

# Legislative Analysis

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## DOMESTIC VIOLENCE PROTECTIONS

Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**House Bill 4476 as introduced**  
**Sponsor: Rep. Harvey Santana**

Analysis available at  
<http://www.legislature.mi.gov>

**House Bill 4477 as introduced**  
**Sponsor: Rep. Klint Kesto**

**House Bill 4478 as introduced**  
**Sponsor: Rep. Robert L. Kosowski**

**House Bill 4480 as introduced**  
**Sponsor: Rep. Kurt Heise**

**House Bill 4479 as introduced**  
**Sponsor: Rep. Amanda Price**

**House Bill 4481 as introduced**  
**Sponsor: Rep. Lisa Posthumus Lyons**

**Committee: Criminal Justice**  
**Complete to 5-18-15**

### BRIEF SUMMARY:

House Bill 4476 would require, in order for a court to order mediation in a domestic relations action, that both parties agree to the mediation; however, the bill would prohibit a court from ordering mediation if a PPO for domestic violence had been issued against one of the parties.

House Bill 4477 revises the service of process in actions appealed to the state Supreme Court or Court of Appeals if a court order had been issued that prohibits the disclosure of the address of the party being served (MCL 600.227 and 600.316).

House Bill 4478 would allow a PPO for domestic violence to prohibit the subject of the order from harming or taking an animal for which the petitioner has an ownership interest.

House Bill 4479 would treat an assault or assault and battery directed against a pregnant woman in the same manner as domestic violence for purposes of enhanced penalties for repeat offenses.

House Bill 4480 would specify that for purposes of determining the best interests of a child in a custody dispute, that actions taken by one parent to protect the child or herself or himself from the abusive parent could not be considered negatively by the court when looking at the willingness and ability of that parent to facilitate and encourage a close parent-child relationship with the abusive parent.

House Bill 4481 would, in general, prohibit custody or parenting time of a child conceived by sexual assault being granted to a biological parent convicted of that assault under another state or federal law, if similar, or who was found in a fact-finding hearing to have committed nonconsensual acts involving penetration; not absolve the convicted parent of

child support responsibilities; provide an affirmative defense for an offending parent; and define "offending parent."

**DETAILED SUMMARY:**

**House Bill 4476** adds a new section to the Revised Judicature Act (MCL 600.1035, proposed). In certain situations, a court would be prohibited from ordering mediation in a domestic relations action unless both parties stipulate (agree). This would apply under one or more of the following circumstances:

- A personal protection order (PPO) has been issued under Sections 2950 (domestic violence) or 2950a (stalking) protecting one party and restraining the other.
- A court order prohibiting one of the parties from contacting the other, other than a PPO for domestic violence or stalking, has been entered.
- One of the parties has engaged in stalking or aggravated stalking directed against the other party.
- One of the parties has committed child abuse or neglect with respect to a child of the other party.
- One of the parties has committed domestic abuse against the other party.
- A party will be unable to negotiate for himself or herself at the mediation.
- There is reason to believe that the health or safety of a party would be endangered by mediation.
- There is another good cause to exempt the domestic relations matter from mediation.

However, even if the parties to a domestic relations action stipulate to mediation, a court would be prohibited from ordering mediation as to an action for, or the part of an action involving, a domestic violence PPO. "Domestic relations action" would mean any of the following:

- An action for divorce, separate maintenance, annulment or affirmation of marriage, paternity, family support under the Family Support Act, the custody of minors under the Child Custody Act, or grandparenting time under Section 7b of the Child Custody Act.
- A proceeding ancillary or subsequent to an action listed above and that relates to the custody of a minor, parenting time with a minor, or the support of a minor, spouse, or former spouse.

**House Bill 4477**, which takes effect 90 days after enactment, amends the Revised Judicature Act to revise the service of process in actions appealed to the state Supreme Court or Court of Appeals when a court order has been issued that prohibits the disclosure of the address of the party being served (MCL 600.227 and 600.316). Typically, one party to an action will serve process or papers directly on the other party.

Instead, under the bill, if a court order has been entered in an action appealed to the state Supreme Court or Court of Appeals (COA) that prohibits the disclosure of the address of

a party to the action or that prohibits a party from contacting another party, the party who is serving process or papers would instead deliver sufficient extra copies to the clerk of the Supreme Court or COA with a request that the clerk, a sheriff, deputy sheriff, police officer, or an appointed court officer serve the process or papers on the protected party. Process or papers received under this provision would be served by the clerk, sheriff, deputy sheriff, police officer, or court officer as provided by court rule.

**House Bill 4478** amends Section 2950 of the Revised Judicature Act, which establishes the procedure for personal protection orders in situations involving domestic violence (MCL 600.2950). An individual may petition the family division of circuit court to enter a personal protection order (PPO) to restrain or enjoin a spouse, a former spouse, an individual with whom he or she has had a child in common, an individual with whom he or she has or has had a dating relationship, or an individual residing or having resided in the same household as the petitioner from doing one or more of several listed actions, such as entering onto the premises.

