

Act No. 10
Public Acts of 1996
Approved by the Governor
February 7, 1996
Filed with the Secretary of State
February 7, 1996

**STATE OF MICHIGAN
88TH LEGISLATURE
REGULAR SESSION OF 1996**

**Introduced by Senators Hoffman, Geake, Dingell, Gougeon, Shugars, Stille, McManus, Schuette, Byrum,
Peters and Emmons**

ENROLLED SENATE BILL No. 614

AN ACT to amend sections 652, 659, 660, 2530, 2950, and 4012 of Act No. 236 of the Public Acts of 1961, entitled as amended "An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of such courts, and of the judges and other officers thereof; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in said courts; pleading, evidence, practice and procedure in civil and criminal actions and proceedings in said courts; to provide remedies and penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with, or contravening any of the provisions of this act," section 652 as amended by Act No. 66 of the Public Acts of 1982, section 2530 as added by Act No. 297 of the Public Acts of 1982, section 2950 as amended by Act No. 402 of the Public Acts of 1994, and section 4012 as amended by Act No. 346 of the Public Acts of 1994, being sections 600.652, 600.659, 600.660, 600.2530, 600.2950, and 600.4012 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Sections 652, 659, 660, 2530, 2950, and 4012 of Act No. 236 of the Public Acts of 1961, section 652 as amended by Act No. 66 of the Public Acts of 1982, section 2530 as added by Act No. 297 of the Public Acts of 1982, section 2950 as amended by Act No. 402 of the Public Acts of 1994, and section 4012 as amended by Act No. 346 of the Public Acts of 1994, being sections 600.652, 600.659, 600.660, 600.2530, 600.2950, and 600.4012 of the Michigan Compiled Laws, are amended to read as follows:

Sec. 652. As used in sections 651 to 673:

(a) "Contestant" means a person, including a parent, who claims a right to custody or parenting time rights with respect to a child.

(b) "Custody determination" means a court decision and court orders and instructions providing for the custody of a child, including parenting time rights. Custody determination does not include a decision relating to child support or other monetary obligation of a person.

(c) "Custody proceeding" includes proceedings in which a custody determination is 1 of several issues including, but not limited to, an action for divorce or separation and child neglect and dependency proceedings.

(d) "Decree or judgment" or "custody decree or judgment" means a custody determination contained in a judicial decree or order made in a custody proceeding, and includes an initial decree or judgment and a modification decree or judgment.

(e) "Home state" means the state in which the child immediately preceding the time involved lived with his or her parents, a parent, or a person acting as parent, for at least 6 consecutive months, and in the case of a child less than 6 months old the state in which the child lived from birth with any of the persons mentioned. Periods of temporary absence of the named persons are counted as part of the 6-month or other period.

- (f) "Initial decree or judgment" means the first custody decree or judgment concerning a particular child.
- (g) "Modification decree or judgment" means a custody decree or judgment that modifies or replaces a prior decree or judgment, whether made by the court that rendered the prior decree or judgment or by another court.
- (h) "Physical custody" means actual possession and control of a child.
- (i) "Person acting as parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody.
- (j) "State" means a state, territory, or possession of the United States, the Commonwealth of Puerto Rico, and the District of Columbia.

Sec. 659. (1) Each party in a custody proceeding in the party's first pleading or in an affidavit attached to that pleading shall give information under oath as to the child's present address, the places where the child has lived within the last 5 years, and the names and present addresses of the persons with whom the child has lived during that period. In the pleading or affidavit required under this subsection, each party shall further declare under oath whether:

- (a) The party has participated as a party, witness, or in another capacity in other litigation concerning the custody of the same child in this state or any other state.
 - (b) The party has information of a custody proceeding concerning the child pending in a court of this or another state.
 - (c) The party knows of a person not a party to the proceedings who has physical custody of the child or claims to have custody or parenting time rights with respect to the child.
- (2) If the declaration as to 1 or more of the items required under subsection (1) is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and as to other matters pertinent to the court's jurisdiction and the disposition of the case.
- (3) A party has a continuing duty to inform the court of any custody proceeding concerning the child in this or another state regarding which the party obtained information during this proceeding.

