



Romney Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

PERSONAL PROTECTION ORDERS

House Bill 5657 as introduced
Sponsor: Rep. Michael Nye

House Bill 5658 as introduced
Sponsor: Rep. Candace Curtis

House Bill 5659 as introduced
Sponsor: Rep. Alan Sanborn

House Bill 5662 as introduced
Sponsor: Rep. Mark Jansen

House Bill 5663 as introduced
Sponsor: Rep. Andrew Richner

House Bill 5664 as introduced
Sponsor: Rep. Laura Baird

House Bill 5665 as introduced
Sponsor: Rep. A.T. Frank

House Bill 5666 as introduced
Sponsor: Rep. Patricia Godchaux

House Bill 5667 as introduced
Sponsor: Rep. Mark Schauer

First Analysis (4-2-98)

Committee: Judiciary

House Bills 5657-5659 and 5662-5667 (4-2-98)

THE APPARENT PROBLEM:

Despite a growing public awareness about domestic violence and its consequences for family members and society as a whole, and despite the enactment of various laws aimed at reducing domestic violence and providing shelter and services to victims of abuse, domestic violence continues at an alarming rate. For some time, procedures for law enforcement response to domestic violence have been tinkered with in an effort to create a more consistent and effective means of dealing with domestic violence. In 1994, 22 new domestic violence laws were passed by Michigan's legislature. One of the results of that legislation was

the creation of domestic violence personal protection orders (PPOs). Personal protection orders are a distinctly new creation of the legislature: they are civil injunctions that have criminal penalties. Under the Revised Judicature Act (RJA) a victim of domestic violence may petition the circuit court to issue a personal protection order to prohibit a spouse, a former spouse, an individual with whom the petitioner has had a child in common, an individual with whom the petitioner has or has had a dating relationship, or an individual who resides or has resided in the petitioner's household from engaging in certain

activities. The personal protection order provisions allow an ex parte PPO to be issued and to become effective without providing notice to the individual who is to be restrained or that person's attorney where the facts reveal that immediate and irreparable injury, loss, or damage could result from the delay required to provide notice or that the provision of notice, in and of itself, will precipitate adverse action by the respondent before the order could be issued.

In the fall of 1995, the Prosecuting Attorneys Association of Michigan (PAAM) and the Domestic Violence Prevention and Treatment Board (DVPTB) met to discuss the implementation of the domestic violence laws enacted by the legislature in 1994. The two groups then agreed to co-chair a statewide, multi-disciplinary task force to gather information on the problems and successes encountered in implementing the new laws, and to make recommendations for legislative and court rule change, police policy, training need, forms changes, and best practices. In July of 1996, the task force issued its report, including recommendations for changes. Legislation has been introduced in order to enact some of the task force's recommendations.

THE CONTENT OF THE BILLS:

House Bill 5657 would amend the Revised Judicature Act of 1961 (MCL 600.2529 et al.) to revise and clarify the procedures involved in issuing and enforcing certain personal protection orders (PPOs). The bill would provide that motions to modify or terminate domestic violence personal protection orders (those issued to restrain or enjoin a spouse, former spouse, an individual who resides or resided in the same household as the victim or an individual with whom he or she has had either a dating relationship or a child in common from engaging in certain activities) and ex parte personal protection orders (issued based only on evidence from the party seeking the order to restrain the other party from engaging in conduct prohibited under the state's stalking laws) would not be subject to a motion fee.

Under domestic violence PPOs, the bill would allow the party seeking the protection order (the petitioner) to have the restrained party (the respondent) barred from access to information regarding the address and telephone number of the petitioner and the parties' minor child. The respondent could also be restrained

from engaging in any conduct that would be prohibited under the stalking laws. Both provisions would be in addition to those already established.

When issuing a domestic violence personal protection order or an ex parte personal protection order, the clerk of the court is required to immediately file a true copy of the order with the local law enforcement agency and provide the petitioner with no less than two copies of the order. The bill would also require the clerk to notify the concealed weapon licensing board in the respondent's county of the existence and contents of the order if the order was one that prohibited the respondent from purchasing or possessing a firearm. In addition, if the respondent had been identified in the pleadings as a law enforcement officer, the clerk would be required to notify the respondent's employer, if known, of the existence of the order.