The bill would add to the list of actions, any of the following with respect to an animal in which the petitioner has an ownership interest:

- Injuring, killing, torturing, neglecting, or threatening to injure, kill, torture, or neglect the animal.
- Removing the animal from the petitioner's possession.
- Retaining or obtaining possession of the animal.

A petitioner would have an "ownership interest" in an animal if the petitioner has a right of property in the animal or keeps or harbors the animal, the animal is in the petitioner's care, and/or the petitioner permits the animal to remain on or about premises occupied by the petitioner. "Neglect" would mean the term as defined in Section 50 of the Michigan Penal Code (MCL 750.50). The bill would also make numerous changes of a technical or editorial nature.

**House Bill 4479** would amend the Michigan Penal Code (MCL 750.81). Current law separates the crime of simple assault and battery from domestic violence. Though the penalties are the same for a first offense, second and subsequent offenses of domestic violence carry much higher penalties. Assault and battery constitutes domestic violence when the action is directed towards a spouse or former spouse, an individual with whom the person has had a child in common, an individual with whom the person has or has had a dating relationship, or an individual residing or having resided in the same household.

The bill would include an assault or assault and battery directed against a pregnant woman as an assault or assault or battery that would be subject to the enhanced penalties for repeat offenses.

**House Bill 4480** amends the Child Custody Act (MCL 722.23). In actions involving dispute of a minor child's custody, the court establishes the rights and duties as to the child's custody, support, and parenting time. In making these decisions, the court relies on the

best interests of the child. The term "best interests of the child" is defined to mean the sum total of several factors specified in the act that are to be considered, evaluated, and determined by the court.

One of the listed factors is the willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents. The bill would add that a court could not consider negatively for the purposes of this factor any action taken by a parent to protect a child or that parent from the child's abusive parent.

**House Bill 4481** also amends the Child Custody Act (MCL 722.25 and 722.27a). Generally speaking, in disputes involving a child who is conceived as the result of an act for which one of the child's biological parents is convicted under Michigan's criminal sexual conduct statutes, the parent who was convicted cannot be awarded custody or parenting time. The bill would extend this to a biological parent who was convicted a substantially similar statute of another state or the federal government, or who is found by clear and convincing evidence in a fact-finding hearing to have committed acts of nonconsensual sexual penetration. As it is currently, these provisions would not apply if, after the date of the conviction, the biological parents cohabit and establish a mutual custodial environment for the child.

Moreover, the bill specifies that an offending parent would not be entitled to custody of the child without the consent of that child's other parent or guardian. However, a denial of custody would not relieve an offending parent of any support or maintenance obligation to the child. The other parent or the guardian of the child would be able to decline support or maintenance from the offending parent.

A parent would be able to assert an affirmative defense of the denial of custody or parenting time in a proceeding brought by the offending parent regarding a child who had been conceived by the act leading to the CSC conviction or found to have committed acts of nonconsensual sexual penetration in a fact-finding hearing described above. "Offending parent" would mean a parent who has been convicted of criminal sexual conduct as described in the act or who has been found by clear and convincing evidence in a fact-finding hearing to have committed acts of nonconsensual sexual penetration.

#### **FISCAL IMPACT:**

HB 4476 – The bill would have no fiscal impact on state or local units of government.

HB 4477 – The bill could have a minimal fiscal impact on the state and on local units of government for delivering sufficient extra copies of the process or papers to the courts and depending on the method chosen for serving the papers or process, if the state or local government were delivering a copy to a protected party.

HB 4478 – To the extent that the bill, by allowing a PPO to prohibit certain acts against a family pet or other animal owned by the petitioner, results in a greater number of criminal

contempt cases, it would increase costs related to county jails and/or local probation supervision. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

Regarding fiscal implications for the Department of Health and Human Services, to the extent that the bill's provisions result in additional violations by individuals under the age of 17 that result in juvenile delinquency criminal contempt cases, any increased costs for additional juvenile delinquency incarceration or probationary expenses would be paid in equal amounts by the county where the individual resides, from that county's Child Care Fund, and by the state.

HB 4479 – To the extent that the bill results in a greater number of convictions, it would increase costs on state and local correctional systems. New felony convictions would result in increased costs related to state prisons, county jails, and/or state probation supervision. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. The average cost of prison incarceration in a state facility is roughly \$34,800 per prisoner per year, a figure that includes various fixed administrative and operational costs. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. State costs for parole and felony probation supervision average about \$3,800 per supervised offender per year. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

HB 4480 – The bill would have no fiscal impact on state or local units of government.

HB 4481 – To the extent that the bill results in a greater number of hearings and determinations on child custody and child support, it would increase costs for the judiciary and local court funding units. The fiscal impact would depend on the increase in caseloads and related administrative costs.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.