House
Legislative
Analysis
Section

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REVISE DOMESTIC VIOLENCE PROVISIONS

House Bill 5271 as enrolled
Public Act 191 of 2001
Sponsor: Rep. Gary A. Newell

House Bill 5273 as enrolled
Public Act 196 of 2001
Sponsor: Rep. Laura M. Toy

House Bill 5275 as enrolled
Public Act 197 of 2001
Sponsor: Rep. Jennifer Faunce

House Bill 5276 as enrolled
Public Act 198 of 2001
Sponsor: Rep. Randy Richardville

House Bill 5278 as enrolled
Public Act 199 of 2001
Sponsor: Rep. Bruce Patterson

House Bill 5280 as enrolled
Public Act 192 of 2001
Sponsor: Rep. Gene De Rossett

House Bill 5281 as enrolled
Public Act 189 of 2001
Sponsor: Rep. Scott Hummel

House Bill 5299 as enrolled
Public Act 200 of 2001
Sponsor: Rep. Doug Bovin

House Bill 5300 as enrolled
Public Act 201 of 2001
Sponsor: Rep. Ruth Johnson

House Bill 5303 as enrolled
Public Act 202 of 2001
Sponsor: Rep. Mickey Mortimer

House Bill 5304 as enrolled
Public Act 194 of 2001
Sponsor: Rep. Jerry O. Kooiman

Senate Bill 721 as enrolled
Public Act 203 of 2001
Sponsor: Sen. Valde Garcia

Senate Bill 722 as enrolled
Public Act 204 of 2001
Sponsor: Sen. Mike Goschka

Senate Bills 723, 753, and 758 as enrolled
Public Acts 190, 209, and 212 of 2001
Sponsor: Sen. Shirley Johnson

Senate Bill 725 as enrolled
Public Act 205 of 2001
Sponsor: Sen. Ken Sikkema

Senate Bills 729, 754, and 757 as enrolled
Public Acts 206, 210, and 211 of 2001
Sponsor: Sen. Bev Hammerstrom

Senate Bill 731 as enrolled
Public Act 207 of 2001
Sponsor: Sen. William Van Regenmorter

Senate Bill 735 as enrolled
Public Act 208 of 2001
Sponsor: Sen. Bill Bullard, Jr.

Senate Bill 736 as enrolled
Public Act 193 of 2001
Sponsor: Sen. Martha G. Scott

House Committee: Criminal Justice
Senate Committee: Judiciary

Third Analysis (1-10-02)

House Bills 5271, 5273, 5275-5276, 5278, 5280-5281, 5299, 5300, 5303, 5304
Senate Bills 721-723, 725, 729, 731, 735, 736, 753, 754, 757-758 (1-10-02)

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 the mid-90s, stalking became a state crime, domestic violence was added as a factor in the state's child custody laws, and many new domestic violence laws were passed by Michigan's legislature to, among many changes, enhance sentencing and charging options for repeat offenders. 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 2001, 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.

The report's 23 findings and 58 recommendations identified many areas of law and public policy still needing to be addressed in order to strengthen protections and services for victims of domestic abuse and strengthen penalties and enforcement capabilities in regard to the perpetrators. In particular, the task force examined the inclusion of "dating relationships" in the definition of domestic violence, enforcement of personal protection orders (PPOs) issued by other states, better tracking of PPO violations, and creation of fatality review teams to review domestic violence related homicides and suicides.

"Dating relationship" is currently included in the definition of "domestic relationships" for purposes of obtaining personal protection orders; however, 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 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.

In addition, the full faith and credit provisions of the federal Violence Against Women Act (18 U.S.C. Sec. 2265) require all states, Indian tribes, and U.S. territories to enforce the protection orders of other states, tribes, and territories as if those orders had been issued in their own jurisdictions. This is especially important when the protection orders were issued to protect a victim of domestic violence. Often, a victim must flee to another state to avoid his or her abuser. If the abuser follows, it is imperative that law enforcement officers and courts uphold the protection order just as if it had originated in that state. One of the recommendations of the task force is to amend state laws relating to the issuance and enforcement of personal protection orders to incorporate the federal mandate of honoring foreign protection orders.

