



**House
Legislative
Analysis
Section**

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REVISE PPO ENFORCEMENT

**House Bill 5275 (Substitute H-1)
Sponsor: Rep. Jennifer Faunce**

**House Bill 5299 with committee
amendment
Sponsor: Rep. Douglas Bovin**

**House Bill 5300 with committee
amendment
Sponsor: Rep. Ruth Johnson**

**House Bill 5301 with committee
amendment
Sponsor: Rep. Mike Kowall**

**House Bill 5302 with committee
amendment
Sponsor: Rep. Glenn S. Anderson**

**House Bill 5303 with committee
amendment
Sponsor: Rep. Mickey Mortimer**

**House Bill 5304 with committee
amendment
Sponsor: Rep. Jerry O. Kooiman**

**House Bill 5305 with committee
amendment
Sponsor: Rep. Jim Howell**

**House Bill 5306 with committee
amendment
Sponsor: Rep. Mary D. Waters**

**Committee: Criminal Justice
First Analysis (10-31-01)**

House Bills 5275 and 5299-5306 (10-31-01)

THE APPARENT PROBLEM:

The full faith and credit provisions of the federal Violence Against Women Act (18 U.S.C. Sec. 2265) require all states, Indian tribes, and U.S. territories to enforce the protection orders of other states, tribes, and territories as if those orders had been issued in their own jurisdictions. This is especially important

when the protection orders were issued to protect a victim of domestic violence. Often, a victim must flee to another state to avoid his or her abuser. If the abuser follows, it is imperative that law enforcement officers and courts uphold the protection order just as if it had originated in that state. Earlier this year, the

Domestic Violence Homicide Prevention Task Force (a statewide, multi-disciplinary assembly of stakeholders chaired by the lieutenant governor and charged with reducing domestic violence related homicides), issued a comprehensive list of recommendations to revise state laws in order to realize the goals of the task force. One of the recommendations was to amend state laws relating to the issuance and enforcement of personal protection orders to incorporate the federal mandate of honoring foreign protection orders. A package of bills has been offered to make the necessary changes.

THE CONTENT OF THE BILLS:

The bills would amend various acts to implement the Full Faith and Credit provisions of the federal Violence Against Women Act (18 U.S.C. Sec. 2265), which requires all states and Indian tribes to enforce the personal protection orders of other states and tribes as they do those issued in their own jurisdictions. House Bill 5275 and House Bills 5299-5306 are tie-barred to each other and to Senate Bill 729 and Senate Bills 751-758. The bills would take effect April 1, 2002.

House Bill 5275 would amend the Revised Judicature Act (MCL 600.2950d through 600.2950g) to implement the Full Faith and Credit provision of the federal Violence Against Women Act. The bill would require that a valid foreign protection order be accorded full faith and credit by a court and subject to the same enforcement procedures and penalties as if it had been issued in this state. "Foreign protection order" would be defined as an injunction or other order issued by a court of another state, Indian tribe, or U.S. territory for the purpose of preventing a person's violent or threatening acts against, harassment of, contact with, communication with, or physical proximity to another person. This would include temporary and final orders issued by civil and criminal courts other than a support or child custody order issued under state divorce and child custody laws. However, such orders would be included to the extent that such an order was entitled to full faith and credit under other federal law if a civil order had been issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection. Under the bill, a foreign protection order would be valid if all of the following conditions were met:

- The issuing court had jurisdiction over the parties and subject matter under the laws of the issuing state, tribe, or territory.

- Reasonable notice and opportunity to be heard was given to the respondent sufficient to protect his or her right to due process. For ex parte orders, notice and opportunity to be heard would have to be provided to the respondent within the time required by state or tribal law, or within a reasonable time after issuance of the order sufficient to protect the respondent's due process rights.

Child custody or support provisions within a valid foreign protection order would also be accorded full faith and credit and enforced in a similar manner to provisions within a personal protection order (PPO).

