



SENATE BILL No. 614

June 15, 1995, Introduced by Senators HOFFMAN, GEAKE, DINGELL, GOUGEON, SHUGARS, STILLE, MC MANUS, SCHUETTE, BYRUM, PETERS and EMMONS and referred to the Committee on Families, Mental Health and Human Services.

A bill to amend sections 652, 659, 660, 2530, 2950, and 4012 of Act No. 236 of the Public Acts of 1961, entitled as amended "Revised judicature act 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.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 652, 659, 660, 2530, 2950, and 4012 of
2 Act No. 236 of the Public Acts of 1961, section 652 as amended by
3 Act No. 66 of the Public Acts of 1982, section 2530 as added by
4 Act No. 297 of the Public Acts of 1982, section 2950 as amended
5 by Act No. 402 of the Public Acts of 1994, and section 4012 as

1 amended by Act No. 346 of the Public Acts of 1994, being
2 sections 600.652, 600.659, 600.660, 600.2530, 600.2950, and
3 600.4012 of the Michigan Compiled Laws, are amended to read as
4 follows:

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

6 (a) "Contestant" means a person, including a parent, who
7 claims a right to custody or ~~visitation~~ PARENTING TIME rights
8 with respect to a child.

9 (b) "Custody determination" means a court decision and court
10 orders and instructions providing for the custody of a child,
11 including ~~visitation~~ PARENTING TIME rights. Custody determina-
12 tion does not include a decision relating to child support or
13 other monetary obligation of a person.

14 (c) "Custody proceeding" includes proceedings in which a
15 custody determination is 1 of several issues INCLUDING, ~~such as~~
16 BUT NOT LIMITED TO, an action for divorce or separation ~~—~~ and
17 ~~includes~~ child neglect and dependency proceedings.

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

22 (e) "Home state" means the state in which the child immedi-
23 ately preceding the time involved lived with his or her parents,
24 a parent, or a person acting as parent, for at least 6 consecu-
25 tive months, and in the case of a child less than 6 months old
26 the state in which the child lived from birth with any of the

1 persons mentioned. Periods of temporary absence of the named
2 persons are counted as part of the 6-month or other period.

3 (f) "Initial decree or judgment" means the first custody
4 decree or judgment concerning a particular child.

5 (g) "Modification decree or judgment" means a custody decree
6 or judgment ~~which~~ THAT modifies or replaces a prior decree or
7 judgment, whether made by the court ~~which~~ THAT rendered the
8 prior decree or judgment or by another court.

9 (h) "Physical custody" means actual possession and control
10 of a child.

11 (i) "Person acting as parent" means a person, other than a
12 parent, who has physical custody of a child and who has either
13 been awarded custody by a court or claims a right to custody.

14 (j) "State" means a state, territory, or possession of the
15 United States, the Commonwealth of Puerto Rico, and the District
16 of Columbia.

17 Sec. 659. (1) ~~Every~~ EACH party in a custody proceeding in
18 ~~his~~ THE PARTY'S first pleading or in an affidavit attached to
19 that pleading shall give information under oath as to the child's
20 present address, the places where the child has lived within the
21 last 5 years, and the names and present addresses of the persons
22 with whom the child has lived during that period. In ~~this~~ THE
23 pleading or affidavit ~~every~~ REQUIRED UNDER THIS SUBSECTION,
24 EACH party shall further declare under oath whether:

25 (a) ~~He~~ THE PARTY has participated as a party, witness, or
26 in another capacity in other litigation concerning the custody of
27 the same child in this state or any other state.

1 (b) ~~He~~ THE PARTY has information of a custody proceeding
2 concerning the child pending in a court of this or another
3 state.

4 (c) ~~He~~ THE PARTY knows of a person not a party to the pro-
5 ceedings who has physical custody of the child or claims to have
6 custody or ~~visitation~~ PARENTING TIME rights with respect to the
7 child.

8 (2) If the declaration as to ~~any~~ 1 OR MORE of the ~~above~~
9 items REQUIRED UNDER SUBSECTION (1) is in the affirmative, the
10 declarant shall give additional information under oath as
11 required by the court. The court may examine the parties under
12 oath as to details of the information furnished and as to other
13 matters pertinent to the court's jurisdiction and the disposition
14 of the case.

