



**House
Legislative
Analysis
Section**

House Office Building, 9 South
Lansing, Michigan 48909
Phone: 517/373-6466

**REVISE DOMESTIC VIOLENCE
PROVISIONS**

**Senate Bill 723 as passed by the Senate
Sponsor: Sen. Shirley Johnson**

**Senate Bill 725 with House committee
amendment
Sponsor: Sen. Ken Sikkema**

**Senate Bill 731 as passed by the Senate
Sponsor: Sen. William Van Regenmorter**

**Senate Bill 735 (Substitute H-1)
Sponsor: Sen. Bill Bullard, Jr.**

**Senate Bill 736 with House committee
amendment
Sponsor: Sen. Martha G. Scott**

**House Committee: Criminal Justice
Senate Committee: Judiciary**

First Analysis (12-5-01)

THE APPARENT PROBLEM:

Despite a growing public awareness about domestic violence and its consequences for family members and society as a whole, and despite the enactment of various laws aimed at reducing domestic violence and providing shelter and services to victims of abuse, domestic violence continues at an alarming rate. For some time, procedures for law enforcement response to domestic violence have been tinkered with in an effort to create a more consistent and effective means of dealing with domestic violence. In 1994, 22 new domestic violence laws were passed by Michigan's legislature. Then, in 1999, several public acts incorporated recommendations proposed by a statewide, multi-disciplinary task force co-chaired by the Prosecuting Attorneys Association of Michigan (PAAM) and the Domestic Violence Prevention and Treatment Board (DVPTB) housed within the Family Independence Agency.

However, despite these efforts, domestic violence has continued to plague the state. According to a recent *Detroit News* story, thousands of women and children were hurt or traumatized by domestic violence incidents in Michigan in 1999, and at least 100

women were killed. Acknowledging both the strides already made against domestic violence and the work yet to be done, Governor Engler convened the Homicide Prevention Task Force in October 2000. Chaired by Lt. Governor Dick Posthumus, the mission of the task force was to stop homicides that resulted from domestic violence.

To that end, PAAM and the DVPTB once again joined with domestic violence stakeholders to assess the current status of domestic violence laws and programs, and to identify areas of concern. In April of this year, the task force released its report and recommendations. Included in the issues discussed was a recommendation to include the term "dating relationship" in the definition of domestic violence incidents.

Though "dating relationship" is currently included in the definition of "domestic relationships" for purposes of obtaining personal protection orders, it is not included in the definition of domestic violence incidents in regard to charging domestic relationship assault or assault and battery, nor is it included in

Senate Bills 723, 725, 731 and 735-736 (12-5-01)

various domestic violence reports filed by peace officers. This is an unfortunate oversight, as abusive behaviors in dating relationships can be just as brutal and just as lethal as in present or past marriage relationships or where there has been a child in common. The Domestic Violence Homicide Prevention Task Force targeted this issue as a prime concern in its report and recommendations on preventing homicides associated with domestic violence.

Several bills, which are part of a larger package of bills to implement the task force's recommendations, have been introduced to address some of the issues identified by the task force.

THE CONTENT OF THE BILLS:

The bill package incorporates several of the recommendations of the Domestic Violence Homicide Prevention Task Force. The bills, with the exception of Senate Bill 736, would take effect April 1, 2002. Senate Bill 736 would take effect October 1, 2002. Specifically, the bills would do the following:

Senate Bill 723. Under the Michigan Penal Code, a non-domestic violence related assault or assault and battery is a misdemeanor punishable by not more than 90 days imprisonment or a fine of not more than \$500, or both. The bill would amend the code (MCL 750.81) to increase the term of imprisonment for a non-relational assault or assault and battery to not more than 93 days. (This would make the penalty for a non-relational assault or assault and battery the same as the penalty for a domestic violence assault or assault and battery. In addition, crimes with 93 days maximum penalties allow police officers to make arrests based upon probable cause – without a warrant – even if they do not witness the domestic violence actually being committed.)

A relational assault or assault and battery (domestic violence) occurs when an individual assaults or assaults and batters a spouse or former spouse, an individual with whom he or she has a child in common, or a resident or former resident of his or her household. The bill would include those crimes committed against a person with whom the offender had or has had a dating relationship. "Dating relationship" would mean frequent, intimate associations primarily characterized by the expectation of affectional involvement, but would not include a casual relationship or an ordinary fraternization between two individuals in a business or social context.

Further, under the code, a person who commits domestic violence and who has been previously convicted of domestic violence or certain assaultive crimes is subject to increased penalties. The bill would amend the code to include a domestic violence conviction or certain assault convictions that occurred in another state (or a violation of a local ordinance of another state) as a conviction that would count as a prior offense for purposes of determining whether the person would be subject to the penalty for a second or subsequent domestic violence offense.