Sec. 660. If the court learns from information furnished by the parties under section 659 or from other sources that a person not a party to the custody proceeding has physical custody of the child or claims to have custody or parenting time rights with respect to the child, the court shall order that person to be joined as a party and to be duly notified of the pendency of the proceeding and of that person's joinder as a party. If the person joined as a party is outside this state, the person shall be served with process or otherwise notified in accordance with section 655.

Sec. 2530. (1) Except in any judicial circuit in which employees serving in the circuit court are employees of the state judicial council, the county treasurer shall deposit all fees collected under section 2529(1)(d) in a fund created for that purpose to be known as the friend of the court fund. The county board of commissioners shall appropriate all sums in this fund, and additionally shall annually appropriate from the county general fund an amount not less than the total amount appropriated for the office of the friend of the court in the county's last fiscal year ending before July 1, 1983, for the purpose of fulfilling the statutory obligations of the friend of the court as provided in the friend of the court act, Act No. 294 of the Public Acts of 1982, being sections 552.501 to 552.535 of the Michigan Compiled Laws, and the support and parenting time enforcement act, Act No. 295 of the Public Acts of 1982, being sections 552.601 to 552.650 of the Michigan Compiled Laws.

(2) In a judicial circuit in which employees serving in the circuit court are employees of the state judicial council, the county treasurer shall remit all sums collected under section 2529(1)(d) to the state as provided in section 595(4). Pursuant to section 595(1), the legislature annually shall appropriate the amount received under this subsection for the purpose of fulfilling the statutory obligations of the friend of the court in the third judicial circuit as provided in Act No. 294 of the Public Acts of 1982 and Act No. 295 of the Public Acts of 1982.

Sec. 2950. (1) By commencing an independent action to obtain relief under this section, by joining a claim to an action, or by filing a motion in an action in which the petitioner and the individual to be restrained or enjoined are parties, an individual may petition the circuit court to enter a personal protection order to restrain or enjoin a spouse, a former spouse, an individual with whom he or she has had a child in common, an individual with whom he or she has or has had a dating relationship, or an individual residing or having resided in the same household as the victim from doing 1 or more of the following:

- (a) Entering onto premises.
- (b) Assaulting, attacking, beating, molesting, or wounding a named individual.
- (c) Threatening to kill or physically injure a named individual.
- (d) Removing minor children from the individual having legal custody of the children, except as otherwise authorized by a custody or parenting time order issued by a court of competent jurisdiction.

(e) Beginning April 1, 1996, purchasing or possessing a firearm.

(f) Interfering with petitioner's efforts to remove petitioner's children or personal property from premises that are solely owned or leased by the individual to be restrained or enjoined.

(g) Interfering with petitioner at petitioner's place of employment or engaging in conduct that impairs petitioner's employment relationship or environment.

(h) Any other specific act or conduct that imposes upon or interferes with personal liberty or that causes a reasonable apprehension of violence.

(2) A petitioner may omit his or her address of residence from documents filed with the court under this section. If a petitioner omits his or her address of residence, the petitioner shall provide the court with a mailing address.

(3) The court shall issue a personal protection order under this section if the court determines that there is reasonable cause to believe that the individual to be restrained or enjoined may commit 1 or more of the acts listed in subsection (1). In determining whether reasonable cause exists, the court shall consider all of the following:

(a) Testimony, documents, or other evidence offered in support of the request for a personal protection order.

(b) Whether the individual to be restrained or enjoined has previously committed or threatened to commit 1 or more of the acts listed in subsection (1).

(4) A court shall not issue a personal protection order that restrains or enjoins conduct described in subsection (1)(a) if all of the following apply:

(a) The individual to be restrained or enjoined is not the spouse of the moving party.

(b) The individual to be restrained or enjoined has a property interest in the premises.

(c) The moving party has no property interest in the premises.

(5) A court shall not refuse to issue a personal protection order solely due to the absence of any of the following:

(a) A police report.

(b) A medical report.

(c) A report or finding of an administrative agency.

(d) Physical signs of abuse or violence.

