

Senate Fiscal Agency  
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**SFA**



**BILL ANALYSIS**

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House Bills 4708 and 4709 (as enrolled)  
House Bills 4710 and 4711 (as reported without amendment)  
House Bill 4712 (as passed by the Senate)  
House Bills 4713 and 4714 (as enrolled)  
House Bill 4715 (as reported without amendment)  
House Bill 4716 (Substitute H-3 as reported without amendment)  
House Bill 4718 (as enrolled)

**PUBLIC ACTS 268 and 269 of 1999**

**PUBLIC ACTS 270 and 271 of 1999**

**PUBLIC ACT 272 of 1999**

Sponsor: Representative Jennifer Faunce (House Bill 4708)  
Representative Marc Shulman (House Bill 4709)  
Representative Alan Sanborn (House Bill 4710)  
Representative Judith Scranton (House Bill 4711)  
Representative Sandra Caul (House Bill 4712)  
Representative Michael Kowall (House Bill 4713)  
Representative Andrew Richner (House Bill 4714)  
Representative Laura Baird (House Bill 4715)  
Representative Patricia Godchaux (House Bill 4716)  
Representative Gerald Van Woerkom (House Bill 4718)

House Committee: Criminal Law and Corrections  
Senate Committee: Judiciary

Date Completed: 1-14-00

## **RATIONALE**

Despite 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 to be a problem. For some time, procedures for law enforcement response to domestic violence have been revised in an effort to create a more consistent and effective means of dealing with this problem. In 1994, 22 laws were passed to address domestic violence, including laws that created personal protection orders (PPOs). Personal protection orders specifically pertain to cases of domestic violence and stalking; they are civil injunctions that carry criminal penalties. Under the Revised Judicature Act (RJA), a victim of domestic violence or stalking may petition the circuit court for a PPO to prohibit a specific individual from engaging in certain activities with respect to the petitioner. The PPO provisions allow a PPO to be issued and take effect without providing notice to the person who is to be restrained, or that person's attorney, in situations in which immediate and irreparable injury, loss, or damage could result from the delay inherent in providing notice or situations in which the provision of notice itself would 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 met to discuss implementation of the domestic violence laws enacted in 1994. The two groups agreed to form and co-chair a statewide, multidisciplinary task force to gather information on the problems and successes encountered in implementing the new laws and to make recommendations for statutory and court rule changes, police policies, training needs, form changes, and other practices. In July 1996, the task force issued its report, including recommendations for statutory changes. Some people believe that these recommendations, which include such topics as access to information, procedural revisions, and the provision of assistance in securing PPOs, should be implemented.

## **CONTENT**

**The bills amend, or would amend, various acts to modify procedures and conditions pertaining to domestic abuse and stalking personal protection orders. The bills do or would do all of the following:**

- Expand the scope of domestic violence PPOs.
- Revise provisions pertaining to the filing,

notice, and service of both domestic violence and stalking PPOs.

- Limit stalking PPOs to situations in which there are actual allegations of stalking.
- Prohibit the issuance of a stalking PPO if the petitioner is a prisoner.
- Expand conditions under which peace officers may make a warrantless arrest in domestic violence or PPO violation situations.
- Require that health care providers or facilities report the perpetrator of a violent injury, if known, when reporting that injury to the police.
- Authorize the family division of circuit court (family court) in each county to provide a domestic violence victim advocate to assist victims of domestic violence in obtaining a PPO.
- Provide for certain information to be entered into, or removed from, as appropriate, the Law Enforcement Information Network and the Corrections Management Information System.
- Redefine "domestic violence" in the domestic violence prevention and treatment Act, to include dating and sexual relationships, family relatives, and former relatives by marriage, as well as minor children of any of those included in the definition.
- Provide for conditions of release to be imposed when a person arrested for domestic violence was released on interim bond or recognizance.
- Prohibit schools from releasing certain information to a person in violation of a PPO.

The bills include an effective date of July 1, 2000.

