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REVISE DV AND NONRELATIONAL ASSAULT PROVISIONS

House Bill 5269 as passed by the House
Sponsor: Rep. William McConico

House Bill 5273 as passed by the House
Sponsor: Rep. Laura M. Toy

House Bill 5278 as passed by the House
Sponsor: Rep. Bruce Patterson

House Bill 5279 as passed by the House
Sponsor: Rep. Gary Woronchak

House Bill 5281 as passed by the House
Sponsor: Rep. Scott Hummel

Committee: Criminal Justice
Second Analysis (12-4-01)

House Bills 5269, 5273, 5278-5279 and 5281 (12-4-01)

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. A package of bills has been proposed 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 would take effect April 1, 2002. Specifically, the bills would do the following:

House Bill 5269. 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 good cause for sealing the records had been shown 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).

House Bill 5273. The Revised Judicature Act regulates the issuance of personal protection orders. A person may petition the circuit court for a personal protection order (PPO) that restrains or bars another person from engaging in certain conduct. If a court refuses a petition to issue a PPO to restrain an individual from engaging in behavior prohibited under Section 411h (stalking) or Section 411i (aggravated stalking) of the Michigan Penal Code, the court must immediately state in writing the specific reasons the petition was refused. House Bill 5273 would amend the act (MCL 600.2950a) to require a court to immediately state in writing the specific reasons for either issuing or refusing to issue a stalking personal protection order. (Stalking that is related to domestic violence can be enjoined by a domestic violence PPO provided under MCL 600.2950.) Further, the bill would prohibit a court from issuing a PPO to restrain or enjoin an individual less than 10 years of age.

House Bill 5278. Under the handgun licensure act (MCL 28.422b), the Department of State Police (DSP) is required, upon entry of an order or disposition into the Law Enforcement Information Network (LEIN), to send a written notice to the subject of the order or disposition. The written notice must include, among other things, a statement that the person cannot obtain a license to purchase a pistol or obtain a concealed weapon license until the order or disposition is removed from the LEIN.

House Bill 5278 would amend this provision to prohibit the DSP from sending the written notice of an entry into the LEIN to a person who was the respondent of a personal protection order (PPO) issued under Section 2950 (domestic violence) or Section 2950a (stalking) of the Revised Judicature Act until the DSP received notice that the respondent of the PPO had been served with or had received notice of the PPO.

House Bill 5279. The Code of Criminal Procedure 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 (MCL 764.9c et al.) 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 bill would 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.

House Bill 5281. 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.)

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.)

FISCAL IMPLICATIONS:

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

House Bill 5269 would have no fiscal impact on either state or local units of government. (10-23-01)

House Bill 5273 would have no significant fiscal impact on the judiciary, though the bill would expand judicial responsibilities with regard to PPO petitions. (10-24-01)

House Bill 5278 would have no significant fiscal implications for the Department of State Police. (10-22-01)

House Bill 5279 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. (12-4-01)

House Bill 5281 could increase local correctional costs to the extent that the bill leads to longer jail stays for domestic assault offenders. 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. (10-29-01)

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:

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. House Bill 5269 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:

Under current law, a person may petition the circuit court for a personal protection order that restrains or

bars another person from engaging in certain conduct. One section of the act provides for PPOs that prohibit someone from committing stalking or aggravated stalking, while another section provides for domestic violence personal protection orders. Domestic violence PPOs may enjoin or restrain a spouse, former spouse, a person who resides (or has resided) in the same household as the victim, or an individual with whom the victim has had either a dating relationship or a child in common, from entering the home and harming or threatening the petitioner and his or her children.

There is a concern that too many non-domestic violence related PPOs are being issued, such as for neighbor-to-neighbor disputes, playground disputes, and other behaviors that really do not rise to the level of stalking. This dilutes the significance of PPOs, and especially of domestic violence PPOs, even though there is much documentation that a high level of danger exists for victims stalked by former spouses or lovers. And, as law enforcement agencies operate on limited budgets, unnecessary PPOs can eat up precious resources for the enforcement of PPOs that are meant to prevent additional violent encounters.

Proponents of House Bill 5273 hope that prohibiting PPOs against children under 10 and requiring judges to also provide a written statement on the record when issuing – and not just when denying – a non-domestic violence PPO will result in fewer frivolous or unwarranted PPOs being granted. Further, neither the state Law Enforcement Information Network (LEIN) nor the National Crime Information Center (NCIC) database will enter a PPO issued against a child of less than 10 years of age. Since an important part of the legislative package addressing the recommendations of the Domestic Violence Homicide Prevention Task Force is to require the LEIN system to enter PPO information and track violations, the provisions relating to issuing PPOs need to be adjusted to accommodate the policies of the LEIN and NCIC systems. (House Bills 5299 and 5305 would amend the Revised Judicature Act to similarly prohibit PPOs from being issued against children under 10 years of age. Both bills have passed the House and are waiting action in the Senate.)

For:

Quite often, a domestic violence victim must take extraordinary precautions when leaving a battering relationship. If the victim petitions for a domestic violence PPO, the victim usually has some knowledge as to when the PPO will be served on the

abuser, thus allowing the victim to devise a safety plan or get to a safe place before the service of process is completed. However, when a PPO is issued, the information is entered into the Law Enforcement Information Network (LEIN). Current law requires the state police to immediately send written notice to the person named in the PPO that he or she may not purchase a pistol or obtain a concealed weapons license until the PPO is removed from the LEIN. Often, this notice arrives before the service of process of the PPO, thereby tipping off the abuser that a PPO has been issued before the victim can get to a safe place. Such scenarios increase the risk of retaliatory actions against the victim and anyone who attempts to aid the victim, such as relatives or friends. House Bill 5278 would increase protection to victims of domestic violence by requiring that the Department of State Police wait to send notice of the gun restrictions until after receiving proof that the abuser has been served with or received notice of the PPO.

For:

The Domestic Violence Homicide Prevention Task Force 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; denial of interim bond; 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. House Bill 5279 would incorporate the task force's recommendation by amending provisions pertaining to denial of an appearance ticket to a person arrested for relational assault, assault and battery, or aggravated assault, warrantless arrests for relational assault, etc.; and eligibility for discharge and dismissal for a first offense of relational assault, assault and battery, or aggravated assault.

For:

House Bill 5281 would make two 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 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 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 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.

POSITIONS:

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

The Michigan State Police Troopers Association supports HB 5281. (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. (11-23-01)

The Michigan Advocacy Project supports House Bills 5273 and 5281. (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.