



**House
Legislative
Analysis
Section**

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DOMESTIC VIOLENCE INJUNCTIONS

**House Bill 4357 as enrolled
Sponsor: Rep. Frank M. Fitzgerald**

**House Bill 4358 as enrolled
Sponsor: Rep. Paul Baade**

**House Bill 4359 as enrolled
Sponsor: Rep. Barbara Dobb**

**House Bill 4362 as enrolled
Sponsor: Rep. Ken Sikkema**

**House Bill 4397 as enrolled
Sponsor: Rep. Dianne Byrum**

**Senate Bill 1022 as enrolled
Sponsor: Sen. William Van Regenmorter**

**Second Analysis (7-19-94)
House Committee: Judiciary
Senate Committee: Judiciary**

House Bills 4357-4359, 4362, 4397 and Senate Bill 1022 (7-19-94)

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.

Michigan law has for some time explicitly allowed the circuit court to issue injunctions prohibiting a person from assaulting a current or former spouse or household member. However, statute does not

contemplate court orders to prohibit a person from threatening the physical safety of a current or former partner, nor does it apply to situations where the parties may not have lived together, but do have a child in common. As threats represent another form of victimization and often precede acts of violence, it has been suggested that the law provide for injunctions against threats. And, as domestic violence sometimes manifests itself in situations where the parties had not shared a residence, it has been suggested that injunctive relief also be allowed in cases where the parties had a child in common, regardless of whether they had lived together.

Further, concerns remain that some judges continue to be reluctant to issue injunctions in domestic abuse cases, sometimes, according to domestic violence workers, waiting until abuse reaches a threshold level thought to warrant an injunction. Justice for domestic violence victims can thus vary from county to county, and even within a county, depending on which judge one draws. To remedy this problem, it has been proposed that a court be

required to issue an injunctive order if certain criteria are met.

In addition, although injunctive remedies are available to victims of domestic violence and stalking, the procedural complexities are such that a victim frequently encounters difficulties in proceeding without an attorney, yet cannot afford to hire one. Under a grant from the Michigan Judicial Institute, the State Court Administrative Office has developed forms for domestic violence victims to use in pursuing injunctive relief without an attorney. Statutory amendments have been proposed to require the development and distribution of such forms as a matter of law, to require court staff to assist victims in filling out the forms.

Finally, strong and consistent enforcement of domestic violence injunctions is widely believed to be an essential component of the laws against domestic assault. Violation of a domestic violence injunction or parental kidnapping injunction is criminal contempt of court, punishable by 90 days in jail and a \$500 fine. To ensure that injunction violations receive adequate attention, it has been proposed that prosecutors be required to prosecute criminal contempt proceedings initiated by the court in such situations.

THE CONTENT OF THE BILLS:

The bills would authorize domestic violence injunctions that ordered an individual to refrain from threatening another current or former family member. They also would expand provisions on domestic violence injunctions to address situations where the petitioner has a child in common with the person being enjoined. In addition, Senate Bill 1022 would require domestic violence injunctions to be issued if certain conditions were met, and would require the State Court Administrative Office (SCAO) to develop forms for domestic violence and stalking victims to use in pursuing injunctive relief without an attorney.

The bills would take effect July 1, 1994. Several of the bills are tie-barred to each other: House Bills 4357, 4359, 4362, and 4397 could not take effect unless all were enacted (see Background Information).

House Bill 4357 would amend the divorce law (MCL 552.14) to explicitly authorize injunctive

orders prohibiting one of the parties from threatening to kill or physically injure a named individual.

House Bill 4359 would amend the Revised Judicature Act (MCL 600.2950) to extend the domestic violence injunction statute to apply to situations where the people involved had a child in common, as well as situations where the injunction was sought against a spouse, former spouse, or current or former household member. The bill also would allow a domestic violence injunction to prohibit a current or former spouse or household member, or person with whom the petitioner had a child in common, from threatening to kill or physically injure a named individual.

House Bill 4362 would amend the Code of Criminal Procedure (MCL 764.15b) to expand a peace officer's warrantless arrest authority regarding domestic violence injunctions, consistent with House Bill 4359's expansion of domestic violence injunctions.

House Bill 4358 would amend the Code of Criminal Procedure (MCL 764.15b) to do the same thing that House Bill 4362 would do, and to generally require prosecutors to prosecute criminal contempt proceedings initiated for violation of domestic violence injunctions and injunctions prohibiting removing children from those who have legal custody or prohibiting entering onto premises. The requirement would not apply if the person who procured the injunction retained his or her own attorney for the proceeding.

Upon the request of the prosecutor in a proceeding that he or she was prosecuting under the bill, the court would grant an adjournment for at least 14 days (or less, if requested by the prosecutor). Upon the motion of the prosecutor, the court could dismiss the proceeding for good cause shown.