(The penalty for a first domestic offense is a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500, or both. A second offense carries a fine of not more than \$1,000, imprisonment for not more than one year, or both. A third or subsequent domestic violence conviction results in a felony punishable by imprisonment for not more than two years, a fine of not more than \$2,500, or both.)

Senate Bill 725. Under the Revised Judicature Act, a motion can be made to seal the court record of certain actions. The bill would amend the act (MCL 600.2972) to require a court – when determining whether to seal the records in a civil or criminal matter involving domestic violence – to consider the safety of any alleged victim or potential victim of the domestic violence. "Domestic violence" is defined in Section 1 of Public Act 389 of 1978 (MCL 400.1501).

Senate Bill 731 would amend the Code of Criminal Procedure (MCL 764.15c). Currently, after investigating or intervening in a domestic violence incident, a peace officer is required to prepare a domestic violence report. The bill would amend the definition of "domestic violence incident" to include a crime committed by an individual against an individual with whom he or she had or has had a dating relationship. (The act defines "dating relationship" as meaning that term as defined in the domestic violence act, Public Act 389 of 1978, MCL 400.1501.) By June 1, 2002, the Department of State Police would have to develop a standard domestic violence incident report form, which peace officers would use to file such reports. The new forms, or a substantially similar form, would have to be used by the peace officers as of October 1, 2002.

Senate Bill 735. The bill would amend the Code of Criminal Procedure (MCL 764.9c et al.) to add "aggravated assault" to the definition of "assaultive crimes" for which a defendant convicted of an

assaultive crime awaiting sentence (or sentenced to a term of imprisonment but who had filed an appeal or application of leave to appeal) must be detained unless he or she were found by clear and convincing evidence to not be likely to pose a danger to others and, in the case of an appeal, the appeal raised a substantial question of law or fact.

In addition, the code prohibits a police officer from issuing an appearance ticket to a person arrested for relational or nonrelational assault, assault and battery, or aggravated assault, if the victim of the offender is the offender's spouse, an individual who has had a child in common with the offender, or an individual who resides or has resided in the same household as the offender. The bill would amend the code to include an incident involving a victim with whom the offender had or has had a dating relationship. "Dating relationship" would mean frequent, intimate associations primarily characterized by the expectation of affectional involvement, but would not include a casual relationship or an ordinary fraternization between two individuals in a business or social context. Similar changes would be made to a provision pertaining to a warrantless arrest for relational assault, assault and battery, or aggravated assault and also to a provision pertaining to a discharge and dismissal for a first-time offender for a charge of relational assault, assault and battery, or aggravated assault.

Further, the code allows a court to require, as part of the sentence for a conviction of certain offenses, the defendant to reimburse the state or a local unit of government for expenses incurred in relation to the incident including, but not limited to, expenses for an emergency response and expenses for prosecuting the person. The bill would add to the list of offenses for which these costs can be assessed a finding of guilt for criminal contempt for a violation of a personal protection order issued under Section 2950 or 2950a of the Revised Judicature Act (RJA), which pertain to nonrelational and relational stalking, or for a violation of a PPO issued by other states that satisfy the conditions for validity as provided under Section 2950i of the RJA.

Senate Bill 736. The bill would amend the Friend of the Court Act (MCL 552.519). Currently, the state Friend of the Court Bureau is required to provide training programs for the Friend of the Court, domestic relations mediators, and employees of the office to better enable them to carry out the duties described in the act and Supreme Court Rules. The bill would require the training programs to include training in the dynamics of domestic violence and in

handling domestic relations matters that have a history of domestic violence.

HOUSE COMMITTEE ACTION:

The committee amended several bills in the package as follows:

Senate Bill 725. The committee amended the bill to require that a court consider the safety of a victim of domestic violence when considering a motion to seal court records in domestic violence-related matters rather than using the safety of the victim in determining whether good cause for sealing the court records has been shown.

Senate Bill 735. The committee adopted a substitute bill that would allow a court to require a person convicted of criminal contempt for a violation of a PPO issued under provisions of the Revised Judicature Act, or issued in another state but that satisfies the conditions for validity under the RJA, to reimburse a governmental unit for certain expenses related to the incident.

Senate Bill 736. The committee adopted an amendment to set an October 1, 2002 effective date.