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

The bill adds the petitioner's place of education to

House Bill 4708 amends the Revised Judicature Act (RJA), which provides for the issuance of domestic violence and stalking PPOs. House Bill 4709 amends the Code of Criminal Procedure. House Bill 4710 would amend Public Act 59 of 1935, which created and provides for the organization of the Michigan State Police. House Bill 4711 would amend the Michigan Penal Code. House Bill 4712 would amend the RJA. House Bill 4713 amends the Michigan Penal Code. House Bill 4714 amends the Department of Corrections law. House Bill 4715 would amend the domestic violence prevention and treatment Act. House Bill 4716 (H-3) would amend Public Act 44 of 1961, which provides for the release of misdemeanor prisoners who give bond to the arresting officer in certain circumstances not inconsistent with public safety. House Bill 4718 amends the Revised School Code.

### House Bill 4708

#### Domestic Violence PPOs

Prohibited Activities/Conduct. A domestic violence PPO may restrain or enjoin a spouse, a former spouse, an individual with whom the PPO petitioner has a child in common, an individual with whom the petitioner currently has or formerly had a dating relationship, or an individual with whom the petitioner resides or has resided, from doing one or more of the following:

- Entering onto a premises.
- Assaulting, attacking, beating, molesting, or wounding a named individual.
- Threatening to kill or physically injure a named individual.
- 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.
- Purchasing or possessing a firearm.
- Interfering with the petitioner's efforts to remove his or her children or personal property from premises that are solely owned or leased by the individual to be restrained or enjoined.
- Interfering with the petitioner at his or her place of employment or engaging in conduct that impairs the petitioner's employment relationship or environment.

the place-of-employment provision and includes the following in the list of activities that may be restrained or enjoined:

- Having access to information in records concerning a minor child of both the petitioner and the respondent that will inform the

respondent about the address or telephone number of the petitioner and the petitioner's minor child or about the petitioner's employment address.

- Engaging in conduct that constitutes stalking or aggravated stalking under the Michigan Penal Code.

Filing/Notice of PPO. Under the RJA, the clerk of a court that issues a domestic violence PPO must do both of the following immediately upon issuance of a PPO and without requiring a proof of service on the individual to be restrained or enjoined:

- File a true copy of the PPO with the law enforcement agency designated by the court in the order.
- Provide the petitioner with at least two true copies of the PPO.

The bill adds all of the following to the court clerk's responsibilities:

- If the respondent is identified in the pleadings as a law enforcement officer, notify the officer's employing agency, if known, about the existence of the PPO.
- If the PPO prohibits the respondent from purchasing or possessing a firearm, notify the concealed weapon licensing board in the respondent's county of residence about the existence and contents of the PPO.
- If the respondent is identified in the pleadings as a Department of Corrections (DOC) employee, notify the Department about the existence of the PPO.
- If the respondent is identified in the pleadings as a someone who might have access to information about the petitioner, or a child of the petitioner and respondent, and that information is contained in Friend of the Court (FOC) records, notify the FOC about the PPO.

Service of PPO. The RJA specifies that a domestic violence PPO must be served personally or by registered or certified mail, return receipt requested and delivery restricted to the addressee at his or her last known address, or by any other manner provided in the Michigan Court Rules.

The bill specifies that, if the person to be restrained or enjoined has not been served, a law enforcement officer or court clerk who knows that a PPO exists may, at any time, serve that person with a true copy of the order or advise him or her about the existence of the PPO, the specific conduct enjoined, the penalties for violating the order, and where an individual restrained or enjoined may obtain a copy of the PPO.

In addition, the RJA provides that, if a person

restrained or enjoined by a domestic violence PPO has not been served, a law enforcement agency or officer responding to a call alleging a violation of a PPO must serve the individual with a true copy of the order or advise him or her about the existence of the PPO, the specific conduct enjoined, the penalties for violating the order, and where he or she may obtain a copy of the PPO. That law enforcement officer also must enforce the PPO and immediately enter or cause to be entered into the Law Enforcement Information Network (LEIN) that the restrained or enjoined individual has actual notice of the PPO. The bill, in addition, requires that the law enforcement officer file a proof of service or proof of oral notice with the clerk of the court that issued the PPO.

