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PERSONAL PROTECTION ORDERS

**House Bill 4708 as enrolled
Public Act 268 of 1999
Sponsor: Rep. Jennifer Faunce**

**House Bill 4709 as enrolled
Public Act 269 of 1999
Sponsor: Rep. Marc Shulman**

**House Bill 4713 as enrolled
Public Act 270 of 1999
Sponsor: Rep. Michael Kowall**

**House Bill 4714 as enrolled
Public Act 217 of 1999
Sponsor: Rep. Andrew Richner**

**House Bill 4718 as enrolled
Public Act 272 of 1999
Sponsor: Rep. Gerald Van Woerkom**

**House Committee: Criminal Law and
Corrections
Senate Committee: Judiciary**

Second Analysis (1-25-00)

THE APPARENT PROBLEM:

Despite a growing public awareness about domestic violence and its consequences for family members and society as a whole, and despite the enactment of various laws aimed at reducing domestic violence and providing shelter and services to victims of abuse, domestic violence continues at an alarming rate. For some time, procedures for law enforcement response to domestic violence have been tinkered with in an effort to create a more consistent and effective means of dealing with domestic violence. In 1994, 22 new domestic violence laws were passed by Michigan's legislature. One of the results of that legislation was the creation of domestic violence personal protection orders (PPOs). Personal protection orders are a distinctly new creation of the legislature: they are civil injunctions that have criminal penalties. Under the Revised Judicature Act (RJA), a victim of domestic violence may petition the circuit court to issue a personal protection order to prohibit a spouse, a former spouse, an individual with whom the petitioner has had

a child in common, an individual with whom the petitioner has or has had a dating relationship, or an individual who resides or has resided in the petitioner's household from engaging in certain activities. The personal protection order provisions allow an ex parte PPO to be issued and to become effective without providing notice to the individual who is to be restrained or that person's attorney where the facts reveal that immediate and irreparable injury, loss, or damage could result from the delay required to provide notice or that the provision of notice, in and of itself, will precipitate adverse action by the respondent before the order could be issued.

In the fall of 1995, the Prosecuting Attorneys Association of Michigan (PAAM) and the Domestic Violence Prevention and Treatment Board (DVPTB) met to discuss the implementation of the domestic violence laws enacted by the legislature in 1994. The two groups then agreed to co-chair a statewide, multi-

House Bills 4708, 4709, 4713 and 4718 (1-25-00)

disciplinary task force to gather information on the problems and successes encountered in implementing the new laws, and to make recommendations for legislative and court rule change, police policy, training needs, forms changes, and best practices. In July of 1996, the task force issued its report, including recommendations for changes. A package of bills has been proposed to address these and other issues related to domestic violence.

THE CONTENT OF THE BILLS:

House Bill 4708 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). Under current law, a person may petition the circuit court for a personal protection order that restrains or bars another person from engaging in certain conduct. One section of the act provides for PPOs that prohibit someone from committing stalking or aggravated stalking, while another section provides for domestic violence personal protection orders. Domestic violence PPOs may enjoin or restrain a spouse, former spouse, a person who resides (or has resided) in the same household as the victim, or an individual with whom the victim has had either a dating relationship or a child in common from entering the home and harming or threatening the petitioner and his or her children.

The bill would provide that motions to modify, terminate, show cause, dismiss, or rescind a domestic violence personal protection order or an ex parte personal protection order (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 the provisions governing domestic violence personal protection orders, the bill would add to the types of conduct that could be enjoined or restrained. It would allow a filing party to petition the court to restrain a person from:

- having access to information in records concerning a minor child of the parties (e.g., school records) that would reveal the petitioner's address, telephone number, or employment address;
- engaging in conduct that constitutes stalking under the penal code; and
- interfering with the petitioner's education (as well as employment, as under current law).

When issuing a domestic violence personal protection order or stalking or aggravated stalking 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 or a corrections officer, the clerk would be required to notify the respondent's employer, if known, of the existence of the order.

Under current law, 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 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 personal protection order for stalking or aggravated stalking, a court could not issue the order unless the petitioner alleged facts that constituted stalking or aggravated 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.

The bill would also change references to the Michigan Law Enforcement Training Council Act to the Commission on Law Enforcement Standards Act to comport with a recent name change.

