

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

House Bill 5275 (Substitute H-1 as passed by the House)
House Bills 5299, 5300, 5303, and 5304 (as passed by the House)
Sponsor: Representative Jennifer Faunce (House Bill 5275)
Representative Douglas Bovin (House Bill 5299)
Representative Ruth Johnson (House Bill 5300)
Representative Mickey Mortimer (House Bill 5303)
Representative Jerry Koiman (House Bill 5304)

House Committee: Criminal Justice
Senate Committee: Judiciary

Date Completed: 12-4-01

CONTENT

House Bills 5275 (H-1), 5299, 5300, 5303, and 5304 would amend the Revised Judicature Act (RJA) and the Code of Criminal Procedure to provide for the enforcement in Michigan of a "foreign protection order". The bills would do all of the following:

- **Specify that a foreign protection order would be valid if certain conditions were met.**
- **Provide that a valid foreign protection order would be enforceable in Michigan.**
- **Specify that personal protection orders (PPOs) issued in Michigan would be enforceable in other jurisdictions.**
- **Excuse actions to enforce foreign protection orders from certain court fees.**
- **Require police agencies' policies to include procedures for enforcing foreign protection orders.**

"Foreign protection order" would mean 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. "Foreign protection order" would include temporary and final orders issued by civil and criminal courts other than a support or child custody order issued pursuant to state divorce and child custody laws, except to the extent that an order was entitled to full faith and credit under other Federal law, whether obtained by the filing of an independent action

or by the joinder of a claim to an action, if a civil order were issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.

The bills would take effect on April 1, 2002, and are tie-barred to each other or equivalent Senate bills, and to other Senate or House bills, as follows: Senate Bill 729 or House Bill 5275; Senate Bill 751 or House Bill 5299; Senate Bill 752 or House Bill 5300; Senate Bill 755 or House Bill 5303; Senate Bill 756 or House Bill 5304; Senate Bill 753 or House Bill 5301; Senate Bill 754 or House Bill 5302; Senate Bill 757 or House Bill 5305; and Senate Bill 758 or House Bill 5306.

House Bill 5275 (H-1)

Overview

The bill would amend the RJA to do all of the following:

- Establish criteria for the validity of foreign protection orders (FPOs).
- Require that valid FPOs, including child custody or support provisions, be accorded full faith and credit by Michigan courts.
- Provide for the enforcement of valid FPOs by Michigan law enforcement officers.
- Specify affirmative defenses against the enforcement of an FPO.
- Grant immunity to Michigan police and court personnel acting in good faith in enforcing FPOs.

Valid Foreign Protection Order

Conditions. A foreign protection order would be valid if 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 were given to the respondent sufficient to protect his or her right to due process.

In the case of ex parte orders, notice and opportunity to be heard would have to be provided within the time required by state or tribal law, and in any event within a reasonable time after the order was issued. (An "ex parte" order is one issued without notice to the opposing party.)

Full Faith and Credit. A valid FPO would have to be accorded full faith and credit by a Michigan court and would be subject to the same enforcement procedures and penalties as if it were issued in Michigan. An FPO 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 and would be enforceable against the respondent. Such an order would not be entitled to full faith and credit and would not be enforceable against the petitioner, however, unless both of the following conditions were met:

- The respondent filed a cross- or counter-petition, complaint, or other written pleading seeking the order.
- The issuing court made specific findings against both the petitioner and the respondent and determined that each was entitled to relief.

("Spouse or intimate partner" would mean a spouse, former spouse, an individual with whom the petitioner had had a child a common, an individual residing or having had resided in the same household as the petitioner, or an individual with whom the petitioner currently or formerly had a dating relationship.)

A child custody or support provision within a valid FPO would have to be accorded full faith and credit by the court and would be subject to the same enforcement procedures and penalties as any provision within a PPO issued in Michigan. The bill states that this provision could not "be construed to preclude law enforcement officers' compliance with the

Child Protection Law".