Another area of concern identified by the task force pertains to violations of personal protection orders (PPOs). Currently, a criminal contempt conviction for a violation of a PPO is not reported to the Michigan Department of State Police (DSP) and so does not appear on a person's criminal history record. Such information is necessary to track, as courts, prosecutors, and law enforcement agencies need such information about a person's propensity to violate a court order, such as a PPO, in order to make appropriate decisions regarding dangerousness, PPO

conditions, bond conditions, sentencing, custody, and parenting time orders. Legislation, therefore, is needed to require that criminal contempt convictions of PPO violations be reported to the DSP Central Records Division for inclusion in a person's criminal history record.

Further, though at least 100 people were murdered as a result of domestic violence in 1999 alone, deaths go beyond just that of the targeted victim of abuse. Often there are collateral deaths of children, relatives, and friends who either were protecting the victim or simply happened to be present when the violence escalated. Many feel that in order to reduce or eliminate deaths related to domestic violence, it is important to research and study cases in which domestic violence turns fatal or near fatal. Information gleaned from such research could then be used to determine more effective intervention programs and policies.

In an effort to address many of the issues identified by the Domestic Violence Homicide Prevention Task Force, a multi-bill, bi-partisan legislative package has been introduced.

THE CONTENT OF THE BILLS:

The bills would amend various laws to implement findings and recommendations by the Domestic Violence Homicide Prevention Task Force. The bills would:

- Implement Full Faith and Credit provisions of federal law regarding enforcement of personal protection orders (PPOs) from other states.

- Include a "dating relationship" in what constitutes a domestic violence incident.

- Establish fingerprinting and record keeping requirements for criminal contempt violations of PPOs.

- Increase the penalty for nonrelational assault and assault and battery to a 93-day misdemeanor.

- Create state or county domestic violence death review teams.

- Require reimbursement for prosecution costs for PPO violations.

Unless otherwise specified, the bills would take effect April 1, 2002. Specifically, the bills would do the following:

Personal Protection Orders

The following bills would amend various acts to implement the Full Faith and Credit provisions of the federal Violence Against Women Act (18 U.S.C. Sec. 2265), which requires all states and Indian tribes to enforce the personal protection orders of other states and tribes as they do those issued in their own jurisdictions. House Bills 5275, 5299, 5300, 5303, 5304 and Senate Bills 729, 753, 754, 757, and 758 are tie-barred to each other.

House Bill 5275 and Senate Bill 729 would amend the Revised Judicature Act (MCL 600.2950*l* and 600.2950m and MCL 600.2950d through 600.2950g, respectively) to implement the Full Faith and Credit provision of the federal Violence Against Women Act. Senate Bill 729 would require that a valid foreign protection order be accorded full faith and credit by a court and be subject to the same enforcement procedures and penalties as if it had been issued in this state. "Foreign protection order" would be defined as an injunction or other order issued by a court of another state, Indian tribe, or U.S. territory for the purpose of preventing a person's violent or threatening acts against, harassment of, contact with, communication with, or physical proximity to another person. This would include temporary and final orders issued by civil and criminal courts other than a support or child custody order issued under state divorce and child custody laws. However, such orders would be included to the extent that such an order was entitled to full faith and credit under other federal law if a civil order had been issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection. Under the bill, a foreign protection order would be valid if all of the following conditions were met:

- The issuing court had jurisdiction over the parties and subject matter under the laws of the issuing state, tribe, or territory.

- Reasonable notice and opportunity to be heard was given to the respondent sufficient to protect his or her right to due process. For ex parte orders, notice and opportunity to be heard would have to be provided to the respondent within the time required by state or tribal law, or within a reasonable time after issuance of the order sufficient to protect the respondent's due process rights.

- Child custody or support provisions within a valid foreign protection order would also be accorded full

faith and credit and enforced in a similar manner to provisions within a personal protection order (PPO).

• Further, among other things, the bill would:

• Provide affirmative defenses to a charge or process seeking enforcement of a foreign protection order.

