



House Office Building, 9 South
Lansing, Michigan 48909
Phone: 517/373-6466

PERSONAL PROTECTION ORDERS

House Bill 4710 as passed by the House
Sponsor: Rep. Alan Sanborn

House Bill 4711 as passed by the House
Sponsor: Rep. Judith Scranton

House Bill 4712 as passed by the House
Sponsor: Rep. Sandra Caul

House Bill 4715 as passed by the House
Sponsor: Rep. Laura Baird

House Bill 4716 as passed by the House
Sponsor: Rep. Patricia Godchaux

House Bill 4719 as passed by the House
Sponsor: Rep. Paul Wojno

House Bill 4720 as passed by the House
Sponsor: Rep. Martha Scott

Committee: Criminal Law and Corrections
Second Analysis (4-11-00)

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. For some time, procedures for law enforcement response to domestic violence have been tinkered with in an effort to create a more consistent and effective means of dealing with domestic violence. In 1994, 22 new domestic violence laws were passed by Michigan's legislature. One of the results of that legislation was the creation of domestic violence personal protection orders (PPOs). Personal protection orders are a distinctly new creation of the legislature: they are civil injunctions that have criminal penalties. Under the Revised Judicature Act (RJA), a victim of domestic violence may petition the circuit court to issue a personal protection order to prohibit 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 has had a dating relationship, or an

individual who resides or has resided in the petitioner's household from engaging in certain activities. The personal protection order provisions allow an ex parte PPO to be issued and to become effective without providing notice to the individual who is to be restrained or that person's attorney where the facts reveal that immediate and irreparable injury, loss, or damage could result from the delay required to provide notice or that the provision of notice, in and of itself, will precipitate adverse action by the respondent before the order could be issued.

In the fall of 1995, the Prosecuting Attorneys Association of Michigan (PAAM) and the Domestic Violence Prevention and Treatment Board (DVPTB) met to discuss the implementation of the domestic violence laws enacted by the legislature in 1994. The two groups then agreed to co-chair a statewide, multi-disciplinary task force to gather information on the problems and successes encountered in implementing the new laws, and to make recommendations for legislative and court rule change, police policy, training

House Bills 4710, 4711, 4712, 4715, 4716, 4719 and 4720 (4-11-00)

need, forms changes, and best practices. In July of 1996, the task force issued its report, including recommendations for changes. A package of bills was proposed to address these and other issues related to domestic violence.

THE CONTENT OF THE BILLS:

House Bill 4710 would amend Public Act 59 of 1935 (MCL 28.6), which creates the state police, to specify that the commissioner and all officers of the Department of State Police have the authority to serve personal protection orders and to arrest anyone who violates such orders. Current law allows the execution of bench warrants issued in domestic relations matters.

House Bill 4711 would amend a provision of the Michigan Penal Code (MCL 750.411) that requires hospitals, pharmacies, and physicians to report to law enforcement officials when they become aware of a person with an injury caused by violence. A violation of this provision of law is a misdemeanor. Current law requires a health care worker to report the name and residence of the victim, and the character and extent of the injuries. The bill would require that the cause of the injuries and the identity of the perpetrator (if known) also be noted.

The bill would also specify that, to the extent not protected by the immunity conferred under the governmental immunity act, a health care worker who, in good faith, made a report or cooperated in an investigation or in a civil or criminal proceeding that was conducted as a result of such a report would be immune from criminal or civil liability for making the report or cooperating in the resulting investigation or court proceeding. The good faith of a health care worker would be presumed under such circumstances, and could only be rebutted by clear and convincing evidence to the contrary. The immunity granted by the bill would apply only to reporting or cooperating and would not extend to acts or omissions that were negligent or that amounted to professional malpractice, or both, and that caused personal injury or death. The bill would also specify that any physician-patient or health professional-patient privilege created or recognized by law would not apply to the reporting requirements and would not provide a defense for failure to provide information regarding a violent injury.

House Bill 4712 would amend the Revised Judicature Act of 1961 (MCL 600.916 and 600.2950b) to authorize the family division of the circuit court in each

county to provide a domestic violence victim advocate to assist victims of domestic violence in obtaining personal protection orders. In offering this assistance, a court could use the services of a public or private agency or an organization that has a record of service to the victims of domestic violence. A domestic violence victim advocate's provision of information and assistance for domestic violence victims would be specifically excluded from the provisions against the practice of law without a license; however, an advocate would be prohibited from representing the victim in court. A domestic violence victim advocate could provide a domestic violence victim with information and assistance, including, but not limited to, the availability of shelter, safety plans, counseling, other social services and generic written materials about state law; provide an interpreter for a case, including a request for a personal protection order; and inform a victim of the availability of a personal protection order, and assist him or her in obtaining, serving, modifying, or rescinding a personal protection order.