House Bill 4397 would amend the Code of Criminal Procedure (MCL 764.15c) to add an item to the notice that a police officer intervening in a domestic violence dispute is required to give the victim. The notice includes information on the various kinds of protective injunctions available to the victim; the bill would include a statement that the victim had the right to seek a court order restraining or enjoining the abuser from threatening to kill or physically injure the victim.

Senate Bill 1022 would amend the Revised Judicature Act (MCL 600.2950 et al.) to do the same things proposed by House Bill 4359, plus require the court to issue injunctions if certain criteria were met, and require the SCAO to develop and provide forms for people to use in seeking domestic violence or stalking restraining orders without an attorney.

Generally, a court would have to issue the requested injunction if it determined there was reasonable cause to believe that any two of the following three conditions were met: the defendant might commit an act of domestic violence; the defendant had committed an act of domestic violence within the past year; and good cause existed to issue the order.

The bill would allow service of domestic violence and anti-stalking injunctions by certified or registered mail (personal service is currently required).

Before October 1, 1994, the SCAO would have to develop and make available forms for use by someone who wished to proceed without an attorney; those forms would have include at a minimum petitions for relief and proof of service for domestic violence and anti-stalking injunctions. Instructions for the forms would have to be written in plain English and would include an explanation of the proper method of service and filing of the proof of service. The court would provide the forms without charge. Upon request, the court would provide assistance, but not legal assistance, in completing the forms and the injunctive order if the court issued such an order, and would instruct the individual regarding the requirements for proper service of the order.

BACKGROUND INFORMATION:

The legislation. The bills have all taken effect. House Bill 4357 became Public Act 57 of 1994, House Bill 4358 became Public Act 62 of 1994, House Bill 4359 became Public Act 58 of 1994, House Bill 4362 became Public Act 59 of 1994, House Bill 4397 became Public Act 60 of 1994, and Senate Bill 1022 became Public Act 61 of 1994.

Governor's Task Force. On June 29, 1994, the Governor's Task Force on Domestic Violence issued a report in which it summarized its recommendations as follows:

**** Require a judge, who refuses to issue a domestic violence injunction, to specifically state the reason for refusal on the record.**

**** Make injunctions immediately enforceable anywhere in Michigan by any law enforcement agency.**

**** Require the clerk of the court that issued the injunction to enter the information immediately on the statewide law enforcement information network, or L.E.I.N. system.**

**** Make domestic violence injunctions mandatory if the proper showing has been made.**

**** Provide courts with more specific criteria to decide when an injunction must be issued and prohibit courts from imposing unnecessary evidentiary hurdles before issuing an injunction.**

**** Expand the categories of individuals currently protected to include those who have had or are having a dating or engagement relationship, and individuals related by consanguinity or affinity within the second degree.**

**** Allow courts to stop conduct which may escalate into violence (i.e., property damage).**

**** Emphasize the right of physical safety over property interests and elevate domestic violence injunctions to the status of other civil injunctions.**

**** Put the burden on the perpetrator to come to court to modify or rescind a domestic violence injunction that was issued under emergency circumstances.**

**** Amend the anti-stalking injunction law and the law allowing warrantless arrests for violating an injunction to be consistent with the changes outlined in the task force's report.**

**** Enact a comprehensive statute governing domestic violence injunctions. Incorporate the recent amendments from the Michigan legislature's 1994 Domestic Violence Package. The task force has drafted a proposed statute.**

**** Require the state court administrative office to develop standardized domestic violence injunction forms for use statewide, containing the necessary information for police enforcement.**

FISCAL IMPLICATIONS:

The Senate Fiscal Agency has reported that House Bills 4357, 4359, 4362, and 4397 would have no fiscal impact on state or local government. (3-4-94 and 3-7-94)

The House Fiscal Agency reported that Senate Bill 1022 would have no fiscal impact. (3-22-94)

With regard to House Bill 4358, the Senate Fiscal Agency said that the bill would result in increased costs to local units of government. The exact amount would depend on the number of criminal contempt proceedings that would be initiated under the bill. No statewide information was available on the number of these proceedings. The time involved in prosecuting contempt proceedings was estimated at two to four hours per case. Therefore, the cost of each case would range from \$65 to \$130. (3-4-94)

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 decreased 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 bills, part of this larger package, would further those aims by making it clear that threats are a form of violence and not to be countenanced, by broadening the scope of domestic assault restraining orders and related arrest authority, by requiring injunctions to be issued if certain conditions were met, by requiring prosecutors to represent complainants in domestic violence proceedings, and by making it easier for victims to obtain injunctions without the assistance of an attorney. By addressing various shortcomings of the law on domestic violence restraining orders, the bills would significantly improve protections to victims at an especially dangerous time--namely, when the victim first takes steps to bring the abuse to an end.

