

CONTEMPT CONVICTIONS

**House Bill 5277 with committee
amendment**
Sponsor: Rep. Larry Julian

**House Bill 5282 with committee
amendment**
Sponsor: Rep. Lauren Hager

Committee: Criminal Justice
First Analysis (10-31-01)

THE APPARENT PROBLEM:

The governor's task force on Domestic Violence Homicide Prevention has identified numerous areas of state law that need to be tightened in order to provide increased protection to individuals touched by domestic violence and nonrelational stalking. One area of concern that has been 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, has been introduced 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.

THE CONTENT OF THE BILLS:

The bills are part of a larger package of bills addressing recommendations of the Domestic Violence Homicide Prevention Task Force. House Bill 5277 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. House Bill 5282 would require the final disposition of a charge of criminal contempt to be reported to the Department of State Police. The bills would take effect April 1, 2001. Specifically, the bills would do the following:

House Bill 5277 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 of the Revised Judicature Act (MCL 600.2950 and 600.2950a). ("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.)
- Require an arresting law enforcement agency to take the fingerprints, in duplicate, of a person arrested for criminal contempt and forward the prints to the DSP within 72 hours of the arrest. (One print would be sent to the FBI). (Apparently, this was also meant to apply only to criminal contempt of a PPO issued under the RJA, but as written it would appear to apply to all criminal contempt arrests.)
- 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 under a provision pertaining to an arrest for 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. (As written, this provision

would appear to apply to all criminal contempt convictions.)

- Clarify that if a law enforcement agency took the fingerprints of a person arrested for a misdemeanor not specified previously in Section 3 of the act, that the agency could not forward the fingerprints to the DSP unless the person was convicted of a misdemeanor.

The bill is tie-barred to House Bill 5282 or to Senate Bill 722.

House Bill 5282 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 of the Revised Judicature Act (MCL 600.2950 and 600.2950a). (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.)

The bill is tie-barred to House Bill 5277 or Senate Bill 721.

(*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.)

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, House Bill 5277 could result in significant costs related to taking and forwarding fingerprints for all law enforcement agencies, and processing and maintaining additional criminal history record information for the Department of State Police. No data exists on the number of individuals arrested for criminal contempt under the relevant sections of the Revised Judicature Act, however, so the potential increase in costs is indeterminate. House Bill 5282 could increase administrative burdens for court clerks, but any fiscal impact would be limited. (10-31-01)

ARGUMENTS:

For:

House Bill 5277 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. House Bill 5282 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 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, but may instead choose incarceration or an alternative incarceration program such as a boot camp because there could be a greater likelihood that the person would violate probation conditions.

Response:

The language restricting criminal contempt to apply only to violations of certain PPOs was only added to one section of the bill. Therefore, as written, House Bill 5277 could still be read as requiring fingerprints to be taken of all persons arrested for criminal contempt (with copies being forwarded to the FBI) and for criminal contempt arrests for violations of certain local ordinances. Further, PPOs can also be issued against juveniles under the Probate Code; however, the bills are silent as to including criminal contempt convictions for these PPO violations.

Rebuttal:

Some people maintain that all PPOs are issued under the provisions of the Revised Judicature Act, and that the PPO provisions in the Probate Code are rarely used.

POSITIONS:

The Office of the Governor supports the bills. (10-30-01)

The Prosecuting Attorneys Association of Michigan (PAAM) supports the concept of the bills. (10-30-01)

The Michigan Coalition Against Domestic and Sexual Violence is in strong support of the concept of the bills. (10-30-01)

The National Organization for Women/Michigan has no position at this time, as there has not been an opportunity to review the bills as amended. (10-30-01)

The Michigan Advocacy Project does not have a position at this time as it has not had an opportunity to review the bills as amended. (10-30-01)

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.