

HOUSE BILL No. 4622

May 19, 2015, Introduced by Reps. Hovey-Wright, Plawecki, Chirkun, Greig, Darany, Faris, Cochran, Chang, Geiss, Irwin, Smiley, Sarah Roberts and Brinks and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled "Revised judicature act of 1961," by amending section 2950a (MCL 600.2950a), as amended by 2010 PA 19.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2950a. (1) Except as provided in subsections (28), (29),
2 and (31), by commencing an independent action to obtain relief
3 under this section, by joining a claim to an action, or by filing a
4 motion in an action in which the petitioner and the individual to
5 be restrained or enjoined are parties, an individual may petition
6 the family division of circuit court to enter a personal protection
7 order to restrain or enjoin an individual from engaging in conduct
8 that is prohibited under section 411h, 411i, or 411s **OR CHAPTER**
9 **LXVIIIA** of the Michigan penal code, 1931 PA 328, MCL 750.411h,
10 750.411i, ~~and~~ 750.411s, **AND 750.462A TO 750.462H. Relief—A COURT**

1 **SHALL NOT GRANT RELIEF** under this subsection ~~shall not be granted~~
2 unless the petition alleges facts that constitute stalking as
3 defined in section 411h or 411i, or conduct that is prohibited
4 under section 411s **OR CHAPTER LXVIIA**, of the Michigan penal code,
5 1931 PA 328, MCL 750.411h, 750.411i, ~~and 750.411s~~, **AND 750.462A TO**
6 **750.462H**. Relief may be sought and granted under this subsection
7 whether or not the individual to be restrained or enjoined has been
8 charged or convicted under section 411h, 411i, or 411s **OR CHAPTER**
9 **LXVIIA** of the Michigan penal code, 1931 PA 328, MCL 750.411h,
10 750.411i, ~~and 750.411s~~, **AND 750.462A TO 750.462H**, for the alleged
11 violation.

12 (2) Except as provided in subsections (28), (29), and (31), by
13 commencing an independent action to obtain relief under this
14 section, by joining a claim to an action, or by filing a motion in
15 an action in which the petitioner and the individual to be
16 restrained or enjoined are parties, an individual may petition the
17 family division of circuit court to enter a personal protection
18 order to restrain or enjoin an individual from engaging in any of
19 the following:

20 (a) One or more of the acts listed in subsection (3), if the
21 respondent has been convicted of a sexual assault of the
22 petitioner, or the respondent has been convicted of furnishing
23 obscene material to the petitioner under section 142 of the
24 Michigan penal code, 1931 PA 328, MCL 750.142, or a substantially
25 similar law of the United States, another state, or a foreign
26 country or tribal or military law. ~~Relief~~ **A COURT SHALL GRANT**
27 **RELIEF** under this subdivision ~~shall be granted~~ if the court

1 determines that the respondent has been convicted of a sexual
2 assault of the petitioner or that the respondent was convicted of
3 furnishing obscene material to the petitioner under section 142 of
4 the Michigan penal code, 1931 PA 328, MCL 750.142, or a
5 substantially similar law of the United States, another state, or a
6 foreign country or tribal or military law.

7 (b) One or more of the acts listed in subsection (3), if the
8 petitioner has been subjected to, threatened with, or placed in
9 reasonable apprehension of sexual assault by the individual to be
10 enjoined. ~~Relief~~ **A COURT SHALL NOT GRANT RELIEF** under this
11 subdivision ~~shall not be granted~~ unless the petition alleges facts
12 that demonstrate that the respondent has perpetrated or threatened
13 sexual assault against the petitioner. Evidence that a respondent
14 has furnished obscene material to a minor petitioner ~~shall~~
15 ~~constitute~~ **IS** evidence that the respondent has threatened sexual
16 assault against the petitioner. Relief may be sought and granted
17 under this subdivision regardless of whether the individual to be
18 restrained or enjoined has been charged with or convicted of sexual
19 assault or an offense under section 142 of the Michigan penal code,
20 1931 PA 328, MCL 750.142, or a substantially similar law of the
21 United States, another state, or a foreign country or tribal or
22 military law.

23 (3) The court may restrain or enjoin an individual against
24 whom a protection order is sought under subsection (2) from 1 or
25 more of the following:

26 (a) Entering onto premises.

