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SFA

BILL ANALYSIS

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House Bill 5564 (Substitute H-3 as passed by the House)
House Bill 5567 (as passed by the House)
Sponsor: Representative Judith Scranton (House Bill 5564)
Representative Kwame Kilpatrick (House Bill 5567)
House Committee: Judiciary
Senate Committee: Judiciary

Date Completed: 9-14-98

CONTENT

House Bill 5564 (H-3) would amend the juvenile code to provide for the family court's jurisdiction in a proceeding for a personal protection order (PPO) against a person under 18 years old; and to provide for the detention of a juvenile who violated a PPO. House Bill 5567 would amend the Code of Criminal Procedure to allow the warrantless arrest of a juvenile who violated a PPO; and to provide for the family court's jurisdiction to conduct contempt proceedings based upon a juvenile's violation of a PPO.

The bills are tie-barred to each other and to Senate Bills 866 and 874, which would amend the Revised Judicature Act to prohibit a court from issuing a PPO if the respondent were the minor child of the petitioner, or if the petitioner were the minor child of the respondent; and to provide that a person could petition the family court for a PPO. (The Senate bills also are tie-barred to the House bills.)

House Bill 5564 (H-3)

The bill provides that the family division of circuit court (family court) would have jurisdiction over a proceeding under Section 2950 or 2950a of the Revised Judicature Act in which a minor under 18 years of age was the respondent (the person to be enjoined or restrained). (Sections 2950 and 2950a apply to domestic violence PPOs and stalking PPOs, respectively.) Venue for an initial action under either section would be proper in the county in which either the petitioner or the respondent resided. If the respondent did not live in this State, venue for the initial action would be proper in the petitioner's county of residence. ("Venue" refers to the county where a case may be brought.)

If the family court exercised jurisdiction over a child in a PPO proceeding, the court's jurisdiction would continue until the order expired, but action regarding the PPO after the respondent's 18th birthday would not be subject to the juvenile code.

Currently, the court may issue an order authorizing a peace officer or other person designated by the court to apprehend a juvenile under certain circumstances. Under the bill, the court also could issue an order authorizing the apprehension of a juvenile who was alleged to have violated a PPO. In addition, the code provides that any local police officer, sheriff or deputy sheriff, State Police officer, county agent, or probation officer may, without a court order, immediately take into custody any child who is found violating any law or ordinance. The bill would include in this provision a juvenile who was violating or had violated a PPO issued by the family court.

Under the code, if a complaint concerning a child has been made or if a petition has been filed, the family court may order the child to be detained in a facility pending a hearing, or may release the child into the custody of a parent, guardian, or custodian. The bill specifies that this would include a supplemental petition alleging a violation of a PPO. The code also provides that custody, pending a hearing, is limited to certain children. The bill would include children who had allegedly violated a PPO and for whom it appeared there was a substantial likelihood of retaliation or continued violation.

Currently, certain children who are taken into custody may not be detained in a secure facility designed to restrict the movements and activities of juvenile offenders, unless the court finds that a child willfully violated a court order and there is not a less restrictive alternative more appropriate to the child's needs. The bill specifies that this provision would not apply to a child who was at least 17 years old and who was under the family court's jurisdiction pursuant to a supplemental petition on a PPO.

Under the code, a child taken into custody may not be detained in a cell or other secure area of any secure facility designed to incarcerate adults unless the child is under the family court's jurisdiction for an offense that would be a felony if committed by an adult. The bill also would make an exception for a child who was at least 17 and was under the court's jurisdiction pursuant to a supplemental petition on a PPO.

The code provides that in a hearing other than a criminal trial, any person interested in the hearing may demand a jury of six individuals, or the court on its own motion may order a jury of six to try the case. The bill specifies that in a PPO proceeding, a jury could be demanded only on a supplemental petition alleging a violation of the PPO. The bill also would require the court to advise the child that he or she had a right to an attorney at every stage of the proceeding.

The code permits the family court to enter certain orders of disposition that are appropriate for the juvenile and society. These include warning the juvenile and dismissing the petition; placing the juvenile on probation; placing the juvenile in foster care; and committing the juvenile to a private or public institution. The bill provides that a juvenile who was the subject of a supplemental petition on a PPO could be placed in a foster care home. If a juvenile were at least 17 and in violation of a PPO, the court could commit him or her to a county jail within the adult prisoner population. The bill also states that in a family court proceeding for a PPO against a juvenile, this section of the code would apply only to a disposition for a violation of a PPO and subsequent proceedings.

House Bill 5567

The Code of Criminal Procedure permits a peace officer, without a warrant, to arrest an individual and take him or her into custody when the officer has reasonable cause to believe that a PPO has been issued, the individual named in the order is in violation of it, and the PPO states in its face that a violation of its terms subjects the individual to immediate arrest and to criminal contempt of court (and, if guilty of criminal contempt, imprisonment for up to 93 days and a fine of up to \$500). Under the bill, the PPO would have to state that a violation would subject the individual to immediate arrest and either of the following:

- If the individual restrained or enjoined were 17 years of age or older, to criminal contempt of court (subject to the current penalty).
- If the individual restrained or enjoined were under 17, to the dispositional alternatives listed in the juvenile code.

The bill provides that the family court would have jurisdiction to conduct criminal contempt

proceedings based upon a violation of a PPO issued under the juvenile code by the family division of circuit court in any county of this State. The family court that conducted the preliminary hearing would have to notify the court that issued the PPO that the issuing court could request the respondent to be returned to that court for violating the order. If the court that issued the PPO requested that the respondent be returned to stand trial, the requesting court would have to bear the transportation cost.

Under the code, an individual is in violation of a PPO if he or she commits one or more of certain acts that the order specifically restrains or enjoins the individual from committing. These acts include interfering with the petitioner at his or her place of employment or engaging in conduct that impairs the petitioner's employment relationship or environment. The bill also would refer to the petitioner's place of education, or the petitioner's educational relationship or environment.

MCL 710.21 et al. (H.B. 5564)
764.15b & 764.15c (H.B. 5567)

Legislative Analyst: S. Lowe

FISCAL IMPACT

House Bill 5564 (H-3)

The revised enforcement procedures for personal protection orders regarding juveniles would result in additional costs to local units of government. Costs are not determinable.

House Bill 5567

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: B. Bowerman

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.