• Specify that a foreign protection order that was sought by a petitioner against a spouse or intimate partner and issued against both the petitioner and respondent would be entitled to full faith and credit against the respondent and enforceable against the respondent. However, a foreign protection order sought by a petitioner against a spouse or intimate partner and issued against both the petitioner and respondent would not be entitled to full faith and credit and would not be enforceable against the petitioner unless certain criteria specified in the bill were met.

• Define "spouse or intimate partner" to include a spouse, a former spouse, a person with whom the petitioner has had a child in common, a person living in the same household as the petitioner, and a person with whom the petitioner has had a dating relationship.

House Bill 5275 would:

• Unless otherwise indicated in the bill, require law enforcement officers, prosecutors, and courts to enforce foreign protection orders other than conditional release orders or probation orders issued by a court in criminal proceedings in the same manner that Michigan-issued PPOs are enforced.

• For a foreign protection order that was a conditional release or probation order issued by a court in a criminal proceeding, provide for enforcement under provisions of the bill, the Code of Criminal Procedure, the Uniform Criminal Extradition Act, and the Uniform Rendition of Accused Persons Act. A violation of such a foreign PPO would be a misdemeanor punishable by imprisonment for not more than 93 days or a fine of $500, or both.

• Allow, under certain conditions, a law enforcement officer to rely upon a copy of a PPO that appears to be a foreign protection order.

• Specify that an absence of verification of a foreign protection order on the Law Enforcement Information Network (LEIN) or the National Crime Information Center (NCIC) Protection Order File would not be grounds for refusal by a law enforcement officer to enforce the terms of the order. The bill would allow an officer to rely on the statement of the petitioner that the order was in effect and that the respondent had received notice of the order.

• Provide a procedure to verify a foreign protection order if a person seeking enforcement of the order did not have a copy. If the order could not be verified, require a law enforcement officer to maintain the peace and take appropriate action with regard to any violation of criminal law.

• Provide a procedure for a law enforcement officer to follow if there were no evidence that the respondent had received notice of the foreign protection order.

• Provide immunity from civil and criminal liability for law enforcement officers, prosecutors, or court personnel who acted in good faith into enforce a foreign protection order. This immunity would not limit or imply an absence of immunity in other circumstances.

House Bill 5273 would amend the Revised Judicature Act (MCL 600.2950a) which, among other things, 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 to require a court to immediately state in writing the specific reasons for either issuing or refusing to issue a nonrelational stalking PPO. If a hearing were held, the court would have to immediately state on the record the specific reasons for issuing or refusing to issue the PPO. (Stalking that is related to domestic violence can be enjoined by a domestic violence PPO provided under MCL 600.2950.)

Further, under current law, PPOs can be issued even against children (except if the respondent is the unemancipated minor child of the petitioner or the petitioner is the unemancipated minor child of the respondent). The bill would prohibit a court from issuing a PPO against a minor child less than 10 years of age.

House Bills 5299 and 5300 would amend the Revised Judicature Act (MCL 600.2950 and MCL 600.2950a, respectively) to specify that a personal protection order (PPO) would be enforceable anywhere in the state when signed by a judge. The bills would also allow a PPO, upon service, to be enforced by another state, Indian tribe, or U.S. territory. In addition to information already required to be listed on a PPO, the bills would require 1) a statement that if the respondent violated the PPO in a jurisdiction other than Michigan, that the respondent would be subject to the enforcement procedures and penalties of the state, Indian tribe, or U.S. territory with jurisdiction over the violation; and, 2) that upon service, a PPO could be enforced by another state, Indian tribe, or U.S. territory.

Currently, PPOs can be issued even against children (except if the respondent is the unemancipated minor child of the petitioner or the petitioner is the unemancipated minor child of the respondent). Both bills would prohibit a court from issuing a PPO against a minor child less than 10 years of age. Further, House Bill 5300 would require a court to state in writing, or on the record if a hearing were held, the specific reasons for issuing or refusing to issue a PPO.

House Bill 5303 would amend the Revised Judicature Act (600.2529). Under the act, a fee of $20 must be paid to the clerk of the court when a motion is filed. However, this fee is waived for several motions filed in conjunction with PPOs, such as a motion to dismiss the petition. The bill would also waive the $20 fee for a motion to dismiss a foreign protection order or a motion to show cause for a violation of a foreign protection order under provisions that would be added by House Bill 5275 and Senate Bill 729.