15 (3) A party has a continuing duty to inform the court of any
16 custody proceeding concerning the child in this or another state
17 ~~of~~ REGARDING which ~~he~~ THE PARTY obtained information during
18 this proceeding.

19 Sec. 660. If the court learns from information furnished by
20 the parties ~~pursuant to~~ UNDER section 659 or from other sources
21 that a person not a party to the custody proceeding has physical
22 custody of the child or claims to have custody or ~~visitation~~
23 PARENTING TIME rights with respect to the child, ~~it~~ THE COURT
24 shall order that person to be joined as a party and to be duly
25 notified of the pendency of the proceeding and of ~~his~~ THAT
26 PERSON'S joinder as a party. If the person joined as a party is

1 outside this state, ~~he~~ THE PERSON shall be served with process
2 or otherwise notified in accordance with section 655.

3 Sec. 2530. (1) Except in any judicial circuit in which
4 employees serving in the circuit court are employees of the state
5 judicial council, the county treasurer shall deposit all fees
6 collected under ~~sections 2528(1)(f) and 2529(1)(f)~~
7 SECTION 2529(1)(D) in a fund created for that purpose to be known
8 as the friend of the court fund. The county board of commission-
9 ers shall appropriate all sums in this fund, and additionally
10 shall annually appropriate from the county general fund an amount
11 not less than the total amount appropriated for the office of the
12 friend of the court in the county's last fiscal year ending
13 before ~~the effective date of this section~~ JULY 1, 1983, for the
14 purpose of fulfilling the statutory obligations of the friend of
15 the court as provided in the friend of the court act, ACT NO. 294
16 OF THE PUBLIC ACTS OF 1982, BEING SECTIONS 552.501 TO 552.535 OF
17 THE MICHIGAN COMPILED LAWS, and the support and ~~visitation~~
18 PARENTING TIME enforcement act, ACT NO. 295 OF THE PUBLIC ACTS OF
19 1982, BEING SECTIONS 552.601 TO 552.650 OF THE MICHIGAN COMPILED
20 LAWS.

21 (2) In ~~any~~ A judicial circuit in which employees serving
22 in the circuit court are employees of the state judicial council,
23 the county treasurer shall remit all sums collected under section
24 ~~2529(1)(f)~~ 2529(1)(D) to the state ~~—~~ as provided in section
25 595(4). Pursuant to section 595(1), the legislature annually
26 shall appropriate the amount received under this subsection for
27 the purpose of fulfilling the statutory obligations of the friend

1 of the court in the third judicial circuit as provided in ~~the~~
2 ~~friend of the court act and the support and visitation enforce-~~
3 ~~ment act~~ ACT NO. 294 OF THE PUBLIC ACTS OF 1982 AND ACT NO. 295
4 OF THE PUBLIC ACTS OF 1982.

5 Sec. 2950. (1) By commencing an independent action to
6 obtain relief under this section, by joining a claim to an
7 action, or by filing a motion in an action in which the peti-
8 tioner and the individual to be restrained or enjoined are par-
9 ties, an individual may petition the circuit court to enter a
10 personal protection order to restrain or enjoin a spouse, a
11 former spouse, an individual with whom he or she has had a child
12 in common, an individual with whom he or she has or has had a
13 dating relationship, or an individual residing or having resided
14 in the same household as the victim from doing 1 or more of the
15 following:

16 (a) Entering onto premises.

17 (b) Assaulting, attacking, beating, molesting, or wounding a
18 named individual.

19 (c) Threatening to kill or physically injure a named
20 individual.

21 (d) Removing minor children from the individual having legal
22 custody of the children, except as otherwise authorized by a cus-
23 tody or ~~visitation~~ PARENTING TIME order issued by a court of
24 competent jurisdiction.

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

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

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

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

11 (2) A petitioner may omit his or her address of residence
12 from documents filed with the court ~~pursuant to~~ UNDER this
13 section. If a petitioner omits his or her address of residence,
14 the petitioner shall provide the court with a mailing address.

