



**House  
Legislative  
Analysis  
Section**

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**PERSONAL PROTECTION ORDERS**

**House Bill 5804 as enrolled  
Public Act 402 of 1994  
Sponsor: Rep. Deborah Whyman**

**House Bill 5805 as enrolled  
Public Act 403 of 1994  
Sponsor: Rep. Roland Jersevic**

**House Bill 5807 as enrolled  
Public Act 404 of 1994  
Sponsor: Rep. Sandra Hill**

**Senate Bill 1265 as enrolled  
Public Act 418 of 1994  
Sponsor: Sen. Joel Gougeon**

**Senate Bill 1268 as enrolled  
Public Act 417 of 1994  
Sponsor: Sen. Glenn D. Steil**

**Second Analysis (1-4-95)  
House Committee: Judiciary  
Senate Committee: Judiciary**

House Bills 5804, 5805, 5807 and Senate Bills 1265 and 1268 (1-4-95)

***THE APPARENT PROBLEM:***

Public Acts 57 through 62 of 1994, part of a broad package aimed at combating domestic violence, focused on statutory changes regarding the issuance and enforcement of domestic violence and anti-stalking injunctive orders. Among other things, those acts explicitly authorized injunctive orders that prohibited physical threats, allowed domestic violence injunctions where the parties had a child in common, required courts to issue domestic violence injunctions if certain criteria were met, required prosecutors to prosecute criminal contempt proceedings initiated for violation of domestic violence injunctions, and required the development and distribution of forms to enable domestic assault and stalking victims to obtain injunctions without the assistance of an attorney.

However, even before these laws took effect (on July 1, 1994), it was evident to many that problems remained with regard to domestic violence and anti-stalking injunctive orders. Apparently in response to such concerns, the governor appointed a special task force on domestic violence, and charged it with

standardizing the criteria used for the issuance and enforcement of family violence injunctions.

In its June 1994 report, the task force pointed out a confusing array of overlapping and inconsistent court rules and statutes governing injunctions, especially domestic violence injunctions. To remedy this situation, the task force recommended the enactment of a single statute to govern domestic violence injunctions, and further recommended a number of additional changes to newly-enacted statute. The task force opposed requiring two of three specified criteria to be met before issuance of an injunction would be made mandatory, and instead recommended that issuance be required upon a showing of reasonable cause to believe that the individual involved might commit an act of domestic violence. The task force further recommended allowing people to obtain domestic violence injunctions in "dating" situations, and defining "domestic violence" to include the vandalism and violence against property that often foreshadows future violence against people.

The task force also identified procedural delays that put victims at risk. Of particular concern were obstacles to immediate enforcement of domestic violence injunctions, notably those raised by requirements for service of injunctions on alleged abusers before injunctions could be entered into the Law Enforcement Information Network (LEIN system) or enforced by warrantless arrest.

The task force further found penalties for violating a domestic violence injunction to be inadequate. The current penalties are criminal contempt penalties of up to 90 days in jail, with a maximum fine of \$500. It would be better, said the task force, to make the penalties for violating a domestic violence injunction the same as the penalties for first-offense simple domestic assault -- namely, imprisonment for up to 93 days and a fine of up to \$500, or both. (The increase to 93 days would, incidentally, trigger statutory requirements for fingerprinting and recordkeeping that only apply to offenses punishable for imprisonment for 93 days or more, thereby helping authorities to identify and track repeat offenders.)

Legislation has been proposed to implement the task force's recommendations and improve the use of protective restraining orders against acts of domestic violence or stalking.

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

The bills constitute a package of legislation to clarify and expand laws on issuing injunctive orders (to be called "personal protection orders" under the bills) in situations involving domestic violence or stalking. Among other things, the bills would:

**\*\* Make orders immediately enforceable upon being signed by a judge, and, providing certain conditions were met, allow warrantless arrest for violation of an order whether or not the violator previously had been served with a copy of the order.**

**\*\* Allow domestic violence protective orders to be issued when the parties had a dating relationship.**

**\*\* Allow domestic violence protective orders to prohibit an alleged abuser from interfering with the petitioner's efforts to remove children or personal property from premises owned or leased solely by the alleged abuser, to bar interference with the petitioner's employment, and to prohibit specified conduct interfering with personal liberty or causing**

a reasonable apprehension of violence.