### Stalking PPOs

Issuance of a PPO. A stalking PPO enjoins or restrains a particular individual from engaging in conduct that constitutes stalking or aggravated stalking under the Michigan Penal Code (MCL 750.411h & 750.411i). The bill prohibits relief from being granted unless the petition for a stalking PPO alleges facts that constitute stalking as defined in those two sections of the Penal Code. The bill also prohibits the issuance of a stalking PPO if the petitioner is a prisoner.

Filing/Notice of PPO. Under the RJA, the clerk of a court that issues a stalking PPO must do both of the following immediately upon issuance of a PPO and without requiring a proof of service on the individual to be restrained or enjoined:

- File a true copy of the PPO with the law enforcement agency designated by the court in the order.
- Provide the petitioner with at least two true copies of the PPO.

The bill also requires the clerk to do all of the following:

- If the respondent is identified in the pleadings as a law enforcement officer, notify the officer's employing agency about the existence of the PPO.
- If the PPO prohibits the respondent from purchasing or possessing a firearm, notify the concealed weapon licensing board in the respondent's county of residence about the existence and contents of the PPO.
- If the respondent is identified in the pleadings as a DOC employee, notify the Department about the existence of the PPO.
- If the respondent is identified in the pleadings as a someone who might have access to information about the petitioner, or a child of the petitioner and respondent, and that

information is contained in FOC records, notify the FOC about the PPO.

Service of PPO. The RJA provides that, if a person restrained or enjoined by a stalking PPO has not been served, a law enforcement agency or officer responding to a call alleging a violation of a PPO must serve the individual with a true copy of the order or advise him or her about its existence, the specific conduct enjoined, the penalties for violating the order, and where he or she may obtain a copy of the PPO. That law enforcement officer also must enforce the PPO and immediately enter or cause to be entered into the LEIN that the restrained or enjoined individual has actual notice of the PPO. The bill, in addition, requires that the law enforcement officer file a proof of service or proof of oral notice with the clerk of the court that issued the PPO.

#### Motion Fees

The RJA imposes a \$20 fee when a motion is filed in the circuit court. The bill provides that, in conjunction with an action brought under the RJA's PPO sections, a motion fee may not be collected for a motion to dismiss the petition, a motion to modify, terminate, or rescind a PPO, or a motion to show cause for a violation of a PPO.

### House Bill 4709

#### Source of Information

The Code of Criminal Procedure allows a peace officer to arrest a person, without a warrant, if the officer has received positive information by written, telegraphic, teletypic, telephonic, radio, or other authoritative source that another peace officer holds a warrant for the person's arrest. The bill adds information received by electronic source to that provision, and allows arrests with information from those sources that a peace officer or a court holds a warrant for the person's arrest.

#### Domestic Assault

Under the Code, an officer may arrest a person for simple assault or aggravated assault, regardless of whether the officer has a warrant or whether the violation was committed in his or her presence, if the officer has reasonable cause to believe that the violation occurred or is occurring and that the person resides or has resided in the same household as the victim or is the victim's spouse or former spouse. The bill also allows such an arrest if an officer receives positive information that another peace officer has reasonable cause to believe that either condition exists.

#### PPO Violation

The Code allows an officer to arrest a person, without a warrant, and take that person into custody when the officer has reasonable cause to believe that all of the following apply:

- A domestic violence or stalking PPO has been issued.
- The individual named in the PPO "is in violation of" the order. (The bill changes this condition to "is violating or has violated" the order.)
- The PPO states on its face that a violation of its terms subjects the person to immediate arrest and penalty.

The bill also allows such an arrest if an officer receives positive information that another officer has reasonable cause to believe that those conditions apply.

