

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 729 (as enrolled)
Senate Bills 753 and 754 (as enrolled)
Senate Bills 757 and 758 (as enrolled)
House Bill 5275 (as enrolled)
House Bills 5299 and 5300 (as enrolled)
House Bills 5303 and 5304 (as enrolled)

Sponsor: Senator Bev Hammerstrom (Senate Bills 729, 754, & 757)

Senator Shirley Johnson (Senate Bills 753 & 758)
Representative Jennifer Faunce (House Bill 5275)
Representative Douglas Bovin (House Bill 5299)
Representative Ruth Johnson (House Bill 5300)
Representative Mickey Mortimer (House Bill 5303)
Representative Jerry Koiman (House Bill 5304)

Committee: Judiciary

Date Completed: 9-10-02

CONTENT

The bills amended the Revised Judicature Act (RJA), the Code of Criminal Procedure, and the juvenile code to provide for the enforcement in Michigan of a "foreign protection order". The bills do all of the following:

- **Specify that a foreign protection order is valid if certain conditions are met.**
- **Provide that a valid foreign protection order is enforceable in Michigan.**
- **Specify that personal protection orders (PPOs) issued in Michigan are enforceable in other jurisdictions.**
- **Subject violators of foreign protection orders to arrest provisions and court proceedings that apply to Michigan PPO violators.**
- **Include violations of stalking PPOs and foreign protection orders in police reporting requirements regarding domestic violence incidents.**
- **Excuse actions to enforce foreign protection orders from certain court fees.**
- **Require police agencies' policies to include procedures for enforcing foreign protection orders.**
- **Prohibit the issuance of a PPO against a respondent under 10 years old.**

All of the bills took effect on April 1, 2002, and were tie-barred to each other.

PUBLIC ACT 206 of 2001
PUBLIC ACTS 209 & 210 of 2001
PUBLIC ACTS 211 & 212 of 2001
PUBLIC ACT 197 of 2001
PUBLIC ACTS 200 & 201 of 2001
PUBLIC ACTS 202 & 194 of 2001

Senate Bill 729 defines "foreign protection order" as an injunction or other order issued by a court of another state, Indian tribe, or U.S. territory for the purpose of preventing a person's violent or threatening acts against, harassment of, contact with, communication with, or physical proximity to another person. The term includes temporary and final orders issued by civil and criminal courts (other than a support or child custody order issued pursuant to state divorce and child custody laws, except to the extent that an order is entitled to full faith and credit under other Federal law), whether obtained by the filing of an independent action or by the joinder of a claim to an action, if a civil order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.

Senate Bill 729

The bill amended the RJA to specify that a foreign protection order (FPO) is valid if the following conditions are met:

- The issuing court had jurisdiction over the parties and subject matter under the laws of the issuing state, tribe, or territory.
- Reasonable notice and opportunity to be heard are given to the respondent sufficient to protect his or her right to due process.

In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by state or tribal law, and in any event within a reasonable time after the order is issued. (An "ex parte" order is one issued without notice to the opposing party.)

A valid FPO must be accorded full faith and credit by a Michigan court and is subject to the same enforcement procedures and penalties as if it were issued in Michigan. A child custody or support provision within a valid FPO must be accorded full faith and credit by the court and is subject to the same enforcement procedures and penalties as any provision within a PPO issued in Michigan. The bill states that this provision may not be construed to preclude law enforcement officers' compliance with the Child Protection Law.

An FPO sought by a petitioner against a "spouse or intimate partner" and issued against both the petitioner and respondent is entitled to full faith and credit and is enforceable against the respondent. Such an order is not entitled to full faith and credit and is not enforceable against the petitioner unless both of the following conditions are met:

- The respondent filed a cross- or counter-petition, complaint, or other written pleading seeking the order.
- The issuing court made specific findings against both the petitioner and the respondent and determined that each was entitled to relief.

(The bill defines "spouse or intimate partner" as a spouse, former spouse, an individual with whom the petitioner has had a child in common, an individual residing or having resided in the same household as the petitioner, or an individual with whom the petitioner currently or formerly has or has had a dating relationship.)