**\*\* Revise standards for issuing domestic violence protective orders, mandating issuance if there was reasonable cause to believe that the individual might commit one or more of the acts that a personal protection order could prohibit. An order could not be refused solely due to the absence of a police or medical report, an administrative finding or report, or physical signs of violence.**

**\*\* Explicitly prohibit a personal protection order from being made mutual.**

**\*\* Require a court that refused to issue a domestic violence or anti-stalking protective order to immediately state its reasons in writing.**

**\*\* Allow ex parte orders (that is, orders issued on behalf of one party without prior notice to the other) to be issued and enforced under certain circumstances.**

**\*\* Require domestic violence and anti-stalking protective orders to be entered immediately on the Law Enforcement Information Network (LEIN system).**

**\*\* Allow a petitioner to use a mailing address instead of residence address on court documents.**

**\*\* Increase the maximum jail term for violation of a domestic violence or anti-stalking protective order from 90 to 93 days, thereby triggering statutory requirements for fingerprinting of and criminal recordkeeping on violators, and making the offense subject to the same penalties that apply to first-offense simple domestic assault.**

The bills would take effect April 1, 1996. None could take effect unless all were enacted. Further details follow.

House Bill 5804 would amend the Revised Judicature Act (MCL 600.2950) with regard to domestic violence protective orders.

Application of law. Domestic violence protective orders are at present limited to situations where there is or has been a spousal relationship between the parties, where the parties have a child in common, or where the parties are or have been members of the same household. The bill would in addition allow orders in situations where the parties

had or formerly had a dating relationship, meaning that they had "frequent, intimate associations primarily characterized by the expectation of affectional involvement." The term would not include a casual relationship or ordinary fraternization between two individuals in a business or social context.

Scope, contents of orders. Domestic violence protective orders may prohibit a person from doing any of several things, including entering onto premises, or assaulting or threatening a named individual. The bill would in addition allow a domestic violence protective order to prohibit the alleged abuser from interfering with the petitioner's efforts to remove children or personal property from premises solely owned or leased by the alleged abuser, and to prohibit any other act or conduct imposing upon personal liberty or causing a reasonable apprehension of violence.

Personal protection orders would have to contain prescribed information on the consequences of violations, the conduct being enjoined, the expiration date, and, for orders issued without notice to the alleged abuser, prescribed information on responding to the notice. Each order also would have to state that it is effective when signed by a judge and is immediately enforceable anywhere in Michigan by any law enforcement agency. The order also would have to name the law enforcement agency designated to enter the personal protection order into the LEIN system.

A personal protection order could not be made mutual. Correlative separate personal protection orders would be prohibited unless both parties had properly petitioned the court.

Issuance. Generally, a court must issue an order upon reasonable cause to believe that any two of the following three criteria are met: the defendant may commit an act of domestic violence; the defendant has committed an act of domestic violence within the past year; and, good cause exists to issue the order. The bill would instead require issuance if there was reasonable cause to believe that the alleged abuser might commit any of the acts that an order may prohibit. In determining whether reasonable cause existed, the court would have to consider evidence offered in support of the request for the order, and whether the individual to be restrained had previously committed or threatened to commit any of the acts that could be

enjoined.

A court could not refuse to issue a personal protection order solely because of the absence of any of the following: a police report; a medical report; a report or finding of an administrative agency; or physical signs of abuse or violence.

A court that refused to grant a personal protection order would have to state its specific reasons immediately in writing. If a hearing was held, the court also would have to immediately state its reasons on the record.

Petitioner's address. A petitioner could omit his or her address of residence from documents filed with the court, but would have to provide the court with a mailing address.

Service. In addition to current methods of serving a domestic violence protective order on the alleged abuser, the bill would allow service by any other manner provided in Michigan court rules. Under the bill, proof of service would be filed with the court clerk, rather than with the petitioner's local law enforcement agency.

Effectiveness. A personal protection order would be effective when signed by a judge.

Ex parte orders. A personal protection order would be issued and effective without written or oral notice to the alleged abuser or his or her attorney, if specific facts in an affidavit or verified complaint made either of the following clearly apparent: that immediate and irreparable harm would result from delay required to effectuate notice, or that the notice would itself precipitate adverse action before the order could be issued.

An ex parte personal protection order would be valid for at least 182 days. The alleged abuser would have 14 days after receiving actual notice of an ex parte order in which to challenge it. The court would have to hold a hearing within 14 days after receiving an alleged abuser's motion to modify or rescind an ex parte personal protection order.

Enforcement. When a personal protection order was issued, the clerk would immediately file a copy with the petitioner's local law enforcement agency, which would enter the information into the LEIN system. (Currently, LEIN entry depends on service of the order on the alleged abuser.) The court

clerk also would inform the petitioner that he or she could take a true copy of the order to the designated law enforcement agency to be immediately entered into the LEIN system. The court clerk would immediately notify the law enforcement agency upon receiving proof of service, and upon modification, extension, or rescission of the order.