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

21 (a) Testimony, documents, or other evidence offered in sup-
22 port of the request for a personal protection order.

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

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

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

6 (b) The individual to be restrained or enjoined has a prop-
7 erty interest in the premises.

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

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

12 (a) A police report.

13 (b) A medical report.

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

15 (d) Physical signs of abuse or violence.

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

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

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

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

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

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

17 (b) A statement that the personal protection order is effec-
18 tive when signed by a judge and is immediately enforceable.

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

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

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

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

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

7 (11) An ex parte personal protection order shall be issued
8 and effective without written or oral notice to the individual
9 restrained or enjoined or his or her attorney if it clearly
10 appears from specific facts shown by verified complaint, written
11 motion, or affidavit that immediate and irreparable injury, loss,
12 or damage will result from the delay required to effectuate
13 notice or that the notice will itself precipitate adverse action
14 before a personal protection order can be issued.

15 (12) A personal protection order issued under
16 subsection (11) is valid for not less than 182 days. The indi-
17 vidual restrained or enjoined may file a motion to modify or
18 rescind the personal protection order and request a hearing
19 ~~pursuant to~~ UNDER the Michigan court rules. The motion to
20 modify or rescind the personal protection order shall be filed
21 within 14 days after the order is served or after the individual
22 restrained or enjoined has received actual notice of the personal
23 protection order unless good cause is shown for filing the motion
24 after the 14 days have elapsed.

25 (13) The court shall schedule a hearing on the motion to
26 modify or rescind the ex parte personal protection order within
27 14 days after the filing of the motion to modify or rescind.

1 (14) The clerk of the court that issues a personal
2 protection order shall do both of the following immediately upon
3 issuance and without requiring a proof of service on the individ-
4 ual restrained or enjoined:

5 (a) File a true copy of the personal protection order with
6 the law enforcement agency designated by the court in the per-
7 sonal protection order.

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

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

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

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

1 protection order or its immediate enforcement under subsections
2 (20) and (21).

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

6 (a) The clerk of the court has received proof that the indi-
7 vidual restrained or enjoined has been served.

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

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

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

20 (21) If the individual restrained or enjoined has not been
21 served, the law enforcement agency or officer responding to a
22 domestic violence call alleging a violation of a personal protec-
23 tion order shall serve the individual restrained or enjoined with
24 a true copy of the order or advise the individual restrained or
25 enjoined of the existence of the personal protection order, the
26 specific conduct enjoined, the penalties for violating the order,
27 and where the individual restrained or enjoined may obtain a copy

1 of the order. The law enforcement officer shall enforce the
2 personal protection order and immediately enter or cause to be
3 entered into the law enforcement information network that the
4 individual restrained or enjoined has actual notice of the per-
5 sonal protection order. If the individual restrained or enjoined
6 has not received notice of the personal protection order, the
7 individual restrained or enjoined shall be given an opportunity
8 to comply with the personal protection order before the law
9 enforcement officer makes a custodial arrest for violation of the
10 personal protection order. The failure to immediately comply
11 with the personal protection order shall be grounds for an imme-
12 diate custodial arrest. This subsection does not preclude an
13 arrest under section 15 or 15a of chapter IV of the code of crim-
14 inal procedure, Act No. 175 of the Public Acts of 1927, being
15 sections 764.15 and 764.15a of the Michigan Compiled Laws.

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

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

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

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

7 (26) As used in this act:

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

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

16 Sec. 4012. (1) Except for garnishment of a tax refund under
17 section 4061a, and subject to subsection (2), a writ of garnish-
18 ment of periodic payments remains in effect for the period pre-
19 scribed by the Michigan court rules.

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

1 (a) A garnishment resulting from an obligation of court
2 ordered support as defined in section 2 of the support and
3 ~~visitation~~ PARENTING TIME enforcement act, Act No. 295 of the
4 Public Acts of 1982, being section 552.602 of the Michigan
5 Compiled Laws.

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

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

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

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

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

21 (b) Charges made by a financial institution automatically
22 against an account which applies to a debt ~~pursuant to~~ UNDER an
23 automatic payment authorization executed by the account owner.

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

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

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