibility for, victim compensation and restitution.
- The right to be informed of the rights mentioned above.

Notification

- A victim, guardian or relative who requests to be notified must provide a current address and telephone number to the attorney representing the Commonwealth and to the local law enforcement agency that is investigating the offense.
 - o The victim, guardian or relative must inform the attorney representing the Commonwealth and the local law enforcement agency of any change in the address or telephone number.
- A victim, guardian or relative may designate a person, including an entity that provides services to victims of sexual assault, to receive any notice requested.
- The appropriate official with custody of the sexual assault evidence collection kit shall collaborate with a sexual assault counselor to employ best practices when notifying a victim of information pertinent to the victim.

- The Attorney General shall, in consultation with the office of victim advocate, the Pennsylvania State Police, the Pennsylvania Chiefs of Police Association, the Pennsylvania District Attorneys Association and the Pennsylvania Coalition Against Rape, develop a standard protocol for notifying sexual assault victims of information relating to evidence gathered regarding the victim.
 - o The Office of Victim Advocate shall disseminate the standard protocol to law enforcement agencies, rape crisis centers, sexual assault counselors and health care facilities that the Office of Victim Advocate determines are likely to encounter sexual assault victims.
 - o The Attorney General, the Pennsylvania State Police, the Pennsylvania Chiefs of Police Association, the Pennsylvania District Attorneys Association, the Pennsylvania Coalition Against Rape and the Office of Victim Advocate shall make the standard protocol available on a publicly accessible Internet website.

Anonymous Reporters

- A victim who has chosen to make an anonymous report may still elect to receive notification under this section.
- The form for consent for anonymous testing shall include a provision for submission of contact information for a victim requesting notification.
- The contact information provided for the purposes of notification shall not, without permission from the victim, be used for any other purpose, including contacting the victim for investigative purposes.

* The most updated version of *Title 35 P.S. Health and Safety, Chapter 54. Sexual Assault Testing and Evidence Collection Act* is [available in its entirety online](#).

C. Protection of Victims of Sexual Violence or Intimidation

Commencement of Proceedings – [42 PA. C.S. § 62A05](#)

(a) General rule: An adult or emancipated minor may seek relief under this chapter for that person or any parent, adult household member or guardian ad litem may seek relief under this chapter on behalf of a minor child, or the guardian of the person of an adult who has been declared incapacitated under 20 Pa.C.S. Ch. 55 (relating to incapacitated persons) may seek relief on behalf of an incapacitated adult, by filing a petition with the court alleging the need for protection from the defendant with respect to sexual violence or intimidation.

(a.1) False reports: A person who knowingly gives false information to a law enforcement officer with intent to implicate another under this chapter commits an offense under 18 Pa.C.S. § 4906 (relating to false reports to law enforcement authorities).

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

(c) Assessment of fees and costs:

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

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

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

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

(c.1) Surcharge on order: When an order is granted under section 62A06 (relating to hearings), a surcharge of \$100 shall be assessed against the defendant. All moneys received from surcharges shall be distributed in the following order of priority:

(1) Twenty-five dollars shall be forwarded to the Commonwealth and shall be used by the Pennsylvania State Police to establish and maintain the Statewide registry of protection orders provided for in section 62A04(c) (relating to responsibilities of law enforcement agencies).

(2) Fifty dollars shall be retained by the county and shall be used to carry out the provisions of this chapter as follows:

(i) Twenty-five dollars shall be used by the sheriff.

(ii) Twenty-five dollars shall be used by the court.

(3) Twenty-five dollars shall be forwarded to the Department of Public Welfare for use for victims of sexual assault in accordance with the provisions of section 2333 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

(4) The surcharge allocated under paragraphs (1) and (3) shall be used to supplement and not to supplant any other source of funds received for the purpose of carrying out the provisions of this chapter.

(d) Service:

(1) The court shall adopt a means of prompt and effective service. If the court so orders, the sheriff or another court-designated agency or individual shall serve the petition and protection order. Under no circumstances shall the plaintiff be obligated to serve the petition or protection order.

(2) The petition and order shall be served upon the defendant.

(3) Within two business days, the order shall be served upon the police department, sheriff and district attorney in the jurisdiction where the order was entered.

(4) A certified copy of the order shall be issued to the plaintiff.

(5) In the case of a minor victim of sexual violence, a copy of the petition and order shall be served upon the county agency and the Department of Public Welfare. For purposes of this subparagraph, the term "county agency" shall be as defined in 23 Pa.C.S. § 6303 (relating to definitions).

(6) A copy of the order shall be issued as otherwise ordered by the court or hearing officer.

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

(e) Assistance and advice to plaintiff The courts and hearing officers shall:

(1) Provide simplified forms and clerical assistance in English and Spanish to help with the writing and filing of the petition for an order for an individual not represented by counsel.

(2) Provide the plaintiff with written and oral referrals, in English and Spanish, to local sexual assault services in the case of sexual violence and to the local legal services office and to the county bar association's lawyer referral service in the case of sexual violence or intimidation.

(f) Effect of departure and nonresidence: The right of the plaintiff to relief under this chapter shall not be affected by the defendant's absence from this Commonwealth or the defendant's nonresidence in this Commonwealth, provided that the court has personal jurisdiction over the defendant in accordance with section 5322 (relating to bases of personal jurisdiction over persons outside this Commonwealth).

