

**STATE OF MICHIGAN
98TH LEGISLATURE
REGULAR SESSION OF 2016**

Introduced by Reps. Kosowski, Kivela, Heise, Glardon, Faris, Hughes, Glenn, Price, Lyons, Cox and Geiss

ENROLLED HOUSE BILL No. 4478

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 the courts, and of the judges and other officers of the courts; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in the courts; pleading, evidence, practice, and procedure in civil and criminal actions and proceedings in the courts; to provide for the powers and duties of certain state governmental officers and entities; 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 2950 (MCL 600.2950), as amended by 2001 PA 200.

The People of the State of Michigan enact:

Sec. 2950. (1) Except as provided in subsections (27) and (28), 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 a spouse, a former spouse, an individual with whom he or she has had a child in common, an individual with whom he or she has or has had a dating relationship, or an individual residing or having resided in the same household as the petitioner from doing 1 or more of the following:

- (a) Entering onto premises.
- (b) Assaulting, attacking, beating, molesting, or wounding a named individual.
- (c) Threatening to kill or physically injure a named individual.
- (d) Removing minor children from the individual having legal custody of the children, except as otherwise authorized by a custody or parenting time order issued by a court of competent jurisdiction.
- (e) Purchasing or possessing a firearm.
- (f) Interfering with petitioner's efforts to remove petitioner's children or personal property from premises that are solely owned or leased by the individual to be restrained or enjoined.
- (g) Interfering with petitioner at petitioner's place of employment or education or engaging in conduct that impairs petitioner's employment or educational relationship or environment.
- (h) Having access to information in records concerning a minor child of both petitioner and respondent that will inform respondent about the address or telephone number of petitioner and petitioner's minor child or about petitioner's employment address.
- (i) 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.

(j) Any of the following with the intent to cause the petitioner mental distress or to exert control over the petitioner with respect to an animal in which the petitioner has an ownership interest:

(i) Injuring, killing, torturing, neglecting, or threatening to injure, kill, torture, or neglect the animal. A restraining order that enjoins conduct under this subparagraph does not prohibit the lawful killing or other use of the animal as described in section 50(11) of the Michigan penal code, 1931 PA 328, MCL 750.50.

(ii) Removing the animal from the petitioner's possession.

(iii) Retaining or obtaining possession of the animal.

(k) Any other specific act or conduct that imposes upon or interferes with personal liberty or that causes a reasonable apprehension of violence.

(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, 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 with a mailing address.

(4) The court shall issue a personal protection order under this section if the court determines that there is reasonable cause to believe that the individual to be restrained or enjoined may commit 1 or more of the acts listed in subsection (1). In determining whether reasonable cause exists, the court shall consider all of the following:

(a) Testimony, documents, or other evidence offered in support of the request for a personal protection order.

(b) Whether the individual to be restrained or enjoined has previously committed or threatened to commit 1 or more of the acts listed in subsection (1).

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

(a) The individual to be restrained or enjoined is not the spouse of the moving party.

(b) The individual to be restrained or enjoined or the parent, guardian, or custodian of the minor to be restrained or enjoined has a property interest in the premises.

(c) The moving party or the parent, guardian, or custodian of a minor petitioner has no property interest in the premises.

(6) A court shall not refuse to issue a personal protection order solely due to the absence of any of the following:

(a) A police report.

(b) A medical report.

(c) A report or finding of an administrative agency.

(d) Physical signs of abuse or violence.

(7) If the court refuses to grant a personal protection order, it shall state immediately in writing the specific reasons it refused to issue a personal protection order. If a hearing is held, the court shall also immediately state on the record the specific reasons it refuses to issue a personal protection order.

(8) A personal protection order may not be made mutual. Correlative separate personal protection orders are prohibited unless both parties have properly petitioned the court under subsection (1).

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

(10) The court shall designate the law enforcement agency that is responsible for entering the personal protection order into the law enforcement information network as provided by the C.J.I.S. policy council act, 1974 PA 163, MCL 28.211 to 28.215.

(11) A personal protection order must include all of the following, and to the extent practicable the following shall be contained in a single form:

(a) A statement that the personal protection order has been entered to restrain or enjoin conduct listed in the order and that violation of the personal protection order will subject the individual restrained or enjoined to 1 or more 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, 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.

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

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

(c) A statement listing the type or types 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 law enforcement information network.

(g) For ex parte orders, 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 order and that motion forms and filing instructions are available from the clerk of the court.

(12) A court shall issue an ex parte personal protection order without written or oral notice to the individual restrained or enjoined or his or her attorney if 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 itself precipitate adverse action before a personal protection order can be issued.

(13) A personal protection order issued under subsection (12) 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 must 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 the 14 days have elapsed.

(14) 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.

(15) The clerk of the court that issues a personal protection order shall do all of the following immediately upon issuance and without requiring a 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 the petitioner with 2 or more 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, if known, about the existence of the personal protection order.

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

(16) 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 under subsection (10) to be immediately entered into the law enforcement information network.

(17) The law enforcement agency that receives a true copy of the personal protection order under subsection (15) or (16) shall immediately and without requiring proof of service enter the personal protection order into the law enforcement information network as provided by the C.J.I.S. policy council act, 1974 PA 163, MCL 28.211 to 28.215.

(18) A personal protection order issued under this section must 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 must 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 must 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 its immediate enforcement under subsections (21) and (22).

(19) The clerk of the court shall immediately notify the law enforcement agency that received the personal protection order under subsection (15) or (16) 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.

(20) The law enforcement agency that receives information under subsection (19) shall enter the information or cause the information to be entered into the law enforcement information network as provided by the C.J.I.S. policy council act, 1974 PA 163, MCL 28.211 to 28.215.

(21) Subject to subsection (22), 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 law enforcement information network as provided by the C.J.I.S. policy council act, 1974 PA 163, MCL 28.211 to 28.215.

(22) 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 law enforcement information network 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. The 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 XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.14.

(23) An individual who is 17 years of age or more and who refuses or fails to comply with a personal protection order under this section is subject to the criminal contempt powers of the court and, if found guilty, shall be imprisoned for not more than 93 days and may be fined not more than \$500.00. An individual who is less than 17 years of age and 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 XIIA 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 a penalty that may be imposed for another criminal offense arising from the same conduct.

(24) 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.

(25) A personal protection order issued under this section is also enforceable under chapter XIIA 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.

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

(27) 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 less than 10 years of age.

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

(29) 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 477.

(30) For purposes of subsection (1)(j), a petitioner has an ownership interest in an animal if 1 or more of the following are applicable:

- (a) The petitioner has a right of property in the animal.
- (b) The petitioner keeps or harbors the animal.
- (c) The animal is in the petitioner's care.
- (d) The petitioner permits the animal to remain on or about premises occupied by the petitioner.

(31) As used in this section:

(a) "Dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional involvement. Dating relationship does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context.

(b) "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.

(c) "Neglect" means that term as defined in section 50 of the Michigan penal code, 1931 PA 328, MCL 750.50.

(d) "Personal protection order" means an injunctive order issued by the circuit court or the family division of circuit court restraining or enjoining activity and individuals listed in subsection (1).

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor