



**House
Legislative
Analysis
Section**

Olds Plaza Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-8486

DOMESTIC VIOLENCE INJUNCTIONS

House Bill 4359 as introduced
Sponsor: Rep. Barbara Dobb

House Bill 4362 as introduced
Sponsor: Rep. Ken Sikkema

First Analysis (4-29-93)
Committee: Judiciary

THE APPARENT PROBLEM:

Despite a 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 at an alarming rate. Nationwide, some three to four million women annually are physically attacked by their husbands or partners; about four women each day are killed. Michigan's domestic violence figures are equally sobering: in 1991, there was a domestic violence-related homicide about every five days. In 1985, local agencies reported 16,576 domestic violence offenses to the Michigan State Police; in 1990, that figure was 25,436; and in 1991, 27,201. While it is unclear to what degree these figures reflect an increase in reporting, rather than an increase in the rate of violence, it is clear that domestic violence remains a significant problem in this state.

Michigan law has since 1983 explicitly allowed the circuit court to issue injunctions prohibiting a person from assaulting a current or former spouse or household member. However, statute does not contemplate court orders to prohibit a person from threatening the physical safety of a current or former partner. As threats represent another form of victimization and often precede acts of violence, it has been suggested that the law also provide for injunctions against threats.

THE CONTENT OF THE BILLS:

House Bill 4359 would amend the Revised Judicature Act (MCL 600.2950) to allow a person to seek an injunction against a current or former spouse or household member that prohibited that person from threatening to kill or physically injure

a named person. The bill could not take effect unless House Bill 4362 were enacted.

House Bill 4362 would amend the Code of Criminal Procedure (MCL 764.15b) to extend a peace officer's warrantless arrest authority to situations where the officer had reasonable cause to believe a person was violating a domestic violence injunction against threatening to kill or physically injure a named person. (Such warrantless arrest authority exists at present for other domestic violence injunctions.) The bill could not take effect unless House Bills 4357 and 4359 were enacted.

Note: House Bill 4358, which deals with prosecution of criminal contempt proceedings related to domestic violence, also proposes to amend MCL 764.15b. The two bills must be made consistent with each other if both are to be enacted.

A companion bill, House Bill 4357, would amend the divorce law (MCL 552.14) to authorize injunctive orders prohibiting one of the parties from threatening to kill or physically injure a named person. The bill could not take effect unless House Bill 4362 were enacted. (House Bill 4357 was reported from the House Judiciary Committee April 20, 1993, and was analyzed separately.)

FISCAL IMPLICATIONS:

There is no fiscal information at present. (4-27-93)

ARGUMENTS:

For:

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

House Bills 4359 and 4362 (4-29-93)

accountable for their actions, it reinforces this belief 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 this end, legislation has been proposed that would strengthen law enforcement response to domestic violence. The bills, part of this larger package, would further these aims by making it clear that threats are a form of violence and not to be countenanced. By broadening the scope of domestic assault restraining orders and related arrest authority, the bills, together with House Bill 4357, would significantly improve the protections to victims at an especially dangerous time--namely, when the victim first takes steps to bring the abuse to an end.

Against:

The legislation is too narrow because it fails to address relationships where there had been dating, but no cohabitation; the abuse that sometimes arises in dating relationships can, unfortunately, be just as deadly as spousal abuse.

Response:

Special laws on spousal abuse have developed least in part because of an historical failure by the criminal justice system to respond adequately to in-family domestic assault. To the extent that this focus is lost, the law could be diluted. Also, including dating or other nonspousal relationships in the bill could lead to difficulty in defining what constitutes a dating relationship.

POSITIONS:

The Domestic Violence Prevention and Treatment Board supports the bills. (4-28-93)

The Prosecuting Attorneys Association of Michigan supports the bills. (4-27-93)

A representative of the Michigan Coalition Against Domestic Assault testified in support of the bills. (4-27-93)