27 (b) Threatening to sexually assault, kill, or physically

1 injure petitioner or a named individual.

2 (c) Purchasing or possessing a firearm.

3 (d) Interfering with the petitioner's efforts to remove the
4 petitioner's children or personal property from premises that are
5 solely owned or leased by the individual to be restrained or
6 enjoined.

7 (e) Interfering with the petitioner at the petitioner's place
8 of employment or education or engaging in conduct that impairs the
9 petitioner's employment or educational relationship or environment.

10 (f) Following or appearing within the sight of the petitioner.

11 (g) Approaching or confronting the petitioner in a public
12 place or on private property.

13 (h) Appearing at the petitioner's workplace or residence.

14 (i) Entering onto or remaining on property owned, leased, or
15 occupied by the petitioner.

16 (j) Contacting the petitioner by telephone.

17 (k) Sending mail or electronic communications to the
18 petitioner.

19 (l) Placing an object on, or delivering an object to, property
20 owned, leased, or occupied by the petitioner.

21 (m) Engaging in conduct that is prohibited under section 411s
22 of the Michigan penal code, 1931 PA 328, MCL 750.411s.

23 (n) Any other specific act or conduct that imposes upon or
24 interferes with personal liberty or that causes a reasonable
25 apprehension of violence or sexual assault.

26 (4) Section 520j of the Michigan penal code, 1931 PA 328, MCL
27 750.520j, applies in any hearing on a petition for, a motion to

1 modify or terminate, or an alleged violation of a personal
2 protection order requested or issued under subsection (2), except
3 as follows:

4 (a) The written motion and offer of proof ~~shall~~**MUST** be filed
5 at least 24 hours before a hearing on a petition to issue a
6 personal protection order or on an alleged violation of a personal
7 protection order.

8 (b) The written motion and offer of proof ~~shall~~**MUST** be filed
9 at the same time that a motion to modify or terminate a personal
10 protection order is filed.

11 (5) If the respondent to a petition under this section is a
12 ~~person~~**AN INDIVIDUAL** who is issued a license to carry a concealed
13 weapon and is required to carry a weapon as a condition of his or
14 her employment, a police officer certified by the commission on law
15 enforcement standards act, 1965 PA 203, MCL 28.601 to 28.616, a
16 sheriff, a deputy sheriff or a member of the Michigan department of
17 state police, a local corrections officer, a department of
18 corrections employee, or a federal law enforcement officer who
19 carries a firearm during the normal course of his or her
20 employment, the petitioner shall notify the court of the
21 respondent's occupation before the personal protection order is
22 issued. This subsection does not apply to a petitioner who does not
23 know the respondent's occupation.

24 (6) A petitioner may omit his or her address of residence from
25 documents filed with the court under this section. If a petitioner
26 omits his or her address of residence, the petitioner shall provide
27 the court a mailing address.

1 (7) If a court issues or refuses to issue a personal
2 protection order, the court shall immediately state in writing the
3 specific reasons for issuing or refusing to issue the personal
4 protection order. If a hearing is held, the court shall also
5 immediately state on the record the specific reasons for issuing or
6 refusing to issue a personal protection order.

7 (8) A **COURT SHALL NOT ISSUE A MUTUAL** personal protection
8 order. ~~shall not be made mutual.~~ Correlative separate personal
9 protection orders are prohibited unless both parties have properly
10 petitioned the court under subsection (1) or (2).

11 (9) A personal protection order is effective and immediately
12 enforceable anywhere in this state ~~when~~ **AFTER BEING** signed by a
13 judge. Upon service, a personal protection order also may be
14 enforced by another state, an Indian tribe, or a territory of the
15 United States.

16 (10) The court **THAT ISSUES A PERSONAL PROTECTION ORDER** shall
17 designate ~~the~~ **A** law enforcement agency that is responsible for
18 entering the personal protection order into the L.E.I.N.

19 (11) A personal protection order issued under this section
20 ~~shall~~ **MUST** include all of the following, to the extent practicable
21 in a single form:

22 (a) A statement that the personal protection order has been
23 entered to enjoin or restrain conduct listed in the order and that
24 violation of the personal protection order will subject the
25 individual restrained or enjoined to 1 or more of the following:

26 (i) If the respondent is 17 years of age or older, immediate
27 arrest and the civil and criminal contempt powers of the court. If

1 the respondent is found guilty of criminal contempt, he or she
2 ~~shall~~**MUST** be imprisoned for not more than 93 days and may be fined
3 not more than \$500.00.