A personal protection order would be enforceable anywhere in Michigan by any law enforcement agency that had received a true copy of the order, that had been shown a copy of the order, or that had verified the order's existence on the LEIN system. If the alleged abuser had not been served, the law enforcement agency or officer responding to a domestic violence call would serve the individual with a copy of the order or notify the individual of the existence of the order, where to get a copy of it, the specific conduct enjoined, and the penalties for violating the order. If the alleged abuser had not had notice of the order, he or she would have to be given an opportunity to comply with it before being arrested and taken into custody. Failure to immediately comply with an order would be grounds for immediate custodial arrest. These provisions, however, would not preclude an officer from making a custodial arrest under other statutes authorizing warrantless arrest.

A personal protection order issued under the bill also would be enforceable under the special warrantless arrest statute contained in the Code of Criminal Procedure (MCL 764.15b, to be amended by House Bill 5806).

Penalties. Violation of a domestic violence protective order would remain a misdemeanor punishable in part with a \$500 maximum fine, but the maximum jail term attached to the offense would be increased from 90 to 93 days, thereby making the penalty identical to that for first-offense simple domestic assault, and triggering fingerprinting and criminal recordkeeping requirements. Criminal penalties could be imposed in addition to any penalty that could be imposed for any other criminal offense arising out of the same conduct.

In addition, a petitioner who knowingly and intentionally made a false statement to the court in order to obtain a personal protection order would be subject to the contempt powers of the court.

House Bill 5805 would amend the Revised Judicature Act (MCL 600.1910 and 600.2950b) to make it consistent with House Bills 5804 and 5808 with regard to service of protective orders, and to revise requirements for the State Court Administrative Office to develop and distribute forms for obtaining personal protection orders without the assistance of an attorney. The new forms, which would have to be easily understood, would have to be ready by October 1, 1995. Forms would have to contain all of the information that House Bills 5804 and 5807 would require on personal protection orders. The State Court Administrative Office also would have to develop forms that people enjoined without notice could use to have a protective order modified or rescinded. In addition, the bill would ease current requirements for courts to provide assistance in completing the forms; rather than being required to provide such assistance, courts would be allowed to do so.

House Bill 5807 would amend the Revised Judicature Act (MCL 600.2950a) with regard to anti-stalking personal protection orders. Procedures and provisions on use of petitioners' addresses, judicial explanations of denials of orders, notices contained in orders, immediate effectiveness of orders, and enforcement of orders would parallel those for domestic violence personal protection orders issued under House Bill 5804.

Senate Bill 1265 would amend the Code of Criminal Procedure (MCL 764.15b and 776.22) to, consistent with House Bills 5804 and 5807, revise provisions on warrantless arrests for violating domestic violence or anti-stalking injunctions; warrantless arrests would be authorized for violations of personal protection orders under House Bills 5804 or 5807. Existing provisions requiring police agencies to have written policies on responding to domestic violence calls would be amended to refer to personal protection orders. The prescribed notice that a police officer gives an apparent victim at the scene also would be altered to reflect changes proposed by House Bill 5804.

Senate Bill 1268 would amend the law entitled "Of Divorce" (MCL 552.14) to replace provisions on injunctive orders with provisions acknowledging personal protection orders issued under House Bills 5804 and 5807.

**BACKGROUND INFORMATION:**

On June 29, 1994, the Governor's Task Force on Domestic Violence issued a report in which it summarized its recommendations as follows:

**\*\* Require a judge, who refuses to issue a domestic violence injunction, to specifically state the reason for refusal on the record.**

**\*\* Make injunctions immediately enforceable anywhere in Michigan by any law enforcement agency.**

**\*\* Require the clerk of the court that issued the injunction to enter the information immediately on the statewide law enforcement information network, or LEIN system.**

**\*\* Make domestic violence injunctions mandatory if the proper showing has been made.**

**\*\* Provide courts with more specific criteria to decide when an injunction must be issued and prohibit courts from imposing unnecessary evidentiary hurdles before issuing an injunction.**

**\*\* Expand the categories of individuals currently protected to include those who have had or are having a dating or engagement relationship, and individuals related by consanguinity or affinity within the second degree.**

**\*\* Allow courts to stop conduct which may escalate into violence (i.e., property damage).**

**\*\* Emphasize the right of physical safety over property interests and elevate domestic violence injunctions to the status of other civil injunctions.**

**\*\* Put the burden on the perpetrator to come to court to modify or rescind a domestic violence injunction that was issued under emergency circumstances.**

**\*\* Amend the anti-stalking injunction law and the law allowing warrantless arrests for violating an injunction to be consistent with the changes outlined in the task force's report.**

**\*\* Enact a comprehensive statute governing domestic violence injunctions. Incorporate the recent amendments from the Michigan legislature's 1994 domestic violence package. The task force has**

drafted a proposed statute.