Against:

The legislation is too narrow because it fails to address relationships where there had been dating,

but no cohabitation. The abuse that sometimes arises in dating relationships can, unfortunately be just as deadly as spousal abuse.

Response:

Special laws on domestic violence have developed at least in part because of an historical failure of the criminal justice system to respond adequately to in-family domestic assault. To the extent that this focus is lost, the law could be diluted. The bills, however, would address some dating relationships through provisions authorizing domestic violence injunctions in situations where the parties had a child together. Some problems arising out of other dating relationships could be addressed through existing provisions authorizing anti-stalking injunctions. To further address dating relationships in general could lead to difficulties in adequately defining what constitutes a dating relationship.

Against:

The Governor's Task Force on Domestic Violence recently reviewed practices, court rules, and statute -- including the bills -- on issuance of domestic violence injunctions, and released its report and recommendations on June 29, 1994 (for the text of the task force's summary of its recommendations, see Background Information). The task force pointed out a confusing array of overlapping and inconsistent court rules and statutes governing injunctions, especially domestic violence injunctions. To remedy this situation, the task force recommended the enactment of a single statute to govern the issuance of domestic violence injunctions, and further recommended a number of changes to the law as proposed by the bills. The task force opposed requiring two of the three criteria to be met before issuance of an injunction would be made mandatory, and instead recommended that issuance be required upon a showing of reasonable cause to believe that the individual involved might commit an act of domestic violence. The task force further recommended defining "domestic violence" to include the vandalism and violence against property that often escalates into violence against people.

The task force also identified procedural delays that could put women and others at risk. Among other things, it urged the elimination of a requirement that a police officer have reasonable cause to believe that a domestic violence injunction had been served before exercising his or her warrantless arrest authority to enforce that injunction. The task force recommended that domestic violence injunctions be immediately effective and

enforceable, and suggested that domestic violence injunctions be immediately entered on the Law Enforcement Information Network (LEIN). (While current law requires LEIN entry, there is no requirement that it be done "immediately.")

The task force further found penalties for violating a domestic violence injunction to be inadequate. The current penalties are criminal contempt penalties of up to 90 days in jail, with a maximum fine of \$500. It would be better, said the task force, to make the penalties for violating a domestic violence injunction the same as the penalties for simple domestic assault -- namely, imprisonment for up to 93 days and a fine of up to \$500, or both. (The increase to 93 days would, incidentally, trigger statutory requirements for fingerprinting and recordkeeping that only apply to offenses punishable by imprisonment for 93 days or more, thereby helping authorities to identify and track repeat offenders.)

The bills obviously fail to meet these and other recommendations made by the task force; further legislation is needed to implement the recommendations and improve the use of protective restraining orders in domestic violence situations. An ideal model for such legislation can be found in the proposed statute drafted by the task force and included in its report.

Against:

To mandate that a court issue a domestic violence injunction under certain conditions would be to unduly interfere with the exercise of judicial discretion to accommodate individual situations. Moreover, the "reasonable cause" standard employed by the bill is much lower than the "clear and convincing evidence" standard that typically applies in issuing injunctions.

Against:

House Bill 4358 could present substantial costs for local prosecutors, and under the provisions of Article IX, Section 29 of the state constitution, that cost could be passed on to the state. Further, prosecutors are already laboring under heavy workloads; to eliminate their discretion in pursuing domestic violence contempt citations could work against the interests of justice.

Response:

It is arguable whether the bill's costs could be considered a mandated state cost under the constitution. Statute has long required prosecutors

to "prosecute . . . in all the courts of the county, all prosecutions, suits, applications, and motions, whether civil or criminal, in which the state or county may be a party or interested" (MCL 49.153). More importantly, however, it is vitally important to ensure that domestic violence restraining orders are properly enforced, without regard to whether the victim-complainant can afford an attorney to pursue criminal contempt proceedings. The victim should not have to hire a private attorney in this situation; the public interest in the matter and the severity of the penalty suggest that the matter is worthy of prosecutorial attention.

Against:

House Bill 4397 misses an opportunity to remedy the defects of the existing notice provision. The notice does not adequately explain whom the victim should contact or how the victim should go about seeking action. For example, the law says that the victim can "ask the county prosecuting attorney to file a criminal complaint," when what a person should do is contact the police. It also says that a person has "the right to go to court and file a petition" for a restraining order, but there is no explanation as to how to do that. Rather than prescribe the exact language of the notice, the statute would do better to lay out minimum requirements regarding the type of information to be provided. Domestic violence experts could then develop a model form that could be distributed to police agencies and used to comply with statutory notice requirements.