4 (ii) If the respondent is less than 17 years of age, immediate
5 apprehension or being taken into custody and the dispositional
6 alternatives listed in section 18 of chapter XIIIA of the probate
7 code of 1939, 1939 PA 288, MCL 712A.18.

8 (iii) If the respondent violates the personal protection order
9 in a jurisdiction other than this state, the enforcement procedures
10 and penalties of the state, Indian tribe, or United States
11 territory under whose jurisdiction the violation occurred.

12 (b) A statement that the personal protection order is
13 effective and immediately enforceable anywhere in this state ~~when~~
14 **AFTER BEING** signed by a judge, and that ~~upon~~**ON** service, a personal
15 protection order also may be enforced by another state, an Indian
16 tribe, or a territory of the United States.

17 (c) A statement listing each type of conduct enjoined.

18 (d) An expiration date stated clearly on the face of the
19 order.

20 (e) A statement that the personal protection order is
21 enforceable anywhere in ~~Michigan~~**THIS STATE** by any law enforcement
22 agency.

23 (f) The **NAME OF THE** law enforcement agency designated by the
24 court to enter the personal protection order into the L.E.I.N.

25 (g) For an ex parte order, a statement that the individual
26 restrained or enjoined may file a motion to modify or rescind the
27 personal protection order and request a hearing within 14 days

1 after the individual restrained or enjoined is served or receives
2 actual notice of the personal protection order and that motion
3 forms and filing instructions are available from the clerk of the
4 court.

5 (12) ~~An ex parte~~ **A COURT SHALL NOT ISSUE A** personal protection
6 order ~~shall not be issued and effective~~ **EX PARTE** without written or
7 oral notice to the individual enjoined or his or her attorney
8 unless it clearly appears from specific facts shown by **A** verified
9 complaint, written motion, or affidavit that immediate and
10 irreparable injury, loss, or damage will result from the delay
11 required to effectuate notice or that the notice will precipitate
12 adverse action before a personal protection order can be issued.

13 (13) A personal protection order issued under subsection (12)
14 is valid for not less than 182 days. The individual restrained or
15 enjoined may file a motion to modify or rescind the personal
16 protection order and request a hearing under the Michigan court
17 rules. ~~The~~ **A** motion to modify or rescind the personal protection
18 order ~~shall~~ **MUST** be filed within 14 days after the order is served
19 or after the individual restrained or enjoined receives actual
20 notice of the personal protection order unless good cause is shown
21 for filing the motion after 14 days have elapsed.

22 (14) Except as otherwise provided in this subsection, ~~the~~ **A**
23 court shall schedule a hearing on ~~the~~ **A** motion to modify or rescind
24 ~~the~~ **AN** ex parte personal protection order within 14 days after the
25 motion to modify or rescind is filed. If the respondent is a person
26 described in subsection (5) and the personal protection order
27 prohibits him or her from purchasing or possessing a firearm, the

1 court shall schedule a hearing on the motion to modify or rescind
2 the ex parte personal protection order within 5 days after the
3 motion to modify or rescind is filed.

4 (15) The clerk of the court that issues a personal protection
5 order shall do all of the following immediately upon issuance
6 without requiring proof of service on the individual restrained or
7 enjoined:

8 (a) File a true copy of the personal protection order with the
9 law enforcement agency designated by the court in the personal
10 protection order.

11 (b) Provide the petitioner with 2 or more true copies of the
12 personal protection order.

13 (c) If the individual restrained or enjoined is identified in
14 the pleadings as a law enforcement officer, notify the officer's
15 employing law enforcement agency of the existence of the personal
16 protection order.

17 (d) If the personal protection order prohibits the individual
18 restrained or enjoined from purchasing or possessing a firearm,
19 notify the concealed weapon licensing board in the individual's
20 county of residence of the existence and content of the personal
21 protection order.

22 (e) If the individual restrained or enjoined is identified in
23 the pleadings as a department of corrections employee, notify the
24 department of corrections of the existence of the personal
25 protection order.