House Bill 4715 would amend the Domestic Violence Prevention and Treatment Act (MCL 400.1501) to revise the definition of "domestic violence." Under current law, domestic violence is defined as a "violent physical attack or fear of violent physical attack perpetrated by an assailant against a victim", in which the assailant is the victim's spouse or former spouse, or a person of the opposite sex with whom the victim lives (or has lived) and with whom the victim is or was involved in a consenting, sexual relationship. Under the bill, unless done in self-defense, any of the following actions, if done to or against a family or household member, would be considered domestic violence: causing or attempting to cause physical or mental harm, placing in fear of physical or mental harm, using force, threat of force, or duress to cause or attempt to cause engagement in involuntary sexual activity; engaging in activity that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

A family or household member would include anyone with whom the person accused of domestic violence had lived or was living, was having or had a sexual relationship, was or had been related to by marriage, has or had a dating relationship (frequent, intimate associations primarily characterized by the expectation of affectional development, not including a casual relationship or ordinary fraternization between two persons in a business or social context), or has had a child in common. The term would also apply to the minor child of any of the preceding persons.

The bill would also change references to the Department of Social Services to the Family Independence Agency to comport with the departmental name change.

House Bill 4716 would amend Public Act 44 of 1961, which provides for the release of misdemeanor prisoners (the interim bond act, MCL 780.582a), to expand the circumstances under which a person who was arrested for a misdemeanor could not be released on his or her own recognizance or on an interim bond set by a peace officer. A person who was arrested, either with or without a warrant, for misdemeanor assault, spousal or domestic assault, or substantially similar local laws would have to be held until he or she could be arraigned or a judge or magistrate could set an interim bond. This would also apply to a person who had been arrested under a warrant for violating a local ordinance that was substantially similar to the state's misdemeanor assault law and where the victim was that person's spouse, former spouse, had a child in common with the person who committed the assault, or resides or resided in the same household. In addition, if the judge or district court magistrate set an interim bond for such a defendant, the defendant could only be released subject to the condition that he or she not have or attempt to have any contact of any kind with the victim.

If a judge or district court magistrate released a person subject to protective conditions, the judge or magistrate would be required to inform the person on the record, either orally or in a personally delivered writing, of all of the following: the specific conditions of the release, that the person would be subject to arrest without a warrant, forfeiture or revocation of his or her bond and new conditions of release imposed, and any other additional penalties that might be imposed if the person were found in contempt of court. Such an order or amended order would have to contain all of the following information: 1) the person's full name, height, weight, race, sex, date of birth, hair color, eye color, and any other identifying information the judge or magistrate considers important; 2) the date the conditions of the order are effective and the date the order will expire; and 3) the conditions imposed. Immediately after entering such an order or amended order, a judge or magistrate would be required to direct a law enforcement agency (and the agency would be required to act) within the jurisdiction of the court, in writing, to enter the order or amended order into the LEIN system. If the order is later rescinded, the judge or magistrate would have to immediately order the law enforcement agency to remove the order from the LEIN. The bill would not restrict the authority of

judges or magistrates to impose protective or other release conditions under other laws or court rules.

House Bill 4719 would amend the Mental Health Code (MCL 330.1746 and 330.1747) to prohibit a mental health professional or facility who has mental health records or other mental health care information pertaining to a minor from releasing certain records or information. If the professional or facility had received a copy of a personal protection order barring a parent's access to records or other information pertaining to his or her minor child's or the other parent's address or telephone number or the other parent's place of employment, then the professional or facility would be prohibited from releasing such information. The information could not be released unless the personal protection order had expired or the mental health professional or facility received a copy of a new or modified court order that permitted access to the information. A mental health professional or facility that made a reasonable effort to comply with the bill's requirements would not be civilly or criminally liable or subject to any other remedy or penalty for failing to comply.