House Bill 5304 would amend the Code of Criminal Procedure (MCL 776.22) to require a police agency to include procedures for enforcing a valid foreign protection order in the agency's written policy regarding responses to domestic violence calls.

Senate Bill 753 would amend the Code of Criminal Procedure (MCL 764.15b) to allow an individual to be arrested without a warrant if he or she violated a valid foreign protection order. "Foreign protection order" and "valid foreign protection order" would be defined as they are in Sections 2950h and 2950i, respectively, of the Revised Judicature Act. The bill would also authorize the family division of circuit court to conduct contempt proceedings on a violation of either a state-issued PPO or a valid foreign protection order and either a violation of a PPO issued under Section 2(h) of the Probate Code or a valid foreign protection order issued against a respondent less than 18 years of age at the time of the alleged violation, and provide for the out-of-state court that issued the order to be notified of the violation in the same manner as are in-state courts.

Senate Bill 754 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 and to include a violation of a valid foreign protection order. "Foreign protection order" and "valid foreign protection order" would be defined as they are in Sections 2950h and 2950i, respectively, of the Revised Judicature Act. (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. (These provisions are also contained within Senate Bill 731.)

Senate Bill 757 would amend the Probate Code (MCL 712A.1 et al.) to specify that the family division of circuit court would have authority and jurisdiction over a proceeding to enforce a valid foreign protection order issued against a respondent who was a minor less than 18 years of age. The court could authorize a peace officer to apprehend a juvenile who was alleged to have violated a valid foreign protection order. In addition, without an order of the court, any local police officer, county agent or probation officer, sheriff or deputy, or state police officer could take a juvenile into custody if there were reasonable cause to believe that he or she had violated or was violating a PPO issued under the code or the Revised Judicature Act or a valid foreign protection order. Further, the bill would specify that a PPO could not be issued against a respondent who was a minor less than 10 years of age.

Senate Bill 758 would amend the Code of Criminal Procedure (MCL 764.15) to allow a peace officer, without a warrant, to arrest a person whom the officer had reasonable cause to believe had violated one or more conditions of a conditional release order or

probation order imposed by a court of this state, another state, Indian tribe, or U.S. territory.

Dating relationship

House Bill 5271 would amend Public Act 319 of 1968 (MCL 28.257), which provides for a uniform crime reporting system. Under the act, a report must be filed with the Department of State Police by a local law enforcement agency with specific information related to crimes of domestic assault. The bill would change this reference to domestic violence incidents. Currently, the reports must include the number of assaults reported that involve an adult and a minor, two male adults or two female adults, one male adult and one female adult, and assaults involving a person and his or her spouse (and the disposition of each of those offenses). The latter category would be changed to include the number of crimes reported (and the disposition of those offenses) involving an individual and his or her spouse, former spouse, an individual whom he or she has had a child in common or has had a dating relationship, and an individual who resided or had resided in the same household. The bill would also define "dating relationship" as frequent, intimate associations primarily characterized by the expectation of affectional involvement, but that does not include a casual relationship or an ordinary fraternization between two individuals in a business or social context. The bill would take effect October 1, 2002.

House Bill 5281 and Senate Bill 723. House Bill 5281 would amend Section 81 and Senate Bill 723 would amend Sections 81 and 81a of the Michigan Penal Code (MCL 750.81 and 750.81 and 750.81a, respectively). Under the 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. Both bills 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 a 93-day maximum penalty allow police officers to make arrests based upon probable cause – without a warrant – even if they do not witness the violence actually being committed.)

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. Both bills would amend Section 81 of the code and Senate Bill 723 would also amend Section 81a, which pertains to aggravated assault, 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 is a felony punishable by imprisonment for not more than two years, a fine of not more than $2,500, or both.)

Further, 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. Senate Bill 723 would amend both Section 81 and Section 81a to 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.

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.