26 (f) If the individual restrained or enjoined is identified in
27 the pleadings as a person who may have access to information

1 concerning the petitioner or a child of the petitioner or
2 individual and that information is contained in friend of the court
3 records, notify the friend of the court for the county in which the
4 information is located of the existence of the personal protection
5 order.

6 (16) The clerk of a court that issues a personal protection
7 order shall inform the petitioner that he or she may take a true
8 copy of the personal protection order to the law enforcement agency
9 designated by the court under subsection (10) to be immediately
10 entered into the L.E.I.N.

11 (17) The law enforcement agency that receives a true copy of a
12 personal protection order under subsection (15) or (16) shall
13 immediately, without requiring proof of service, enter the personal
14 protection order into the L.E.I.N.

15 (18) A personal protection order issued under this section
16 ~~shall~~ **MUST** be served personally, by registered or certified mail,
17 return receipt requested, delivery restricted to the addressee at
18 the last known address or addresses of the individual restrained or
19 enjoined or by any other method allowed by the Michigan court
20 rules. If the individual restrained or enjoined has not been
21 served, a law enforcement officer or clerk of the court who knows
22 that a personal protection order exists may, at any time, serve the
23 individual restrained or enjoined with a true copy of the order or
24 advise the individual restrained or enjoined of the existence of
25 the personal protection order, the specific conduct enjoined, the
26 penalties for violating the order, and where the individual
27 restrained or enjoined may obtain a copy of the order. If the

1 individual restrained or enjoined is less than 18 years of age, the
2 parent, guardian, or custodian of the individual ~~shall~~**MUST** also be
3 served personally or by registered or certified mail, return
4 receipt requested, delivery restricted to the addressee at the last
5 known address or addresses of the parent, guardian, or custodian. A
6 proof of service or proof of oral notice ~~shall~~**MUST** be filed with
7 the clerk of the court issuing the personal protection order. This
8 subsection does not prohibit the immediate effectiveness of a
9 personal protection order or immediate enforcement under subsection
10 (21) or (22).

11 (19) The clerk of the court that issued a personal protection
12 order shall immediately notify the law enforcement agency that
13 received the personal protection order under subsection (15) or
14 (16) if either or both of the following occur:

15 (a) The clerk of the court receives proof that the individual
16 restrained or enjoined has been served.

17 (b) The personal protection order is rescinded, modified, or
18 extended by court order.

19 (20) The law enforcement agency that receives information
20 under subsection (19) shall enter the information or cause the
21 information to be entered into the L.E.I.N.

22 (21) Subject to subsection (22), a personal protection order
23 is immediately enforceable anywhere in this state by any law
24 enforcement agency that has received a true copy of the order, is
25 shown a copy of it, or has verified its existence on the L.E.I.N.

26 (22) If the individual restrained or enjoined by a personal
27 protection order has not been served, a law enforcement agency or

1 officer responding to a call alleging a violation of the personal
2 protection order shall serve the individual restrained or enjoined
3 with a true copy of the order or advise the individual restrained
4 or enjoined of the existence of the personal protection order, the
5 specific conduct enjoined, the penalties for violating the order,
6 and where the individual restrained or enjoined may obtain a copy
7 of the order. The law enforcement officer shall enforce the
8 personal protection order and immediately enter or cause to be
9 entered into the L.E.I.N. that the individual restrained or
10 enjoined has actual notice of the personal protection order. The
11 law enforcement officer also shall file a proof of service or proof
12 of oral notice with the clerk of the court that issued the personal
13 protection order. If the individual restrained or enjoined has not
14 received notice of the personal protection order, the individual
15 restrained or enjoined ~~shall~~**MUST** be given an opportunity to comply
16 with the personal protection order before the law enforcement
17 officer makes a custodial arrest for violation of the personal
18 protection order. Failure to immediately comply with the personal
19 protection order is grounds for an immediate custodial arrest. This
20 subsection does not preclude an arrest under section 15 or 15a of
21 chapter IV of the code of criminal procedure, 1927 PA 175, MCL
22 764.15 and 764.15a, or a proceeding under section 14 of chapter
23 XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.14.