BACKGROUND INFORMATION:

Senate Bills 723, 725, 731, and 735 are virtually identical to the House-passed versions of House Bills 5281, 5269, 5374, and 5279, respectively.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bills would have the following fiscal implications:

Senate Bill 723 could increase state or local correctional costs depending on the numbers and types of convictions obtained. There are no data to indicate the extent to which local costs could increase under the bill; however, any increase in state costs is likely to be minimal because data indicate that there were no felony dispositions for domestic assault or aggravated domestic assault in 1999. In addition, the provision to establish a non-domestic assault and battery offense as a 93-day misdemeanor would trigger state police fingerprinting and recordkeeping requirements; therefore, the bill could increase costs for the Department of State Police by an unknown amount. Further, to the extent that the bill increased collections of penal fines, it would increase penal fine revenues going to local libraries, which are the

constitutionally designated recipients of penal fine revenue. (12-3-01)

Senate Bill 725 would have no fiscal impact on either state or local units of government. (12-3-01)

Senate Bill 731 is not expected to significantly affect costs for the Department of State Police by requiring the department to develop a standard domestic violence incident report. (12-4-01)

Senate Bill 735 could increase local correctional costs to the extent that offenders convicted of aggravated stalking remained in jail instead of being released on bail. The provision forbidding an appearance ticket from being issued for assault against someone with whom a person has or has had a dating relationship could increase local correctional costs to the extent that offenders who might have received appearance tickets were instead detained. Further, allowing warrantless arrest for an assault in which the offender had or has had a dating relationship with the victim would not have a direct fiscal impact, but could increase local correctional costs for detaining domestic violence offenders. The provision extending domestic violence “discharge and dismissal” provisions would have no direct fiscal impact. Additional revenues for affected units of government could be provided by the bill’s provision to allow a court to order an offender governmental expenses and costs of prosecution in cases involving criminal contempt violations of PPOs. (12-4-01)

Senate Bill 736 would increase costs for the Friend of the Court training programs. Based on information from the State Court Administrative Office, the estimated costs of training (using 199 FOC employees annually) would be approximately \$22,900. (12-3-01)

ARGUMENTS:

For:

The package as a whole incorporates several of the recommendations made by the governor’s task force. The purpose of the task force was to scrutinize current law and programs relating to domestic violence with the goal of reducing and even eliminating homicides arising from domestic violence incidents. The bill package would not plug all the holes in current law and domestic violence programs, but it does represent another important step in working toward that goal. Enacting appropriate laws is a work in progress. As problems are identified, and as technological advances and the development

of effective domestic violence programs are created, laws need to be adjusted to incorporate the new developments.

For:

Senate Bill 723 would make several significant changes to current law. First, the bill would require that out-of-state domestic violence convictions be counted when determining if an abuser is subject to an increased penalty for a repeat violation, and would include incidents in which the offender and victim were dating or had dated. Domestic violence is a crime of repetition. Many abusers arrested for domestic violence have previous domestic violence convictions in other states. Under current law, however, only Michigan convictions are counted when a prosecutor is determining whether to charge an abuser with a first, second, third, or subsequent offense. There are precedents in Michigan law regarding the use of out-of-state convictions to charge a person as a repeat offender, such as the drunk driving laws. The intent is not to be overly punitive, but to hold perpetrators of domestic violence accountable for their actions and to protect victims and potential victims from further abuse. In addition, the bill would include dating relationships in the definition of domestic violence-related assault and assault and battery.

In another significant change, the bill would make non-relational assault or assault and battery a 93-day misdemeanor, meaning that a conviction could result in imprisonment for up to 93 days. This is important because a 93-day penalty allows for a warrantless arrest based on probable cause and also triggers statutory fingerprinting and criminal reporting requirements. When a person is arrested for an offense carrying a penalty exceeding 92 days, he or she is fingerprinted and the fingerprints are sent to the Criminal Records Division of the Department of State Police and the Federal Bureau of Investigation. This provides for better tracking of offenders across state lines as the fingerprints would be entered into the national fingerprint database.

Though this amendment affects penalties for assault or assault and battery not associated with domestic violence, it is nonetheless a violent crime and one that should be treated seriously. In addition, many perpetrators of non-relational misdemeanor assault or assault and battery go on to commit more serious assaultive crimes. By triggering the fingerprinting requirements, repeat offenders can be accurately identified. Further, it is not uncommon for arrestees to give an alias or use false identification. The only way to accurately identify a person is by his or her

fingerprint. Having the fingerprints on file of persons convicted of misdemeanor assault or assault and battery will also identify those having a record of assault or assault and battery for purposes of employment for jobs that require criminal background checks.