A PPO can be served either personally or by registered or certified mail, or a police officer can serve a PPO when responding to a domestic violence call. The bill would allow a police officer to serve a personal protection order while responding to any type of call. In addition, a police officer or a clerk of the court could, at any time, serve a copy of the order on the respondent or orally advise the respondent about the existence of the order, the conduct enjoined, the penalties for violation, and where the respondent could obtain a copy of the order. Proof of such oral notice would have to be filed with the clerk of the court that had issued the order.

In cases where a party was seeking a non-domestic ex parte personal protection order, the court could refuse to issue the order unless the petitioner alleged facts that constituted stalking as defined by state law. If the court refused to issue a protection order, it would be required to state the specific reason for the refusal in writing.

The bill would also prohibit PPOs from being issued where the petitioner is an unemancipated minor (less than 18 years of age) and the respondent is the minor's parent. In cases where the respondent was less than 18 years old, the court would proceed under authority of the juvenile division of the probate court.

House Bill 5658 would amend the Code of Criminal Procedure (MCL 764.15, et al.) to expand the provisions under which a police officer may make a warrantless arrest.

Currently, in order to make a warrantless arrest on an outstanding warrant, the officer making the arrest must have received positive information by telephone, telegraph, teletype, radio, in writing, or by some other authoritative means that another officer holds a warrant for the individual's arrest. The bill would allow an arrest on an outstanding warrant where the officer was informed of the warrant by electronically received communications. In addition, the bill would provide that a warrantless arrest could be made on a warrant held by a court under the same circumstances. The bill would also allow for the same warrantless arrests to be made by officers of the U.S. Customs Service or the immigration or naturalization service.

Warrantless arrests made for spousal or domestic assault, violation of personal protection order, or violation of a conditional release would be allowed where the officer making the arrest received positive information that another peace officer had reasonable cause to believe that the violation of law or of the PPO occurred or is occurring. Currently, an officer making an arrest under these circumstances must have his or her own reasonable cause to believe that the violation occurred and may not rely on information that another officer has reasonable cause.

The bill would add to the required information that a police officer must provide to the victim of a domestic violence incident that the officer investigated or intervened in. The notice would have to inform the victim that he or she has the right to have his or her abuser prohibited from having access to information in records that concern a minor child of the abuser and victim that would inform the abuser of the victim's or the child's address or telephone number, or the victim's employment address. The notice would also have to include notification of the victim's right to go to court and file a motion for an order to show cause and a hearing if the abuser violated or was violating a personal protection order and had not been arrested.

A defendant who was arrested for violating a PPO must be given a hearing before the circuit court within 24 hours after his or her arrest. If the circuit court judge is not available within 24 hours from the arrest, the district court is required to set a bond and order the defendant to appear before the circuit court for a hearing. The bill would provide that if the district court would not be open within 24 hours after the arrest, a judge or district court magistrate would be required to set bond and order the defendant to appear before the circuit court for a hearing on the charge.

However, the court could not rescind a PPO, dismiss a contempt proceeding based on a PPO, or impose any other sanction due to a failure to comply with these time limits. The bill would also remove a provision requiring a PPO to be entered into the law enforcement information network (LEIN).

If a criminal contempt proceeding for a violation of a PPO was initiated as a result of a show cause order or other proceeding, the court would be required to notify the prosecuting attorney of the contempt proceeding, to notify the petitioner of the PPO and his or her attorney, and to direct the petitioner to appear at the hearing appear at the hearing and provide evidence. The bill would also specify that the prosecuting attorney was responsible for prosecuting cases for PPO violations initiated by show cause orders.

The bill would also define a "domestic violence incident" to mean an incident reported to a law enforcement agency that involved allegations of either a violation of a domestic violence PPO or a crime committed by an individual against his or her spouse, former spouse, an individual with whom he or she has had a child in common, or an individual who resides or has resided in the same household.