The bill specifies that all of the following may be affirmative defenses to any charge or process filed seeking enforcement of a foreign protection order:

- Lack of jurisdiction by the issuing court over the parties or subject matter.
- Failure to provide notice and opportunity to be heard.
- Lack of the filing of a complaint, petition, or

motion by or on behalf of a person seeking protection in a civil FPO.

(An affirmative defense is evidence that outweighs the evidence against the defense.)

Senate Bill 753

The bill amended the Code of Criminal Procedure to include a valid foreign protection order in provisions pertaining to the enforcement of a PPO restraining or enjoining domestic violence or stalking activity.

The Code allows a peace officer, without a warrant, to arrest and take into custody an individual when the officer has, or receives positive information that another peace officer has, reasonable cause to believe that a PPO has been issued and the person named in the order is violating or has violated it. The bill added to that authorization reasonable cause to believe that a PPO is a valid foreign protection order.

In addition, the Code provides that the family division of circuit court (family court) in each county has jurisdiction to conduct contempt proceedings based on a violation of a PPO issued by the circuit court in any Michigan county. The court of arraignment must notify the court that issued the PPO that it may request the defendant to be returned to it for the violation. If the issuing court requests the defendant's return, the county of the requesting court must bear the cost of transporting him or her to that county. The bill includes a violation of a valid FPO in those provisions.

Under the Code, the family court also has jurisdiction to conduct contempt proceedings based on a violation of a domestic violence or stalking PPO issued under the juvenile code by the family court in any Michigan county. The family court that conducts a preliminary inquiry must notify the court that issued the PPO that it may request that the respondent be returned to that county for violating the PPO. If the issuing court requests the respondent's return, the county of the requesting court must bear the cost of transporting him or her to that county. The bill includes in those provisions a violation of a valid FPO issued against a respondent who is less than 18 years old at the time of an alleged violation of the order within Michigan.

Senate Bill 754

The bill amended the Code of Criminal Procedure to expand the definition of "domestic violence incident" in a provision that requires a peace officer to provide certain information to a victim of domestic violence and to prepare a domestic violence report after a domestic violence incident.

The bill defines "domestic violence incident" as an incident reported to a law enforcement agency involving allegations of one or both of the following:

- A violation of a PPO restraining or enjoining acts of domestic violence, or a violation of a valid foreign protection order.
- A crime committed by an individual against his or her spouse or former spouse, an individual with whom he or she has had a child, or an individual who resides or formerly resided in the same household, or an individual with whom he or she has or has had a dating relationship.

(Previously, the definition did not include the references to a foreign protection order or a dating relationship.)

Under the Code, after investigating or intervening in a domestic violence incident, a peace officer must give the victim a written notice that includes the police agency's name and telephone number; the officer's name and badge number; and specific statements about the victim's rights and services available to him or her. The officer also must prepare a domestic violence report that contains identifying information about the victim, suspect, and any witnesses; specific information about the incident being investigated; a description of previous domestic violence incidents between the victim and the suspect; the date and time of the report; and the officer's name, badge number, and signature.

The bill requires the Department of State Police, by June 1, 2002, to develop a standard domestic violence incident report form. As of October 1, 2002, a peace officer must use the standard form developed by the State Police or a form that is substantially similar.

Senate Bill 757

The bill amended the juvenile code to do all of the following:

- Provide for the family court's jurisdiction over a proceeding to enforce a valid FPO issued against a respondent who is a minor less than 18 years of age.
- Allow the family court to issue an order authorizing a peace officer or other person designated by the court to apprehend a juvenile who is alleged to have violated a valid FPO.
- Allow any police officer, county agent, or probation officer, without an order of the family court, to take into custody any child for whom there is reasonable cause to believe is violating or has violated a valid FPO.

The bill also provides that a personal protection order may not be issued against a respondent who is less than 10 years old.

