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SFA



BILL ANALYSIS

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Senate Bills 866 and 874 (as enrolled)
House Bills 5564 and 5567 (as enrolled)
Sponsor: Senator William Van Regenmorter (Senate Bill 866)
Senator Alma Wheeler Smith (Senate Bill 874)
Representative Judith Scranton (House Bill 5564)
Representative Kawme Kilpatrick (House Bill 5567)

Senate Committee: Judiciary
House Committee: Judiciary

Date Completed: 1-7-99

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). Some people have raised concerns about whether PPOs can be sought by or issued against juveniles, how juveniles should be treated when they violate a PPO, and whether PPOs might be inappropriate in parent-child situations. That is, there is concern that 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 suggested that the law should clearly spell out the court's authority in regard to juveniles subject to PPOs.

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.

PUBLIC ACTS 476 and 477 of 1998
PUBLIC ACTS 474 and 475 of 1998

CONTENT

Senate Bills 866 and 874 amended the Revised Judicature Act to do the following:

- Provide that a court may not issue a personal protection order if either 1) the unemancipated respondent is the minor child of the petitioner, or 2) the unemancipated petitioner is the minor child of the respondent.
- Provide that a person may petition the family division of the circuit court for a PPO.
- Specify that a PPO issued before the bill's effective date is not invalid on the ground that it does not comply with one or more of the requirements added by the bill.
- Provide that a PPO involving a respondent under 17 must state that he or she may 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 is under 18.

House Bill 5564 amended the juvenile code to provide for the family court's jurisdiction in a proceeding for a PPO against a person under 18 years old; and to provide for the apprehension, detention, and disposition of a juvenile who violates a PPO. **House Bill 5567** amended the Code of Criminal Procedure to allow the warrantless arrest of a 17-year-old who violates a PPO; provide that he or she will be subject to criminal contempt or to the dispositional alternatives listed in the juvenile code; and provide for the family court's

jurisdiction to conduct contempt proceedings based upon a juvenile's violation of a PPO.

All of the bills were tie-barred to each other, and will take effect on March 1, 1999.

Senate Bills 866 & 874

The bills specify that if the respondent is less than 18 years old, a court may not issue a PPO under the Revised Judicature Act, but must proceed under Section 2 of the juvenile code (which, under House Bill 5564), gives the family court jurisdiction over a PPO proceeding in which the respondent is under 18).

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 must include this provision if the respondent is 17 years old or older. If the respondent is under 17, the PPO must state that violation of the PPO will 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) must be contained in a single form to the extent 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 is under 18, his or her parent, guardian, or custodian also must 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 add that these provisions do 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 is 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, a PPO may not restrain or enjoin 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 or the parent, guardian, or custodian of the minor to be restrained or enjoined has a property interest in the premises.
- The moving party or the parent, guardian, or custodian of a minor petitioner has no property interest in the premises.

Senate Bill 866 applies to stalking PPOs under Section 2950a of the RJA, and Senate Bill 874 applies to domestic violence PPOs under Section 2950 of the RJA.

House Bill 5564

The bill provides that the family court has jurisdiction over a proceeding under Section 2950 or 2950a of the RJA in which a minor under 18 years of age is the respondent. Venue for an initial action under either section is proper in the county in which either the petitioner or the respondent resides. If the respondent did not live in this State, venue for the initial action would be proper in the petitioner's county of residence. ("Venue" refers to the county where a case may be brought.)

Under the bill, If the family court exercises jurisdiction over a child in a PPO proceeding, the court's jurisdiction will continue until the order expires, but action regarding the PPO after the respondent's 18th birthday will not be subject to the juvenile code.

Currently, the court may issue an order authorizing a peace officer or other person designated by the court to apprehend a juvenile under certain circumstances. Under the bill, the court also may issue an order authorizing the apprehension of a juvenile who is alleged to have violated a PPO. In addition, the juvenile code provides that any local police officer, sheriff or deputy sheriff, State Police officer, county agent, or probation officer may, without a court order, immediately take into custody any child who is found violating any law or ordinance. The bill includes in this provision a juvenile who is violating or has violated a PPO issued by the family court.

Under the code, if a complaint concerning a child has been made or if a petition has been filed, the family court may order the child to be detained in a facility pending a hearing, or may release the child into the custody of a parent, guardian, or custodian. The bill specifies that this includes a supplemental petition alleging a violation of a PPO. The code also provides that custody, pending a hearing, is limited to certain children. The bill includes children who have allegedly violated a PPO and for whom it appears there is a substantial likelihood of retaliation or continued violation.

Currently, certain children who are taken into custody may not be detained in a secure facility designed to restrict the movements and activities of juvenile offenders, unless the court finds that a child willfully violated a court order and there is not a less restrictive alternative more appropriate to the child's needs. The bill specifies that this provision does not apply to a child who is at least 17 years old and who is under the family court's jurisdiction pursuant to a supplemental petition on a PPO.