Hearings - [42 PA. C.S. § 62A06](#)

(a) General rule: Within ten business days of the filing of a petition under this chapter, a hearing shall be held before the court where the plaintiff must:

(1) assert that the plaintiff or another individual, as appropriate, is a victim of sexual violence or intimidation committed by the defendant; and

(2) prove by preponderance of the evidence that the plaintiff or another individual, as appropriate, is at a continued risk of harm from the defendant.

(a.1) Right to counsel: The court shall, at the time the defendant is given notice of the hearing, advise the defendant of the right to be represented by counsel. The notice shall be printed and delivered in a manner that easily attracts attention to its contents.

(b) Temporary orders: If a plaintiff seeks a temporary order for protection from an immediate and present danger, the court shall conduct an ex parte proceeding. The court may enter a temporary order as it deems necessary to protect the plaintiff or another individual, as appropriate, when it finds the plaintiff or another individual is in immediate and present danger from the defendant. The temporary order shall remain in effect until modified or terminated by the court after notice and hearing.

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

Relief – [42 PA. C.S. § 62A07](#)

(a) Order or consent agreement: The court may issue an order or approve a consent agreement to protect the plaintiff or another individual, as appropriate, from the defendant.

(b) General rule: An order or a consent agreement may include:

(1) Prohibiting the defendant from having any contact with the victim, including, but not limited to, restraining the defendant from entering the victim's residence, place of employment, business or school. This may include prohibiting indirect contact through third parties and also prohibiting direct or indirect contact with other designated persons.

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

(c) Duration and amendment of order or agreement: A protection order or an approved consent agreement shall be for a fixed period of time not to exceed 36 months. The court may amend its order or agreement at any time upon subsequent petition filed by either party.

(d) Extension of protection orders:

(1) An extension of an order may be granted:

(i) Where the court, after a duly filed petition, notice to the defendant and a hearing, in accordance with the procedures set forth in sections 62A05 (relating to commencement of proceedings) and 62A06 (relating to hearings), finds that the extension is necessary because the defendant engaged in one or more acts or finds some other circumstances that, in the discretion of the court, demonstrate a continued risk of harm to the victim.

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

(2) Service of an extended order shall be made in accordance with section 62A05(d).

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

(e) Notice: Notice shall be given to the defendant stating that violations of the order will subject the defendant to arrest under section 62A12 (relating to arrest for violation of order) or contempt of court under section 62A14 (relating to contempt for violation of order).

(f) Incarceration: When the defendant is or was incarcerated and will be released from custody in the next 90 days or has been released from custody within the past 90 days,

a plaintiff does not need to show that the defendant engaged in one or more acts that indicate a continued risk of harm to the victim in order to obtain an extension or a subsequent protection order under this chapter.

(g) Identifying information: Any order issued under this chapter shall, when furnished by either party, specify the Social Security number and date of birth of the defendant.

Emergency relief by minor judiciary- [42 PA. C.S. § 62A09](#)

(a) General rule:

- (1)** in counties with fewer than four judges, the court is unavailable:
 - (i)** from the close of business at the end of each day to the resumption of business the next morning;
 - (ii)** from the end of the business week to the beginning of the business week; and
 - (iii)** during the business day by reason of duties outside the county, illness or vacation; or
- (2)** in counties with at least four judges, the court is unavailable:
 - (i)** from the close of business at the end of each day to the resumption of business the next morning; and
 - (ii)** from the end of the business week to the beginning of the business week;

a petition may be filed before a hearing officer who may grant relief in accordance with section 62A07 (relating to relief) if the hearing officer deems it necessary to protect the victim upon good cause shown in an ex parte proceeding. Immediate and present danger posed by the defendant to the victim shall constitute good cause for the purposes of this subsection.

(b) Expiration of order: An order issued under subsection (a) shall expire at the end of the next business day the court deems itself available. The court shall schedule hearings on orders entered by hearing officers under subsection (a) and shall review and continue in effect orders that are necessary to protect the plaintiff or another individual, as appropriate, until the hearing, at which time the plaintiff may seek a temporary order from the court.

(c) Certification of order to court: An emergency order issued under this section and any documentation in support thereof shall be immediately certified to the court. The certification to the court shall have the effect of commencing proceedings under section 62A05 (relating to commencement of proceedings) and invoking the other provisions of this chapter. If it is not already alleged in a petition for an emergency order, the plaintiff shall file a verified statement setting forth the reasons for the need for protection at least five days prior to the hearing. Service of the verified statement shall be made subject to section 62A05(d).

(d) Instructions regarding the commencement of proceedings: Upon issuance of an emergency order, the hearing officer shall provide the plaintiff instructions regarding the commencement of proceedings in the court at the beginning of the next business

day and regarding the procedures for initiating a contempt charge should the defendant violate the emergency order. The hearing officer shall also advise the plaintiff of the existence of rape crisis centers in the county or in nearby counties in the case of sexual violence and inform the plaintiff of the availability of legal assistance without cost if the plaintiff is unable to pay for them in the case of sexual violence or intimidation.

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Sexual assault counselor – [42 PA. C.S. § 62A10](#)

A sexual assault counselor may accompany and provide assistance to a plaintiff in any legal proceeding or hearing under this chapter which relates to sexual violence.

*The most current version of *Pennsylvania Title 42, Chapter 62A – Protection of Victims of Sexual Violence or Intimidation* is [available in its entirety online](#).

