



**House  
Legislative  
Analysis  
Section**

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**PROSECUTE DOMESTIC VIOLENCE**

House Bill 4358 as introduced  
First Analysis (4-29-93)

Sponsor: Rep. Paul Baade  
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; and in 1991, 27,201. 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 approach to dealing with domestic violence is to promote a strong and consistent enforcement of laws against domestic assault. Under Michigan law, it is criminal contempt of court, punishable by up to 90 days in jail and a \$500 fine, to violate an injunction that prohibits a current or former spouse or household member from entering the home, assaulting someone, or removing children from the person with legal custody of them. To ensure that such matters receive adequate attention, it has been proposed that prosecutors be required to prosecute criminal contempt proceedings initiated by the court.

***THE CONTENT OF THE BILL:***

The bill would amend the Code of Criminal Procedure (MCL 764.15b) 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.

The court would have to notify the prosecutor of the criminal contempt proceeding, and also notify any attorney of record for the person who had procured the injunction.

(Note: House Bill 4362, which deals with arrest authority for domestic violence injunctions, also proposed to amend MCL 764.15b. The two bills must be made consistent with each other if both are to be enacted.)

***FISCAL IMPLICATIONS:***

There is no fiscal information at present. (4-27-93)

***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 these aims by requiring the prosecutor to represent the complainant in a criminal contempt proceeding on violation of a domestic abuse injunction. 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:***

The bill could present substantial costs for local prosecutors; under the provisions of Article IX,

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Section 19 of the constitution, that cost could be passed on to the state. Those costs likely would be on the order of several hundred dollars per hearing. 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).

***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 spousal abuse have developed least in part because of an historical failure by 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. Also, including dating or other nonspousal relationships in the bill could lead to difficulty in defining what constitutes a dating relationship.

***POSITIONS:***

In its September 1991 report, the Inter-Agency Domestic Violence Task Force recommended that "when an assailant has been arrested and brought into court for violation of a criminal spouse abuse injunction, the prosecutor should represent the complainant."

The Domestic Violence Prevention and Treatment Board supports the bill. (4-28-93)

The Prosecuting Attorneys Association of Michigan has concerns about the "Headlee" implications of the bill, but supports it as part of the comprehensive package on domestic violence. (4-27-93)

A representative of the Michigan Coalition Against Domestic Violence testified in support of the bill. (4-27-93)