

[No. 196]

(HB 5273)

AN ACT to amend 1961 PA 236, entitled "An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of such courts, and of the judges and other officers thereof; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in said courts; pleading, evidence, practice and procedure in civil and criminal actions and proceedings in said courts; to provide remedies and penalties for the violation of certain provisions of this act; to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act; and to repeal acts and parts of acts," by amending section 2950a (MCL 600.2950a), as amended by 1999 PA 268.

*The People of the State of Michigan enact:*

**600.2950a Personal protection order restraining or enjoining individual from engaging in conduct prohibited under §§ 750.411h and 750.411i; facts alleging stalking; respondent required to carry concealed weapon; omitting address of residence from documents; reasons for issuing or refusing to grant order; mutual order prohibited; effectiveness, issuance, contents, and duration of order; duties of court clerk; entering order into L.E.I.N.; service; notice to law enforcement agency; enforcement; refusal or failure to comply; false statement to court; purchase or possession of firearm; minor; issuance to prisoner prohibited; definitions.**

Sec. 2950a. (1) Except as provided in subsections (25) and (26), by commencing an independent action to obtain relief under this section, by joining a claim to an action, or by filing a motion in an action in which the petitioner and the individual to be restrained or enjoined are parties, an individual may petition the family division of circuit court to enter a personal protection order to restrain or enjoin an individual from engaging in conduct that is prohibited under section 411h or 411i of the Michigan penal code, 1931 PA 328, MCL 750.411h and 750.411i. Relief shall not be granted unless the petition alleges facts that constitute stalking as defined in section 411h or 411i of the Michigan penal code, 1931 PA 328, MCL 750.411h and 750.411i. Relief may be sought and granted under this section whether or not the individual to be restrained or enjoined has been charged or convicted under section 411h or 411i of the Michigan penal code, 1931 PA 328, MCL 750.411h and 750.411i, for the alleged violation.

(2) If the respondent is a person who is issued a license to carry a concealed weapon and is required to carry a weapon as a condition of his or her employment, a police officer certified by the commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.616, a sheriff, a deputy sheriff or a member of the Michigan department of state police, a local corrections officer, a department of corrections employee, or a federal law enforcement officer who carries a firearm during the normal course of his or her employment, the petitioner shall notify the court of the respondent's occupation prior to the issuance of the personal protection order. This subsection does not apply to a petitioner who does not know the respondent's occupation.

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

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(4) A court shall immediately state in writing the specific reasons for issuing or refusing to issue a personal protection order. If a hearing is held, the court shall also immediately state on the record the specific reasons for issuing or refusing to issue a personal protection order.

(5) A personal protection order shall not be made mutual. Correlative separate personal protection orders are prohibited unless both parties have properly petitioned the court according to subsection (1).

(6) A personal protection order is effective and immediately enforceable when signed by a judge.

(7) The court shall designate the law enforcement agency that is responsible for entering the personal protection order into the L.E.I.N.

(8) A personal protection order issued under this section shall include all of the following, and to the extent practicable contained in a single form:

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

(i) If the respondent is 17 years of age or more, immediate arrest and the civil and criminal contempt powers of the court, and that if he or she is found guilty of criminal contempt, he or she shall be imprisoned for not more than 93 days and may be fined not more than \$500.00.

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

(b) A statement that the personal protection order is effective and immediately enforceable when signed by a judge.

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

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

(e) A statement that the personal protection order is enforceable anywhere in Michigan by any law enforcement agency.

(f) The law enforcement agency designated by the court to enter the personal protection order into the L.E.I.N.

(g) For an ex parte order, a statement that the individual restrained or enjoined may file a motion to modify or rescind the personal protection order and request a hearing within 14 days after the individual restrained or enjoined has been served or has received actual notice of the personal protection order and that motion forms and filing instructions are available from the clerk of the court.

(9) An ex parte personal protection order shall not be issued and effective without written or oral notice to the individual enjoined or his or her attorney unless it clearly appears from specific facts shown by verified complaint, written motion, or affidavit that immediate and irreparable injury, loss, or damage will result from the delay required to effectuate notice or that the notice will precipitate adverse action before a personal protection order can be issued.

(10) A personal protection order issued under subsection (9) is valid for not less than 182 days. The individual restrained or enjoined may file a motion to modify or rescind the personal protection order and request a hearing under the Michigan court rules. The motion to modify or rescind the personal protection order shall be filed within 14 days after the order is served or after the individual restrained or enjoined has received actual notice of the personal protection order unless good cause is shown for filing the motion after 14 days have elapsed.

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(11) Except as otherwise provided in this subsection, the court shall schedule a hearing on the motion to modify or rescind the ex parte personal protection order within 14 days after the filing of the motion to modify or rescind. If the respondent is a person described in subsection (2) and the personal protection order prohibits him or her from purchasing or possessing a firearm, the court shall schedule a hearing on the motion to modify or rescind the ex parte personal protection order within 5 days after the filing of the motion to modify or rescind.