Under the code, a child taken into custody may not be detained in a cell or other secure area of any secure facility designed to incarcerate adults unless the child is under the family court's jurisdiction for an offense that would be a felony if committed by an adult. The bill also makes an exception for a child who is at least 17 and is under the court's jurisdiction pursuant to a supplemental petition on a PPO.

The code provides that in a hearing other than a criminal trial, any person interested in the hearing may demand a jury of six individuals, or the court on its own motion may order a jury of six to try the case. The bill specifies that in a PPO proceeding, a jury may not be demanded or ordered on a supplemental petition alleging a violation of the PPO. The bill requires the court to advise the child that he or she has a right to an attorney at every stage of the proceeding.

The code permits the family court to enter certain orders of disposition that are appropriate for the juvenile and society. These include warning the juvenile and dismissing the petition; placing the juvenile on probation; and committing the juvenile to a private or public institution. A juvenile who violates the law or is a runaway or a truant also may be placed in foster care subject to the court's jurisdiction. Under the bill, a juvenile who is the subject of a supplemental petition on a PPO may be placed in foster care, as well. If a juvenile is at least 17 and in violation of a PPO, the court may commit him or her to a county jail within the adult prisoner population. The bill also states that in a family court proceeding for a PPO against a juvenile, this section of the code applies only to a disposition for a violation of a PPO and subsequent proceedings.

House Bill 5567

The Code of Criminal Procedure permits a peace officer, without a warrant, to arrest an individual and take him or her into custody when the officer has reasonable cause to believe that a PPO has been issued, the individual named in the order is in violation of it, and the PPO states in its face that a violation of its terms subjects the individual to immediate arrest and to criminal contempt of court (and, if guilty of criminal contempt, imprisonment for up to 93 days and a fine of up to \$500). Under the bill, the PPO must state that a violation will subject the individual to immediate arrest and either of the following:

- If the individual restrained or enjoined is 17 years of age or older, to criminal contempt of court (subject to the current penalty).

- If the individual restrained or enjoined is 17 or older, to the dispositional alternatives listed in the juvenile code.

The bill provides that the family court has jurisdiction to conduct criminal contempt proceedings based upon a violation of a PPO issued under the juvenile code by the family division of circuit court in any county of this State. The family court that conducts the preliminary hearing must notify the court that issued the PPO that the issuing court may request the respondent to be returned to that court for violating the order. If the court that issued the PPO requests that the respondent be returned to stand trial, the requesting court must bear the transportation cost.

Under the code, an individual is in violation of a PPO if he or she commits one or more of certain acts that the order specifically restrains or enjoins the individual from committing. These acts include interfering with the petitioner at his or her place of employment or engaging in conduct that impairs the petitioner's employment relationship or environment. The bill also refers to the petitioner's place of education, or the petitioner's educational relationship or environment.

MCL 600.2950a (S.B. 866)
600.2950 (S.B. 874)
710.21 et al. (H.B. 5564)
764.15b & 764.15c (H.B. 5567)

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

This package of legislation should clear up any confusion that may have existed in regard to whether juveniles are subject to personal protection orders, and how the courts should handle juveniles who violate PPOs. Some of the uncertainty stems from the criminal aspect of PPO violations; under current law, a PPO violator can be punished for criminal contempt of court, but juvenile offenders generally are not subject to criminal penalties.

While the Senate bills provide in the RJA that an individual may petition the family court for a PPO, the House and Senate bills make it clear in the juvenile code that the family court has jurisdiction in PPO proceedings involving a person under 18. The House bills also make it clear that a juvenile under 17 is subject to the dispositional options prescribed in the juvenile code, while a 17-year-old who violates a PPO may be confined in a jail or other secure facility designed to incarcerate adults. A 17-year-old PPO violator also will be subject to the court's criminal contempt power and may be imprisoned or fined, or treated as a juvenile offender.

Supporting Argument

The bills will ensure that personal protection orders are not issued when one party is an unemancipated minor and the other party is that minor's parent. 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, other laws may be used to intervene in or resolve a threat. For example, the situation may be addressed under 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

This legislation clarifies the family court's jurisdiction in PPO proceedings. 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. Considering that PPO actions often involve individuals who have, or used to have, some type of domestic relationship, the family court is the appropriate forum for these matters. A PPO that has been issued by the circuit court, however, will still be enforceable.

Supporting Argument

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

Legislative Analyst: S. Lowe

FISCAL IMPACT

Senate Bills 866 & 874

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

House Bill 5564

The revised enforcement procedures for personal protection orders regarding juveniles will result in additional costs to local units of government. Costs are not determinable.

House Bill 5567

The bill will 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.