

HOUSE BILL No. 4470

March 11, 1997, Introduced by Reps. Curtis, Profit, Cropsey, Baade, DeHart, Lowe, Harder, Wetters, McNutt, Dalman, Leland, Jaye and Callahan and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
by amending section 2950 (MCL 600.2950), as amended by 1996 PA
10.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2950. (1) By commencing an independent action to
2 obtain relief under this section, by joining a claim to an
3 action, or by filing a motion in an action in which the peti-
4 tioner and the individual to be restrained or enjoined are par-
5 ties, an individual may petition the circuit court to enter a
6 personal protection order to restrain or enjoin a spouse, a
7 former spouse, an individual with whom he or she has had a child
8 in common, an individual with whom he or she has or has had a
9 dating relationship, or an individual residing or having resided

1 in the same household as the victim from doing 1 or more of the
2 following:

3 (a) Entering onto premises.

4 (b) Assaulting, attacking, beating, molesting, or wounding a
5 named individual.

6 (c) Threatening to kill or physically injure a named
7 individual.

8 (d) Removing minor children from the individual having legal
9 custody of the children, except as otherwise authorized by a cus-
10 tody or parenting time order issued by a court of competent
11 jurisdiction.

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (a) A police report.

24 (b) A medical report.

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

26 (d) Physical signs of abuse or violence.

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

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

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

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

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

21 (a) A statement that the personal protection order has been
22 entered to restrain or enjoin conduct listed in the order and
23 that violation of the personal protection order will subject the
24 individual restrained or enjoined to immediate arrest and the
25 civil and criminal contempt powers of the court, and that if he
26 or she is found guilty of criminal contempt, he or she shall be

1 imprisoned for not more than 93 days and may be fined not more
2 than \$500.00.

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

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

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

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

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

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

20 (11) ~~An~~ EXCEPT AS PROVIDED IN SUBSECTION (12), AN ex parte
21 personal protection order shall be issued and effective without
22 written or oral notice to the individual restrained or enjoined
23 or his or her attorney if it clearly appears from specific facts
24 shown by verified complaint, written motion, or affidavit that
25 immediate and irreparable injury, loss, or damage will result
26 from the delay required to effectuate notice or that the notice

1 will itself precipitate adverse action before a personal
2 protection order can be issued.

3 (12) IF ALL OF THE FOLLOWING CIRCUMSTANCES EXIST, THE COURT
4 SHALL NOT ISSUE AN EX PARTE PERSONAL PROTECTION ORDER AGAINST A
5 RESPONDENT AND SHALL CONDUCT A HEARING ON THE PETITION FOR A PER-
6 SONAL PROTECTION ORDER WITHIN 30 DAYS OF THE DATE THAT THE PETI-
7 TION WAS FILED:

8 (A) THE PETITIONER HAS PREVIOUSLY FILED A PETITION FOR A
9 PERSONAL PROTECTION ORDER AGAINST THE RESPONDENT AND THE PERSONAL
10 PROTECTION ORDER WAS RESCINDED AFTER A HEARING ON A MOTION TO
11 RESCIND.

12 (B) THE RESPONDENT IS AN EMPLOYEE WHO IS REQUIRED TO CARRY A
13 FIREARM IN THE COURSE OF HIS OR HER EMPLOYMENT.

14 (13) ~~(12)~~ A personal protection order issued under
15 subsection (11) is valid for not less than 182 days. The indi-
16 vidual restrained or enjoined may file a motion to modify or
17 rescind the personal protection order and request a hearing under
18 the Michigan court rules. The motion to modify or rescind the
19 personal protection order shall be filed within 14 days after the
20 order is served or after the individual restrained or enjoined
21 has received actual notice of the personal protection order
22 unless good cause is shown for filing the motion after the 14
23 days have elapsed.

24 (14) ~~(13) The~~ EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSEC-
25 TION, THE court shall schedule a hearing on the motion to modify
26 or rescind the ex parte personal protection order within 14 days
27 after the filing of the motion to modify or rescind. IF THE

1 RESPONDENT IS A LAW ENFORCEMENT OFFICER AND THE PERSONAL
2 PROTECTION ORDER PROHIBITS HIM OR HER FROM PURCHASING OR POSSESS-
3 ING A FIREARM, THE COURT SHALL SCHEDULE A HEARING ON THE MOTION
4 TO MODIFY OR RESCIND THE EX PARTE PERSONAL PROTECTION ORDER
5 WITHIN 5 DAYS AFTER THE FILING OF THE MOTION TO MODIFY OR
6 RESCIND.

7 (15) ~~(14)~~ The clerk of the court that issues a personal
8 protection order shall do both of the following immediately upon
9 issuance and without requiring a proof of service on the individ-
10 ual restrained or enjoined:

11 (a) File a true copy of the personal protection order with
12 the law enforcement agency designated by the court in the per-
13 sonal protection order.

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

16 (16) ~~(15)~~ The clerk of the court shall inform the peti-
17 tioner that he or she may take a true copy of the personal pro-
18 tection order to the law enforcement agency designated by the
19 court in subsection (9) to be immediately entered into the law
20 enforcement information network.