In addition, the Code provides that a person arrested for violating a PPO must be brought before the family court within 24 hours after arrest to answer a charge of contempt for violating the PPO. In circuits in which the circuit court judge may not be present or available within 24 hours after arrest, a person arrested for a PPO violation must be taken before the district court within 24 hours and the district court must set bond and order the defendant to appear before the circuit court for a hearing on the charge. The bill specifies that, if the district court will not be open within 24 hours after arrest, a judge or district court magistrate must set bond and order the defendant to appear before the circuit court for a hearing on the charge.

Under the bill, if a criminal contempt proceeding for violating a PPO is not initiated by an arrest, but is initiated as a result of a show cause order or other process or proceedings, the court must do both of the following:

- Notify the party who procured the PPO and his or her attorney of record and direct the party to appear at the hearing and give evidence on the contempt charge.
- Notify the prosecuting attorney of the criminal contempt proceeding.

The Code requires the prosecuting attorney to prosecute a criminal contempt proceeding initiated by the court for a PPO violation, unless the party who procured the PPO retains his or her own attorney for the criminal contempt proceeding. The bill extends this requirement to a criminal contempt proceeding for a PPO violation initiated by a show cause hearing, and relieve the prosecutor of the responsibility to prosecute a criminal contempt proceeding if he or she determines that the PPO was not violated or that it would not be in the interest of justice to prosecute the criminal contempt violation.

The bill prohibits a court from rescinding a PPO, dismissing a contempt proceeding based on a PPO, or imposing any other sanction for a failure to comply with a time limit prescribed in the Code's provisions for arrest and prosecution for a PPO violation.

#### Domestic Violence Investigation

The Code requires that, after investigating or intervening in a "domestic dispute", a peace officer provide the victim with a copy of a notice regarding the victim's legal right to obtain a PPO. The bill refers to a "domestic violence incident" rather than a "domestic dispute". The bill defines "domestic violence incident" as an incident reported to a law enforcement agency involving allegations of a violation of a domestic violence PPO and/or a crime committed by an individual against his or her spouse or former spouse, an individual with whom he or she has had a child in common, or an individual who currently resides or formerly resided in the same household.

#### Violation of Condition of Release

The Code provides that an officer may arrest, without a warrant, and take into custody a defendant whom the officer has reasonable cause to believe is violating or has violated a condition of release imposed by a court under the Code. The bill extends this authority to an officer who receives positive information that another peace officer has reasonable cause, and includes conditions of release imposed under Public Act 44 of 1961 (which would be amended by House Bill 4716).

#### **House Bill 4710**

Public Act 59 of 1935 authorizes officers of the Department of State Police to exercise the powers of deputy sheriffs in the execution of civil bench warrants issued by a circuit court pursuant to any domestic relations matter. The bill would add to that provision the authority to serve a domestic violence or stalking PPO or arrest a person who was violating or had violated a domestic violence or stalking PPO.

#### **House Bill 4711**

The Michigan Penal Code requires certain medical providers and facilities to report to police incidents of violent injury, and makes failure to do so a misdemeanor offense. The report must state the name and residence of the person treated, the person's whereabouts, and the character and extent of the injury. The bill would require that the report also include the cause of the injury and the identification of the perpetrator, if known.

In addition, the bill specifies that, to the extent not protected by immunity conferred by the governmental

immunity Act, a person who made a report of a violent injury in good faith, as required by the Penal Code, or who cooperated in good faith in a subsequent investigation, civil proceeding, or criminal proceeding would be immune from civil or criminal liability that the person otherwise would incur by making the report or cooperating in an investigation or proceeding. A person who made a report of a violent injury or who cooperated in an investigation or proceeding would be presumed to have acted in good faith and that presumption could be rebutted only by clear and convincing evidence.

The immunity granted under the bill would extend only to the actions described in the bill and would not extend to another act or omission that was negligent or that amounted to professional malpractice, or both, and that caused personal injury or death.