For:

Quite often, a victim of domestic violence must hide from her or his abuser in order to protect herself or himself, or any children involved, from further abuse. At times, the abuse can be so severe and so unrelenting that the victim may need to find a new job, move to a new city, or even move to a new state. The safety of such a person can be compromised if the abuser discovers the new residence or new workplace that the victim has established. Sometimes, the abuser uses information in court records to locate the victim. There are many stories of abusers showing up at what was thought to be a safe house, or showing up at a victim's new place of employment, and injuring or killing not only the victim, but also relatives, friends, or coworkers who simply happened to be there at the time. Senate Bill 725 would provide needed protection to victims of domestic violence by allowing a judge to seal court records related to any criminal or civil action involving domestic violence in order to protect the safety of the victim or potential victims.

For:

Senate Bill 735 would address the problem of a person previously convicted of aggravated stalking being released on bail during the time between a conviction on the charges of violating a domestic violence or stalking PPO and sentencing, and an offender being released on bail while appealing a conviction of violating a PPO. This bill is important because stalking, as well as domestic violence, has a repetitive element. Often, an arrest or a conviction for a stalking or domestic violence PPO violation is enough to evoke yet another attack on the victim. This makes the time between conviction and sentencing for a violation or before a ruling on an appeal a particularly dangerous time for the victim. The bill would increase protection to petitioners of PPOs by denying bail to offenders who have been convicted of aggravated stalking if there is evidence that the abuser poses a danger to others.

The bill would also permit a court to require a person who was convicted of violating a PPO to reimburse state or local units of government for certain costs associated with his or her arrest and prosecution. The purpose of a PPO is to eliminate further violence by

keeping the parties separated. A person who deliberately chooses to violate a PPO should be held financially responsible for the costs associated with his or her prosecution, as well as any medically necessary emergency care that resulted from another act of violence. With so many deaths and serious injuries associated with PPO violations, it is time that abusers, law enforcement agencies, and courts recognize the importance of complying with and enforcing PPOs.

For:

Domestic violence is not limited to assaults on spouses or former spouses. Many people live together or date for many years without marrying. Also, not all of these relationships produce a child in common. Further, domestic violence is not only the domain of long-term relationships, but can also be exhibited within weeks or months of the beginning of a romantic involvement. Without intervention, domestic violence is a repetitive crime. If a person abuses someone that they are dating, the abuse is likely to continue for as long as the couple stays together, and the abuser is likely to continue abusive behaviors in any future relationships. Currently, the domestic violence laws cover current and former marriage relationships or relationships that produced a child in common. By including "dating relationships", a person can be charged with domestic assault or assault and battery, which can carry a stiffer penalty than simple assault or assault and battery. Therefore, including dating relationships in what defines a domestic violence incident is an important protection for victims of domestic assault, and provides proper accountability for those who would abuse people with whom they are having or have had a relationship.

For these reasons, the Domestic Violence Homicide Prevention Task Force has recommended that a current or former dating relationship be included in the definition of domestic relationship for purposes of charging domestic relationship assault, assault and battery, or aggravated assault; mandatory report writing; and so forth. Abusive behaviors in dating relationships can be just as brutal or lethal as in past or present marital relationships, relationships that have a child in common, or relationships between residents or former residents of the same household. Therefore, an individual who is violent toward a person he or she is dating or has dated should be subject to the same penalties. Senate Bills 731 and 735 would incorporate several of the Task Force's recommendations by amending provisions pertaining to inclusion of incidents involving dating relationships in domestic violence reports and denial

of an appearance ticket to a person arrested for relational assault, assault and battery, or aggravated assault; warrantless arrests for relational assault; and eligibility for discharge and dismissal for a first offense of relational assault, assault and battery, or aggravated assault.

For:

Senate Bill 736 will provide much needed training in domestic violence matters to county Friend of the Court employees and domestic relations mediators to improve their ability to carry out duties described in the Friend of the Court Act and in Supreme Court rules. Since these people are on the front lines in dealing with victims and perpetrators of domestic violence, it is imperative that they be properly trained in the dynamics involved in domestic violence.

POSITIONS:

The Office of the Governor supports the bills. (11-19-01)

The Michigan State Police Troopers Association supports SB 723. (11-26-01)

The Michigan Coalition Against Domestic and Sexual Violence generally supports the concept of the bills. (11-19-01)

The National Organization for Women/Michigan strongly supports the bills in concept. (11-19-01)

The Prosecuting Attorneys Association of Michigan (PAAM) supports the concept of the bills. (12-4-01)

The Michigan Advocacy Project supports Senate Bill 723. (12-3-01)

Representatives from the National Council of Jewish Women indicated support for the bill package. (10-23-01)

Analyst: S. Stutzky

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.