House Bill 4720 would amend the Public Health Code (MCL 333.16290 and 330.20175a) to prohibit health facilities or agencies and licensees or registrants under the code from releasing certain information about minors who had received treatment. The bill would apply to facilities, agencies, licensees, or registrants that had treated a minor patient and had medical records or other health care information about the minor. The facility, agency, licensee, or registrant could not release information to a parent that would reveal the minor child's or the other parent's address or telephone number or the other parent's place of employment, if the facility, agency, licensee, or registrant had received a copy of a personal protection order barring the parent's access to those records or information. The information could not be released unless the personal protection order had expired or a new or modified order permitting access had been received. A facility, agency, licensee, or registrant who made a reasonable effort to comply with the bill's requirements would not be civilly or criminally liable or subject to any other remedy or penalty for failing to comply. Finally, the holder of the records or other information could charge a reasonable fee for editing information from medical records as required by the bill.

Effective Date. All of the bills would take effect on July 1, 2000.

BACKGROUND INFORMATION:

A statewide, multi-disciplinary task force co-chaired by the Prosecuting Attorneys Association of Michigan and the Domestic Violence Prevention and Treatment Board of the Family Independence Agency issued its report in July 1996, and made several recommendations for changes in statute, court rules, and police policies. The task force was created in an attempt to gather information on the problems and successes of local jurisdictions as they implemented 22 new domestic violence laws passed by the legislature in 1994.

Though some of the task force's recommendations have already been enacted into law, other problems that have yet to be addressed include the following:

- It is recommended that a victim have the ability to obtain a PPO that would prohibit an abuser from having access to records pertaining to the couple's children (e.g., school or medical records) that would reveal the victim's whereabouts. An additional recommendation would require the cooperation of education and health officials.
- Notification of a county concealed weapon licensing board is recommended if a PPO prohibits a person from owning or possessing a firearm. A separate recommendation is to permit a court to prohibit firearm purchase or possession as a condition of probation.
- It is recommended that state police troopers be authorized to serve PPOs and to make arrests for violations.
- It is recommended that health providers with a duty to report injuries caused by violence be immunized from tort liability for such reporting.
- The task force recommends that domestic violence victim advocates be authorized to assist victims in filing the necessary forms for obtaining PPOs, and to assist victims in other ways.
- It is recommended that the purview of the Domestic Violence Prevention and Treatment Board be expanded to recognize victims who are children, victims of violence in dating relationships, and victims of violence in same sex relationships.
- The task force recommended that, when a person arrested on domestic violence charges must be released because he or she cannot be arraigned within the statutorily required period, that such a release be

conditioned on the person having no contact with the victim.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, House Bill 4710 and 4715 would have no direct state or local fiscal impact. House Bill 4712 would result in an indeterminate cost increase to local jurisdictions. House Bill 4719 would be cost neutral as a holder of mental health records would be permitted to charge a reasonable amount to the person who requested the editing of the records. Fiscal information on the other bills in the package is not available. (4-7-00)

ARGUMENTS:**For:**

The bills are part of a large package of legislation that is the result of recommendations made by the task force co-chaired by the Domestic Violence Prevention and Treatment Board and the Prosecuting Attorneys Association of Michigan. 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, laws have been enacted to strengthen law enforcement's response to domestic violence. By addressing various shortcomings of the law on domestic violence restraining orders as recommended by the task force, the package would significantly improve protections to victims of domestic violence and clarify many of the issues that have been confusing for law enforcement personnel and judges.

PPOs are a valuable tool in providing protection for some people; however, the task force's study of the issue has uncovered some flaws that the bills would help to correct. The package will help to strengthen the effectiveness of PPOs by clarifying a number of issues. First, the expanded definition of domestic violence will make clearer the sort of behavior that the law is intended to protect against. The package would also eliminate some confusion and expand the situations where a police officer could arrest a person for a violation of a PPO. In addition, procedures for setting bond after arrest for violation of a PPO would be changed, as would provisions regarding to legitimately serve a PPO.

Further, the package includes two other particularly useful recommendations: first, that victim's assistants could be used to alleviate many of the frivolous requests, incomplete or inaccurately completed forms, and misunderstandings about the process of filing court documents; and second, that health care providers who are required to report suspected cases of domestic violence should be given the same level of immunity in making such reports as is currently granted for the similar reporting of child abuse.

Against:

The bills may increase existing problems with the procedures for domestic violence PPOs. Because PPOs are obtained on an ex parte basis without the opportunity for the respondent to have notice or a hearing, some argue that the procedures are unconstitutional. Even if constitutional, the provisions that would bar one parent from having access to information about the other parent's address and telephone number could cause a myriad of problems in child custody situations. Barring a parent from information about his or her child's whereabouts would interfere with existing court orders regarding custody and parenting time; a parent who successfully obtained a PPO could easily hide the child and block the other parent's parenting time. An unscrupulous parent could do this easily without notification or a hearing. In addition, barring one parent from access to the other's employment information would make it impossible for the respondent-parent to verify the other party's income for the purpose of modifying support orders. These provisions will also make it virtually impossible for a respondent to serve any documents for any purpose on the PPO petitioner.

