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PERSONAL PROTECTION ORDERS

House Bill 4710 as enrolled
Public Act 83 of 2000
Sponsor: Rep. Alan Sanborn

House Bill 4711 as enrolled
Public Act 339 of 2000
Sponsor: Rep. Judith Scranton

House Bill 4712 as enrolled
Public Act 112 of 2000
Sponsor: Rep. Sandra Caul

House Bill 4715 as enrolled
Public Act 84 of 2000
Sponsor: Rep. Laura Baird

**House Committee: Criminal Law and
Corrections**
Senate Committee: Judiciary
Third Analysis (1-30-01)

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 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.

In addition, current law requires that applicants for admission to the State Bar of Michigan must be “a resident of 1 of the states or territories or the District of Columbia.” The State Board of Law Examiners has narrowly interpreted the term “resident”. Under this interpretation, foreign nationals who do not have a permanent residence visa or a “green card” are not eligible for admission to the bar. However, the state bar will allow them to apply for admission and to the bar exam. This can affect the lives of foreign nationals who are either serving in the United States military or an allied military force because they are unable to obtain permanent resident visas. It has been suggested that this problem could be eliminated by redefining the term resident.

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. In addition to these requirements, the bill would require that the cause of the injuries be noted and would allow the identity of the perpetrator (if known) to 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 4711 would take effect on April 1, 2001.

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.

The bill would also amend the provisions relating to the qualifications for admission to the state bar. The bill would expand the definition of “resident” to include a member of the military service of the United States or its allies, provided that person holds a temporary visa or permanent resident visa issued by the United States Immigration and Naturalization Service. Current law requires that in order to be eligible a person must be a resident of one of the states or territories or the District of Columbia, but does not define the term “resident.”

The majority of the bill’s provisions would take effect on July 1, 2000. However, the portion of the bill relating to the qualifications for admission to the state bar would take effect immediately upon enactment.

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.

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 as of spring 2000, other problems that had yet to be addressed included 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 would have no direct state or local fiscal impact. House Bill 4711 would have no significant fiscal impact. (1-26-01 and 1-30-01)

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 legitimately serve a PPO.

Further, the package includes two other particularly useful recommendations: first, provision of domestic violence victim advocates to help victim's to provide information and assistance to victims; and second, that health care providers who are required to report suspected cases of domestic violence will be given the same level of immunity in making such reports as is currently granted for the similar reporting of child abuse.

Against:

The package leaves out one of the most important task force recommendations -- 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. 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. By not including bills to make such changes, the package is seriously weakened.

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.