21 (17) ~~(16)~~ The law enforcement agency that receives a true
22 copy of the personal protection order under subsection ~~(14)~~ or
23 (15) OR (16) shall immediately and without requiring proof of
24 service enter the personal protection order into the law enforce-
25 ment information network as provided by ~~Act No. 163 of the~~
26 ~~Public Acts of 1974~~ THE L.E.I.N. POLICY COUNCIL ACT OF 1974,
27 1974 PA 163, MCL 28.211 TO 28.216.

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1 (18) ~~-(17)-~~ A personal protection order issued under this
2 section shall be served personally or by registered or certified
3 mail, return receipt requested, delivery restricted to the
4 addressee at the last known address or addresses of the individ-
5 ual restrained or enjoined or by any other manner provided in the
6 Michigan court rules. A proof of service shall be filed with the
7 clerk of the court issuing the personal protection order. This
8 subsection does not prohibit the immediate effectiveness of a
9 personal protection order or its immediate enforcement under sub-
10 sections ~~-(20)-~~ (21) and ~~-(21)-~~ (22).

11 (19) ~~-(18)-~~ The clerk of the court shall immediately notify
12 the law enforcement agency that received the personal protection
13 order under subsection ~~-(14)-or-~~ (15) OR (16) if either of the
14 following occurs:

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

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

19 (20) ~~-(19)-~~ The law enforcement agency that receives infor-
20 mation under subsection ~~-(18)-~~ (19) shall enter the information
21 or cause the information to be entered into the law enforcement
22 information network as provided by ~~Act No. 163 of the Public~~
23 ~~Acts of 1974-~~ THE L.E.I.N. POLICY COUNCIL ACT OF 1974, 1974 PA
24 163, MCL 28.211 TO 28.216.

25 (21) ~~-(20)-~~ Subject to subsection ~~-(21)-~~ (22), a personal
26 protection order is immediately enforceable anywhere in this
27 state by any law enforcement agency that has received a true copy

1 of the order, is shown a copy of it, or has verified its
2 existence on the law enforcement information network as provided
3 by ~~Act No. 163 of the Public Acts of 1974~~ THE L.E.I.N. POLICY
4 COUNCIL ACT OF 1974, 1974 PA 163, MCL 28.211 TO 28.216.

5 (22) ~~(21)~~ If the individual restrained or enjoined has not
6 been served, the law enforcement agency or officer responding to
7 a domestic violence call alleging a violation of a personal pro-
8 tection order shall serve the individual restrained or enjoined
9 with a true copy of the order or advise the individual restrained
10 or enjoined of the existence of the personal protection order,
11 the specific conduct enjoined, the penalties for violating the
12 order, and where the individual restrained or enjoined may obtain
13 a copy of the order. The law enforcement officer shall enforce
14 the personal protection order and immediately enter or cause to
15 be entered into the law enforcement information network that the
16 individual restrained or enjoined has actual notice of the per-
17 sonal protection order. If the individual restrained or enjoined
18 has not received notice of the personal protection order, the
19 individual restrained or enjoined shall be given an opportunity
20 to comply with the personal protection order before the law
21 enforcement officer makes a custodial arrest for violation of the
22 personal protection order. The failure to immediately comply
23 with the personal protection order shall be grounds for an imme-
24 diate custodial arrest. This subsection does not preclude an
25 arrest under section 15 or 15a of chapter IV of the code of crim-
26 inal procedure, ~~Act No. 175 of the Public Acts of 1927, being~~

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1 ~~sections 764.15 and 764.15a of the Michigan Compiled Laws~~ 1927
2 PA 175, MCL 764.15 AND 764.15A.

3 (23) ~~-(22)-~~ An individual who refuses or fails to comply
4 with a personal protection order is subject to the criminal con-
5 tempt powers of the court and, if found guilty, shall be impris-
6 oned for not more than 93 days and may be fined not more than
7 \$500.00. The criminal penalty provided for under this section
8 may be imposed in addition to a penalty that may be imposed for
9 another criminal offense arising from the same conduct.

10 (24) ~~-(23)-~~ An individual who knowingly and intentionally
11 makes a false statement to the court in support of his or her
12 petition for a personal protection order is subject to the con-
13 tempt powers of the court.

14 (25) ~~-(24)-~~ A personal protection order issued under this
15 section is also enforceable under section 15b of chapter IV of
16 ~~Act No. 175 of the Public Acts of 1927, being section 764.15b of~~
17 ~~the Michigan Compiled Laws~~ THE CODE OF CRIMINAL PROCEDURE, 1927
18 PA 175, MCL 764.15B.

19 (26) ~~-(25)-~~ A personal protection order issued under this
20 section is also enforceable under chapter 17.

21 (27) ~~-(26)-~~ As used in this ~~act~~ SECTION:

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

1 (B) "LAW ENFORCEMENT OFFICER" MEANS A PERSON WHO IS
2 REGULARLY EMPLOYED AS A MEMBER OF A DULY AUTHORIZED POLICE AGENCY
3 OR OTHER ORGANIZATION OF THE UNITED STATES, THIS STATE, OR A
4 CITY, COUNTY, TOWNSHIP, OR VILLAGE OF THIS STATE, AND WHO IS
5 RESPONSIBLE FOR THE PREVENTION AND DETECTION OF CRIME AND THE
6 ENFORCEMENT OF THE GENERAL CRIMINAL LAWS OF THIS STATE.

7 (C) ~~(b)~~ "Personal protection order" means an injunctive
8 order issued by the circuit court restraining or enjoining activ-
9 ity and individuals listed in subsection (1).