5. Human Trafficking

A. Selected Federal Human Trafficking Statutes

The Trafficking Victims Protection Act of 2000 (“[TVPA](#)”)

The TVPA sets the national framework for the federal government’s response to human trafficking. It has been reauthorized five times, each time signaling a better understanding of domestic human trafficking. The TVPA focuses on prevention, prosecution and protection of victims in order to combat sex and labor trafficking in the United States.

Sex Trafficking of Children, or by Force, Fraud, or Coercion – [18 U.S.C. § 1591](#)

(a) Whoever knowingly—

- (1)** in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits by any means a person; or
- (2)** benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1), knowing, or, except where the act constituting the violation of paragraph (1) is advertising, in reckless disregard of the fact, that means of force, threats of force, fraud, coercion described in subsection (e)(2), or any combination of such means will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, shall be punished as provided in subsection (b).

(b) The punishment for an offense under subsection (a) is—

- (1)** if the offense was effected by means of force, threats of force, fraud, or coercion described in subsection (e)(2), or by any combination of such means, or if the person recruited, enticed, harbored, transported,

- provided, obtained, advertised, patronized, or solicited had not attained the age of 14 years at the time of such offense, by a fine under this title and imprisonment for any term of years not less than 15 or for life; or
- (2) if the offense was not so effected, and the person recruited, enticed, harbored, transported, provided, obtained, advertised, patronized, or solicited had attained the age of 14 years but had not attained the age of 18 years at the time of such offense, by a fine under this title and imprisonment for not less than 10 years or for life.
- (c) In a prosecution under subsection (a)(1) in which the defendant had a reasonable opportunity to observe the person so recruited, enticed, harbored, transported, provided, obtained, maintained, patronized, or solicited, the Government need not prove that the defendant knew, or recklessly disregarded the fact, that the person had not attained the age of 18 years.
- (d) Whoever obstructs, attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be fined under this title, imprisoned for a term not to exceed 25 years, or both.

Alien Victims of Severe Forms of Trafficking of Persons – [8 CFR § 214.11](#)

- (b) **Eligibility for T-1 status.** An alien is eligible for T-1 nonimmigrant status under section 101(a)(15)(T)(i) of the Act if he or she demonstrates all of the following, subject to section 214(o) of the Act:
- (1) **Victim.** The alien is or has been a victim of a severe form of trafficking in persons.
- (2) **Physical presence.** The alien is physically present in the United States or at a port-of-entry thereto, according to paragraph (g) of this section.
- (3) **Compliance with any reasonable request for assistance.** The alien has complied with any reasonable request for assistance in a Federal, State, or local investigation or prosecution of acts of trafficking in persons, or the investigation of a crime where acts of trafficking in persons are at least one central reason for the commission of that crime, or meets one of the conditions described below.
- (i) **Exemption for minor victims.** An alien under 18 years of age is not required to comply with any reasonable request.
- (ii) **Exception for trauma.** An alien who, due to physical or psychological trauma, is unable to cooperate with a reasonable request for assistance in the Federal, State, or local investigation or prosecution of acts of trafficking in persons, or the investigation of a crime where acts of trafficking in persons are at least one central reason for the commission of that crime, is not required to comply with such reasonable request.

- (4) **Hardship.** The alien would suffer extreme hardship involving unusual and severe harm upon removal.
- (5) **Prohibition against traffickers in persons.** No alien will be eligible to receive T nonimmigrant status under section 101(a)(15)(T) of the Act if there is substantial reason to believe that the alien has committed an act of a severe form of trafficking in persons.

“Severe form of trafficking in persons” is defined as trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act is under the age of 18 years; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

*The most current version of *United States Title 18 – Crimes and Criminal Procedure* is [available in its entirety online](#), as is the most current version of [United States Code of Regulations Title 8 – Aliens and Nationality](#).

B. Selected Pennsylvania Human Trafficking Statutes

Trafficking in Individuals - [18 PA.CON.S. STAT.ANN. § 3011](#)

(a) **Offense defined:** A person commits a felony:

(1) of the first degree if the person recruits, entices, solicits, advertises, harbors, transports, provides, obtains or maintains an individual if the person knows or recklessly disregards that the individual will be subject to sexual servitude;

(2) of the first degree if the person knowingly benefits financially or receives anything of value from any act that facilitates any activity described in paragraph (1);

(3) of the second degree if the person recruits, entices, solicits, advertises, harbors, transports, provides, obtains or maintains an individual if the person knows or recklessly disregards that the individual will be subject to labor servitude; or

(4) of the second degree if the person knowingly benefits financially or receives anything of value from an act which facilitates any activity under paragraph (3).

(b) **Trafficking in minors:** Notwithstanding section 1103 (relating to sentence of imprisonment for felony), a person shall be sentenced to a term of imprisonment fixed by the court at not more than 40 years if:

(1) the person violates subsection (a)(1) or (2); and

(2) the violation:

(i) results in a minor being subjected to sexual servitude; and

(ii) is part of a course of conduct subjecting minors to sexual servitude.

Or the person knowingly benefits financially or receives anything of value from any act that facilitates any of the acts listed above.

Involuntary Servitude - [18 PA.CON.S. STAT.ANN. § 3012](#)

(a) Offense defined: A person commits a felony of the first degree if the person knowingly, through any of the means described in subsection (b), subjects an individual to labor servitude or sexual servitude, except where the conduct is permissible under Federal or State law other than this chapter.