Enforcement of a Foreign Protection Order

Enforcement. Law enforcement officers, prosecutors, and the court would have to enforce a FPO in the same manner that it would enforce a Michigan-issued PPO restraining or enjoining domestic violence or stalking activity. A foreign protection order that was a conditional release order or a probation order issued by a court in a criminal proceeding, however, would have to be enforced pursuant to the Code of Criminal Procedure, the Uniform Extradition Act, and the Uniform Rendition of Accused Persons Act.

A law enforcement officer could rely upon a copy of any protection order that appeared to be an FPO, and that was provided to him or her from any source, if the putative order appeared to contain all of the following:

- The names of the parties.
- The date the protection order was issued, before the date enforcement was sought.
- The terms and conditions against the respondent.
- The name of the issuing court.
- The signature of, or on behalf of, a judicial officer.
- No obvious indication that the order was invalid, such as an expiration date that was before the date enforcement was sought.

The fact that a putative FPO could not be verified on the Law Enforcement Information Network (LEIN) or the National Crime Information Center (NCIC) protection order file maintained by the FBI would not be grounds to refuse to enforce the terms of the order, unless it was apparent that the order was invalid. A law enforcement officer could rely upon the statement of the petitioner that the putative FPO foreign protection order remained in effect and could rely upon the statement of either the petitioner or the respondent that the respondent had received notice of that order.

Verification. If a person seeking enforcement of a foreign protection order did not have a copy of the order, the officer would have to attempt to verify, through LEIN or the NCIC protection order file, administrative messaging, contacting the issuing court, contacting the law enforcement agency in the issuing jurisdiction, contacting that jurisdiction's protection order registry, or any

other method the officer believed to be reliable, the existence of the foreign protection order and all of the following:

- The names of the parties.
- The date the FPO was issued, before the date enforcement was sought.
- Terms and conditions against the respondent.
- The name of the issuing court.
- That there was no obvious indication that the order was invalid, such as an expiration date before the date enforcement was sought.

The officer would have to enforce the FPO if the existence of the FPO and the information listed above were verified. If a person seeking enforcement of an FPO did not have a copy of the order, and the law enforcement officer could not verify it, the officer would have to maintain the peace and take appropriate action with regard to any criminal violations.

The law enforcement officer also would have to maintain the peace and take appropriate action with regard to any criminal violations when enforcing an FPO. Penalties provided for under the RJA's provisions for domestic violence or stalking PPOs could be imposed in addition to a penalty that could be imposed for any criminal offense arising from the same conduct.

Service or Notice. If there were no evidence that the respondent had been served with or received notice of the FPO, the law enforcement officer would have to serve the respondent with a copy of the order, or advise him or her about its existence, the name of the issuing court, the specific conduct enjoined, the penalties for violating the order in Michigan, and the penalties for violating the order in the issuing jurisdiction if the officer were aware of them. The officer would have to enforce the FPO and give the petitioner, or cause him or her to be given, proof of service or proof of oral notice. The officer also would have to give the issuing court, or cause it to be given, the same proof, if that court's address were apparent on the order or otherwise was readily available. If the order were entered into LEIN or the NCIC protection order file, the officer would have to give the agency that entered the order, or cause it to be given, proof of service or proof of oral notice.

If there were no evidence that the respondent

had received notice of the order, the respondent would have to be given an opportunity to comply with the order before the officer made a custodial arrest for violation of the order. Failure to comply immediately with the FPO would be grounds for an immediate custodial arrest. The bill states that this provision would not preclude an arrest without a warrant as authorized under the Code of Criminal Procedure or the juvenile code.

Affirmative Defense. All of the following could be affirmative defenses to any charge or process filed seeking enforcement of a foreign protection order:

- Lack of jurisdiction by the issuing court over the parties or subject matter.
- Failure to provide notice and opportunity to be heard.
- Lack of the filing of a complaint, petition, or motion by or on behalf of a person seeking protection in a civil FPO.