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

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

(b) Provide petitioner with not less than 2 true copies of the personal protection order.

(c) If respondent is identified in the pleadings as a law enforcement officer, notify the officer's employing law enforcement agency about the existence of the personal protection order.

(d) If the personal protection order prohibits the respondent from purchasing or possessing a firearm, notify the concealed weapon licensing board in respondent's county of residence about the existence and content of the personal protection order.

(e) If the respondent is identified in the pleadings as a department of corrections employee, notify the state department of corrections about the existence of the personal protection order.

(f) If the respondent is identified in the pleadings as being a person who may have access to information concerning the petitioner or a child of the petitioner or respondent and that information is contained in friend of the court records, notify the friend of the court for the county in which the information is located about the existence of the personal protection order.

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

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

(15) A personal protection order issued under this section shall be served personally or by registered or certified mail, return receipt requested, delivery restricted to the addressee at the last known address or addresses of the individual restrained or enjoined or by any other manner provided in the Michigan court rules. If the individual restrained or enjoined has not been served, a law enforcement officer or clerk of the court who knows that a personal protection order exists may, at any time, serve the individual restrained or enjoined with a true copy of the order or advise the individual restrained or enjoined about the existence of the personal protection order, the specific conduct enjoined, the penalties for violating the order, and where the individual restrained or enjoined may obtain a copy of the order. If the respondent is less than 18 years of age, the parent, guardian, or custodian of that individual shall also be served personally or by registered or certified mail, return receipt requested, delivery restricted to the addressee at the last known address or addresses of the parent, guardian, or custodian of the individual restrained or enjoined. A proof of service or proof of oral notice shall be filed with the clerk of the court issuing the personal protection order. This subsection does not prohibit the immediate effectiveness of a personal protection order or immediate enforcement under subsection (18) or (19).

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(16) The clerk of the court shall immediately notify the law enforcement agency that received the personal protection order under subsection (12) or (13) if either of the following occurs:

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

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

(17) The law enforcement agency that receives information under subsection (16) shall enter the information or cause the information to be entered into the L.E.I.N.

(18) Subject to subsection (19), a personal protection order is immediately enforceable anywhere in this state by any law enforcement agency that has received a true copy of the order, is shown a copy of it, or has verified its existence on the L.E.I.N.

(19) If the individual restrained or enjoined has not been served, the law enforcement agency or officer responding to a call alleging a violation of a personal protection order shall serve the individual restrained or enjoined with a true copy of the order or advise the individual restrained or enjoined about the existence of the personal protection order, the specific conduct enjoined, the penalties for violating the order, and where the individual restrained or enjoined may obtain a copy of the order. The law enforcement officer shall enforce the personal protection order and immediately enter or cause to be entered into the L.E.I.N. that the individual restrained or enjoined has actual notice of the personal protection order. The law enforcement officer also shall file a proof of service or proof of oral notice with the clerk of the court issuing the personal protection order. If the individual restrained or enjoined has not received notice of the personal protection order, the individual restrained or enjoined shall be given an opportunity to comply with the personal protection order before the law enforcement officer makes a custodial arrest for violation of the personal protection order. Failure to immediately comply with the personal protection order is grounds for an immediate custodial arrest. This subsection does not preclude an arrest under section 15 or 15a of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.15 and 764.15a, or a proceeding under section 14 of chapter XIIIA of the probate code of 1939, 1939 PA 288, MCL 712A.14.

(20) An individual 17 years of age or more who refuses or fails to comply with a personal protection order issued under this section is subject to the criminal contempt powers of the court and, if found guilty of criminal contempt, shall be imprisoned for not more than 93 days and may be fined not more than \$500.00. An individual less than 17 years of age who refuses or fails to comply with a personal protection order issued under this section is subject to the dispositional alternatives listed in section 18 of chapter XIIIA of the probate code of 1939, 1939 PA 288, MCL 712A.18. The criminal penalty provided for under this section may be imposed in addition to any penalty that may be imposed for any other criminal offense arising from the same conduct.

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

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

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

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

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

- (a) The respondent is the unemancipated minor child of the petitioner.
- (b) The petitioner is the unemancipated minor child of the respondent.
- (c) The respondent is a minor child under 10 years of age.

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

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

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

(29) As used in this section:

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

(b) "L.E.I.N." means the law enforcement information network administered under the L.E.I.N. policy council act of 1974, 1974 PA 163, MCL 28.211 to 28.216.

(c) "Personal protection order" means an injunctive order issued by circuit court or the family division of circuit court restraining or enjoining conduct prohibited under section 411h or 411i of the Michigan penal code, 1931 PA 328, MCL 750.411h and 750.411i.

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

### **Effective date.**

Enacting section 1. This amendatory act takes effect April 1, 2002.

This act is ordered to take immediate effect.

Approved December 27, 2001.

Filed with Secretary of State December 27, 2001.

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