(b) Means of subjecting an individual to involuntary servitude: A person may subject an individual to involuntary servitude through any of the following means:

- (1) Causing or threatening to cause serious harm to any individual.
- (2) Physically restraining or threatening to physically restrain another individual.
- (3) Kidnapping or attempting to kidnap any individual.
- (4) Abusing or threatening to abuse the legal process.
- (5) Taking or retaining the individual's personal property or real property as a means of coercion.
- (6) Engaging in unlawful conduct with respect to documents, as defined in section 3014 (relating to unlawful conduct regarding documents).
- (7) Extortion.
- (8) Fraud.
- (9) Criminal coercion, as defined in section 2906 (relating to criminal coercion).
- (10) Duress, through the use of or threat to use unlawful force against the person or another.
- (11) Debt coercion.
- (12) Facilitating or controlling the individual's access to a controlled substance.
- (13) Using any scheme, plan or pattern intended to cause the individual to believe that, if the individual does not perform the labor, services, acts or performances, that individual or another individual will suffer serious harm or physical restraint.

Patronizing a Victim of Sexual Servitude - [18 PA.CONS.STAT.ANN. § 3013](#)

(a) Offense defined:

(1) A person commits a felony of the first degree if the person engages in any sex act or performance with another individual knowing that the act or performance is the result of the individual being a victim of human trafficking.

(2) A person commits an offense if the person engages in any sex act or performance with another individual with reckless disregard for whether the act or performance is the result of the individual being a victim of human trafficking. An offense under this paragraph constitutes:

- (i) A felony of the third degree when the offense is a first offense.
- (ii) A felony of the first degree when the offense is a second or subsequent offense.

(b) Investigation: An individual arrested for a violation of section 5902(e) (relating to prostitution and related offenses) may be formally detained and questioned by law enforcement personnel to determine if the individual engaged in any sex act or

performance with the alleged prostitute knowing that the individual is a victim of human trafficking.

(c) Fine: A person whose violation of this section results in a judicial disposition other than acquittal or dismissal shall also pay a fine in one of the following amounts to the court, to be distributed to the commission to fund the grant program established under section 3031 (relating to grants):

(1) Except as otherwise provided in paragraph (2):

(i) Not less than \$1,000 and not more than the maximum amount applicable under section 1101 (relating to fines).

(ii) A person convicted of a second offense shall pay a fine of not less than \$5,000 nor more than \$25,000.

(iii) A person convicted of a third or subsequent offense shall pay a fine of not less than \$10,000 nor more than \$50,000.

(2) Not less than \$10,000 nor more than \$50,000, if the victim of sexual servitude was a minor at the time of the offense.

(d) Distribution of fines:

(1) From all fines collected under this section, 50% shall be deposited in the Safe Harbor for Sexually Exploited Children Fund established under section 3064 (relating to Safe Harbor for Sexually Exploited Children Fund) and 50% shall be deposited in the restricted account established in paragraph (2).

(2) The Prevention of Human Trafficking Restricted Account is established in the General Fund. The money in the restricted account is appropriated on a continuing basis to the commission for the purpose of funding the grant programs under section 3031.

Victim Protection During Prosecution - [18 PA.CON.S.TAT.ANN. § 3019 \(d\)](#)

(a) Disclosure of name of victim of human trafficking: Notwithstanding any other provision of law to the contrary, unless the court otherwise orders in a prosecution involving a victim of human trafficking, an officer or employee of the court may not disclose the identity of the victim of human trafficking to the public. Any record revealing the name of the victim of human trafficking shall not be open to public inspection.

(b) Affirmative defense: An individual who is charged with any violation under section 5902 (relating to prostitution and related offenses) may offer the defense at trial that he engaged in the conduct charged because he was compelled to do so by coercion or the use of or a threat to use unlawful force against his person or the person of another, which a person of reasonable firmness in his situation would have been unable to resist.

(c) Diversionary program: An individual who is charged with violating a trespassing, loitering, obstruction of highway, disorderly conduct or simple possession of a controlled substance statute as a direct result of being a victim of human trafficking, where the violation is his first offense, shall be given first consideration for a pretrial diversionary program by the judicial authority with jurisdiction over the violations. If the individual successfully completes the diversionary program, the court shall order that the

individual's records of the charge of violating the statute shall be expunged as provided for under section 9122 (relating to expungement).

(d) Motion to vacate conviction:

(1) An individual convicted under section 3503 (relating to criminal trespass), 5503 (relating to disorderly conduct), 5506 (relating to loitering and prowling at night time), 5507 (relating to obstructing highways and other public passages) or 5902 or an offense for simple possession of a controlled substance committed as a direct result of being a victim of human trafficking may file a motion to vacate the conviction.

(2) In order to be considered, a motion under this subsection must:

(i) Be in writing.

(ii) Be consented to by the attorney for the Commonwealth.

(iii) Describe the supporting evidence with particularity.

(iv) Include copies of any documents showing that the moving party is entitled to relief under this section.

(e) Official documentation: No official determination or documentation is required to grant a motion under this section, but official documentation from a Federal, State or local government agency indicating that the defendant was a victim at the time of the offense creates a presumption that the defendant's participation in the offense was a direct result of being a victim.

(f) Grant of motion: The court shall grant the motion if it finds that:

(1) The moving party was convicted of an offense described in subsection (d)(1).

(2) The conviction was obtained as a result of the moving party's having been a victim of human trafficking.

(g) Conviction vacated: If the motion under subsection (d) is granted, the court shall vacate the conviction, strike the adjudication of guilt and order the expungement of the record of the criminal proceedings. The court shall issue an order to expunge all records and files related to the moving party's arrest, citation, investigation, charge, adjudication of guilt, criminal proceedings and probation for the offense.

Safe Harbor for Sexually Exploited Children - [18 PA.CONS.STAT.ANN. § 3065](#)

(a) Safe Harbor: If it is determined by a law enforcement officer, after reasonable detention for investigative purposes, that an individual is under 18 years of age and is determined to be a sexually exploited child, the individual shall be immune from:

(1) Prosecution or adjudication as a delinquent child for a violation of sections 5507 (relating to obstructing highways and other public passages) and 5902(a) (relating to prostitution and related offenses).

(2) Revocation of an existing term of probation or parole arising from a conviction or adjudication for another offense if the revocation is based on conduct under paragraph (1).

- (b) Exceptions to safe harbor:** The safe harbor under subsection (a) shall not:
- (1)** Interfere with or prevent an investigation, arrest, charge, prosecution, delinquency adjudication or revocation for violations other than a violation under subsection (a).
 - (2)** Bar the admission of evidence in connection with the investigation and prosecution for a violation other than a violation under subsection (a).
 - (3)** Bar the admission of evidence in connection with an investigation and prosecution of an individual who does not qualify for safe harbor as provided under this section.

(c) Detainment: An individual determined to be a sexually exploited child as defined in section 3001 (relating to definitions) shall be detained no longer than necessary and only to assist the child in securing specialized services available under section 3062 (relating to specialized services for sexually exploited children) or to refer the child to a county agency if required under 42 Pa.C.S. § 6328 (relating to dependency in lieu of delinquency).

(d) Immunity: In addition to any other immunity or limitation on civil liability, a law enforcement officer or prosecuting attorney who, acting in good faith, investigates, detains, charges or institutes delinquency proceedings against an individual who is thereafter determined to be entitled to immunity under this section shall not be subject to civil liability for the actions.

Dependency in lieu of delinquency- [42 Pa. C.A.S. § 6328](#)

(a) Referral to county agency: The offenses provided under subsection (b) shall be referred to a county agency under 23 Pa.C.S. §§ 6362 (relating to responsibilities of county agency for child protective services) and 6375 (relating to county agency requirements for general protective services) if the offense:

- (1)** Is committed by a child as a direct result of being a sexually exploited child as defined in 18 Pa.C.S. § 3001 (relating to definitions).
- (2)** Is directly related to having been subject to human trafficking as defined in 18 Pa.C.S. § 3001.

(b) Eligible offenses: Eligible offenses for referral to a county agency include the following:

- (1)** 18 Pa.C.S. § 3503 (relating to criminal trespass).
- (2)** 18 Pa.C.S. § 4914 (relating to false identification to law enforcement authorities).
- (3)** 18 Pa.C.S. § 5503 (relating to disorderly conduct).
- (4)** 18 Pa.C.S. § 5506 (relating to loitering and prowling at night time).
- (5)** An offense for simple possession of a controlled substance under section 13(a)(16) and (31) of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act.

(c) Delinquency proceedings:

- (1) If an offense listed in subsection (b) is referred to a county agency, delinquency proceedings under this chapter may not be commenced immediately.
- (2) If treatment and social services are unsuccessful while the dependency petition is pending, as evidenced by the child's behavior, and the county agency believes that juvenile justice services are necessary and warranted, the county agency shall refer the child's case to the juvenile probation department or district attorney's office for the commencement of delinquency proceedings.

(d) Record expungement: Upon the final discharge of supervision, juvenile court records relating to an offense listed in subsection (b) shall be expunged by the court under 18 Pa.C.S. § 9123 (relating to juvenile records).

"Sexually exploited child" is defined as individual under 18 years of age who:

- (1) is a victim of sexual servitude; or
- (2) is a victim of an offense under 18 U.S.C. § 1591 (relating to sex trafficking of children or by force, fraud, or coercion).

"Sexual servitude." Any sex act or performance involving a sex act for which anything of value is directly or indirectly given, promised to or received by any individual or which is performed or provided by any individual and is induced or obtained from:

- (1) A minor.
- (2) Any other individual by any of the means set forth in section 3012(b).

"Sex act." Any touching or exposure of the sexual or other intimate parts of any individual for the purpose of gratifying sexual desire of any individual.

*The most current version of Title 18, Chapter 30 – Human Trafficking is [available in its entirety online](#).

6. Selected Pennsylvania Offenses Against Children

STOP Grant Program funds can be used to assist severe sexual assault victims who are 11 years and older.

Cyber harassment of a child - [18 PA.CON.S.TAT.ANN. § 2709 \(a.1\)](#)

(1) A person commits the crime of cyber harassment of a child if, with intent to harass, annoy or alarm, the person engages in a continuing course of conduct of making any of the following by electronic means directly to a child or by publication through an electronic social media service:

- (i) seriously disparaging statement or opinion about the child's physical characteristics, sexuality, sexual activity or mental or physical health or condition; or
- (ii) threat to inflict harm.

(2)(i) If a juvenile is charged with a violation of paragraph (1), the judicial authority with jurisdiction over the violation shall give first consideration to referring the juvenile charged with the violation to a diversionary program under Pa.R.J.C.P. No. 312 (relating to Informal Adjustment) or No. 370 (relating to Consent Decree). As part of the

diversionary program, the judicial authority may order the juvenile to participate in an educational program which includes the legal and nonlegal consequences of cyber harassment.