Further, among other things, the bill would:

- Provide affirmative defenses to a charge or process seeking enforcement of a foreign protection order.
- Specify that a foreign protection order that was sought by a petitioner against a spouse or intimate partner and issued against both the petitioner and respondent would be entitled to full faith and credit against the respondent and enforceable against the respondent. However, a foreign protection order sought by a petitioner against a spouse or intimate partner and issued against both the petitioner and respondent would not be entitled to full faith and credit and would not be enforceable against the petitioner unless certain criteria specified in the bill were met.
- Define "spouse or intimate partner" to include a spouse, a former spouse, a person with whom the petitioner has had a child in common, a person living in the same household as the petitioner, and a person with whom the petitioner has had a dating relationship.
- Unless otherwise indicated in the bill, require law enforcement officers, prosecutors, and courts to enforce foreign protection orders other than conditional release orders or probation orders issued by a court in criminal proceedings in the same manner that Michigan-issued PPOs are enforced.
- For a foreign protection order that was a conditional release or probation order issued by a court in a criminal proceeding, provide for enforcement under provisions of the Code of Criminal Procedure, the Uniform Criminal Extradition Act, and the Uniform Rendition of Accused Persons Act.

- Allow, under certain conditions, a law enforcement officer to rely upon a copy of a PPO that appears to be a foreign protection order.

- Specify that an absence of verification of a foreign protection order on the Law Enforcement Information Network (LEIN) or the National Crime Information Center (NCIC) Protection Order File would not be grounds for refusal by a law enforcement officer to enforce the terms of the order. The bill would allow an officer to rely on the statement of the petitioner that the order was in effect and that the respondent had received notice of the order.

- Provide a procedure to verify a foreign protection order if a person seeking enforcement of the order did not have a copy. If the order could not be verified, require a law enforcement officer to maintain the peace and take appropriate action with regard to any violation of criminal law.

- Provide a procedure for a law enforcement officer to follow if there were no evidence that the respondent had received notice of the foreign protection order.

- Provide immunity from civil and criminal liability for a law enforcement officer, prosecutor, or court personnel who acted in good faith in enforcing a foreign protection order. This immunity would not limit or imply an absence of immunity in other circumstances.

House Bill 5299 and House Bill 5300 would amend the Revised Judicature Act (MCL 600.2950 and MCL 600.2950a, respectively) to specify that a personal protection order (PPO) would be enforceable anywhere in the state when signed by a judge. The bills would also allow a PPO, upon service, to be enforced by another state, Indian tribe, or U.S. territory. In addition to information already required to be listed on a PPO, the bills would require 1) a statement that if the respondent violated the PPO in a jurisdiction other than Michigan, that the respondent would be subject to the enforcement procedures and penalties of the state, Indian tribe, or U.S. territory with jurisdiction over the violation; and, 2) that upon service, a PPO could be enforced by another state, Indian tribe, or U.S. territory.

Currently, PPOs can be issued even against children (except if the respondent is the unemancipated minor child of the petitioner or the petitioner is the unemancipated minor child of the respondent).

House Bill 5299 would prohibit a court from issuing a PPO against a minor child less than 10 years of age.

House Bill 5301 would amend the Code of Criminal Procedure (MCL 764.15b) to allow an individual to be arrested without a warrant if he or she violated a valid foreign protection order. The bill would also authorize the family division of circuit court to conduct contempt proceedings on a violation of either a state-issued PPO or a valid foreign protection order and either a violation of a PPO issued under Section 2(h) of the Probate Code or a valid foreign protection order issued against a respondent less than 18 years of age at the time of the alleged violation, and provide for the out-of-state court that issued the order to be notified of the violation in the same manner as are in-state courts.

House Bill 5302 would amend the Code of Criminal Procedure (MCL 764.15c) to include a violation of a valid foreign protection order in the definition of “domestic violence incident”. (Currently, the act requires a peace officer to prepare a domestic violence report after investigating or intervening in a domestic violence incident.)

House Bill 5303 would amend the Revised Judicature Act (600.2529). Under the act, a fee of \$20 must be paid to the clerk of the court when a motion is filed. However, this fee is waived for several motions filed in conjunction with PPOs, such as a motion to dismiss the petition. The bill would also waive the \$20 fee for a motion to dismiss a foreign protection order or a motion to show cause for a violation of a foreign protection order under provisions that would be added by House Bill 5275.

House Bill 5304 would amend the Code of Criminal Procedure (MCL 776.22) to require a police agency to include procedures for enforcing a valid foreign protection order in the agency’s written policy regarding responses to domestic violence calls.

