



Romney Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

PERSONAL PROTECTION ORDERS

House Bill 5657

Sponsor: Rep. Michael Nye

House Bill 5658

Sponsor: Rep. Candace Curtis

House Bill 5659

Sponsor: Rep. Alan Sanborn

House Bill 5660

Sponsor: Rep. Jessie Dalman

House Bill 5661

Sponsor: Rep. Ted Wallace

House Bill 5662

Sponsor: Rep. Mark Jansen

House Bill 5663

Sponsor: Rep. Andrew Richner

House Bill 5664

Sponsor: Rep. Laura Baird

House Bill 5665

Sponsor: Rep. A.T. Frank

House Bill 5666

Sponsor: Rep. Patricia Godchaux

House Bill 5667

Sponsor: Rep. Mark Schauer

Committee: Judiciary

Complete to 3-16-98

House Bills 5657-5667 (3-16-98)

A SUMMARY OF HOUSE BILLS 5657 - 5667 AS INTRODUCED 3-11-98

House Bill 5657 would amend the Revised Judicature Act of 1961 (MCL 600.2529 et al.) to revise and clarify the procedures involved in issuing and enforcing certain personal protection orders (PPOs).

The bill would provide that motions to modify or terminate domestic violence personal protection orders (those issued to restrain or enjoin a spouse, former spouse, an individual who resides or resided in the same household as the victim or an individual with whom he or she has had either a dating relationship or a child in common from engaging in certain activities) and ex parte personal protection orders (issued based only on evidence from the party seeking the order to restrain the other party from engaging in conduct prohibited under the state's stalking laws) would not be subject to a motion fee.

Under domestic violence PPOs, the bill would allow the party seeking the protection order (the petitioner) to have the restrained party (the respondent) barred from access to information regarding the address and telephone number of the petitioner and the parties' minor child. The respondent could also be restrained from engaging in any conduct that would be prohibited under the stalking laws. Both provisions would be in addition to those already established.

When issuing a domestic violence personal protection order or an ex parte personal protection order, the clerk of the court is required to immediately file a true copy of the order with the local law enforcement agency and provide the petitioner with no less than two copies of the order. The bill would also require the clerk to notify the concealed weapon licensing board in the respondent's county of the existence and contents of the order if the order was one that prohibited the respondent from purchasing or possessing a firearm. In addition, if the respondent had been identified in the pleadings as a law enforcement officer, the clerk would be required to notify the respondent's employer, if known, of the existence of the order.

A PPO can be served either personally or by registered or certified mail, or a police officer can serve a PPO when responding to a domestic violence call. The bill would allow a police officer to serve a personal protection order while responding to any type of call. In addition, a police officer or a clerk of the court could, at any time, serve a copy of the order on the respondent or orally advise the respondent about the existence of the order, the conduct enjoined, the penalties for violation, and where the respondent could obtain a copy of the order. Proof of such oral notice would have to be filed with the clerk of the court that had issued the order.

In cases where a party was seeking a non-domestic ex parte personal protection order, the court could refuse to issue the order unless the petitioner alleged facts that constituted stalking as defined by state law. If the court refused to issue a protection order, it would be required to state the specific reason for the refusal in writing.

The bill would also prohibit PPOs from being issued where the petitioner is an unemancipated minor (less than 18 years of age) and the respondent is the minor's parent. In cases where the respondent was less than 18 years old, the court would proceed under authority of the juvenile division of the probate court.

House Bill 5658 would amend the Code of Criminal Procedure (MCL 764.15, et al.) to expand the provisions under which a police officer may make a warrantless arrest.

Currently, in order to make a warrantless arrest on an outstanding warrant, the officer making the arrest must have received positive information by telephone, telegraph, teletype, radio, in writing, or by some other authoritative means that another officer holds a warrant for the individual's arrest. The bill would allow an arrest on an outstanding warrant where the officer was informed of the warrant by electronically received communications. In addition, the bill would provide that a warrantless arrest could be made on a warrant held by a court under the same circumstances. The bill would also allow for the same warrantless arrests to be made by officers of the U.S. Customs Service or the immigration or naturalization service.

Warrantless arrests made for spousal or domestic assault, violation of personal protection order, or violation of a conditional release would be allowed where the officer making the arrest received positive information that another peace officer had reasonable cause to believe that the violation of law or of the PPO occurred or is occurring. Currently, an officer making an arrest under these circumstances must have his or her own reasonable cause to believe that the violation occurred and may not rely on information that another officer has reasonable cause.

The bill would add to the required information that a police officer must provide to the victim of a domestic violence incident that the officer investigated or intervened in. The notice would have to inform the victim that he or she has the right to have his or her abuser prohibited from having access to information in records that concern a minor child of the abuser and victim that would inform the abuser of the victim's or the child's address or telephone number, or the victim's employment address. The notice would also have to include notification of the victim's right to go to court and file a motion for an order to show cause and a hearing if the abuser violated or was violating a personal protection order and had not been arrested.

