



DOMESTIC VIOLENCE ARRESTS

**House Bill 4360 as introduced
First Analysis (4-29-93)**

**Sponsor: Rep. Shirley Johnson
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 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.

One approach to dealing with domestic violence is to promote a strong and consistent enforcement of laws against domestic assault. However, while Michigan law allows warrantless arrest in domestic assault cases, it does not particularly encourage officers to make such arrests, nor does it offer specific guidance on state policy regarding arrests for domestic assault. As a result, arrest policies, whether formal or informal, vary across the state, and mediation, which many believe to be less effective than arrest in curbing abusive behavior, may continue to be the preferred form of police response in some jurisdictions. To rectify this situation, legislation has been proposed to require each police agency to develop "preferred arrest" policies meeting certain guidelines.

THE CONTENT OF THE BILL:

The bill would amend the Code of Criminal Procedure to require each police agency to implement by January 1, 1994 a written policy on police response to domestic violence calls. A policy would have to reflect that domestic violence is

criminal conduct. Each police agency would have to consult with an area shelter for victims of domestic violence in developing, implementing, and evaluating its policy, and in training its officers in the policy.

Each policy would have to include at a minimum procedures for all of the following:

**** Conducting a criminal investigation with specific standards for misdemeanor and felony arrests.**

**** Making criminal arrests.** Procedures would have to emphasize that in most circumstances, an officer should arrest a person if there was probable cause to believe that the person had committed domestic violence and his or her actions constituted a crime. When it appeared that the individuals involved had committed crimes against each other, the officer, when determining whether to arrest one or both of the individuals, should consider the bill's intent to protect victims of domestic violence, the relative degree of injury or fear inflicted on the individuals involved, and any history of domestic violence between the individuals. Procedures also would have to emphasize that an officer should not arrest someone if there was reasonable cause to believe that he or she was acting in self-defense or defense of another; that an arrest decision should not be based on the consent of the victim to any subsequent prosecution or on the relationship of the individuals involved; and that a decision not to arrest someone should not be based solely upon the absence of visible injury.

**** Denial of interim bond, as provided by the interim bond statute.** (Public Act 308 of 1990 amended that statute to require that a person arrested under warrant for domestic assault be held either until arraigned or until 20 hours have passed, whichever was sooner.)

**** Making an arrest for a violation of a domestic abuse injunction, and procedures for verification of an injunction.**

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**** Emergency assistance to victims, including medical care, transportation to a shelter, or remaining at the scene until further violence was no longer imminent. The assistance is to be available whether or not the officer had decided that no probable cause existed for an arrest.**

**** Informing the victim of community services and legal options as required by the Code of Criminal Procedure. (Public Act 222 of 1985 amended the code to require a police officer on the scene to give a domestic violence victim a written statement on his or her rights and the availability of services.)**

**** Preparing a written report, whether or not an arrest was made, to document the presence or absence of probable cause for making an arrest.**

**** Training of peace officers, dispatchers, and supervisors.**

**** Discipline for noncompliance with the policy.**

**** Annual evaluations of the policy.**

The local policies developed under the bill would have to be put in writing and made available to the public upon request.

MCL 776.22

FISCAL IMPLICATIONS:

Fiscal information is not available 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 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 bill, part of a larger package, would further those aims by requiring police agencies across the state to adopt preferred arrest policies in domestic assault cases. At least one study has shown arrest

to be more effective than traditional on-the-scene mediation in preventing the recurrence of abuse. Arrest not only teaches the offender that society does not accept abusive behavior; it also provides the mechanism to get an offender into court-ordered counseling. Arrest, with its accompanying period of detention, also provides a victim with time to consult with domestic violence shelter staff, move to a shelter, or seek a protective injunction. While some may prefer that the bill mandate arrests, a preferred arrest policy can achieve the same goals without unduly restricting a police officer's ability to accommodate the situation at hand.

Against:

To ensure arrests are made consistently, the bill should mandate arrests, as is done in Connecticut, Maine, Nevada, Oregon, Washington, Wisconsin, and several other states. Mandatory arrest policies can accommodate necessary exceptions, such as for self-defense, and typically do. As it stands, the bill would give police too much discretion to follow institutionalized biases and not arrest a domestic assault offender.

Against:

The bill could do more to ensure the adequacy of preferred arrest policies. For example, as the most dangerous time for a domestic violence victim tends to be when steps are taken to bring the violence to an end, the bill also should require that police notify the victim of release procedures, including the likelihood and probable time of release of the arrested person. In addition, the bill contains no penalties for agencies that ignore the requirements for preferred arrest policies, thus making it all too easy for local agencies to continue to act under misguided procedures.

Against:

The bill assumes that arrest of a batterer reduces the likelihood that the behavior will be repeated. While early research on the deterrent effects of arrest on domestic violence suggested that a man was less likely to repeat the behavior if arrested at the scene, subsequent research suggests that the deterrent effects are short-lived. A 1991 study distinguished between "short" arrests (where the offender could be expected to be released within a few hours), "full" arrests (where the offender tended to remain jailed until a prosecutorial charging conference), and warnings. That study found that the deterrent effects of short arrest ended after 30 days, and that over a longer term (up to one year),

short arrest was more likely than a warning to be followed by another episode of domestic violence. Longer custody arrests appeared to have no clear long-term effect one way or the other. Many questions remain to be answered about the effects of various arrest scenarios on various population groups (unemployment, for example, seems to be a factor in recidivism rates). The bill, by assuming certain benefits of strong arrest policies, promotes a simplistic approach that may be less effective than a more flexible alternative.

Response:

The bill would not mandate arrests, but rather arrest policies; officers could continue to exercise discretion at the scene, and as more becomes known about the effectiveness of various approaches to domestic violence, new information could be incorporated into existing policies and procedures. More importantly, a strong policy in favor of arrest assures the victim time to get safely out of the house or seek support services.

Against:

By failing to require prosecutors to adopt policies favoring arrest in domestic violence situations, the bill fails to bring a critical element of law enforcement within its scope.

Response:

The bill would be the wrong place to attempt to establish such requirements for prosecutors, as it deals with warrantless arrests at the scene--situations in which prosecutors are not involved. It would be better to address prosecutorial policies in separate legislation.

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 at 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.

Against:

The bill should not suggest that police officers be required to make determinations of self-defense at the scene. Such determinations are best left to judicial process.

POSITIONS:

In its September 1991 report, the Inter-agency Domestic Violence Task Force recommended that all law enforcement agencies in Michigan adopt a preferred arrest policy in response to domestic violence crimes. In the event that voluntary adoption of a preferred arrest policy does not occur, the task force recommended the enactment of legislation to ensure that political subdivisions of the state establish a preferred arrest policy.

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

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

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