



**House
Legislative
Analysis
Section**

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DOMESTIC ASSAULT ARRESTS

**Senate Bill 813 with House
committee amendment
First Analysis (3-17-94)**

**Sponsor: Senator John F. Kelly
Senate Committee: Judiciary
House Committee: Judiciary**

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. Nationwide, some three to four million women annually are physically attacked by their husbands or partners; about four women each day are killed. Michigan's domestic violence figures are equally sobering: in 1991, there was a domestic violence-related homicide every five days. In 1985, local agencies reported 16,576 domestic violence offenses to the Michigan State Police; in 1990, that figure was 25,436; in 1991, 27,201, and in 1992, 29,891. While it is unclear to what degree these figures reflect an increase in reporting, rather than an increase in the rate of violence, it is clear that domestic violence remains a significant problem in this state.

One way to help protect victims of domestic violence is to provide police with broad arrest powers in domestic situations, so that police may promptly intervene to remove an assailant from the scene of an assault, simultaneously giving a victim time to seek domestic violence services, providing the opportunity for additional attention from the criminal justice system, and impressing upon the perpetrator the seriousness of the offense. Since 1978, Michigan law has allowed a police officer to make a warrantless arrest at the scene of a domestic disturbance where there was reason to believe an assault had been committed, even if the officer had not actually witnessed the crime. Subsequent amendments broadened the application of the warrantless arrest authority, so that in addition to situations where there was reasonable cause to believe that there was or had been a

spousal relationship, the authority also extends to situations where the apparent assailant was a current or former household member. However, domestic violence situations also may occur when the people involved had never been married and had never maintained a single, joint residence. Shelter workers report that violence between two people who never married nor shared a home is far from unheard of. To help address such situations, amendments have been proposed to extend the warrantless arrest authority to situations where the officer had reasonable cause to believe that the apparent offender had a child in common with the victim.

THE CONTENT OF THE BILL:

The bill would amend the Code of Criminal Procedure to expand the warrantless arrest authority that police have in responding to domestic disturbances. An officer may at present make a warrantless arrest for assault or aggravated assault if there was reasonable cause to believe both that an assault had occurred and that the apparent offender was a spouse, former spouse, or current or former household member of the victim's. The bill would extend this authority to situations where there was reasonable cause to believe that the apparent offender had a child in common with the victim. The bill would take effect July 1, 1994.

MCL 764.15a

HOUSE COMMITTEE ACTION:

The House Judiciary Committee adopted an amendment that eliminated a tie-bar to 14 other bills dealing with domestic violence.

Senate Bill 813 (3-17-94)

FISCAL IMPLICATIONS:

The Senate Fiscal Agency said that the bill would have no fiscal impact on state or local government. (3-7-94)

ARGUMENTS:

For:

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, legislation has been proposed that would strengthen law enforcement response to domestic violence. The bill, part of this larger package, would further those aims by expanding the warrantless arrest authority to include domestic assault situations where the apparent offender had a child in common with the victim, regardless of whether they had ever been married or lived together.

Against:

Some have expressed concerns about how the bill might affect the performance of a police officer's duties; it should be the assault, and not the relationship, that is the driving force behind an arrest. By extending the already-broad arrest powers in domestic disturbances, the bill can put a police officer in the position of having to ascertain whether two people who are strangers to the officer had a child in common.

Response:

The bill leaves resolution to the discretion of the officer. That is the same discretion that is already employed in warrantless arrest decisions where a spousal or household relationship was claimed. An officer would no more have to see a birth certificate under the bill than he or she would have to see a marriage license or rent receipt under current law.

Against:

Some may believe that the bill should go farther, and extend the arrest authority to address relationships where there had been dating, but no child or cohabitation. Assaultive behavior sometimes develops during dating, and a person who breaks off the relationship is at increased risk

of being attacked. Domestic violence commonly is taken to include situations where there was a romantic or familial relationship of unequal power between the people involved. Given this understanding of the problem, the bill is deficient; it would fail to protect all victims of domestic violence, instead opting to protect a selected few.

Response:

Special laws for spousal abuse have developed at least in part because of an historical failure by the criminal justice system to respond adequately to an in-family domestic assault. To the extent that this focus is lost, the law could be diluted. Also, to include dating relationships in the bill would lead to difficulty in defining what constitutes a dating relationship.

POSITIONS:

The Domestic Violence Prevention and Treatment Board supports the bill. (3-15-94)

The Michigan Coalition Against Domestic Violence supports the bill. (3-15-94)

The Prosecuting Attorneys Association of Michigan supports the bill. (3-15-94)

The Michigan Council on Crime and Delinquency supports the concept of the bill. (3-15-94)