(ii) If the person successfully completes the diversionary program, the juvenile's records of the charge of violating paragraph (1) shall be expunged as provided for under section 9123 (relating to juvenile records)

Corruption of Minors – [18 PA.CON.S.TAT.ANN. § 6301](#)

(a) Offense defined: (1) (i) Except as provided in subparagraph (ii), whoever, being of the age of 18 years and upwards, by any act corrupts or tends to corrupt the morals of any minor less than 18 years of age, or who aids, abets, entices or encourages any such minor in the commission of any crime, or who knowingly assists or encourages such minor in violating his or her parole or any order of court, commits a misdemeanor of the first degree.

(ii) Whoever, being of the age of 18 years and upwards, by any course of conduct in violation of Chapter 31 (relating to sexual offenses) corrupts or tends to corrupt the morals of any minor less than 18 years of age, or who aids, abets, entices or encourages any such minor in the commission of an offense under Chapter 31 commits a felony of the third degree.

(2) Any person who knowingly aids, abets, entices or encourages a minor younger than 18 years of age to commit truancy commits a summary offense. Any person who violates this paragraph within one year of the date of a first conviction under this section commits a misdemeanor of the third degree. A conviction under this paragraph shall not, however, constitute a prohibition under section 6105 (relating to persons not to possess, use, manufacture, control, sell or transfer firearms).

(b) Adjudication of delinquency unnecessary: A conviction under the provisions of this section may be had whether or not the jurisdiction of any juvenile court has attached or shall thereafter attach to such minor or whether or not such minor has been adjudicated a delinquent or shall thereafter be adjudicated a delinquent.

(c) Presumptions: In trials and hearings upon charges of violating the provisions of this section, knowledge of the minor's age and of the court's orders and decrees concerning such minor shall be presumed in the absence of proof to the contrary.

(d) Mistake as to age:

(1) Whenever in this section the criminality of conduct depends upon the corruption of a minor whose actual age is under 16 years, it is no defense that the actor did not know the age of the minor or reasonably believed the minor to be older than 18 years.

(2) Whenever in this section the criminality of conduct depends upon the corruption of a minor whose actual age is 16 years or more but less than 18 years, it is a defense for the actor to prove by a preponderance of the evidence that he reasonably believed the minor to be 18 years or older.

Sexual Abuse of Children- [18 PA.CON.S.TAT.ANN. § 6312\(b\)\(1\)](#)

(b) Photographing, videotaping, depicting on computer or filming sexual acts:

(1) Any person who causes or knowingly permits a child under the age of 18 years to engage in a prohibited sexual act or in the simulation of such act commits an offense if such person knows, has reason to know or intends that such act may be photographed, videotaped, depicted on computer or filmed.

(2) Any person who knowingly photographs, videotapes, depicts on computer or films a child under the age of 18 years engaging in a prohibited sexual act or in the simulation of such an act commits an offense.

(c) Dissemination of photographs, videotapes, computer depictions and films:

Any person who knowingly sells, distributes, delivers, disseminates, transfers, displays or exhibits to others, or who possesses for the purpose of sale, distribution, delivery, dissemination, transfer, display or exhibition to others, any book, magazine, pamphlet, slide, photograph, film, videotape, computer depiction or other material depicting a child under the age of 18 years engaging in a prohibited sexual act or in the simulation of such act commits an offense.

(d) Child pornography: Any person who intentionally views or knowingly possesses or controls any book, magazine, pamphlet, slide, photograph, film, videotape, computer depiction or other material depicting a child under the age of 18 years engaging in a prohibited sexual act or in the simulation of such act commits an offense.

(d.1) Grading: The offenses shall be graded as follows:

(1) Except as provided in paragraph (3), an offense under subsection (b) is a felony of the second degree.

(2) (i) Except as provided in paragraph (3), a first offense under subsection (c) or (d) is a felony of the third degree.

(ii) A second or subsequent offense under subsection (c) or (d) is a felony of the second degree.

(3) When a person commits an offense graded under paragraph (1) or (2)(i), the grading of the offense shall be one grade higher than the grade specified in paragraph (1) or (2)(i) if:

(i) indecent contact with the child as defined in section 3101 (relating to definitions) is depicted; or

(ii) the child depicted is under 10 years of age or prepubescent.

(e) Evidence of age: In the event a person involved in a prohibited sexual act is alleged to be a child under the age of 18 years, competent expert testimony shall be sufficient to establish the age of said person.

(e.1) Mistake as to age: Under subsection (b) only, it is no defense that the defendant did not know the age of the child. Neither a misrepresentation of age by the child nor a bona fide belief that the person is over the specified age shall be a defense.

(f) Exceptions: This section does not apply to any of the following:

(1) Any material that is viewed, possessed, controlled, brought or caused to be brought into this Commonwealth, or presented, for a bona fide educational, scientific, governmental or judicial purpose.

(2) Conduct prohibited under section 6321 (relating to transmission of sexually explicit images by minor), unless the conduct is specifically excluded by section 6321(d).

(3) An individual under 18 years of age who knowingly views, photographs, videotapes, depicts on a computer or films or possesses or intentionally views a visual depiction as defined in section 6321 of himself alone in a state of nudity as defined in section 6321.

(f.1) Criminal action:

(1) A district attorney shall have the authority to investigate and to institute criminal proceedings for any violation of this section.

(2) In addition to the authority conferred upon the Attorney General by the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act, the Attorney General shall have the authority to investigate and to institute criminal proceedings for any violation of this section or any series of violations of this section involving more than one county of this Commonwealth or involving any county of this Commonwealth and another state. No person charged with a violation of this section by the Attorney General shall have standing to challenge the authority of the Attorney General to investigate or prosecute the case, and, if any such challenge is made, the challenge shall be dismissed and no relief shall be available in the courts of this Commonwealth to the person making the challenge.

(g) Definitions: As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Intentionally views." The deliberate, purposeful, voluntary viewing of material depicting a child under 18 years of age engaging in a prohibited sexual act or in the simulation of such act. The term shall not include the accidental or inadvertent viewing of such material.

"Prohibited sexual act." Sexual intercourse as defined in section 3101 (relating to definitions), masturbation, sadism, masochism, bestiality, fellatio, cunnilingus, lewd exhibition of the genitals or nudity if such nudity is depicted for the purpose of sexual stimulation or gratification of any person who might view such depiction.

Unlawful Contact with Minor – [18 PA.CONS.STAT.ANN. § 6318](#)

(a) Offense defined: A person commits an offense if he is intentionally in contact with a minor, or a law enforcement officer acting in the performance of his duties who has assumed the identity of a minor, for the purpose of engaging in an activity prohibited under any of the following, and either the person initiating the contact or the person being contacted is within this Commonwealth:

(1) Any of the offenses enumerated in Chapter 31 (relating to sexual offenses).

(2) Open lewdness as defined in section 5901 (relating to open lewdness).

(3) Prostitution as defined in section 5902 (relating to prostitution and related offenses).

(4) Obscene and other sexual materials and performances as defined in section 5903 (relating to obscene and other sexual materials and performances).

(5) Sexual abuse of children as defined in section 6312 (relating to sexual abuse of children).

(6) Sexual exploitation of children as defined in section 6320 (relating to sexual exploitation of children).

(b) Grading: A violation of subsection (a) is:

(1) an offense of the same grade and degree as the most serious underlying offense in subsection (a) for which the defendant contacted the minor; or

(2) a felony of the third degree; whichever is greater.

(b.1) Concurrent jurisdiction to prosecute: The Attorney General shall have concurrent prosecutorial jurisdiction with the district attorney for violations under this section and any crime arising out of the activity prohibited by this section when the person charged with a violation of this section contacts a minor through the use of a computer, computer system or computer network. No person charged with a violation of this section by the Attorney General shall have standing to challenge the authority of the Attorney General to prosecute the case, and, if any such challenge is made, the challenge shall be dismissed and no relief shall be available in the courts of this Commonwealth to the person making the challenge.

(c) Definitions: As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Computer." An electronic, magnetic, optical, hydraulic, organic or other high-speed data processing device or system which performs logic, arithmetic or memory functions and includes all input, output, processing, storage, software or communication facilities which are connected or related to the device in a computer system or computer network.

"Computer network." The interconnection of two or more computers through the usage of satellite, microwave, line or other communication medium.

"Computer system." A set of related, connected or unconnected computer equipment, devices and software.

"Contacts." Direct or indirect contact or communication by any means, method or device, including contact or communication in person or through an agent or agency, through any print medium, the mails, a common carrier or communication common carrier, any electronic communication system and any telecommunications, wire, computer or radio communications device or system.

"Minor." An individual under 18 years of age.

Sexual Exploitation of Children - [18 PA.CON.S.TAT.ANN.- § 6320](#)

(a) Offense defined: A person commits the offense of sexual exploitation of children if he procures for another person a child under 18 years of age for the purpose of sexual exploitation.

(b) Penalty: An offense under this section is a felony of the second degree.

(c) Definitions: As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Procure." To obtain or make available for sexual exploitation.

"Sexual exploitation." Actual or simulated sexual activity or nudity arranged for the purpose of sexual stimulation or gratification of any person.

*The most current version of Pennsylvania Title 18, Chapter 63 – Minors is [available in its entirety online](#).

7. Selected Pennsylvania Rules of Evidence

Evidence of victim's sexual conduct (Rape Shield) - [18 Pa.Cons.Stat.Ann § 3104](#)

(a) General rule: Evidence of specific instances of the alleged victim's past sexual conduct, past sexual victimization, allegations of past sexual victimization, opinion evidence of the alleged victim's past sexual conduct, and reputation evidence of the alleged victim's past sexual conduct shall not be admissible in prosecutions of any offense listed in subsection (c) except evidence of the alleged victim's past sexual conduct with the defendant where consent of the alleged victim is at issue and such evidence is otherwise admissible pursuant to the rules of evidence.

(b) Evidentiary proceedings: A defendant who proposes to offer evidence of the alleged victim's past sexual conduct, past sexual victimization, allegations of past sexual victimization, opinion evidence of the alleged victim's past sexual conduct and reputation evidence of the alleged victim's past sexual conduct pursuant to subsection (a) shall file a written motion and offer of proof at the time of trial. If, at the time of trial, the court determines that the motion and offer of proof are sufficient on their faces, the court shall order an in camera hearing and shall make findings on the record as to the relevance and admissibility of the proposed evidence pursuant to the standards set forth in subsection (a).

(c) Applicability: This section shall apply to prosecutions of any of the following offenses, including conspiracy, attempt or solicitation to commit any of the following offenses, enumerated in this title:

Chapter 27 (relating to assault).

Chapter 29 (relating to kidnapping).

Chapter 30 (relating to human trafficking).

Chapter 31 (relating to sexual offenses).

Section 4302 (relating to incest).

Section 4304 (relating to endangering welfare of children), if the offense involved sexual contact with the victim.

