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PERSONAL PROTECTION ORDERS AGAINST JUVENILES

House Bill 5564 (Substitute H-3)
Sponsor: Rep. Judith Scranton

House Bill 5567 with committee amendment
Sponsor: Rep. Kwame Kilpatrick

Senate Bill 866 with committee amendment
Sponsor: Sen. William VanRegenmorter

Senate Bill 874 with committee amendment
Sponsor: Sen. Alma Smith

Committee: Judiciary
First Analysis (4-22-98)

THE APPARENT PROBLEM:

In 1992, the legislature enacted a package of legislation (Public Acts 251, 260, 261, and 262) aimed at combating the problem of stalking. The legislation criminalized stalking, authorized warrantless arrests for stalking, and authorized anti-stalking court orders and civil lawsuits for damages caused by stalking. In 1994, the legislature further enacted a package of legislation (Public Act 57 through 62) aimed at combating domestic violence that focused on statutory changes regarding the issuance and enforcement of domestic violence and anti-stalking personal protection orders (PPOs). However, even before these laws took effect on July 1, 1994, it was evident that there were many problems with this new legal remedy, and the governor appointed a special task force on domestic violence, charging it with standardizing the criteria used for the issuance and enforcement of family violence injunctions. The task force issued its report on June 29, 1994, and a number of its recommendations have been taken up in legislation this session. (See the House Legislative Analysis Section analysis of House Bills 5657 through 5667 dated 4-2-98.)

Reportedly, however, even before the governor's domestic violence task force met, there were separate concerns about personal protection orders issued against minors, including the fact that minors cannot make certain legal decision for themselves and the belief that adult sanctions for violating PPOs (such as jail time for contempt of court) should not apply to minors who violated PPOs. In addition, there have

been cases in which children as young as ten years of age have gone to court requesting PPOs against other ten-year-olds as a result of childhood spats, which many people believe to be a misuse of this legal tool. In addition, apparently some people have questioned whether or not PPOs properly may be sought by or against minors. Finally, the creation of the family division of the circuit court (which took effect on January 1, 1998) has involved the transfer of jurisdiction over proceedings involving minors from the probate to the circuit court, so statutory changes need to be made to reflect this change also. A bicameral, bipartisan package of four bills has been introduced that would address these and related issues.

THE CONTENT OF THE BILLS:

The bills would revise and clarify the issuance and enforcement of PPOs issued against juveniles. In general, House Bill 5564 would amend the provisions of the juvenile code regarding the authority and jurisdiction of the family division of the circuit court with regard to "juvenile PPOs," while House Bill 5567 would amend the current warrantless arrest provisions for PPO violations in the Code of Criminal Procedure to conform with the changes to the Revised Judicature Act (RJA) proposed by Senate Bills 866 and 874. The Senate bills would amend the RJA, among other things, to prohibit PPOs between parents and their minor children; require that PPOs issued against minors under 17 also be served on the minor's parent, guardian, or custodian; subject minors under 17 who

House Bills 5564 and 5567, Senate Bills 866 and 874 (4-22-98)

violated PPOs to the juvenile code's dispositional alternatives to imprisonment and fines (17-year-old minors would be subject to adult criminal contempt penalties); and require that PPOs issued against minors describe the legal consequences of violating a PPO. Each of the bills is tie-barred to the others, and all of the bills would take effect on September 1, 1998.

A more detailed description of the content of the House bills follows (for a more detailed analysis of the Senate bills, see the Senate Fiscal Agency Analysis dated 4-16-98).

House Bill 5564 would amend the juvenile part of the Probate Code (MCL 712A.2 et al.) to do the following:

** Give the family division of the circuit court ("the family court") explicit jurisdiction over PPOs against minors younger than 17;

** Specify that venue for the initial PPO action against a minor would be proper in the county of residence of either of the petitioner or of the respondent, and, if the respondent lived out of state, in the petitioner's county of residence;

** In the case of a PPO issued against a minor under the juvenile code, the family court would continue to have jurisdiction until the order expired, but action regarding the PPO after the respondent turned 18 would no longer be under the juvenile code;

** Allow the court to order the apprehension of a juvenile alleged to have violated a PPO issued under the juvenile code, and allow a law enforcement officer, without a court order, to take into custody a minor who was violating or had violated a PPO issued under the juvenile code;

** Allow the pre-adjudication detention of a juvenile who was alleged to have violated a PPO, and limit custody to those juveniles for whom it appeared there was "a substantial likelihood of retaliation or continued violation";

** Allow the family court to place 17-year-olds under its jurisdiction for PPOs issued under the juvenile code into secure juvenile or adult facilities (Section 15 would waive the juvenile code prohibition against the pre-adjudication detention of children "in a secure cell or other secure facility designed to incarcerate adults" for 17-year-olds accused of violating a PPO, while Section 18 would allow "commitment to a county jail

within the adult prisoner population" of 17-year-olds in violation of a PPO);

** Allow jury trials for juveniles accused of violating a PPO;

** Require the court to advise juveniles accused of violating a PPO that they had the right to an attorney at each stage of the proceeding;

** Allow the court to use the dispositional alternatives of Section 18 of the juvenile code, including placement in a foster care home, for juveniles who violated a PPO; and

** Update the contempt section of the juvenile code, which currently references "The Judicature Act of 1915" instead of the Revised Judicature Act of 1961.

House Bill 5567 would amend the Code of Criminal Procedure (MCL 764.15b and 764.15c) to give the family division of the circuit court jurisdiction to conduct contempt proceedings for violations of PPOs issued in any county in the state. The court conducting the preliminary hearing would be required to notify the court that had issued the PPO that the issuing court could request the respondent be returned to the issuing court's county to stand trial. If the issuing court requested the return of the respondent, the requesting county would bear the cost of transporting the defendant to that county.

