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SFA



BILL ANALYSIS

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Senate Bill 866 (Substitute S-1 as passed by the Senate)
Senate Bill 874 (Substitute S-1 as passed by the Senate)
Sponsor: Senator William Van Regenmorter (Senate Bill 866)
Senator Alma Wheeler Smith (Senate Bill 874)
Committee: Judiciary

Date Completed: 4-16-98

RATIONALE

Under the Revised Judicature Act (RJA), an individual may petition the circuit court for a personal protection order (PPO) that enjoins or restrains another person from engaging in certain conduct. One section of the RJA provides for PPOs that prohibit someone from committing stalking or aggravated stalking, while another section provides for domestic violence PPOs (described in **BACKGROUND**, below). There is some concern that PPOs could be issued inappropriately in family situations. That is, perhaps a parent could obtain a PPO against his or her child as a disciplinary measure, or a child could seek a PPO as a way to retaliate against his or her parent. It has been pointed out that other laws may be used to intervene in or resolve a threatening situation involving a parent and child.

Another concern relates to the court that may issue a PPO. Currently, the RJA states that an individual may petition the circuit court for a stalking or domestic violence PPO. After the PPO provisions were enacted, legislation created the family division of the circuit court (family court) to handle such matters as divorce, custody, and child neglect and abuse. It has been suggested that the family division also should be responsible for issuing PPOs.

CONTENT

The bills would amend the Revised Judicature Act to do the following:

- **Provide that a court could not issue a personal protection order if either 1) the respondent were the minor child of the petitioner, or 2) the petitioner were the minor child of the respondent.**

- **Provide that a person could petition the family division of the circuit court for a PPO.**
- **Specify that a PPO that was issued before the bill's effective date would not be invalid on the ground that it did not comply with one or more of the requirements added by the bill.**
- **Provide that a PPO involving a respondent under 17 would have to state that he or she could be subject to immediate apprehension and the dispositional alternatives listed in the juvenile code.**
- **Require service of a PPO on a parent, guardian, or custodian if the respondent were under 17.**

Senate Bill 866 (S-1) would apply to stalking PPOs. Senate Bill 874 (S-1) would apply to domestic violence PPOs.

Currently, a PPO must state that it has been entered to enjoin or restrain conduct listed in the order and that violation of the order will subject the individual restrained or enjoined to immediate arrest and the civil and criminal contempt powers of the court, and that if the individual is found guilty of criminal contempt, he or she must be imprisoned for up to 93 days and may be fined up to \$500. Under the bills, a PPO would have to include this provision if the respondent were 17 years old or older. If the respondent were under 17, the PPO would have to state that violation of the PPO would subject the individual restrained or enjoined to immediate apprehension or being taken into custody, and to the dispositional alternatives listed in Section 18 of the juvenile code. (Under Section 18, a court may warn a juvenile or his or her parents, guardian, or custodian; place the juvenile

on probation or under supervision in his or her own home or in the home of a related adult; commit the juvenile to a public institution, county facility, institution operated as an agency of the court or county, or other agency authorized to receive juveniles; order the juvenile to engage in community service; order the juvenile to pay a civil fine; place the juvenile in juvenile boot camp; etc.)

The RJA also requires a PPO to state that the order is effective when signed by a judge and is immediately enforceable, list the types of conduct enjoined, state an expiration date, state that the PPO is enforceable anywhere in Michigan, state the law enforcement agency designated to enter the PPO into the Law Enforcement Information Network, and, for ex parte orders, state that the individual restrained or enjoined may file a motion to modify or rescind the order and request a hearing. Under the bills, all of the required statements (including the consequences of a violation) would have to be contained in a single form whenever practicable.

The RJA provides that a PPO must be served personally, by registered or certified mail to the address of the individual restrained or enjoined, or by any other manner provided in the Michigan court rules. Under the bills, if the respondent were under 17, his or her parent, guardian, or custodian also would have to be served personally or by registered or certified mail.

Under the RJA, if an individual restrained or enjoined has not been served, the law enforcement agency or officer responding to a call alleging violation of the PPO must give a copy of the order to the individual or advise him or her of the order. The individual must be given an opportunity to comply before being arrested for violating the order, and is subject to arrest for failure to comply. The Act specifies that these provisions do not preclude an arrest under Section 15 or 15a of the Code of Criminal Procedure (authorizing warrantless arrests). The bills would add that these provisions would not preclude a proceeding under Section 14 of the juvenile code (which provides for juveniles to be taken into custody).

The RJA states that a PPO is effective when signed by a judge. Under the bills, a PPO also would be immediately enforceable when signed.