Criminal Contempt

Senate Bills 721 and 722. Senate Bills 721 and 722 are tie-barred to each other and would take effect October 1, 2002. Senate Bill 721 would add a conviction for criminal contempt for a violation of a personal protection order (PPO) to the information required to be filed in a criminal history record and would require fingerprinting for criminal contempt arrests. Senate Bill 722 would require the final disposition of a charge of criminal contempt to be reported to the Department of State Police. (*Black's Law Dictionary* distinguishes between civil and criminal contempt as follows: *Civil contempt* is the "failure to do something which the party is ordered by the court to do" and is "against the party in whose behalf the mandate of the court was issued" with a fine imposed as a penalty. However, *criminal contempt* is an act "done in disrespect of the court or its process or which obstruct[s] the administration of justice or tend[s] to bring the court into disrespect," and is punished by a fine or imprisonment.)

Specifically, the bills would do the following:

Senate Bill 721 would amend Public Act 289 of 1925 (MCL 28.242 and 28.243), which created a bureau for criminal identification and records within the Department of State Police (DSP). The bill would make the following changes:

- Require the Central Records Division of the DSP to procure and file for purposes of criminal identification criminal history record information on all persons convicted within the state of criminal contempt for a violation of a PPO issued under Sections 2950 or 2950a, or a violation of a valid foreign PPO issued under Section 2950i, of the Revised Judicature Act (MCL 600.2950, 600.2950a, and 600.2950i). ("Criminal history record information" includes name; date of birth; fingerprints; photographs; personal descriptions; identifying marks such as scars and tattoos; aliases; Social Security and driver's license numbers; and information on misdemeanor convictions and felony arrests and convictions. Sections 2950 and 2950a of the Revised Judicature Act (RJA) pertain to nonrelational and relational PPOs, respectively, that restrain another from engaging in stalking or aggravated stalking. Section 2950i would be added by enrolled Senate Bill 729, Public Act 206 of 2001, which specifies criteria for determining the validity of a foreign PPO.)

- Require an arresting law enforcement agency to take the fingerprints of a person arrested for criminal contempt for a violation of a PPO issued under Sections 2950, 2950a, or 2950i of the RJA. The prints would have to be sent to the DSP within 72 hours of the arrest and then the DSP would have to forward the prints to the FBI.

• If not previously taken under the above provision, require a law enforcement agency to take a person's fingerprints upon an arrest for criminal contempt for a violation of a PPO issued under Sections 2950, 2950a, or 2950i of the RJA under a provision pertaining to an arrest for a misdemeanor violation of a state law for which the maximum penalty is 93 days imprisonment or a violation of a local ordinance for which the maximum penalty is 93 days imprisonment and that substantially corresponds to a violation of state law that is also a misdemeanor with a maximum penalty of 93 days imprisonment.

• Incorporate changes made to the act by Public Act 187 of 2001, enrolled Senate Bill 478, which takes effect April 1, 2002. (For more information regarding the provisions of Senate Bills 478 and 479, see the Senate Fiscal Agency's analysis of SB 478 and 479 dated 5-30-01.)

Senate Bill 722 would amend the Code of Criminal Procedure (MCL 769.16a) to require the clerk of a court to advise the DSP of a final disposition of a charge of criminal contempt for a violation of a PPO issued under Section 2950 and 2950a, or of a valid foreign PPO issued under Section 2950i, of the Revised Judicature Act (MCL 600.2950, 600.2950a, and 600.2950i). (Currently, the clerk advises the DSP of a final disposition of a felony or misdemeanor charge for which the maximum penalty exceeds 92 days imprisonment or of a local ordinance that corresponds to a state law and that is a misdemeanor with a maximum penalty of 93 days imprisonment.)

Additionally, the bill would require a court clerk to report to the state police the final disposition of a misdemeanor in a case in which the appropriate court was notified that fingerprints were forwarded to the state police. Further, a court clerk is currently not required, unless ordered by the court, to report a misdemeanor conviction if either of the following applies: 1) the conviction is for driving without a license; or 2) a sentence of imprisonment is not imposed, except as an alternative sentence, and any fines and costs ordered total less than $100. The bill instead would specify that the court clerk could not report a conviction of a misdemeanor offense under the Michigan Vehicle Code (MCL 257.1 to 257.923), or a substantially similar local ordinance, unless the offense was punishable by imprisonment for more than 92 days, the offense could be punishable by more than 92 days as a second conviction, or a judge orders the clerk to report the conviction. A misdemeanor conviction for driving without a license would not have to be reported by the clerk unless ordered to do so by the court.