House Bill 4709 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 or release under the Interim Bond Act 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, clarify the language of the notice and specify that the notice would only have to substantially comply with the language in the law. 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, unless the prosecuting attorney determined either that the PPO had not been violated or that pursuit of the contempt prosecution would not be in the interests of justice.

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 4713 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 Penal Code distinguishes between assaults where there is an element of domestic violence and assaults where there is no spousal relationship between the offender and the victim. The relationship is described in the law as an assault against the violator's "spouse or former spouse, an individual with whom he or she has had a child in common, or a resident or former resident of his or her household". The bill would amend the code to clarify part of that definition to refer to "a resident of the same household", rather than to "a resident of his or her 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. The same language would be used in sections setting forth the various domestic assault offenses (i.e., simple assault-domestic [first offense], simple assault-domestic with one previous conviction, simple assault-domestic with two or more

previous convictions, aggravated assault-domestic [first offense], and aggravated assault-domestic with one or more previous convictions).

House Bill 4714 would amend the Department of Corrections act (MCL 791.236) to require the department to enter certain information into the Corrections Management Information System, accessible by the Law Enforcement Information Network (LEIN). Specifically, if a parole order contains a condition intended to protect one or more named persons, those provisions of the parole order would have to be entered into the system. Further, if the parole board revoked a parole order containing such a provision, the department would have to remove from the system the provisions of that parole order within three business days.

House Bill 4718 would amend the Revised School Code (MCL 380.1137) to specify that, if a school district, local act school district, public school academy, intermediate school district, or nonpublic school had received a copy of a personal protection order barring a parent's access to records or other information pertaining to his or her minor child's or the other parent's address or telephone number or the other parent's place of employment, the district, academy or school would be prohibited from releasing or providing that information.

Effective Date. All of the bills would take effect on July 1, 2000.

BACKGROUND INFORMATION:

A statewide, multi-disciplinary task force co-chaired by the Prosecuting Attorneys Association of Michigan and the Domestic Violence Prevention and Treatment Board of the Family Independence Agency issued its report in July 1996, and made several recommendations for changes in statute, court rules, and police policies. The task force was created in an attempt to gather information on the problems and successes of local jurisdictions as they implemented 22 new domestic violence laws passed by the legislature in 1994.

Though some of the task force's recommendations have already been enacted into law, other problems that have yet to be addressed include the following:

- A personal protection order can enjoin or restrain an abuser from interfering with a victim of abuse at his or her place of employment; it is recommended that PPOs also address access to the victim's place of education.

- The Revised Judicature Act contains separate provisions for PPOs related to domestic violence and stalking; it is recommended that judges have the ability to address both in a single order.

- It is recommended that a victim have the ability to obtain a PPO that would prohibit an abuser from having access to records pertaining to the couple's children (e.g., school or medical records) that would reveal the victim's whereabouts. An additional recommendation would require the cooperation of education and health officials.

- If an abuser is a law enforcement officer, it is recommended that his or her employer be notified immediately of the issuance of a protective order against that person.

- Likewise, notification of a county concealed weapon licensing board is recommended if a PPO prohibits a person from owning or possessing a firearm. A separate recommendation is to permit a court to prohibit firearm purchase or possession as a condition of probation.

- The task force recommended expanding the authority to make warrantless arrests in cases where an officer receives information pertaining to reasonable cause by electronic means, or where a bench warrant has been issued.

- It is recommended that state police troopers be authorized to serve PPOs and to make arrests for violations.

- It is recommended that health providers with a duty to report injuries caused by violence be immunized from tort liability for such reporting.

- The task force recommends that domestic violence victim advocates be authorized to assist victims in filing the necessary forms for obtaining PPOs, and to assist victims in other ways.

- The definition of domestic violence refers, in part, to an assault by a person on a member of his or her household; this has been interpreted by some as requiring that the assailant be the property owner. A change in the definition has been recommended to take into account members of the same household.

- It is recommended that if the parole board, as a condition of parole, requires that the parolee have no contact with a named person, that this information be

communicated to law enforcement personnel via the Law Enforcement Information Network.

