

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 1282 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Shirley Johnson
Committee: Judiciary

Date Completed: 8-31-00

RATIONALE

Public Act 44 of 1961 provides for the release of misdemeanor prisoners on interim bond deposited by the prisoners with the arresting officer, or on their own recognizance, in certain circumstances. Out of concerns that perpetrators of domestic violence might have been released too quickly, before they had a "cooling off" period, Public Act 308 of 1990 amended Public Act 44 to prohibit or delay the release of misdemeanor prisoners on interim bond or their own recognizance in cases of domestic assault. Testimony before a Senate committee in 1990 revealed that domestic assaults are often repeated, especially in cases in which the offender is released from custody after a relatively short amount of time. The 1990 amendments to Public Act 44 provide that a person arrested for domestic assault must be held until he or she can be brought before a magistrate for arraignment or, if a magistrate is not available or immediate trial cannot be held within 24 hours, the person must be held for 20 hours, after which he or she may be released on interim bond or on his or her own recognizance.

In subsequent years, due to a growing public awareness of the problem of domestic violence, many new provisions regarding that issue were enacted in Michigan. In 1994, for instance, 22 laws were passed to address domestic violence, including laws that created personal protection orders (PPOs), which are civil injunctions that carry criminal penalties and specifically pertain to cases of domestic violence and stalking. The 1994 PPO legislation, however, did not address the release-on-bond provisions of Public Act 44 for those arrested for domestic assault.

In the fall of 1995, the Prosecuting Attorneys Association of Michigan (PAAM) and the Domestic Violence Prevention and Treatment Board met to discuss implementation of the domestic violence laws enacted in 1994. The two groups agreed to form and co-chair a statewide, multidisciplinary task force to gather information on the problems and successes encountered in implementing the new

laws and to make recommendations for statutory and court rule changes, police policies, training needs, form changes, and other practices. In July 1996, the task force issued its report, including recommendations for statutory changes. Many of these recommendations, which encompass such topics as access to information, procedural revisions, and the provision of assistance in obtaining a PPO, have been enacted. Another recommendation put forth by the task force was that a person arrested for domestic assault should not be released on bond or on his or her own recognizance until he or she has been arraigned or interim bond has been set by a judicial officer, and that any bond include conditions prohibiting the arrested person from having any contact with the victim.

CONTENT

The bill would amend Public Act 44 of 1961 to establish restrictions on an interim bond set by a judge or district court magistrate for a person arrested for domestic assault, and to make other revisions pertaining to the interim bond process. Under the bill, a person arrested for domestic assault could not be released on interim bond to a police officer, could not be released prior to appearing before a judge or magistrate, and could be released only on the condition that he or she have no contact with the victim. The bill includes an effective date of July 1, 2000.

Overview of the Act

Under Public Act 44, if a person is arrested without a warrant for a misdemeanor or a local ordinance violation, and the offense is punishable by not more than one year's imprisonment, the arresting officer must take the person, without delay, before the most convenient magistrate to answer the complaint. If a magistrate is not available or immediate trial cannot be had, the person arrested may deposit an interim bond with the arresting officer or his or her direct supervisor or department, or with the sheriff in

charge of the county jail if the person is lodged in the jail, in order to guarantee his or her appearance.

A person arrested with or without a warrant for simple or aggravated assault in a domestic situation, however, may not be released on an interim bond or on his or her own recognizance. Instead, the person must be held until he or she can be brought before a magistrate for arraignment. If a magistrate is not available or immediate trial cannot be held within 24 hours, the person must be held for 20 hours, after which he or she may be released on an interim bond payable to a law enforcement officer or on his or her own recognizance.

Domestic Assault Restrictions

Under the bill, a person arrested for domestic assault would have to be held until he or she could be arraigned or have interim bond set by a judge or district court magistrate. If a judge or magistrate set interim bond, the person could be released only subject to the condition that he or she not have or attempt to have contact of any kind with the victim. If a judge or magistrate released a person subject to protective conditions, the judge or magistrate would have to inform the person, on the record, either orally or by a writing personally delivered to the person, of the specific conditions imposed and that if the person violated a condition of release, he or she would be subject to arrest without a warrant and could have his or her bond forfeited or revoked and new conditions of release imposed, in addition to any other penalties that could be imposed if he or she were found in contempt of court.

An order or amended order issued under this provision would have to contain all of the following:

- A statement of the person's full name.
- A statement of the person's height, weight, race, sex, date of birth, hair color, eye color, and any other identifying information the judge or magistrate considered appropriate.
- A statement of the date the conditions became effective.
- A statement of the date on which the order would expire.
- A statement of the conditions imposed.

The judge or magistrate immediately would have to direct in writing that a law enforcement agency within the court's jurisdiction enter the order or amended order into the Law Enforcement Information Network (LEIN). If the order or amended order were rescinded, the judge or magistrate immediately would have to order the law enforcement agency to remove it from the LEIN. A law enforcement agency within the court's jurisdiction immediately would have to enter an order or amended order into the LEIN, as

provided in the LEIN Policy Council Act, or remove it from the LEIN upon expiration of the order or as directed by the court.

The bill states that it would not limit the authority of judges or district court magistrates to impose protective or other release conditions under other applicable statutes or court rules.

Other Revisions

The Act provides that, if in the opinion of the arresting officer or department, an arrested person is under the influence of liquor or a controlled substance, is wanted by police authorities to answer another charge, or is unable to establish or demonstrate his or her identity, or if it is otherwise unsafe to release the person, the arrested person must be held until he or she is in a proper condition to be released or until the next session of court. The bill would extend that provision to a person arrested for a misdemeanor violation of operating a motor vehicle while under the influence of, or while impaired by, liquor or a controlled substance.

MCL 780.581 & 780.582a

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bill is the result of one of the recommendations made by a task force that examined PPOs and was co-chaired by the Domestic Violence Prevention and Treatment Board and the Prosecuting Attorney's Association of Michigan. Personal protection orders are a valuable tool in providing for the safety of some people, who have been or likely will be victims of domestic violence. The task force's study of the issue, however, uncovered some flaws that the bill, along with other 1999-2000 legislation, would help to correct. While not directly providing for the issuance of a PPO, the bill would require that a person charged with domestic assault and released on interim bond or recognizance comply with a condition that he or she have no contact with the victim. This would help to protect the victim from further abuse and would make it easier for a court to order the alleged abuser to stay away from the victim, because he or she would not have to petition the court for the protection, which a victim must do to obtain a PPO.

Also, the release of a person charged with domestic

A9900's1282a

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.

assault would have to be granted by a judge or court magistrate, rather than by a police officer. This would ensure that the court was immediately aware of the charges and implemented the no-contact condition of release.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill would have an indeterminate impact on local units of government. The potential impact on jail time cannot be estimated.

Fiscal Analyst: B. Bowerman