Senate Bill 758

The bill amended the Code of Criminal Procedure to allow a peace officer, without a warrant, to arrest a person if the officer has reasonable cause to believe the person has violated one or more conditions of a conditional release order or probation order imposed by a court of this State, another state, an Indian tribe, or a United States territory.

(Previously, this provision allowed the warrantless arrest of a person whom a peace officer had reasonable cause to believe had violated a condition of probation imposed by a court.)

House Bill 5275

Enforcement

The bill amended the Revised Judicature Act to require law enforcement officers, prosecutors, and the court to enforce a foreign protection order in the same manner that they would enforce a Michigan-issued PPO restraining or enjoining domestic violence or stalking activity. A foreign protection order that is a conditional release order or a probation order issued by a court in a criminal proceeding, however, must be enforced as provided in the

bill (below) pursuant to the Uniform Extradition Act or the Uniform Rendition of Accused Persons Act, or pursuant to the Code of Criminal Procedure (as provided for a warrantless arrest under Senate Bill 758).

The bill specifies that a person who violates an FPO that is a conditional release order or a probation order issued by a court in a criminal proceeding is guilty of a misdemeanor punishable by imprisonment for up to 93 days and/or a maximum fine of \$500.

The bill allows a law enforcement officer to rely upon a copy of any protection order that appears to be an FPO, and that is provided to him or her from any source, if the putative FPO appears to contain all of the following:

- The names of the parties.
- The date the protection order was issued, which is before the date enforcement is sought.
- The terms and conditions against the respondent.
- The name of the issuing court.
- The signature of, or on behalf of, a judicial officer.
- No obvious indication that the order is invalid, such as an expiration date that is before the date enforcement is sought.

The fact that a putative FPO shown to an officer cannot be verified on the Law Enforcement Information Network (LEIN) or the National Crime Information Center (NCIC) protection order file maintained by the FBI is not a ground to refuse to enforce the terms of the order, unless it is apparent to the officer that the putative FPO is invalid. A law enforcement officer may rely upon the statement of the petitioner that the putative FPO remains in effect, and may rely upon the statement of the petitioner or the respondent that the respondent has received notice of that order.

Verification

If a person seeking enforcement of a foreign protection order does not have a copy of it, the officer must attempt to verify, through LEIN or the NCIC protection order file, administrative messaging, contacting the issuing court, contacting the law enforcement agency in the issuing jurisdiction, contacting that jurisdiction's protection order registry, or

any other method the officer believes to be reliable, the existence of the foreign protection order and all of the following:

- The names of the parties.
- The date the FPO was issued, which is before the date enforcement is sought.
- Terms and conditions against the respondent.
- The name of the issuing court.
- That there is no obvious indication that the order is invalid, such as an expiration date before the date enforcement is sought.

The officer must enforce the FPO if the existence of the order and the information listed above are verified. If a person seeking enforcement of an FPO does not have a copy of the order, and the law enforcement officer cannot verify it, the officer must maintain the peace and take appropriate action with regard to any criminal violations.

The law enforcement officer also must maintain the peace and take appropriate action with regard to any criminal violations when enforcing an FPO. The penalties provided for under the RJA's provisions for domestic violence or stalking PPOs may be imposed in addition to a penalty that may be imposed for any criminal offense arising from the same conduct.

Service or Notice

If there is no evidence that the respondent has been served with or received notice of the FPO, the law enforcement officer must serve the respondent with a copy of the order, or advise him or her about its existence, the name of the issuing court, the specific conduct enjoined, the penalties for violating the order in Michigan, and, if the officer is aware of them, the penalties for violating the order in the issuing jurisdiction. The officer must enforce the FPO and give the petitioner, or cause him or her to be given, proof of service or proof of oral notice. The officer also must give the issuing court, or cause it to be given, the same proof, if that court's address is apparent on the order or otherwise is readily available. If the order is entered into LEIN or the NCIC protection order file, the officer must give the agency that entered the order, or cause it to be given, proof of service or proof of oral notice.