House Bill 5659 would amend Public Act 59 of 1935 (MCL 28.6), which creates the state police, to grant the commissioner and all officers of the Department of State Police the authority to serve domestic violence or ex parte personal protection orders and to arrest anyone who violates such orders.

House Bill 5662 would amend the Penal Code (MCL 750.81 and 750.81a) to clarify the definition of a "household" for determining whether or not domestic violence occurred. The current language indicates that domestic violence occurs when the person who owns or leases the household commits an assault against a resident or former resident of that household. The bill would clarify that domestic violence occurs where the victim and the defendant are members of the same household regardless of who owns or leases the property.

House Bill 5663 would amend the Department of Corrections Act (MCL 791.236) to add a parole requirement restriction. Parole orders that contained a condition or restriction that was intended to protect one or more named persons would have to be entered into the Corrections Management Information System.

If the parole board revoked such an order, the department would be required to immediately remove those provisions from the system.

House Bill 5664 would amend the Domestic Violence Prevention and Treatment Act (MCL 400.1501) to revise the definition of "domestic violence." Unless done in self-defense, any of the following actions, if done to or against a family or household member, would be considered domestic violence: causing or attempting to cause physical or mental harm, placing in fear of physical or mental harm, using force, threat of force, or duress to cause or attempt to cause engagement in involuntary sexual activity; engaging in activity that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

A family or household member would include anyone with whom the person accused of domestic violence had lived or was living, was having or had a sexual relationship, was or had been related to by marriage, has or had a dating relationship (frequent, intimate associations primarily characterized by the expectation of affectional development, not including a casual relationship or ordinary fraternization between two persons in a business or social context), or has had a child in common. The term would also apply to the minor child of any of the preceding persons.

The bill would also change references to the Department of Social Services to the Family Independence Agency to comport with the departmental name change.

House Bill 5665 would amend the Penal Code (MCL 750.110a) to establish and set penalties for the crime of third degree home invasion. Third degree home invasion would be a felony and would be punishable by no more than 10 years in prison and/or a fine of no more than \$3,000. A person would be guilty of third degree home invasion if he or she either broke into a dwelling or entered a dwelling without permission with the intent to commit a misdemeanor assault or spousal or domestic assault in that dwelling.

House Bill 5666 would amend Public Act 44 of 1961, which provides for the release of misdemeanor prisoners (the interim bond act, MCL 780.582a), to expand the circumstances under which a person who was arrested for a misdemeanor could not be released on his or her own recognizance or on an interim bond set by a peace officer. A person who was arrested, either with or without a warrant, for misdemeanor

assault, spousal or domestic assault, or substantially similar local laws would have to be held until he or she could be arraigned or a judge or magistrate could set an interim bond. This would also apply to a person who had been arrested under a warrant for violating a local ordinance that was substantially similar to the state's misdemeanor assault law and where the victim was that person's spouse, former spouse, had a child in common with the person who committed the assault, or resides or resided in the same household. In addition, if the judge or district court magistrate set an interim bond for such a defendant, the defendant could only be released subject to the condition that he or she not have or attempt to have any contact of any kind with the victim.

House Bill 5667 would amend the Code of Criminal Procedure (MCL 771.3) to include the same restrictions on probation orders as would be required on personal protection orders. In addition to the conditions that the court can already apply to probation orders, the bill would allow the court to prohibit a probationer from purchasing or possessing a firearm, or to subject a probationer to any conditions reasonably necessary to protect one or more named persons. If a probation order contained a condition thought reasonably necessary for the protection of one or more persons, the court would be required to immediately direct a law enforcement agency to enter the order into the Law Enforcement Information Network (LEIN) and the agency would be required to immediately enter that order into the system. If the court rescinded, amended, or modified the condition or order, the court would again be required to inform the law enforcement agency and the agency would be required to remove, amend, or modify the LEIN system entry, as instructed.