**\*\* Require the State Court Administrative Office to develop standardized domestic violence injunction forms for use statewide, containing the necessary information for police enforcement.**

**FISCAL IMPLICATIONS:**

The State Court Administrative Office (SCAO) has noted that the bills, by expanding the scope of those eligible to obtain protective orders, would increase potential costs to court funding units. New duties for the SCAO would be those of redesigning and distributing forms and instructions for obtaining a personal protection order without an attorney, and of designing and distributing forms and instructions for alleged abusers who seek to have orders revoked or amended without an attorney. (11-22-94)

The Senate Fiscal Agency has reported that the bills could increase costs by including dating relationships in the situations in which personal protection restraining orders can be entered. The bills also could increase staff costs because of the requirement that the orders be entered immediately. Increased staff costs could result either from the hiring of more staff or from decreased staff force in other court and law enforcement functions. There also could be a rise in the number of hearings as a result of the legislation. (12-7-94)

**ARGUMENTS:**

**For:**

The bills would greatly improve the statutes on protective orders in domestic violence and stalking cases. They would make domestic violence protective orders available to women battered or threatened by their boyfriends, a situation that shelter workers and others say happens all too frequently, but which is not addressed by current statute. They would allow protective orders against disruptions in the workplace (where domestic violence victims are sometimes harassed, threatened, or even killed by their abusers), and, through allowing orders against conduct causing a reasonable apprehension of violence, they would address problems with vandalism or violence to pets that often escalates to violence against an individual.

Dangerous delays in implementation and enforcement of protective orders would be remedied by making orders immediately effective

upon the judge's signature, by requiring immediate entry into the LEIN system, and by making orders immediately enforceable through warrantless arrest by a police officer who has been shown a copy of the order. Victims would be empowered as well: each victim would be given two copies of the order; one to take to the law enforcement agency to ensure prompt LEIN entry, and the other to keep on hand to show a police officer called to the scene.

However, the rights of alleged abusers would not be ignored: *ex parte* orders could be issued only where circumstances clearly warranted, and even then, individuals would be given notice and opportunity for a hearing on rescission or revision of a protective order. False allegations of abuse would be discouraged through the application of contempt penalties.

Finally, the bills would standardize procedures for issuance and enforcement of personal protection orders. Parallel provisions would be enacted in domestic violence and anti-stalking statutes, and orders sought in the context of a divorce or separation would be addressed by the provisions of the Revised Judicature Act, not by separate provisions in the divorce law.

The bills would give concrete expression to the recommendations of the governor's task force on domestic violence, and make it easier for people threatened by domestic violence or stalking to get protection from courts and police before violence occurs.

***Against:***

Extending domestic violence protective orders to dating situations could prove ill-advised. For one thing, special laws on domestic violence 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 degree that this focus is lost, the law could be diluted, particularly if efforts to eliminate institutionalized biases in police departments and on the bench are undermined by a premature expansion of the law into controversial areas of protection.

In addition, inclusion of dating relationships raises many issues regarding how to deal with alleged abusers who are juveniles, and thus come under the authority of the probate court and the juvenile code, not the circuit court and the Revised Judicature Act.

Among the questions raised are those regarding how to proceed in juvenile court, how to apply criminal contempt sanctions when jailing is barred for most juveniles, how to proceed in situations where the juvenile alleged abuser is married to the petitioner, and how to deal with a situation when a minor subject to a personal protection order reaches the age of majority.

Problems arising from dating relationships are already partly covered by anti-stalking statutes and by newly-enacted provisions allowing protective orders when the parties have a child in common. Rather than proceed hastily, it would be better to postpone expansion of the law to dating relationships and first resolve the problems presented by such an expansion.

***Response:***

Legislation to address situations involving juveniles will likely receive prompt legislative attention early next year; it even might be possible to remedy jurisdictional and procedural problems before these bills take effect on April 1. To delay the application of protective orders to dating relationships would be to postpone indefinitely the implementation of statutory change with the potential to save lives. Dating violence is a significant problem, as at least four states (California, Colorado, Pennsylvania, and Illinois) have recognized by protecting against dating violence in their domestic violence laws. Michigan should also offer protection.

***For:***

By relaxing requirements for courts to assist people in filling out do-it-yourself injunction forms, House Bill 5805 would ease problems that many county clerks' offices have been experiencing with recently-enacted requirements to assist with those forms (the clerk of the court for the circuit court is the county clerk). Current forms are relatively complex, and many clerks have had to spend a substantial amount of time helping people to complete them. Sometimes extra space has had to be found to accommodate the people, many of whom have small children in tow (one clerk reportedly used personal funds to set up a space with coloring books and crayons). The bill would emphasize the need to simplify the forms while simultaneously allowing clerks' assistance to be provided voluntarily, rather than mandating that such assistance be provided upon request. The bill thus would make forms more usable, ease burdens for counties, and forestall any questions of whether the assistance requirement constituted a mandated state cost for

which the state would be constitutionally required to reimburse counties.

**House Bills 5804, 5805, 5807 and Senate Bills 1265 and 1268 (1-4-95)**