



**House
Legislative
Analysis
Section**

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

PRETRIAL RELEASE CONDITIONS

**Senate Bill 135 with House committee
amendment**

Sponsor: Sen. William Van Regenmorter

Senate Bill 136 (Substitute H-1)

Sponsor: Sen. John J.H. Schwartz, M.D.

First Analysis (4-22-93)

Senate Committee: Judiciary

House Committee: Judiciary

THE APPARENT PROBLEM:

Michigan law has for some time recognized and protected the rights of crime victims. The Crime Victim's Rights Act (Public Act 87 of 1985) provides for specific rights of crime victims, such as the right to make a statement at sentencing. It also specifies duties for the criminal justice system; for example, the prosecutor must provide a victim with information on suggested procedures if the victim is subjected to threats or intimidation, and the sheriff or the Department of Corrections must notify a victim of the escape or impending release of the offender. Underlying much of the act is the principle that a victim has the right to be protected from the accused throughout the process; this principle was given formal expression in the state constitution when voters approved Proposal B at the November 1988 election.

Unfortunately, victims continue to be endangered by what many perceive to be shortcomings in the law, and the danger appears to be the greatest when there is or has been some relationship between the victim and the accused. One particularly tragic example occurred two years ago, when a Battle Creek woman was fatally shot by an ex-boyfriend in front of her six-year old daughter. The man was free on bond pending trial on charges being brought as a result of his shooting at the victim and her current boyfriend a few weeks previous to the fatal shooting; his bond prohibited contact with the victim. What many find especially appalling about the case is that police were called when the murderer had threatened the victim on the evening before the 7:00 a.m. murder, but because the arrest for the earlier offense occurred in a different jurisdiction, police at the scene were unaware and unable to confirm that the conditions of bond had

been violated, and thus were unable to undertake a warrantless arrest of the offender.

Police and others say that if pertinent information on the earlier release and conditions of pretrial release had been available on the Law Enforcement Information Network (LEIN), the murder might have been averted. To help prevent this sort of thing from happening in the future, it has been proposed to amend statute with specific attention to using conditions of bond to protect innocent parties and to ensure police access to needed information on such protective conditions.

THE CONTENT OF THE BILLS:

Senate Bill 136 would amend the Code of Criminal Procedure (MCL 765.6b) to make special provision for imposing conditions of pretrial release reasonably necessary for the protection of any person.

In imposing protective conditions, a judge would have to make a finding on the record on the need for the conditions, and would have to inform the defendant of the specific conditions imposed.

The order imposing protective conditions would have to include information prescribed by the bill and would have to be entered on the Law Enforcement Information Network (LEIN). The court would direct a law enforcement agency within its jurisdiction to enter or remove an order from the LEIN system.

The bill would take effect July 1, 1993; it could not take effect unless Senate Bill 135 was enacted.

Senate Bills 135 and 136 (4-22-93)

Senate Bill 135 would amend the Code of Criminal Procedure (MCL 764.15e) to explicitly authorize the warrantless arrest of someone whom a peace officer had reasonable cause to believe was violating or had violated a condition of release under Senate Bill 136. The officer would prepare a complaint as prescribed by the bill. Distribution of copies of the complaint and post-arrest procedures would vary according to whether the defendant was arrested within or outside of the jurisdiction of the court that imposed the conditions. In either situation, the defendant would have to be brought before the local court within one business day following arrest, and the case would be transferred to the original court, if not already there.

If the arresting police agency or officer in charge of the jail considered it safe to release the defendant before he or she was brought before the court, the agency or officer could release the defendant on interim bond of no more than \$500, requiring the defendant to appear at the opening of court the next business day. If the defendant was held for more than 24 hours without being brought before the court, jail records would have to note the reason it was not safe to release the defendant on interim bond.

The court would have to give priority to cases brought under the bill in which the defendant was in custody or in which the defendant's release would present an unusual risk to the safety of any person.

The bill would take effect July 1, 1993, but could not do so unless Senate Bill 136 was enacted.

HOUSE COMMITTEE ACTION:

The House Judiciary Committee adopted a series of largely technical amendments to Senate Bill 136, and added an effective date of July 1, 1993 to each bill.

FISCAL IMPLICATIONS:

With regard to the Senate versions of the bills, the Senate Fiscal Agency noted that the timing and hearing provisions of Senate Bill 135 would raise administrative costs to the court, and that the requirement to enter an order of conditional release in to the LEIN would increase the administrative costs of running the system. (4-2-93)

ARGUMENTS:

For:

The bills would in effect create a pretrial victim's protection law, giving explicit protection to victims who may be at risk from the pretrial release of certain offenders. There would be explicit authority for and greater statutory emphasis on the use of conditions of pretrial release to protect those who may be endangered by the release of the accused; even more importantly, there would be mechanisms to ensure that law enforcement personnel were aware of those conditions and could respond appropriately upon any later complaints.

Against:

The bills are of questionable necessity. Judges already have the authority to place restrictions on a defendant's bail and to revoke bail if a condition is violated.

Response:

Under the bills, conditions of a release would be entered into the LEIN system, enabling officers in any jurisdiction to arrest a suspected violator. This would be crucial to the protection of a victim who was not in the jurisdiction of the court that earlier released the defendant on bail. Further, the basic purpose of bail is to ensure the presence of the accused at trial, not to protect the victim.

POSITIONS:

The Department of State Police supports the concept of the bills. (4-20-93)

The Michigan Coalition Against Domestic Violence supports the bills. (4-21-93)

The Prosecuting Attorneys Association of Michigan strongly supports the bills. (4-21-93)

A representative of Victims of Stalkers Network testified in support of the bills. (4-20-93)