(Note. Public Act 188 (enrolled Senate Bill 479), which takes effect April 1, 2002, amends the same section of law and in a manner identical to Senate Bill 722, with the exception of the requirement to report the final disposition of a charge of criminal contempt for PPO violations.)

Other Provisions

House Bill 5276 would amend Public Act 44 of 1961 (MCL 780.582a), which provides for the release of misdemeanor prisoners by giving bond to the arresting officer. Under the act, a person can be released on bond or on his or her personal recognizance until the time of the arraignment. However, release on bond is not available to a person if arrested for domestic violence assaults without a warrant under the Code of Criminal Procedure or for an arrest with a warrant for assault, assault and battery, or aggravated assault under the Penal Code – unless a magistrate is unavailable for arraignment within 24 hours, in which case a person could be released on interim bond or on his or her own recognizance after being held for 20 hours.

The bill would include in the description of domestic violence-related assault, assault and battery, and aggravated assault those crimes committed against an individual with whom the person has had a dating relationship or with whom the person had a child in common. ("Dating relationship" means that term as defined in the Revised Judicature Act (MCL 600.2950), which is substantially the same as defined in Public Act 389 of 1978, above.)

More substantially, however, the bill would remove the provision allowing a person interim bond after being held for 20 hours. Instead, the person would have to be held until arraignment or until a judge or district court magistrate could set interim bond. If interim bond were set by a judge or magistrate, he or she would have to consider and could impose the condition that the released person have no contact with the victim, or attempt to contact the victim in any way.

The person would have to be informed on the record of the specific conditions imposed and that violations of the conditions of release would subject the person to rearrest (without a warrant), forfeiture of bond, and new conditions of release imposed, in addition to any other penalties that can be imposed if he or she were found in contempt of court. The bill would specify

information to be included on any order or amended order issued if a person violated the bond conditions, and require this order or amended order to be entered into the Law Enforcement Information Network (LEIN). Should the order or amended order be rescinded, it would be removed from LEIN. The bill would not limit the authority of judges or magistrates to impose protective or other release conditions under other applicable statutes or court rules.

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 5280 would amend Public Act 389 of 1978 (MCL 400.1511), the domestic violence act, to allow the state or a county to establish an interagency domestic violence death review team. Two or more counties could establish a single review team. The team would review fatal and near-fatal incidents of domestic violence, including suicide. Events leading up to the incident, available community resources, current laws and policies, actions taken by the agencies and individuals related to the incident and the parties, and any other relevant information could be reviewed by the team. The purpose of the teams would be to learn how to prevent domestic violence homicides and suicides by improving the response of individuals and agencies to domestic violence.

The bill would allow each team to determine its own structures and activities and the number and type of incidents to review. The teams would have to make policy and other recommendations as to how incidents of domestic violence can be prevented. A team could include, but would not be limited to, an individual trained in forensic pathology, a health care professional with training and experience in domestic violence abuse, a medical examiner, an individual trained or educated with experience in criminology, a prosecuting attorney, a representative of a domestic violence shelter that was receiving funding from the Domestic Violence Prevention and Treatment Board, a representative from a battered woman's advocacy organization, or a law enforcement officer.

Information obtained or created by a team under the bill would be confidential and not subject to civil discovery or the Freedom of Information Act. Documents created by the review teams would not be subject to subpoena, except documents and records otherwise available from other sources would not be exempt from subpoena**,** discovery, or introduction into evidence solely because they were presented to or reviewed by a review team. A fatality review team could disclose information relevant to an investigation of a crime only to the prosecuting attorney or to a law enforcement agency, and would have to report information required under the Child Protection Law to the Family Independent Agency (FIA). A prosecuting attorney, law enforcement agency, and the FIA could use that information in carrying out their lawful responsibilities.

An individual who either appeared before or participated in a fatality review team would have to sign a confidentiality agreement acknowledging that any information provided to the team was confidential, but subject to possible disclosure to the prosecuting attorney, law enforcement agency, or the FIA. A violation of the bill's confidentiality provisions would be a misdemeanor.

