

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

SFA**BILL ANALYSIS**

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

Senate Bills 723, 725, and 731 (as enrolled)
Senate Bills 735 and 736 (as enrolled)
House Bills 5271 and 5273 (as enrolled)
House Bills 5276 and 5278 (as enrolled)
House Bills 5280 and 5281 (as enrolled)

Sponsor: Senator Shirley Johnson (Senate Bill 723)
Senator Ken Sikkema (Senate Bill 725)
Senator William Van Regenmorter (Senate Bill 731)
Senator Bill Bullard, Jr. (Senate Bill 735)
Senator Martha G. Scott (Senate Bill 736)
Representative Gary A. Newell (House Bill 5271)
Representative Laura M. Toy (House Bill 5273)
Representative Randy Richardville (House Bill 5276)
Representative Bruce Patterson (House Bill 5278)
Representative Gene DeRossett (House Bill 5280)
Representative Scott Hummel (House Bill 5281)

Senate Committee: Families, Mental Health and Human Services (S.B. 723, 736, & H.B. 5280)
Judiciary (S.B. 725, 731, 735, H.B. 5271, 5273, 5276, 5278, & 5281)

House Committee: Criminal Justice

Date Completed: 9-10-02

CONTENT

The bills amended various statutes governing domestic violence to do the following:

- Include dating relationships in circumstances that can trigger penalties for domestic violence, and in provisions pertaining to the warrantless arrest, detention, and discharge of a person for domestic violence.
- Include dating relationships in circumstances that require peace officers to provide certain information to domestic violence victims and prepare a domestic violence report.
- Include a violation of the law of another state as a prior conviction, for the purpose of enhanced penalties for repeated domestic assault offenses.
- Expand the domestic violence information that must be reported to the Department of State Police.
- Require courts to consider the safety of any alleged or potential victim of domestic violence, when considering a motion to seal court records.
- Require a court to specify the reasons for issuing a personal protection order (PPO) enjoining stalking.

PUBLIC ACTS 190, 205, & 207 of 2001

PUBLIC ACTS 208 & 193 of 2001

PUBLIC ACTS 191 & 196 of 2001

PUBLIC ACTS 198 & 199 of 2001

PUBLIC ACTS 192 & 189 of 2001

- Provide that a person arrested for domestic violence may not be released until he or she is arraigned or interim bond is set.
- Provide that notice of a handgun licensure restriction may not be sent to a person subject to a domestic violence or stalking PPO until he or she has been given notice of the PPO.
- Allow the State and counties to establish interagency domestic violence fatality review teams.
- Require Friend of the Court training programs to include training regarding domestic violence issues.

All of the bills, except House Bills 5271 and 5280, took effect on April 1, 2002. House Bills 5271 and 5280 will take effect on October 1, 2002.

Senate Bills 723 and 735 define "dating relationship" as frequent, intimate associations primarily characterized by the expectation of affectional involvement. The term does not include a casual relationship or an ordinary fraternization between two individuals in a business or social context.

Senate Bill 723 & House Bill 5281

Domestic Assault

Under the Michigan Penal Code, domestic assault is a misdemeanor punishable by imprisonment for up to 93 days and/or a fine of up to \$500. Domestic assault includes assault committed against a spouse or former spouse, an individual with whom the offender has had a child in common, or a person who is or was a resident of the offender's household. Under Senate Bill 723, domestic assault also includes assault against an individual with whom the offender has or has had a dating relationship.

Domestic assault is punishable by up to one year's imprisonment and/or a maximum fine of \$1,000 if the offender previously has been convicted of domestic assault or any of the following in a domestic situation:

- Aggravated assault (MCL 750.81a).
- Assault with a dangerous weapon (MCL 750.82).
- Assault with intent to commit murder (MCL 750.83).
- Assault with intent to do great bodily harm (MCL 750.84).
- Assault with intent to maim (MCL 750.86).
- Violation of a local ordinance substantially corresponding to the Code's domestic assault prohibition.

If an offender has two or more previous convictions, domestic assault is a felony punishable by up to two years' imprisonment and/or a maximum fine of \$2,500.

Under the bills, these enhanced penalties also apply if the offender previously has been convicted of assaulting his or her spouse or former spouse, an individual with whom he or she has had a child in common, a resident or former resident of his or her household, or an individual with whom he or she has or has had a dating relationship, in violation of a law of another state or an ordinance of a political subdivision of another state substantially corresponding to a section of the Penal Code prohibiting domestic assault, aggravated assault, assault with a dangerous weapon, or assault with intent to commit murder, to do great bodily harm, or to maim. (The House bill included violations of another state's laws or ordinances as prior offenses, while the Senate bill added dating relationships to these provisions.)

