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## BAN CHILD ABUSER FROM HOME

House Bill 4205 as enrolled  
Sponsor: Rep. James McNutt

House Bill 4206 as enrolled  
Sponsor: Rep. Shirley Johnson

Second Analysis (2-10-94)  
House Committee: Judiciary  
Senate Committees: Judiciary (HB 4205),  
Family Law, Criminal Law, and  
Corrections (HB 4206)

### ***THE APPARENT PROBLEM:***

When it appears that a child has been abused in the home, and the situation calls for at least temporarily separating the child and the alleged abuser, the probate court basically faces two alternatives: remove the child from the home, or remove the adult from the home. In the preliminary hearing stage of the process (that is, when a petition in probate court is authorized), the court may, upon a showing of probable cause, order the child removed from the home. Until recently, many probate judges believed that they held a similar authority to order the adult from the home. However, the supreme court in 1990 ruled that the probate court did not have the authority to order a parent from the home pending trial on the matter (In re Macomber, 436 Mich. 386). As ordering the child to be removed from the home can add to the child's trauma and feelings of guilt, many believe that the probate court should have the ability to order an allegedly abusive adult from the home at the pretrial stage.

### ***THE CONTENT OF THE BILLS:***

House Bill 4206 would amend the juvenile code (MCL 712A.13a) to provide that if a juvenile petition was authorized and the probate court found probable cause that a parent or other person had abused a child, the court could order that parent or other person to leave the home and not return except as allowed by the court. In issuing that order, the court would release the child to the other parent, a guardian, or a custodian. The court could not order the alleged abuser to leave the home unless it determined that the person presented a substantial risk of harm to the child, that removing the person was necessary to adequately protect the

child, that the proposed arrangement would adequately protect the child, and that it would be in the child's best interest to remain in the home. In determining whether to order a person removed, the court could consider whether the parent who is to remain in the home had a legal right to retain possession of the home, or was married to the person to be removed.

The court could order an allegedly abusive parent to pay appropriate support while banned from the home, and could include any reasonable term or condition necessary for the child's well-being. The court also could order the allegedly abusive person, according to terms the court may set, to surrender any firearms or other potentially dangerous weapons to a local law enforcement agency.

House Bill 4205 would amend the Code of Criminal Procedure (MCL 764.15e) to authorize the warrantless arrest of someone who violated an order under House Bill 4206. A peace officer could make the arrest upon reasonable cause to believe all of the following: that the person had been ordered to leave the home for a stated period of time by the probate court; that a true copy of the order and proof of service had been filed with the local law enforcement agency; that the person named in the order had been notified of it; that the person was violating the order; and, that the order stated that violation of it would subject the person to criminal contempt of court which would be punished by up to 90 days in jail and could be punished by a fine of up to \$500.

A peace officer who made an arrest under the bill would have to prepare a complaint as prescribed by

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the bill and provide copies to the person arrested and the court that issued the order (the court also would get the original).

Someone arrested under the bill would have to be brought before the probate court on contempt charges within 24 hours after the arrest. The court would set a hearing date and set a reasonable bond pending the hearing, which would have to be held within 72 hours after the arrest. The court also would notify the person who had custody of the child being protected, and require that person to appear and give evidence at the hearing. If a probate judge was not available, the arrested person would be taken before the district court.

The bill also would require that a law enforcement agency enter information on orders issued under House Bill 4206 into the Law Enforcement Information Network (LEIN). When such an order was rescinded, the court immediately would order the law enforcement agency to remove the LEIN entry.

The bill could not take effect unless House Bill 4206 was enacted.

#### ***FISCAL IMPLICATIONS:***

The Senate Fiscal Agency has reported that House Bill 4205 would have a minimal fiscal impact on the probate and district courts, police departments, and county jails, and that there are no data on the number of these types of cases, but they are few in number according to the courts. (6-11-93) The Senate Fiscal Agency has reported that House Bill 4206 would have no fiscal impact on state or local government. (6-14-93)

#### ***ARGUMENTS:***

##### ***For:***

Although ordering an adult from his or her home is a drastic step, it sometimes is the only way, short of removing a child from his or her home, to ensure the continued safety and well-being that child. The alternative, removing the child from the home, risks adding to the trauma of a child who already may be feeling at fault for what had happened; sending the child to live in foster care with strangers would in effect punish the child for the actions of the adult. With the bills, this necessity could be avoided; the bills would explicitly authorize the probate court to order an allegedly abusive adult from the home if

there was probable cause to believe that the adult had abused a child in the home. In doing so, the bills would restore an authority for pretrial orders that until recently many thought was an implicit part of the court's statutory powers. Michigan is reported to be the only state that does not explicitly provide for such pretrial orders; it should not continue to be.

##### ***Response:***

There are at present ways in which the probate court can get an allegedly abusive adult to leave the home. For example, the court can point out that unless the adult leaves the home, the child will be placed in foster care.

##### ***For:***

To the degree that the bills enabled foster care costs to be avoided, they would save money for the state and counties. In authorizing the probate court to order the temporary payment of support, the bills would help to shift the financial burden from the government to the responsible party.

##### ***Against:***

The bills would not adequately provide for due process of law in removing an allegedly abusive adult from the home he or she shares with a child. In employing a standard of "probable cause" to believe that the adult had abused the child, the bill would make it too easy for an innocent adult to be deprived of his or her home on the word of a nosy and imaginative neighbor or a vindictive mate.

##### ***Response:***

Before the eviction order could be issued, there would have to be a hearing on the matter in which allegations had been substantiated at least to the degree of showing probable cause to believe that they were true. True, an eviction would pose inconvenience and expense for the person, but in criminal law, "probable cause" is sufficient grounds for temporary incarceration. The high courts of at least two states (Missouri and Pennsylvania) have held that a victim's right to immediate protection against abuse and the government's interest in preventing domestic violence outweigh the interest in uninterrupted possession of one's home. The bills reflect such reasoning.