(6) If the court refuses to grant a personal protection order, it shall state immediately in writing the specific reasons it refused to issue a personal protection order. If a hearing is held, the court shall also immediately state on the record the specific reasons it refuses to issue a personal protection order.

(7) A personal protection order shall not be made mutual. Correlative separate personal protection orders are prohibited unless both parties have properly petitioned the court pursuant to subsection (1).

(8) A personal protection order is effective when signed by a judge.

(9) The court shall designate the law enforcement agency that is responsible for entering the personal protection order into the law enforcement information network as provided by the L.E.I.N. policy council act of 1974, Act No. 163 of the Public Acts of 1974, being sections 28.211 to 28.216 of the Michigan Compiled Laws.

(10) A personal protection order shall include all of the following:

(a) A statement that the personal protection order has been entered to restrain or enjoin conduct listed in the order and that violation of the personal protection order will subject the individual restrained or enjoined to immediate arrest and the civil and criminal contempt powers of the court, and that if he or she is found guilty of criminal contempt, he or she shall be imprisoned for not more than 93 days and may be fined not more than \$500.00.

(b) A statement that the personal protection order is effective when signed by a judge and is immediately enforceable.

(c) A statement listing the type or types of conduct enjoined.

(d) An expiration date stated clearly on the face of the order.

(e) A statement that the personal protection order is enforceable anywhere in Michigan by any law enforcement agency.

(f) The law enforcement agency designated by the court to enter the personal protection order into the law enforcement information network.

(g) For ex parte orders, a statement that the individual restrained or enjoined may file a motion to modify or rescind the personal protection order and request a hearing within 14 days after the individual restrained or enjoined has been served or has received actual notice of the order and that motion forms and filing instructions are available from the clerk of the court.

(11) An ex parte personal protection order shall be issued and effective without written or oral notice to the individual restrained or enjoined or his or her attorney if it clearly appears from specific facts shown by verified complaint, written motion, or affidavit that immediate and irreparable injury, loss, or damage will result from the delay

required to effectuate notice or that the notice will itself precipitate adverse action before a personal protection order can be issued.

(12) A personal protection order issued under subsection (11) is valid for not less than 182 days. The individual restrained or enjoined may file a motion to modify or rescind the personal protection order and request a hearing under the Michigan court rules. The motion to modify or rescind the personal protection order shall be filed within 14 days after the order is served or after the individual restrained or enjoined has received actual notice of the personal protection order unless good cause is shown for filing the motion after the 14 days have elapsed.

(13) The court shall schedule a hearing on the motion to modify or rescind the ex parte personal protection order within 14 days after the filing of the motion to modify or rescind.

(14) The clerk of the court that issues a personal protection order shall do both of the following immediately upon issuance and without requiring a proof of service on the individual restrained or enjoined:

(a) File a true copy of the personal protection order with the law enforcement agency designated by the court in the personal protection order.

(b) Provide the petitioner with not less than 2 true copies of the personal protection order.

(15) The clerk of the court shall inform the petitioner that he or she may take a true copy of the personal protection order to the law enforcement agency designated by the court in subsection (9) to be immediately entered into the law enforcement information network.

(16) The law enforcement agency that receives a true copy of the personal protection order under subsection (14) or (15) shall immediately and without requiring proof of service enter the personal protection order into the law enforcement information network as provided by Act No. 163 of the Public Acts of 1974.

(17) A personal protection order issued under this section shall be served personally or by registered or certified mail, return receipt requested, delivery restricted to the addressee at the last known address or addresses of the individual restrained or enjoined or by any other manner provided in the Michigan court rules. A proof of service shall be filed with the clerk of the court issuing the personal protection order. This subsection does not prohibit the immediate effectiveness of a personal protection order or its immediate enforcement under subsections (20) and (21).

(18) The clerk of the court shall immediately notify the law enforcement agency that received the personal protection order under subsection (14) or (15) if either of the following occurs:

(a) The clerk of the court has received proof that the individual restrained or enjoined has been served.

(b) The personal protection order is rescinded, modified, or extended by court order.

(19) The law enforcement agency that receives information under subsection (18) shall enter the information or cause the information to be entered into the law enforcement information network as provided by Act No. 163 of the Public Acts of 1974.