All of the bills, except House Bills 5666, 5665 and 5662, would take effect on September 1, 1998.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

The bills are the result of recommendations made by the Domestic Violence Prevention and Treatment Board (DVPTB). Many perpetrators of domestic violence fail to take responsibility for their actions and blame the victim; to the degree that society fails to

hold these people accountable for their actions, it reinforces this belief and decreases the chances that the person will change his or her behavior. Domestic violence is not a private matter, and legal intervention can effectively get this message across. To this end, laws have been enacted to strengthen law enforcement's response to domestic violence. By addressing various shortcomings of the law on domestic violence restraining orders as recommended by the DVPTB, the bills would significantly improve protections to victims of domestic violence and clarify many of the issues that have been confusing for law enforcement and judges.

PPOs are a valuable tool in providing protection for some people; however, the DVPTB's study of the issue has uncovered some flaws that the bills would help to correct. The bills will help to strengthen the effectiveness of PPOs by clarifying a number of issues. The current language of the law has left some judges believing that they are required to grant PPOs in neighborhood disputes. The bills will help to alleviate confusion about judges' ability to deny PPOs for stalking behavior where the parties are not involved in a domestic relationship and help to prevent the misuse of such orders in, for example, cases of neighborhood disputes. The bills would also eliminate some confusion and expand the situations where a police officer could arrest a person for a violation of a PPO. In addition, procedures for setting bond after arrest for violation of a PPO would be changed, as would provisions regarding how service of a PPO could legitimately be made.

Against:

The package of bills does not include two particularly useful recommendations: first, that victim's assistants could be used to alleviate many of the frivolous requests, incomplete or inaccurately completed forms, and misunderstandings about the process of filing court documents; and second, that health care providers who are required to report suspected cases of domestic violence should be given the same level of immunity in making such reports as is currently granted for the similar reporting of child abuse.

Response:

There are two other bills that would deal with each of these recommendations that are still before the Judiciary Committee. According to testimony before the committee, these bills were held back for further review by the committee and could be reported in the near future.

Against:

The bills will increase existing problems with the procedures for domestic violence PPOs. Because PPOs are obtained on an ex parte basis without the opportunity for the respondent to have notice or a hearing, some argue that the procedures are unconstitutional. Even if constitutional, the provisions that would bar one parent from having access to information about the other parent's address and telephone number could cause a myriad of problems in child custody situations. Barring a parent from information about his or her child's whereabouts would interfere with existing court orders regarding custody and parenting time; a parent who successfully obtained a PPO could easily hide the child and block the other parent's parenting time. An unscrupulous parent could do this easily without notification or a hearing. In addition, barring one parent from access to the other's employment information would make it impossible for the respondent-parent to verify the other party's income for the purpose of modifying support orders. These provisions will also make it virtually impossible for a respondent to serve any documents for any purpose on the PPO petitioner.

Against:

The bills are less effective in protecting the victims of domestic violence than they could be because House Bill 5666 does not require that a bond set in such cases be a cash/surety bond rather than a 10 percent bond. A 10 percent bond may be paid by the defendant, and if the defendant then violates the conditions of the bond there is little or no means for the the remainder of the bond to be recouped. Furthermore, no one else is accountable for the defendant's performance of the conditions of the bond or for his appearance in court when ordered. If the legislation required the use of a cash/surety bond, the court and the victims of domestic violence would be better protected. The court would receive the the full protection of the face value of the bond because the bonding agency would be responsible for the full amount of the bond. The victim would be better protected because the defendant's appearance and performance would be monitored and gauranteed by the bonding agency. The agency would be motivated to make certain that the defendant complied with all of the conditions of his or her release because the defendant's failure to meet these expectations could result in the agency having to pay off the entirety of the bond amount.

POSITIONS:

The Family Independence Agency supports the bills.
(4-1-98)

The Prosecuting Attorneys Association of Michigan
supports the bills. (4-1-98)

The Domestic Violence Prevention and Treatment
Board supports the bills. (4-1-98)

The Michigan Conference of the National Organization
for Women (NOW) supports the bills. (4-1-98)

The Michigan Coalition Against Domestic and Sexual
Violence supports the bills. (4-1-98)

The Capitol Area Fathers for Equal Rights opposes
House Bills 5657, 5658, and 5666. (4-1-98)

Analyst: W. Flory

■ 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.