If there is no evidence that the respondent has received notice of the order, the respondent must be given an opportunity to comply with the order before the officer makes a custodial arrest for violation of the order. Failure to comply immediately with the FPO would be grounds for an immediate custodial arrest. The bill states that these provisions do preclude arresting someone without a warrant as authorized under the Code of Criminal Procedure, or taking a juvenile into custody without a court order as authorized under the juvenile code.

Immunity

The bill provides that law enforcement officers, prosecutors, and court personnel acting in good faith are immune from civil and criminal liability in any action arising from the enforcement of a foreign protection order. This immunity does not, in any manner, limit or imply an absence of immunity in other circumstances.

House Bills 5299 & 5300

The bills amended the RJA to provide for the out-of-state enforcement of a PPO restraining or enjoining domestic violence or stalking activity. Previously, the RJA provided that a PPO was effective and immediately enforceable when signed by a judge, and the PPO had to include a statement to that effect. The bills specify that a PPO is effective and enforceable anywhere in Michigan when signed by a judge and that, upon service, a PPO also may be enforced by another state, an Indian tribe, or a U.S. territory. The PPO must include a state this information.

In addition, the Code requires a PPO to include a statement that it has been entered to restrain or enjoin conduct listed in the order and that violation of the PPO will subject the restrained or enjoined individual to immediate arrest and the civil and criminal contempt powers of the court and that the individual may be sentenced to imprisonment and/or a fine if found guilty of contempt. The bills also require the statement to indicate that, if the respondent violates the PPO in a jurisdiction other than Michigan, he or she will be subject to the enforcement procedures and penalties of that state, Indian tribe, or U.S. territory.

The bills also prohibit the issuance of a domestic violence or stalking PPO if the respondent is under 10 years old.

Under House Bill 5300, if a court refuses to grant a PPO restraining or enjoining stalking, it must immediately state in writing the specific reasons for issuing or refusing to issue an order. If the court holds a hearing, it must state on the record the specific reasons for issuing or refusing to issue a PPO. Previously, the court was required to state its reasons for refusing to issue an order.

House Bill 5303

The bill amended the RJA to exclude from requirements for court filing fees and motion fees an action for the enforcement of a foreign protection order.

Under the RJA, before a civil action is commenced, the party bringing the action must pay a \$62 fee to the clerk of the circuit court. An action brought exclusively under the sections of the RJA providing for domestic violence or stalking PPOs is exempt from the filing fee. Under the bill, an action brought exclusively under the Act's FPO provisions also is exempt.

In addition, the RJA requires that a \$20 fee be paid to the circuit court clerk upon the filing of a motion. In conjunction with an action relating to a domestic violence or stalking PPO, however, a motion fee may not be collected for a motion to dismiss the petition, a motion to modify, rescind, or terminate a PPO, or a motion to show cause for a violation of a PPO. Under the bill, a motion fee also may not be collected for a motion to dismiss a proceeding to enforce a foreign protection order or a motion to show cause for a violation of an FPO.

House Bill 5304

The bill amended the Code of Criminal Procedure to provide that each police agency's written policies for police officers responding to domestic violence calls must include procedures for enforcing a valid foreign protection order.

S0102\s729es

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.

MCL 600.2950h-600.2950k (S.B. 729)
764.15b (S.B. 753)
764.15c (S.B. 754)
712A.1 et al. (S.B. 757)
764.15 (S.B. 758)
600.2950/ & 600.2950m (H.B. 5275)
600.2950 (H.B. 5299)
600.2950a (H.B. 5300)
600.2529 (H.B. 5303)
776.22 (H.B. 5304)

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

Courts. The State Court Administrative Office reported that there were 49,932 personal protection order cases filed in 2000. Potential enforcement costs resulting from the bills are indeterminate, and will depend on the additional case filings to enforce foreign protection orders.

Family Independence Agency. It appears that the bills will have an indeterminate fiscal impact on the State and on local units of government. Expanding the types of applicable protection orders may increase the number of cases served by State-contracted or locally contracted detention service providers.

Fiscal Analyst: Bill Bowerman
Bruce Baker
Connie Cole
Bethany Wicksell