(20) Subject to subsection (21), a personal protection order is immediately enforceable anywhere in this state by any law enforcement agency that has received a true copy of the order, is shown a copy of it, or has verified its existence on the law enforcement information network as provided by Act No. 163 of the Public Acts of 1974.

(21) If the individual restrained or enjoined has not been served, the law enforcement agency or officer responding to a domestic violence call alleging a violation of a personal protection order shall serve the individual restrained or enjoined with a true copy of the order or advise the individual restrained or enjoined of the existence of the personal protection order, the specific conduct enjoined, the penalties for violating the order, and where the individual restrained or enjoined may obtain a copy of the order. The law enforcement officer shall enforce the personal protection order and immediately enter or cause to be entered into the law enforcement information network that the individual restrained or enjoined has actual notice of the personal protection order. If the individual restrained or enjoined has not received notice of the personal protection order, the individual restrained or enjoined shall be given an opportunity to comply with the personal protection order before the law enforcement officer makes a custodial arrest for violation of the personal protection order. The failure to immediately comply with the personal protection order shall be grounds for an immediate custodial arrest. This subsection does not preclude an arrest under section 15 or 15a of chapter IV of the code of criminal procedure, Act No. 175 of the Public Acts of 1927, being sections 764.15 and 764.15a of the Michigan Compiled Laws.

(22) An individual who refuses or fails to comply with a personal protection order is subject to the criminal contempt powers of the court and, if found guilty, shall be imprisoned for not more than 93 days and may be fined not more than \$500.00. The criminal penalty provided for under this section may be imposed in addition to a penalty that may be imposed for another criminal offense arising from the same conduct.

(23) An individual who knowingly and intentionally makes a false statement to the court in support of his or her petition for a personal protection order is subject to the contempt powers of the court.

(24) A personal protection order issued under this section is also enforceable under section 15b of chapter IV of Act No. 175 of the Public Acts of 1927, being section 764.15b of the Michigan Compiled Laws.

(25) A personal protection order issued under this section is also enforceable under chapter 17.

(26) As used in this act:

(a) "Dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional involvement. This term does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context.

(b) "Personal protection order" means an injunctive order issued by the circuit court restraining or enjoining activity and individuals listed in subsection (1).

Sec. 4012. (1) Except for garnishment of a tax refund under section 4061a, and subject to subsection (2), a writ of garnishment of periodic payments remains in effect for the period prescribed by the Michigan court rules.

(2) A garnishee is not liable for a writ of garnishment of periodic payments under subsection (1) to the extent that the garnishee is required to satisfy another writ of garnishment against the same defendant having a higher priority or having the same priority but received at an earlier date. For purposes of this subsection, writs of garnishment have priority in the following order:

(a) A garnishment resulting from an obligation of court ordered support as defined in section 2 of the support and parenting time enforcement act, Act No. 295 of the Public Acts of 1982, being section 552.602 of the Michigan Compiled Laws.

(b) A levy of the state or a governmental unit of the state to satisfy a tax liability.

(c) Any other garnishments, in the order in which they are served.

(3) Except as otherwise provided by statute, a plaintiff shall pay a fee of \$6.00 at the time a writ to the garnishee of garnishment of periodic payments is served upon the garnishee.

(4) As used in this section and section 8410a, "periodic payments" means wages, salary, commissions, and other earnings, land contract payments, rent, and other periodic debt or contract payments that are or become payable during the effective period of the writ of garnishment. Periodic payments do not mean any of the following:

(a) Payments by a financial institution of interest on a deposit account.

(b) Charges made by a financial institution automatically against an account which applies to a debt under an automatic payment authorization executed by the account owner.

(c) Payments made by a financial institution to honor a check or draft or to comply with an account holder's order of withdrawal of funds from an account.

(d) Interest earned on a certificate of deposit that is paid into a deposit account.

Section 2. This amendatory act shall not take effect unless Senate Bill No. 624 of the 88th Legislature is enacted into law.

Section 3. This amendatory act shall take effect June 1, 1996.

This act is ordered to take immediate effect.

Secretary of the Senate.

Clerk of the House of Representatives.

Approved -----

Governor.