Currently, a court may not issue a domestic violence PPO restraining or enjoining a person from entering onto premises if all of the following apply: the individual to be restrained or enjoined is not the spouse of the moving party, the individual to

be restrained or enjoined has a property interest in the premises, and the moving party has no property interest in the premises. Under Senate Bill 874 (S-1), a PPO could not restrain or enjoin a person from entering onto premises if all of the following applied:

- The individual to be restrained or enjoined was not the spouse of the moving party.
- The individual to be restrained or enjoined or the parent, guardian, or custodian of the minor to be restrained or enjoined had a property interest in the premises.
- The moving party or the parent, guardian, or custodian of a minor petitioner had no property interest in the premises.

Senate Bills 866 (S-1) and 874 (S-1) are tie-barred to each other and to House Bills 5564 and 5567, which would amend the juvenile code and the Code of Criminal Procedure to provide for the family court's jurisdiction in PPO proceedings.

MCL 600.2950a (S.B. 866)
600.2950 (S.B. 874)

BACKGROUND

Domestic Violence PPOs

A domestic violence PPO may enjoin or restrain 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 had a dating relationship, or an individual who resides or formerly resided in the same household as the petitioner, from entering onto premises; assaulting, attacking, beating, molesting, or wounding a named individual; threatening to kill or physically injure a named individual; removing minor children from the individual having legal custody (except as otherwise authorized by a custody or parenting time order); purchasing or possessing a firearm; interfering with the petitioner's efforts to remove his or her children or personal property from premises that are solely owned or leased by the individual to be restrained; interfering with the petitioner at his or her place of employment or engaging in conduct that impairs the petitioner's employment relationship or environment; or doing any other specific act that imposes upon or interferes with personal liberty or causes a reasonable apprehension of violence.

The current domestic violence PPO provisions were contained in a package of legislation enacted by Public Acts 57 through 66 of 1994. These measures broadened the scope of domestic abuse

restraining orders in a number of ways. Previously, the RJA had allowed a person to petition the circuit court to restrain or enjoin a spouse, a former spouse, or a person who resided or formerly resided with the petitioner from certain activities. The 1994 amendments, among other things, extended this provision to an individual with whom the petitioner has had a child in common, and included threatening to kill or physically injure a named person in the behavior that may be enjoined. The amendments also make it mandatory for a court to issue an injunction under certain circumstances, and require that a victim be notified of the availability of a domestic violence or stalking PPO.

Stalking PPOs

The current stalking provisions were enacted in 1992. Public Act 260 of 1992 amended the Michigan Penal Code to make stalking a misdemeanor, while Public Act 261 amended the Code to create the felony of aggravated stalking. ("Stalking" refers to a willful course of conduct that involves repeated or continuing harassment that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested, and that actually causes the victim to experience any of those feelings.)

Public Act 262 of 1992 enacted the stalking PPO provisions in the Revised Judicature Act. A stalking PPO may be sought regardless of whether the person to be restrained is charged with or convicted of stalking or aggravated stalking, and the victim may maintain a civil action against a person who engaged in stalking behavior regardless of whether the person is convicted.

Public Act 251 of 1992 amended the Code of Criminal Procedure to authorize the warrantless arrest of someone whom a police officer has reasonable cause to believe is stalking or violating a stalking PPO.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bills would ensure that personal protection orders were not issued when one party was a parent or minor child of the other party. Parents should not seek judicial intervention as a means of disciplining or punishing unruly children or otherwise avoiding parental responsibility. At the same time, children should not have access to the

courts for the purpose of getting back at their parents or avoiding disciplinary measures. In the event that an abusive family situation exists, it may be addressed under other laws, such as the juvenile code, the Child Protection Law, the emancipation of minors law, or even the Michigan Penal Code.

Response: If an estranged parent is threatening his or her family, a PPO might be more effective than the intervention process provided for in the juvenile code.

Supporting Argument

The family court was created by Public Act 388 of 1996, and was assigned many matters that formerly were handled by the circuit court or the juvenile division of probate court. For cases filed on or after January 1, 1998, the family court's exclusive jurisdiction includes divorce, child custody, paternity, child abuse and neglect, and juvenile delinquency. Public Act 388 also gave the family court exclusive jurisdiction over domestic violence and stalking PPOs for cases filed on or after that date. The bills would reflect this jurisdiction in the RJA's PPO provisions. A PPO that had been issued by the circuit court, however, would still be enforceable.

Supporting Argument

The bills include provisions that would tailor the PPO sections to juvenile respondents. In particular, the bills would require a PPO directed at a juvenile to state the consequences of violating the order, and would make it clear that these consequences could include immediate apprehension. In addition, the bills would ensure that a copy of the PPO was sent to the juvenile's parent, custodian, or guardian.

Legislative Analyst: S. Lowe

FISCAL IMPACT

The bills would have no fiscal impact on State or local government.

Fiscal Analyst: B. Bowerman

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.