A defendant who was arrested for violating a PPO must be given a hearing before the circuit court within 24 hours after his or her arrest. If the circuit court judge is not available within 24 hours from the arrest, the district court is required to set a bond and order the defendant to appear before the circuit court for a hearing. The bill would provide that if the district court would not be open within 24 hours after the arrest, a judge or district court magistrate would be required to set bond and order the defendant to appear before the circuit court for a hearing on the charge. However, the court could not rescind a PPO, dismiss a contempt proceeding based on a PPO, or impose any other sanction due to a failure to comply with these time limits. The bill would also remove a provision requiring a PPO to be entered into the law enforcement information network (LEIN).

If a criminal contempt proceeding for a violation of a PPO was initiated as a result of a show cause order or other proceeding, the court would be required to notify the prosecuting attorney of the contempt proceeding, to notify the petitioner of the PPO and his or her attorney, and to direct the petitioner to appear at the hearing and provide evidence. The bill would also specify that the prosecuting attorney was responsible for prosecuting cases for PPO violations initiated by show cause orders.

The bill would also define a "domestic violence incident" to mean an incident reported to a law enforcement agency that involved allegations of either a violation of a domestic violence

PPO or a crime committed by an individual against his or her spouse, former spouse, an individual with whom he or she has had a child in common, or an individual who resides or has resided in the same household.

House Bill 5659 would amend Public Act 59 of 1935 (MCL 28.6), which creates the state police, to grant the commissioner and all officers of the Department of State Police the authority to serve domestic violence or ex parte personal protection orders and to arrest anyone who violates such orders.

House Bill 5660 would amend the Penal Code (MCL 750.411) to provide immunity for health care providers who report wounds or injuries inflicted by violence. Current law requires a health care worker to report instances of injuries or wounds caused by violence. Under the bill, 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 resultant 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 5661 would amend the Revised Judicature Act of 1961 (MCL 600.916 and 600.2950b) to create a domestic violence advocate position within the family division of the circuit courts. The purpose of the domestic violence advocate would be 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 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 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.

House Bill 5662 would amend the Penal Code (MCL 750.81 and 750.81a) to clarify the definition of a "household" for determining whether or not domestic violence occurred. The current language indicates that domestic violence occurs when the person who owns or leases the household commits an assault against a resident or former resident of that household. The bill would clarify that domestic violence occurs where the victim and the defendant are members of the *same* household regardless of who owns or leases the property.

House Bill 5663 would amend the Department of Corrections Act (MCL 791.236) to add a parole requirement restriction. Parole orders that contained a condition or restriction that was intended to protect one or more named persons would have to be entered into the Corrections Management Information System. If the parole board revoked such an order, the department would be required to immediately remove those provisions from the system.

House Bill 5664 would amend the Domestic Violence Prevention and Treatment Act (MCL 400.1501) to revise the definition of "domestic violence." 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.

House Bill 5665 would amend the Penal Code (MCL 750.110a) to establish and set penalties for the crime of third degree home invasion. Third degree home invasion would be a felony and would be punishable by no more than 10 years in prison and/or a fine of no more than \$3,000. A person would be guilty of third degree home invasion if he or she either broke into a dwelling or entered a dwelling without permission with the intent to commit a misdemeanor assault or spousal or domestic assault in that dwelling.

House Bill 5666 would amend Public Act 44 of 1961, which provides for the release of misdemeanor prisoners (the interim bond act, MCL 780.582a), to expand the circumstances under which a person who was arrested for a misdemeanor could not be released on his or her own recognizance or on an interim bond set by a peace officer. A person who was arrested, either with or without a warrant, for misdemeanor assault, spousal or domestic assault, or substantially similar local laws would have to be held until he or she could be arraigned or a judge or magistrate could set an interim bond. This would also apply to a person who had been arrested under a warrant for violating a local ordinance that was substantially similar to the state's misdemeanor assault law and where the victim was that person's spouse, former spouse, had a child in common with the person who committed the assault, or resides or resided in the same household. In addition, if the judge or district court magistrate set an interim bond for such a defendant, the defendant could only be released subject to the condition that he or she not have or attempt to have any contact of any kind with the victim.

House Bill 5667 would amend the Code of Criminal Procedure (MCL 771.3) to include the same restrictions on probation orders as would be required on personal protection orders. In addition to the conditions that the court can already apply to probation orders, the bill would allow the court to prohibit a probationer from purchasing or possessing a firearm, or to subject a probationer to any conditions reasonably necessary to protect one or more named persons. If a probation order contained a condition thought reasonably necessary for the protection of one or more persons, the court would be required to immediately direct a law enforcement agency to enter the order into the Law Enforcement Information Network (LEIN) and the agency would be required to immediately enter that order into the system. If the court rescinded, amended, or modified the condition or order, the court would again be required to inform the law enforcement agency and the agency would be required to remove, amend, or modify the LEIN system entry, as instructed.

All of the bills, except House Bills 5666, 5665 and 5662, would take effect on September 1, 1998.

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.