Section 6301(a)(1)(ii) (relating to corruption of minors).

Section 6312(b) (relating to sexual abuse of children).

Section 6318 (relating to unlawful contact with minor).

Section 6320 (relating to sexual exploitation of children).

Admissibility of Certain Statements (Tender Years Exception) - [42 Pa. Cons. Stat. Ann. § 5985.1](#)

(a) General rule: (1) An out-of-court statement made by a child victim or witness, who at the time the statement was made was 16 years of age or younger, describing any of the offenses enumerated in paragraph (2), not otherwise admissible by statute or rule of evidence, is admissible in evidence in any criminal or civil proceeding if:

(i) the court finds, in an in camera hearing, that the evidence is relevant and that the time, content and circumstances of the statement provide sufficient indicia of reliability; and

(ii) the child either:

(A) testifies at the proceeding; or

(B) is unavailable as a witness.

(2) The following offenses under 18 Pa.C.S. (relating to crimes and offenses) shall apply to paragraph (1):

Chapter 25 (relating to criminal homicide).

Chapter 27 (relating to assault).

Chapter 29 (relating to kidnapping).

Chapter 30 (relating to human trafficking).

Chapter 31 (relating to sexual offenses).

Chapter 35 (relating to burglary and other criminal intrusion).

Chapter 37 (relating to robbery).

Section 4302 (relating to incest).

Section 4304 (relating to endangering welfare of children), if the offense involved sexual contact with the victim.

Section 6301(a)(1)(ii) (relating to corruption of minors).

Section 6312(b) (relating to sexual abuse of children).

Section 6318 (relating to unlawful contact with minor).

Section 6320 (relating to sexual exploitation of children).

(a.1) Emotional distress: In order to make a finding under subsection (a)(1)(ii)(B) that the child is unavailable as a witness, the court must determine, based on evidence presented to it, that testimony by the child as a witness will result in the child suffering serious emotional distress that would substantially impair the child's ability to reasonably communicate. In making this determination, the court may do all of the following:

(1) Observe and question the child, either inside or outside the courtroom.

(2) Hear testimony of a parent or custodian or any other person, such as a person who has dealt with the child in a medical or therapeutic setting.

(a.2) Counsel and confrontation: If the court hears testimony in connection with making a finding under subsection (a)(1)(ii)(B), all of the following apply:

- (1)** Except as provided in paragraph (2), the defendant, the attorney for the defendant and the attorney for the Commonwealth or, in the case of a civil proceeding, the attorney for the plaintiff has the right to be present.
- (2)** If the court observes or questions the child, the court shall not permit the defendant to be present.

(b) Notice required: A statement otherwise admissible under subsection (a) shall not be received into evidence unless the proponent of the statement notifies the adverse party of the proponent's intention to offer the statement and the particulars of the statement sufficiently in advance of the proceeding at which the proponent intends to offer the statement into evidence to provide the adverse party with a fair opportunity to prepare to meet the statement.

Expert testimony in certain criminal proceedings – [42 Pa. Cons. Stat. Ann. § 5920](#)

(a) Scope: This section applies to all of the following:

- (1)** A criminal proceeding for [an offense for which registration is required] any crime listed under [Subchapter H] Subchapter H (relating to registration of sexual offenders) or I (relating to continued registration of sexual offenders) of Chapter 97 [(relating to registration of sexual offenders)].
- (2)** A criminal proceeding for an offense [under 18 Pa.C.S. Ch. 31 (relating to sexual offenses).], including attempt, solicitation or conspiracy, under any of the following provisions of 18 Pa.C.S. (relating to crimes and offenses):
 - (i)** Chapter 30 (relating to human trafficking), if the offense involved sexual servitude.
 - (ii)** Chapter 31 (relating to sexual offenses).
 - (iii)** Section 4302 (relating to incest).
 - (iv)** Section 4304 (relating to endangering welfare of children), if the offense involved sexual contact with the victim.
 - (v)** Section 5902(b) or (b.1) (relating to prostitution and related offenses).
 - (vi)** Section 6301(a)(1)(i) (relating to corruption of minors), if the offense involved sexual contact with the victim.
 - (vii)** Section 6301(a)(1)(ii).
 - (viii)** Section 6312 (relating to sexual abuse of children).
 - (ix)** Section 6318 (relating to unlawful contact with minor).
 - (x)** Section 6320 (relating to sexual exploitation of children).
- (3)** A criminal proceeding for a domestic violence offense.

(b) Qualifications and use of experts: **(1)** In a criminal proceeding subject to this section, a witness may be qualified by the court as an expert if the witness has specialized knowledge beyond that possessed by the average layperson based on the witness's experience with, or specialized training or education in, criminal justice, behavioral sciences or victim services issues, related to sexual violence or domestic violence, that will assist the trier of fact in understanding the dynamics of sexual violence or domestic violence, victim responses to sexual violence or domestic violence

and the impact of sexual violence or domestic violence on victims during and after being assaulted.

(c) Definitions: As used in this section, the term "domestic violence" means an offense under 18 Pa.C.S. § 2701 (relating to simple assault), 2702 (relating to aggravated assault), 2709.1 (relating to stalking) or 2718 (relating to strangulation) perpetrated against a family or household member, as that term is defined in 23 Pa.C.S. § 6102 (relating to definitions).

*The most current version of *Pennsylvania Title 18, Chapter 31 – Sexual Offenses* is [available in its entirety online](#), as is *Pennsylvania Title 42, Section 59 – Depositions and Witnesses*.