The bill also specifies that the physician-patient privilege created under the RJA, a health professional-patient privilege created under Article 15 of the Public Health Code, and any other health professional-patient privilege created or recognized by law would not apply to a report made under the Penal Code's requirement, would not be valid reasons for failure to comply with the reporting requirement, and would not be a defense to a misdemeanor charge filed for failure to report the violent injury.

#### **House Bill 4712**

The bill would authorize the family court in each county to provide a domestic violence victim advocate to assist victims of domestic violence in obtaining a PPO. To provide that assistance, the court could use the services of a public or private agency or organization that had a record of service to victims of domestic violence. A domestic violence victim advocate could provide all of the following assistance:

- Informing a victim of the availability of, and assisting the victim in obtaining, serving, modifying, or rescinding a PPO.
- Providing an interpreter for a case involving domestic violence that included a request for a PPO.
- Informing a victim of the availability of shelter, safety plans, counseling, other social services, and generic written materials about Michigan law.

A domestic violence victim advocate could not represent or advocate for domestic violence victims in court. The bill also specifies, however, that providing assistance as a domestic violence victim advocate would not violate the RJA's prohibition against the unauthorized practice of law.

To the extent not protected by the immunity conferred in the governmental immunity Act, a person other than a court employee who provided assistance as a domestic violence victim advocate would be presumed to be acting in good faith and would not be liable in a civil action for damages for acts or omissions in providing assistance, except for acts or omissions that amounted to gross negligence or willful and wanton misconduct.

### **House Bill 4713**

The Michigan Penal Code provides for enhanced penalties for simple assault and aggravated assault when the victim is the offender'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 changes the last condition in that provision to a resident or former resident of "the same" household.

### **House Bill 4714**

The bill provides that, if a parole order contains a condition intended to protect one or more named persons, the Department of Corrections must enter those provisions of the parole order into the Corrections Management Information System (CMIS), accessible by the LEIN. If the parole board revokes such a parole order, the Department must remove the provision of that parole order from the CMIS within three business days.

### **House Bill 4715**

The bill would change the domestic violence prevention and treatment Act's definition of "domestic violence", define certain other terms pertaining to that proposed definition, and replace references to the former Department of Social Services with references to the Family Independence Agency.

Currently, "domestic violence" means a violent physical attack or fear of violent physical attack perpetrated by an assailant against a victim; in which the victim is a person assaulted by or threatened by assault by his or her spouse or former spouse or an adult person or emancipated minor assaulted by an adult person of the opposite sex with whom the victim cohabitates or formerly cohabitated; and in which the victim and assailant are or were involved in a consenting, sexual relationship.

Under the bill, "domestic violence" would instead mean the occurrence of any of the following acts that was not an act of self-defense:

- Causing or attempting to cause physical or mental harm to a family or household member.
- Placing a family or household member in fear of physical or mental harm.

- Causing or attempting to cause a family or household member to engage in involuntary sexual activity by force, threat of force, or duress.
- Engaging in activity toward a family or household member that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

"Family or household member" would include any of the following:

- A spouse or former spouse.
- An individual with whom the person currently or formerly resided.
- An individual with whom the person currently or formerly had a dating relationship.
- An individual with whom the person currently or formerly was engaged in a sexual relationship.
- An individual to whom the person was related or had formerly been related by marriage.
- An individual with whom the person had a child in common.
- The minor child of an individual described above.

"Dating relationship" would mean frequent, intimate associations primarily characterized by the expectation of affectional involvement. Dating relationship would not include a casual relationship or an ordinary fraternization between two individuals in a business or social context.

### **House Bill 4716 (H-3)**

Public Act 44 of 1961 provides that a person may not be released on an interim bond or on his or her own recognizance before being taken before a court, but must be held until he or she can be brought before a magistrate for arraignment or, if a magistrate is not available or immediate trial cannot be held within 24 hours, the person must be held for 20 hours, after which he or she may be released on interim bond or on his or her own recognizance if either of the following applies:

- The person is arrested without a warrant for simple or aggravated assault and has a child in common with the victim, resides or has resided in the same household as the victim, or is a spouse or former spouse of the victim.
- The person is arrested with a warrant for simple or aggravated assault and is a spouse or former spouse of a person who resides or has resided in the same household as the victim.