24 (23) An individual 17 years of age or older who refuses or
25 fails to comply with a personal protection order issued under this
26 section is subject to the criminal contempt powers of the court
27 and, if found guilty of criminal contempt, ~~shall~~**MUST** be imprisoned

1 for not more than 93 days and may be fined not more than \$500.00.
2 An individual less than 17 years of age who refuses or fails to
3 comply with a personal protection order issued under this section
4 is subject to the dispositional alternatives listed in section 18
5 of chapter XIIIA of the probate code of 1939, 1939 PA 288, MCL
6 712A.18. The criminal penalty under this section may be imposed in
7 addition to any penalty that may be imposed for any other criminal
8 offense arising from the same conduct.

9 (24) An individual who knowingly and intentionally makes a
10 false statement to a court in support of his or her petition for a
11 personal protection order is subject to the contempt powers of the
12 court.

13 (25) A personal protection order issued under this section is
14 also enforceable under ~~chapter XIIIA of the probate code of 1939,~~
15 ~~1939 PA 288, MCL 712A.1 to 712A.32, and section 15b of chapter IV~~
16 of the code of criminal procedure, 1927 PA 175, MCL 764.15b.

17 (26) A personal protection order issued under this section may
18 enjoin or restrain an individual from purchasing or possessing a
19 firearm.

20 (27) A personal protection order issued under this section is
21 also enforceable under chapter 17.

22 (28) A court shall not issue a personal protection order that
23 restrains or enjoins conduct described in subsection (1) or (3) if
24 any of the following apply:

25 (a) The respondent is the unemancipated minor child of the
26 petitioner.

27 (b) The petitioner is the unemancipated minor child of the

1 respondent.

2 (c) The respondent is a minor child less than 10 years of age.

3 (29) If the respondent is less than 18 years old, issuance of
4 a personal protection order under this section is subject to
5 chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.1
6 to 712A.32.

7 (30) A personal protection order issued before March 1, 1999
8 is not invalid on the ground that it does not comply with 1 or more
9 of the requirements added by 1998 PA 476.

10 (31) A court shall not issue a personal protection order under
11 this section if the petitioner is a prisoner. If a personal
12 protection order is issued in violation of this subsection, a court
13 shall rescind the personal protection order upon notification and
14 verification that the petitioner is a prisoner.

15 (32) As used in this section:

16 (a) "Convicted" means 1 of the following:

17 (i) The subject of a judgment of conviction or a probation
18 order entered in a court that has jurisdiction over criminal
19 offenses, including a tribal court or a military court.

20 (ii) Assigned to youthful trainee status under sections 11 to
21 15 of chapter II of the code of criminal procedure, 1927 PA 175,
22 MCL 762.11 to 762.15, if the individual's status of youthful
23 trainee is revoked and an adjudication of guilt is entered.

24 (iii) The subject of an order of disposition entered under
25 section 18 of chapter XIIA of the probate code of 1939, 1939 PA
26 288, MCL 712A.18, that is open to the general public under section
27 28 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL

1 712A.28.

2 (iv) The subject of an order of disposition or other
3 adjudication in a juvenile matter in another state or country.

4 (b) "Federal law enforcement officer" means an officer or
5 agent employed by a law enforcement agency of the United States
6 government whose primary responsibility is the enforcement of laws
7 of the United States.

8 (c) "L.E.I.N." means the law enforcement information network
9 administered under the C.J.I.S. policy council act, 1974 PA 163,
10 MCL 28.211 to 28.215.

11 (d) "Personal protection order" means an injunctive order
12 issued by ~~the circuit court or~~ the family division of circuit court
13 restraining or enjoining conduct prohibited under subsection (1) or
14 (3).

15 (e) "Prisoner" means a person subject to incarceration,
16 detention, or admission to a prison who is accused of, convicted
17 of, sentenced for, or adjudicated delinquent for violations of
18 federal, state, or local law or the terms and conditions of parole,
19 probation, pretrial release, or a diversionary program.

20 (f) "Sexual assault" means an act, attempted act, or
21 conspiracy to engage in an act of criminal conduct as defined in
22 section 520b, 520c, 520d, 520e, or 520g of the Michigan penal code,
23 1931 PA 328, MCL 750.520b, 750.520c, 750.520d, 750.520e, and
24 750.520g, or an offense under a law of the United States, another
25 state, or a foreign country or tribal or military law that is
26 substantially similar to an offense listed in this subdivision.

27 Enacting section 1. This amendatory act takes effect 90 days

1 after the date it is enacted into law.