



**House
Legislative
Analysis
Section**

Olds Plaza Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

**DOMESTIC ASSAULT; WARRANT-
LESS ARREST**

**House Bill 4483 as introduced
First Analysis (5-18-95)**

**Sponsor: Rep. Nick Ciaramitaro
Committee: Judiciary and Civil Rights**

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; in 1991, 27,201, and in 1992, 29,891. 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 have strong laws against domestic assault. Such laws make it clear to batterers that society does not countenance such behavior, and make it harder for a batterer to believe that it is his or her right to "discipline" his or her spouse or that a physical assault may be justified by verbal provocation. Since 1978, Michigan law has allowed a police officer to make a warrantless arrest at the scene of a domestic disturbance where there was reason to believe an assault had been committed, even if the officer had not actually witnessed the crime.

In spite of the provisions allowing for a warrantless arrest in domestic assault situations, some city and/or township attorneys are unwilling to prosecute these cases where the basis of the arrest was a violation of a local ordinance. These attorneys believe that the current law allows complaints for such arrests to be prosecuted only by

the county prosecutor and precludes complaints from being prosecuted by city attorneys. These city and township attorneys feel that because the current law does not explicitly specify that warrantless arrests can be made to enforce violations of local ordinances, they lack the authority to prosecute warrantless arrests made under this law.

Because most cities have local ordinances prohibiting domestic assault which parallel the state domestic assault laws, the perceived inability of city attorneys to prosecute violations of these local ordinances where a warrantless arrest was made limits the effectiveness of these ordinances.

THE CONTENT OF THE BILL:

Under the Code of Criminal Procedure, a police officer is currently able to arrest an individual for simple assault and/or aggravated assault in a domestic situation without a warrant and without having observed the crime being committed. The officer must have reasonable cause to believe that an assault (simple or aggravated, as described by the code) occurred or is occurring, and that the perpetrator is either a spouse or former spouse of the victim, resides or has resided with the victim, or has had a child with the victim.

The bill would explicitly extend the domestic assault warrantless arrest provision to violations of local ordinances similar to the sections of the penal code regarding simple assault and/or aggravated assault.

MCL 764.15a

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have no significant fiscal implications for the state or local units of government. (5-16-95)

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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 enacted that would strengthen law enforcement response to domestic violence. However, the current law is not clear on whether a warrantless arrest for domestic assault may be prosecuted by the city attorney's office, as opposed to the county prosecutor's office. This bill would clarify the existing law by specifically allowing the prosecution of warrantless domestic assault arrests under local ordinances. Thus, the prosecution of such cases could be made by either the city or township attorney's office or the county prosecutor's office. The bill would provide greater flexibility to law enforcement officials in their efforts to prosecute domestic violence cases by increasing the options available to law enforcement officials and could facilitate stronger local policies and cooperation between local police and prosecuting officers.

POSITIONS:

There are no positions on the bill.