The bill would add to the second condition a person who had a child in common with the victim. The bill

specifies that a person arrested under either condition could not be released on an interim bond or on his or her own recognizance but would have to be arraigned or have interim bond set by a judge or district court magistrate.

Under the bill, if a judge or district court magistrate set interim bond, the person could be released only subject to the condition that he or she not have or attempt to have contact of any kind with the victim.

If a judge or district court magistrate released a person subject to protective conditions, the judge or magistrate would have to inform the person on the record, either orally or by a writing that was personally delivered to the person, of the specific conditions imposed and that if the person violated a condition of release, he or she would be subject to arrest without a warrant and could have bond forfeited or revoked and new conditions of release imposed. Bond revocation and new conditions would be in addition to any other penalties that could be imposed if he or she were found in contempt of court.

An order or amended order of conditions of release imposed under the bill would have to state all of the following:

- The person's full name.
- The person's height, weight, race, sex, date of birth, hair color, eye color, and any other identifying information the judge or magistrate considered appropriate.
- The date the conditions would become effective.
- The date on which the order would expire.
- The conditions imposed.

The judge or district court magistrate immediately would have to direct, in writing, that a law enforcement agency within the court's jurisdiction enter an order or amended order of conditions of release into the LEIN. If the order or amended order were rescinded, the judge or magistrate immediately would have to order the law enforcement agency to remove the order or amended order from the LEIN. A law enforcement agency would have to enter or remove an order or amended order, immediately, as directed by a court under the bill.

The bill specifies that it would not limit the authority of judges or district court magistrates to impose protective or other release conditions under other applicable statutes or court rules.

#### **House Bill 4718**

The bill specifies that, if a school district, local act school district, public school academy, intermediate school district, or nonpublic school is the holder of records pertaining to a minor pupil, and if a parent of

that minor pupil is prohibited by a domestic violence or stalking PPO from having access to information in records concerning the minor that will inform him or her about the minor's or other parent's address or telephone number or the other parent's employment address, and if the school district or school has received a copy of the PPO, the school district or school may not release that information to the parent who is subject to the PPO.

MCL 600.2529 et al. (H.B. 4708)  
764.15 (H.B. 4709)  
28.6 (H.B. 4710)  
750.411 (H.B. 4711)  
600.916 et al. (H.B. 4712)  
750.81 & 750.81a (H.B. 4713)  
791.236 (H.B. 4714)  
400.1501 (H.B. 4715)  
780.582a (H.B. 4716)  
380.1137a (H.B. 4718)

## **BACKGROUND**

The statewide, multidisciplinary task force co-chaired by PAAM and the Family Independence Agency's Domestic Violence Prevention and Treatment Board 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 various jurisdictions as they implemented domestic violence laws enacted in 1994.

Though some of the task force's recommendations have already been enacted into law, other problems that were not addressed include the following:

- A PPO can enjoin or restrain an abuser from interfering with a victim of abuse at his or her place of employment. The task force recommended that PPOs also address access to the victim's place of education.
- The RJA contains separate provisions for PPOs related to domestic violence and stalking. The task force recommended that judges be given the ability to address both in a single order, by prohibiting stalking activity in a domestic violence PPO.
- The task force 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 were a law enforcement officer, the task officer recommended that his or her employer be notified immediately of the issuance of a PPO against that person. Also, notification of a county concealed weapon licensing board was recommended, if a PPO prohibited a person from owning or possessing a firearm. (Although not covered in the legislation addressed in this analysis, a separate recommendation would 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 in which an officer received information pertaining to reasonable cause by electronic means, or if a bench warrant had been issued.
- The task force recommended that State Police troopers be explicitly authorized to serve PPOs and to make arrests for PPO violations.
- The task force recommended that health providers with a duty to report injuries caused by violence receive immunity from liability for that reporting.
- The task force recommended that domestic

violence victim advocates be authorized to assist victims in filing the necessary forms for obtaining PPOs, and to assist victims in other manners.