The bill also would allow the juvenile code dispositional alternatives for juveniles younger than 17, while subjecting 17-year-olds to adult criminal contempt penalties for violating a PPO.

More specifically, the bill would require a PPO to state that a violation of its terms would subject the violator both to immediate arrest and (a) if the respondent was 17 years old, criminal contempt (with attendant possible imprisonment for up to 93 days and a fine up to \$500) or (b) if the respondent was under 17, to the dispositional alternatives in the juvenile code. (Note: Currently, the fine for criminal contempt is not mandatory but permissive; the bill would make the fine, like imprisonment, mandatory.)

Finally, the bill would add "place of education" and "educational relationship or environment" to the current workplace and work relationship or environment provisions of the code. That is, the bill would allow a PPO to restrain or enjoin someone from interfering with a petitioner at the petitioner's place of education (in addition to the current "place of work").

HOUSE COMMITTEE ACTION ON SENATE BILLS 866 AND 874:

The House Judiciary Committee amended both bills to add a September 1, 1998, effective date.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

The bills would correct a number of problems that have been identified with regard to so-called juvenile personal protection orders. First, House Bill 5564 would give the family division of the circuit court explicit jurisdiction under the juvenile code for PPO proceedings involving juveniles younger than 17, thereby clarifying the court's authority to issue and enforce such PPOs (including expressly allowing the arrest or apprehension of juveniles who violated PPOs and the pre-adjudication detention of juveniles accused of violating PPOs). The bill, in addition, would guarantee minors accused of violating PPOs the same rights to a jury trial that adults have when charged with criminal contempt, and would further establish the right of minors to legal representation at all stages of proceedings alleging violations of PPOs. This is important, given the potential consequences of such violations, especially for 17-year-old violators, who would be subject to adult penalties. The bill also would make necessary corrections to the juvenile code regarding references to the family division of the circuit court, which (as of January 1, 1998) is the successor court to the probate court in juvenile matters. And finally, the bill would make long-overdue changes updating the contempt section of the juvenile code, a section that has not been amended since 1944. The updating is particularly important in light of the fact that criminal contempt is a key sanction for violations of PPOs.

House Bill 5567 would exempt minors younger than 17 who violated a PPO from adult criminal contempt sanctions, which include imprisonment and possible fines, while subjecting 17-year-old violators to these adult sanctions, including adult jail and fines that the bill would make mandatory instead of permissive.

Against:

While correcting many of the problems raised concerning the issue of juvenile PPOs, the bills also have some problems. For example, since the rationale for separate juvenile court proceedings before the family court apparently was to distinguish between cases brought against adults and those brought against minors, it would make sense to set 18 as the age for distinguishing between juvenile and adult sanctions. The way the bills now are written, unemancipated 17-year-olds, who lack the legal capacity to make certain decisions for themselves, would be treated as though they were adults, and House Bill 5564 gives the family court jurisdiction only over PPO proceedings "in which a minor less than 17 years of age is the respondent." Why not include all minors up to the age of 18? Also, although the bills would require that juveniles accused of violating PPOs be advised of their right to an attorney at all stages of the proceedings, the appointment of an attorney at public expense is not required, presumably out of concern for Headlee implications. Yet the juvenile code continues to allow the court to assess attorney costs against an accused juvenile (or against the person responsible for the juvenile's support).

Response:

Treating 17-year-olds like adults is not unusual. If a 17-year-old commits a felony or misdemeanor, he or she is treated as an adult, can be sentenced like an adult, and placed anywhere that an adult can, including jail. Secondly, it is not clear that House Bill 5564 does not give the family court jurisdiction over 17-year-old minors, despite the reference in proposed subsection 2(h) to PPO proceedings "in which a minor less than 17 years of age is the respondent." For in proposed subsection 2a(3), the bill also extends the family court's jurisdiction, if it had exercised jurisdiction over a child under 2(h), over respondents "until the order expires," though action regarding the PPO "after the respondent's eighteenth birthday" would not be subject to the juvenile code. This suggests that 17-year-olds would fall under family court jurisdiction (though it also could suggest that action regarding PPOs taken out against juveniles would continue through the respondent's eighteenth birth date, though not thereafter). Finally, with regard to advising minors of their right to an attorney in PPO proceedings without requiring that one be appointed at public expense, if a court determined that due process required appointment of an attorney in cases where the minor (or those providing him or her with support) were indigent, the due process exception to state-mandated costs would apply and the Headlee provisions would not be valid.

Against:

None of the bills appear to address the issue of frivolous PPOs involving minors, such as the PPOs reportedly taken out against each other by ten-year-olds involved in a school dispute. While the Senate bills would prohibit minors from taking out PPOs against their parents and parents from taking out PPOs against their minor children, what would prevent minors from taking out PPOs against each other over name calling or playground spats? In fact, although proponents of the bill package argue that it targets only violent juveniles, other people believe that juveniles should be allowed to be plaintiffs but not defendants in PPOs, since truly violent juveniles will hardly be deterred from violence simply because of a PPO taken out against them. It might even be the case that some violent juveniles could come out with a lesser charge because they or their lawyers figured out that it would be better to plead guilty to the PPO violation before it got dismissed. Finally, given the amount of violence in some families, why shouldn't parents or minor children be allowed to take out PPOs against violent minor children or parents? Intrafamily violence, especially that involving parents and minor children, should be tackled with as many tools as possible, and if PPOs are part of addressing domestic violence then surely they should be allowed in these cases as well.

POSITIONS:

There are no positions on the bills.

Analyst: S. Ekstrom

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.