(An affirmative defense is evidence that outweighs the evidence against the defense.)

Immunity

A law enforcement officer, prosecutor, or court personnel acting in good faith would be immune from civil and criminal liability in any action arising from the enforcement of a foreign protection order. Immunity granted under the bill would not, in any manner, limit or imply an absence of immunity in other circumstances.

House Bills 5299 & 5300

The bills would amend the RJA to provide for the out-of-state enforcement of a PPO restraining or enjoining domestic violence or stalking activity. The RJA currently provides that a PPO is effective and immediately enforceable when signed by a judge. The bills specify that a PPO would be effective and enforceable anywhere in Michigan when signed by a judge and that, upon service, a PPO also could be enforced by another state, an Indian tribe, or a U.S. territory.

In addition, a PPO must include a statement that it has been entered to restrain or enjoin conduct listed in the order and that violation of the PPO will subject the restrained or enjoined individual to immediate arrest and the civil and criminal contempt powers of the court and

that the individual may be sentenced to imprisonment and/or a fine if found guilty of contempt. The bills would require that the statement also indicate that, if the respondent violated the PPO in a jurisdiction other than Michigan, he or she would be subject to the enforcement procedures and penalties of that state, Indian tribe, or U.S. territory.

Under the RJA, a PPO also must include a statement that it is effective and immediately enforceable when signed by a judge. The bills would require the statement to specify that the PPO would be effective and enforceable anywhere in Michigan when signed by a judge and that, upon service, it also could be enforced by another state, an Indian tribe, or a U.S. territory.

House Bill 5299 also would prohibit the issuance of a domestic violence PPO if the respondent were a minor child under 10 years old.

House Bill 5303

The bill would amend the RJA to exclude from requirements for court filing fees and motion fees an action for the enforcement of a foreign protection order under House Bill 5275.

Under the RJA, before a civil action is commenced, the party bringing the action must pay a \$62 fee to the clerk of the circuit court. An action brought exclusively under the sections of the RJA providing for domestic violence or stalking PPOs is exempt from the filing fee. Under the bill, an action brought exclusively under House Bill 5275 also would be exempt.

The RJA also requires that a \$20 fee be paid to the circuit court clerk upon the filing of a motion. In conjunction with an action relating to a domestic violence or stalking PPO, however, a motion fee may not be collected for a motion to dismiss the petition, a motion to modify, rescind, or terminate a PPO, or a motion to show cause for a violation of a PPO. Under the bill, a motion fee also could not be collected for a motion to dismiss a proceeding to enforce a foreign protection order or a motion to show cause for a violation of an FPO under House Bill 5275.

House Bill 5304

The bill would amend the Code of Criminal Procedure to provide that each police agency's written policies for police officers responding to domestic violence calls would have to include procedures for enforcing a valid foreign protection order.

Proposed MCL 600.2950h-600.2950l
(H.B. 5275)

MCL 600.2950 (H.B. 5299)
600.2950a (H.B. 5300)
600.2529 (H.B. 5303)
776.22 (H.B. 5304)

Legislative Analyst: P. Affholter

FISCAL IMPACT

Courts. The State Court Administrative Office reports that there were 49,932 personal protection order cases filed in 2000. Potential enforcement costs resulting from the bills are indeterminate, and would depend on the additional case filings to enforce foreign protection orders.

Jails. To the extent that they could increase the number of people held in local facilities for contempt of court for violating a PPO, the bills could have an increased fiscal impact on local units. The cost of incarceration in a local facility varies between \$27 and \$62 per day.

Family Independence Agency. It appears that the bills would have an indeterminate fiscal impact on the State and on local units of government. Expanding the types of applicable protection orders could increase the number of cases served by State-contracted or locally contracted detention service providers.

Fiscal Analyst: B. Bowerman
B. Baker
B. Wicksall
C. Cole

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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.