Fatality review team meetings would be closed to the public and not subject to the Open Meetings Act. The bill would specify that certain information, such as information that identified a victim of domestic violence, could not be disclosed in any report that would be available to the public.

An annual report of a team's aggregate findings, recommendations, and steps taken to implement those recommendations would have to be prepared for each calendar year or portion of a year in which a review team had been convened and presented to the Michigan Domestic Violence Prevention and Treatment Board on or before March 1 of the following year. No personally identifying information could be contained in the report, nor could information regarding the involvement of any agency with a victim or that person's family. If the board develops a form for review teams to use in reporting annual aggregate findings and recommendations, review teams would have to use that form.

The bill would establish criteria for immunity from civil liability for personal injury or property damage and certain civil actions for members of a domestic violence fatality review team, persons providing information to review teams, the state, or municipalities when performing activities within the scope of the bill unless gross negligence or willful misconduct were involved.

Subject to available funding, the Michigan Domestic Violence Prevention and Treatment Board could develop a protocol for the review teams to follow, develop a form for use by review teams to report aggregate findings and recommendations, develop and provide training for teams, and prepare a report summarizing the findings and recommendations of the review teams (which would go to the governor, the Senate, and the House of Representatives) and could make recommendations to reduce and eradicate the incidence of domestic violence. Review teams would have to follow any protocols developed by the board.

The bill would take effect October 1, 2002.

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 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 relation matters that have a history of domestic violence.

The bill would take effect October 1, 2002.

BACKGROUND INFORMATION:

The Report and Recommendations of the Domestic Violence Homicide Prevention Task Force includes a background section that gives an historical overview of the legislative changes to Michigan's domestic violence laws over the past decade, a summary of the information gathering process for the report, the task forces's findings, and the recommendations for legislative and policy changes. A copy of the Report and Recommendations can be obtained by sending a written request to the Michigan Domestic Violence Prevention & Treatment Board, FIA – Child & Family Services Administration, 235 S. Grand Avenue, Suite 506, Lansing, MI 48909; by calling the MDVPTB at 517-335-6388; or by fax at 517-241-8903.

For detailed information on the Michigan Domestic Violence Prevention & Treatment Board (MDVPTB), its mission, programs, the Domestic Violence Survivor's Handbook, and links to domestic violence-related websites, visit www.mfia. state.mi.us/ CFSAdmin/dv/domestic_violence.html.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

The package as a whole incorporates many 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:

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. Increasingly, violence in dating relationships is being observed among teens and college-age women. As reported in an article in the *Lansing State Journal* (12-24-01), a study published in the August *Journal of the American*

Medical Association (JAMA) that involved 4,000 high-school girls in Massachusetts revealed that 20 percent of the girls reported dating violence. The newspaper article also reported that the coordinator for a teen health clinic in Ypsilanti said that "two-thirds of the approximately 900 girls they see annually report some form of dating violence." These numbers are particularly alarming because, according to the *LSJ* article, the Massachusetts study also found "higher rates of drug abuse, physical injury, sexual assault and unhealthy dieting behaviors" in affected teens than in teens who had not experienced dating violence.

Some domestic violence experts have voiced concerns that this trend for relational violence among teens could again promote the belief that violence within a relationship is normal. Without intervention, domestic violence is a repetitive crime. If a person abuses someone whom he or she is 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. However, existing domestic violence laws cover current and former marriage relationships or relationships that produced a child in common. Yet, abusive behaviors in dating relationships can be just as brutal or lethal. Therefore, an individual who is violent toward a person he or she is dating or has dated should be subject to the same penalties.