House Bill 5305 would amend the Probate Code (MCL 712A.1 et al.) to specify that the family division of circuit court would have authority and jurisdiction over a proceeding to enforce a valid foreign protection order issued against a respondent who was a minor less than 18 years of age. The court could authorize a peace officer to apprehend a juvenile who was alleged to have violated a valid foreign protection order. In addition, without an order of the court, any local police officer, county agent or probation officer, sheriff or deputy, or state police officer could take a juvenile into custody if there were reasonable cause to believe that he or she had violated or was violating a PPO issued under the

code or the Revised Judicature Act or a valid foreign protection order. Further, the bill would specify that a PPO could not be issued against a respondent that was a minor less than 10 years of age.

House Bill 5306 would amend the Code of Criminal Procedure (MCL 764.15) to allow a peace officer, without a warrant, to arrest a person that the officer had reasonable cause to believe had violated one or more conditions of a conditional release order imposed by a court of this state, another state, Indian tribe, or U.S. territory.

BACKGROUND INFORMATION:

An identical package of bills, Senate Bills 729 and 751-758, has been introduced in the Senate.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill package would have an indeterminate fiscal impact. The impact would depend on how the bills affected state and local workloads and funding opportunities. There are no data indicating how many people in Michigan might be protected by a “foreign” protection order. However, provisions assuring enforcement of foreign protection orders could increase workloads and attendant costs for affected courts and law enforcement agencies, although grant availability could help to offset costs in a limited number of jurisdictions. Specifically, the bills would affect state and local governments in the following ways:

House Bill 5275 could increase workloads for local courts and law enforcement agencies to an extent dependent on the number of foreign protection orders needing enforcement. House Bills 5299 and 5300 would have no fiscal impact on state or local units of government. House Bill 5301 and 5306 would have no direct fiscal impact; but, if arrests led to increased use of jail or other sanctions for the arrested offenders, the bills could increase local correctional costs or otherwise affect utilization of local law enforcement and correctional resources. House Bills 5302 and 5304 would have no direct fiscal impact on state or local units of government. House Bill 5303 could increase the extent to which court resources were directed toward resolving certain matters without accompanying fee revenue. Expanded caseloads under House Bill 5305 could increase court costs and demand for detention services, which could increase state and local costs. (10-31-01)

ARGUMENTS:

For:

Reportedly, Michigan is one of the last states to implement the full faith and credit provisions of the Violence Against Women Act with regard to upholding and enforcing protection orders issued by other state, tribal, or territorial jurisdictions. However, enacting the bill package will also mean that other states with similar laws will enforce personal protection orders (PPOs) issued in this state. This is an important protection to offer victims of abuse and threatened abuse. For those who stalk and prey on others, it means that they will be held accountable for their actions, for under the bills, a PPO issued against them in Michigan will be upheld by other states (though each state would enforce the PPO according to their own law) and that Michigan would enforce a protection order issued by another state. This should provide a powerful disincentive for an abuser or stalker to follow his or her victim across jurisdictional boundaries, and should increase the protective intent of the PPOs for abuse victims.

For:

House Bills 5299 and 5305 would add a prohibition on issuing a PPO against a child who was less than 10 years old. Though originally intended to provide protection for people being stalked and for victims of domestic violence, PPOs have been sought by adults in neighbor-to-disputes and by parents whose children have been threatened or abused by other children. However, neither the state Law Enforcement Information Network (LEIN) nor the National Crime Information Center (NCIC) database will enter a PPO issued against a child of less than 10 years of age. An important part of the legislation is to require the LEIN system to enter PPO information and track violations; therefore, the provisions relating to issuing PPOs need to be adjusted to accommodate the policies of the LEIN and NCIC systems.

POSITIONS:

The Office of the Governor supports the bills. (10-31-01)

The Prosecuting Attorneys Association of Michigan (PAAM) supports the concept of the bills. (10-30-01)

The Michigan Coalition Against Domestic and Sexual Violence is in strong support of the concept of the bills. (10-30-01)

The National Organization for Women/Michigan has no position at this time, as there has not been an opportunity to review the bills as amended. (10-30-01)

The Michigan Advocacy Project does not have a position at this time as it has not had an opportunity to review the bills as amended. (10-30-01)

Analyst: S. Stutzky

■ 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.