- It is recommended that the purview of the Domestic Violence Prevention and Treatment Board be expanded to recognize victims who are children, victims of violence in dating relationships, and victims of violence in same sex relationships.
- The task force recommended that, when a person arrested on domestic violence charges must be released because he or she cannot be arraigned within the statutorily required period, that such a release be conditioned on the person having no contact with the victim.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, House Bills 4708 and 4709 would have an indeterminate fiscal impact. House Bills 4713 and 4714 would have no significant fiscal impact. Information on House Bill 4718 is not available. (1-25-00)

ARGUMENTS:

For:

The bills are the result of recommendations made by the task force co-chaired by the Domestic Violence Prevention and Treatment Board and the Prosecuting Attorneys Association of Michigan. Many perpetrators of domestic violence fail to take responsibility for their actions and blame the victim; to the degree that society fails to hold these people accountable for their actions, it reinforces this belief and decreases the chances that the person will change his or her behavior. Domestic violence is not a private matter, and legal intervention can effectively get this message across. To this end, laws have been enacted to strengthen law enforcement's response to domestic violence. By addressing various shortcomings of the law on domestic violence restraining orders as recommended by the task force, the bills would significantly improve protections to victims of domestic violence and clarify many of the issues that have been confusing for law enforcement personnel and judges.

PPOs are a valuable tool in providing protection for some people; however, the task force's study of the issue has uncovered some flaws that the bills would help to correct. The bills will help to strengthen the effectiveness of PPOs by clarifying a number of issues. The current language of the law has left some judges believing that they are required to grant PPOs in

neighborhood disputes. The bills will help to alleviate confusion about judges' ability to deny PPOs for stalking behavior where the parties are not involved in a domestic relationship and help to prevent the misuse of such orders in, for example, cases of neighborhood disputes. The bills would also eliminate some confusion and expand the situations where a police officer could arrest a person for a violation of a PPO.

Response:

Several bills that would address other recommendations of the task force have not yet passed the Senate. Those bills are also needed to improve the legal system's response to domestic violence.

Against:

The bills may increase existing problems with the procedures for domestic violence PPOs. Because PPOs are obtained on an ex parte basis without the opportunity for the respondent to have notice or a hearing, some argue that the procedures are unconstitutional. Even if constitutional, the provisions that would bar one parent from having access to information about the other parent's address and telephone number could cause a myriad of problems in child custody situations. Barring a parent from information about his or her child's whereabouts would interfere with existing court orders regarding custody and parenting time; a parent who successfully obtained a PPO could easily hide the child and block the other parent's parenting time. An unscrupulous parent could do this easily without notification or a hearing. In addition, barring one parent from access to the other's employment information would make it impossible for the respondent-parent to verify the other party's income for the purpose of modifying support orders. These provisions will also make it virtually impossible for a respondent to serve any documents for any purpose on the PPO petitioner.

For:

The task force recommended that domestic violence PPOs be allowed to include provisions prohibiting the abuser from having access to information that could help him or her find out where the petitioner is living or working. In order to do this effectively, it is necessary that those entities that hold or maintain school records be required to withhold information from abusers when the entity has knowledge of the restrictions of the PPO. The bills are needed to help protect both the victims of domestic violence and their children. Many studies have shown that the victims of domestic violence are at greater risk of being seriously harmed or even killed by their abusers when they attempt to leave the relationship. Therefore anything that helps to conceal

a victim's whereabouts from his or her abuser could help to save that victim's life.

Against:

The opportunities for misuse of these restrictions are immeasurable. The restrictions will interfere with existing court orders regarding custody and parenting time; a parent who successfully obtained a PPO could easily hide the child and block the other parent's parenting time until the non-custodial parent has the opportunity to be heard before the court and have the PPO rescinded. Given that these PPOs may be obtained without the other parent having the opportunity to be heard, restrictions like this should not be added to the PPO without giving the other parent a chance to present his or her side of the story.

Furthermore, barring access to school health records will interfere with the ability of a non-custodial parent to learn about the level and quality of the education that his or her child is receiving. This is information that every parent should be entitled to; barring access to this information interferes directly with the ability of the parent to be a parent. Not merely information about where the other parent was living or working would be blocked, but more than likely, the entities affected by these bills would simply block access to all information rather than risk liability for letting out restricted information. This is a possible consequence that is entirely unacceptable and is not covered in the legislation.

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.