- The definition of domestic violence refers, in part, to an assault by a person on a member of *his or her* household. This evidently has been interpreted by some as requiring that the assailant be the property owner. A change in the definition was recommended to take into account members of *the same* household.
- The task force recommended that, if the parole board required as a condition of parole that a parolee have no contact with a named person, that information be communicated to law enforcement personnel via the LEIN.
- The task force 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, release be conditioned on the person's having no contact with the victim.

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

The bills are the result of recommendations made by a task force that examined PPOs and was co-chaired by the Domestic Violence Prevention and Treatment Board and the Prosecuting Attorneys Association of Michigan. Personal protection orders are a valuable tool in providing protection for some people, who have been or likely will be victims of domestic violence or stalking. The task force's study of the issue, however, uncovered some flaws that the bills would help to correct. The bills would strengthen the effectiveness of PPOs by clarifying a number of issues. The current language of the law apparently has left some judges believing that they are required to grant PPOs for behavior in situations in which the parties are not involved in a domestic relationship and that do not legally constitute stalking. The bills would help to alleviate confusion over whether PPOs are an appropriate tool for such issues as neighborhood disputes. The bills also would improve enforcement of PPOs by outlining responsibilities for the entry of information into the LEIN, expanding the situations in which a police officer may arrest a person for a violation of a PPO, and revising procedures for setting bond after arrest. The package also would expand the scope of PPOs,



change provisions concerning service of PPOs, allow courts to appoint domestic violence victim advocates to assist victims in securing PPOs, and restrict access to information pertaining to a PPO petitioner and his or her children by a person subject to a PPO.

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 attitude 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 that end, laws have been enacted in recent years to strengthen law enforcement's response to domestic violence. By addressing various shortcomings of the laws regarding PPOs, as recommended by the task force, the bills would significantly improve protection for victims of domestic violence and clarify many of the issues that have been confusing for law enforcement personnel and judges.

**Response:** House Bill 4716 (H-3) also should require that bond set for someone arrested for a PPO violation be in the form of a cash or surety bond, and should specify that a 10% bond could not be offered. Otherwise, a defendant may pay a 10% bond and, if the defendant then violates the bond, there may be little or no means for the remainder of the bond to be recouped. Also, no one else would be accountable for the defendant's performance of the conditions of the bond or for his or her appearance in court when ordered. With a cash or surety bond, the interests of the court and the victim would be better protected.

### **Supporting Argument**

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 certain records be required to withhold information from abusers when the entity has knowledge of the restrictions of the PPO. This feature of the bills is needed to help protect both the victims of domestic violence and their children, since domestic violence victims may be at even greater risk of being harmed or even killed by their abusers when they attempt to leave the relationship. Anything that would help to conceal a victim's whereabouts from his or her abuser could help to protect that victim from harm.

**Response:** In addition to the bills in this package of legislation that would restrict availability to such information held by schools and the Friend of the Court, House Bills 4719 and 4720 would restrict availability to addresses and telephone numbers in medical and mental health information. Those bills are presently in the Senate Judiciary Committee.

### **Opposing Argument**

The bills actually could add to the existing problems with the procedures for securing domestic violence PPOs. The provisions that would prevent one parent from having access to information about the other parent's address and telephone number could cause significant problems in child custody situations. Barring a parent from information about his or her child's whereabouts could 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 access to him or her. An unscrupulous parent conceivably could do this without notification or a hearing, since some PPOs may be issued on an ex parte basis. In addition, barring one parent from access to the other's employment information could make it impossible for one parent to verify the other parent's income for the purpose of modifying support orders. These provisions also could make it virtually impossible for a respondent to serve legal documents on the PPO petitioner.