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; domestic violence reports; denial of an appearance ticket to a person arrested for relational 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, among others. By including "dating relationships", a person could 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:

Reportedly, Michigan is one of the last states to implement the full faith and credit provisions of the Violence Against Women Act with regard to upholding and enforcing personal protection orders (PPOs) issued by other state, tribal, or territorial jurisdictions. By enacting the bill package, PPOs will be enforced with greater uniformity within the state and other states with similar laws. This is an important protection to offer victims of abuse and threatened abuse. For those who stalk and prey on others, it means that they will be held accountable for their actions, for under the bills, a PPO issued against them in Michigan will be upheld by other states (though each state would enforce the PPO according to their own law) and Michigan would enforce a protection order issued by another state. The legislation should, therefore, increase the protective intent of the PPOs by providing a powerful disincentive for an abuser or stalker to follow his or her victim across jurisdictional boundaries.

For:

House Bills 5273, 5299, 5300 and Senate Bill 757 would amend various acts to prohibit the issuance of a PPO against a child who was less than 10 years old. Personal protection orders were originally intended to provide protection for people being stalked and for victims of domestic violence. There is a concern, however, 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 trend 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 hope that prohibiting PPOs against children under 10 and, as provided in House Bills 5273 and 5300, 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 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.

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:

House Bill 5281 and Senate Bill 723 would make several significant changes to current law. First, the bills 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, Senate Bill 723 would include dating relationships in the definition of domestic violence-related assault and assault and battery.

In another significant change, the bills 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 crime of assault or assault and battery is 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, to avoid further abuse, a victim of domestic violence must hide from her or his abuser for self-protection or to protect any children involved. 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:

House Bill 5276 would eliminate the current practice of releasing persons arrested for domestic violence and assault related crimes before arraignment after being held for 20 hours in situations where a judge or magistrate is not available. Under the bill, a person arrested for such crimes could only be released after arraignment or after he or she had an interim bond set by a court. Further, until the arraignment, a judge or magistrate could make the release conditional by ordering that the person not contact the victim, or attempt to do so, in any way. This will provide much needed protection for victims of domestic violence, who are particularly vulnerable during this time period to reprisals by the abuser or by conciliatory behaviors meant to dissuade the victim from further prosecution.

Response:

Though the time period between arrest and arraignment is generally short, it can be as long as 48 to 60 hours for weekend and holiday periods. If a no contact order was issued as a condition of release on bond, a person who lived with the victim, or had left something of importance at the victim's residence, could not even make arrangements to pick up clothes, car keys, and so on since that would be construed as making contact. Even having a friend or relative contact the victim to retrieve personal items could be construed as contact. Of course the victim should be protected, but it would be hoped that some initial arrangement, perhaps court-supervised, to transfer necessary personal property would be allowed. Indeed, such a consideration may increase compliance rates with no-contact orders by eliminating a perceived "excuse" to make contact in order to retrieve car keys, cars, wallets, etc.

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, like 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:

Senate Bill 721 would include a conviction for criminal contempt of a violation of a personal protection order in a person's criminal history record kept by the state police. The bill refers specifically to PPOs issued under provisions of the Revised Judicature Act that pertain to stalking and aggravated stalking and include both domestic violence related stalking and nonrelational stalking. Senate Bill 722 would require court clerks to advise the state police of final dispositions of criminal contempt charges for PPO-related violations.

Both bills are important because a person who violates a PPO may be at higher risk for violating a PPO issued at a later date or of violating other court orders such as probation conditions, custody and parenting orders, and so on. Stalking, like domestic violence, is a repetitive behavior, and so it is important for judges, prosecutors, and law enforcement officers to know if a person already has a history of violating court orders when they are making decisions regarding a current issue before them. For example, a judge may not grant probation to a person before the court on a criminal charge if that person has a past history of violating a PPO. Because there could be a greater likelihood that the person would violate probation conditions, a judge may instead choose incarceration or an alternative incarceration program such as a boot camp.

For:

By scrutinizing incidents of domestic violence fatalities, more effective measures and programs to

reduce such incidents could be identified. Fatality review teams created under House Bill 5280 could pinpoint holes in the current delivery system for domestic violence resources, loopholes in laws, and other factors that make domestic violence one of the leading causes of homicides. In addition, the teams could study the impact of domestic violence on suicide rates. This bill would provide a relatively low cost means of affecting a very serious issue. Measures implemented as a result of the review teams could result in lives saved, psychological trauma to children averted, and possibly lower incarceration rates (due to less recidivism) if effective intervention programs for batterers can be developed.

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.

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.