For:

The task force recommended that domestic violence PPOs be allowed to include provisions prohibiting the abuser from having access to information that could help him or her find out where the petitioner is living or working. In order to do this effectively, it is necessary that those entities that hold or maintain medical, or mental health records be required to withhold information from abusers when the entity has knowledge of the restrictions of the PPO. The bills are needed to help protect both the victims of domestic violence and their children. Many studies have shown that the victims of domestic violence are at greater risk of being seriously harmed or even killed by their abusers when they attempt to leave the relationship. Therefore anything that helps to conceal a victim's whereabouts from his or her abuser could help to save that victim's life.

Against:

The opportunities for misuse of these restrictions are immeasurable. The restrictions will interfere with existing court orders regarding custody and parenting time; a parent who successfully obtained a PPO could easily hide the child and block the other parent's parenting time until the non-custodial parent has the opportunity to be heard before the court and have the PPO rescinded. Given that these PPOs may be obtained without the other parent having the opportunity to be heard, restrictions like this should not be added to the PPO without giving the other parent a chance to present his or her side of the story.

Furthermore, barring access to medical and mental health records will interfere with the ability of a non-custodial parent to learn about the level and quality of the health care that his or her child is receiving. This is information that every parent should be entitled to; barring access to this information interferes directly with the ability of the parent to be a parent. Not merely information about where the other parent was living or working would be blocked, but more than likely, the entities affected by these bills would simply block access to all information rather than risk liability for letting out restricted information. This is a possible consequence that is entirely unacceptable and is not covered in the legislation.

Response:

The bills allow for the protected information to be edited for a fee and then released to the parent seeking the information. This should serve to eliminate the risk that all information will be denied -- the persons releasing the records could edit out protected information and release the remainder, charging a small fee for the editing. This will allow a parent access to his or her child's medical and mental health information, but will also protect the child and other parent where a PPO has been issued.

Against:

The provisions regarding hospitals and other medical facilities and personnel raise a number of questions and the possibility of significant increase in costs. As noted above, health care providers are sometimes required to provide parents with information about health care; which legal requirement will outweigh the other? How will health care providers know that a PPO exists? If all that is required is copy of the PPO, can a provider ignore a verbal notice of the existence of a PPO? How will the provider know if the copy that was provided is still in effect? Will the hospital or

physician be required to call the courthouse and check the status of the PPO?

At what point will knowledge be attributed to the particular provider? For example, if a treating physician has knowledge of a PPO and refers the patient to another doctor, is the second doctor assumed to have knowledge of the PPO? Is the first doctor required to pass on the knowledge of the PPO's existence? If the patient goes to the emergency room of hospital "A" and tells the hospital of the PPO, is hospital "B" assumed to have awareness of that PPO next week? What about a doctor working out of hospital "A"?

Against:

The package is less effective in protecting the victims of domestic violence than it could be, because House Bill 4716 does not require that a bond set in such cases be a cash/surety bond rather than a ten percent bond. A ten percent bond may be paid by the defendant, and if the defendant then violates the conditions of the bond there is little or no means for the remainder of the bond to be recouped. Furthermore, no one else is accountable for the defendant's performance of the conditions of the bond or for his appearance in court when ordered. If the legislation required the use of a cash/surety bond, the court and the victims of domestic violence would be better protected. The court would receive the full protection of the face value of the bond because the bonding agency would be responsible for the full amount of the bond. The victim would be better protected because the defendant's appearance and performance would be monitored and guaranteed by the bonding agency. The agency would be motivated to make certain that the defendant complied with all of the conditions of his or her release because the defendant's failure to meet these expectations could result in the agency having to pay off the entirety of the bond amount.

POSITIONS:

The Family Independence Agency supports the concept of the legislation. (3-31-00)

The Michigan Conference of the National Organization for Women (NOW) supports the legislation. (4-6-00)

The Michigan Coalition Against Domestic and Sexual Violence supports the legislation. (3-31-00)

The Prosecuting Attorneys Association of Michigan supports the legislation. (3-30-00)

Analyst: W. Flory

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.