In addition, barring access to school records, as House Bill 4718 will do, and to health records, as the bills still in committee would do, could interfere with the ability of a noncustodial parent to learn about the level and quality of the education and health care that his or her child is receiving. This is information that every parent should be entitled to obtain; making this information inaccessible would interfere directly with the person's ability to be a good parent.

**Response:** The bills would not restrict a parent's access to information on the quality or extent of education or health care, but only to information in those records that would inform the parent of the other parent's address and telephone number or employment location.

Legislative Analyst: P. Affholter

### **FISCAL IMPACT**

#### **House Bills 4708 and 4709**

The bills will have an indeterminate impact on the State and local units of government. In 1998 there were 47,808 new filings for personal protection orders. Increased enforcement costs and additional notification requirements will depend on the number of PPOs issued. The elimination of the motion fee for motions to dismiss, modify, rescind, or terminate a PPO, or a motion to show cause will result in a loss of revenue to the State Court Fund and local units of government. Of the \$20 motion fee, \$10 is deposited in the State Court Fund.

#### **House Bill 4710**

The bill would have no fiscal impact on State or local government.

**House Bill 4711**

The bill would result in administrative savings regarding obtaining information on violent injuries.

The table below shows the number and disposition of offenders convicted of various domestic violence offenses in 1997. There are no data available to determine if the change made by the bill will increase or decrease the number of offenders convicted of this crime.

**House Bill 4712**

The bill would have an indeterminate impact on local units of government, which would depend on the number of counties that decided to provide a domestic violence victim advocate to assist victims of domestic violence.

**House Bill 4713**

The bill will have an indeterminate fiscal impact on State and local government.

|                    |  | <u>Offenders Convicted in 1997</u> |               |                  |             |              |
|--------------------|--|------------------------------------|---------------|------------------|-------------|--------------|
| <u>MCL Section</u> | <u>Description*</u>                                  | <u>Convictions</u>                 | <u>Prison</u> | <u>Probation</u> | <u>Jail</u> | <u>Other</u> |
| 750.81(2)          | Domestic Violence Attempted                          | 22                                 | 3             | 12               | 5           | 2            |
| 750.81(3)          | 2 <sup>nd</sup> Offense Domestic Violence            | 1                                  | 1             | 1                | 1           |              |
| 750.81(4)          | 3 <sup>rd</sup> Offense Domestic Violence Attempted  | 2                                  | 22            | 55               | 33          | 5            |
|                    |  | 4                                  |               | 2                | 2           |              |
| 750.81a(3)         | 2 <sup>nd</sup> Offense Aggravated Domestic Violence | 14                                 | 1             | 9                | 4           |              |

\*The description is for caption purposes only. For full crime detail refer to the section amended.

**House Bill 4714**

The bill will have an indeterminate fiscal impact on State government.

agencies based on types of services provided.

Therefore, changes would not affect the distribution of Federal revenue or State funds.

The inclusion of additional parole conditions into the Corrections Management Information System or the removal of the information upon revocation of a condition of parole will not require additional personnel. For fiscal year 1999-2000, the Legislature has appropriated 85.5 FTE positions and \$9.3 million for planning, research, and information systems in the Department of Corrections.

**House Bill 4716 (H-3)**

The bill would have an indeterminate impact on local units of government. The potential impact of reduced jail time cannot be estimated.

**House Bill 4715**

The bill would have an indeterminate impact on State government. The revision of the domestic violence definition to include "mental harm" could contribute to an increase in the number of cases investigated under the expanded definition. The number of additional cases cannot be estimated at this time. However, the Domestic Violence Prevention and Treatment Board awards to agencies in the State contracts that are funded approximately 88% with federal funds, and are not based on the number of people served. The funds are awarded to service

**House Bill 4718**

The bill will have no fiscal impact on State or local government.

Fiscal Analyst: B. Bowerman  
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.