Aggravated Domestic Assault

Under the Code, assaulting an individual without a weapon and inflicting an aggravated injury upon that individual without intending to commit murder or to inflict great bodily harm (aggravated assault) is a misdemeanor punishable by up to one year's imprisonment and/or a maximum fine of \$1,000. The same penalty applies if aggravated assault is committed against the offender's spouse or former spouse, an individual with whom he or she has had a child in common, or a resident or former resident of the same household as the offender (aggravated domestic assault).

Aggravated domestic assault is a felony punishable by up to two years' imprisonment and/or a maximum fine of \$2,500 if the offender previously has been convicted of domestic assault, aggravated domestic assault, or any of the following in a domestic situation:

- Assault with a dangerous weapon.
- Assault with intent to commit murder, to do great bodily harm, or to maim.
- A violation of a local ordinance substantially corresponding to the Code's aggravated assault prohibition.

Under the Senate bill, each of these provisions also includes a violation against an individual with whom the offender has or has had a dating relationship. In addition, the House bill extended the enhanced penalty to an offender who has been previously convicted of a substantially corresponding law of another state or a substantially corresponding ordinance of a political subdivision of another state.

Simple Assault

House Bill 5281 increased the maximum term of imprisonment from 90 to 93 days for simple (nondomestic) assault.

Senate Bill 725

The bill amended the Revised Judicature Act to provide that, when considering a motion to seal court records in a civil or criminal matter, if the motion involves an allegation of domestic violence, the court must consider the safety of any alleged victim or potential victim of the domestic violence.

"Domestic violence" is defined as in the domestic violence prevention and treatment

Act. Under that Act, domestic violence means the occurrence of any of the following acts by a person that is not an act of self-defense:

- Causing or attempting to cause physical or mental harm to a family or household member.
- Placing a family or household member in fear of physical or mental harm.
- Causing or attempting to cause a family or household member to engage in involuntary sexual activity by force, threat of force, or duress.
- Engaging in activity toward a family or household member that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

Senate Bill 731

The bill amended the Code of Criminal Procedure to include a dating relationship in circumstances that require a peace officer to provide certain information to a victim of domestic violence and prepare a domestic violence report after a domestic violence incident. In addition, the bill required the Department of State Police by June 1, 2002, to develop a standard domestic violence incident report form. Effective October 1, 2002, a peace officer must use that form, or a substantially similar form, to report a domestic violence incident.

Under the Code, "domestic violence incident" means an incident reported to a law enforcement agency involving allegations of a violation of a personal protection order restraining or enjoining acts of domestic violence, or a crime committed by an individual against his or her spouse or former spouse, an individual with whom he or she has had a child, or an individual who resides or formerly resided in the same household. The bill includes in that provision a crime committed by an individual against another individual with whom he or she has or has had a dating relationship.

(The Code requires a peace officer to provide a victim with a written notice that includes the police agency's name and telephone number; the peace officer's name and badge number; and specific statements about the victim's rights and available services. The officer also must prepare a domestic violence report that contains required information.)

Senate Bill 735

The bill amended the Code of Criminal Procedure to include dating relationships in several provisions pertaining to the arrest and detention of individuals for domestic assault or aggravated domestic assault. Under the bill, these provisions apply if the victim has or has had a dating relationship with the offender or, as already provided, if the victim is the offender's spouse or former spouse, an individual who has had a child in common with the offender, or an individual who is or was residing in the same household as the offender. These provisions do the following:

- Allow a police officer to arrest a person without a warrant for domestic assault or aggravated domestic assault if the officer has reasonable cause to believe that the violation occurred or is occurring.
- Prohibit a police officer from issuing an appearance ticket to someone arrested without a warrant for domestic assault or aggravated domestic assault.
- Allow a court to defer further proceedings and place the accused on probation, and require the person to be discharged upon filling the conditions of probation, if he or she has not been previously convicted of assault or aggravated assault and pleads guilty to or is found guilty of domestic assault or aggravated domestic assault.

The bill also allows a court, as part of the sentence for a conviction, to order a person to reimburse the State or a local unit of government for expenses incurred in relation to the incident, if the person is found guilty of criminal contempt for violating a PPO enjoining domestic violence or stalking, or for violating a foreign protection order that satisfies the conditions for validity provided in the Revised Judicature Act.

In addition, the Code provides that a defendant convicted of an assaultive crime and awaiting sentence may not be granted bail unless the court finds by clear and convincing evidence that he or she is not likely to pose a danger to others. The bill added aggravated stalking to the list of assaultive crimes in that provision.

Senate Bill 736

The bill amended the Friend of the Court (FOC) Act to require that FOC training programs include training regarding domestic violence issues.

Under the Act, the State FOC Bureau must provide training programs for county FOC offices and their employees and domestic relations mediators, to improve their ability to carry out the duties described in the Act and in Supreme Court rules. Under the bill, the training programs must include training in the dynamics of domestic violence and in handling domestic relations matters having a history of domestic violence.

House Bill 5271

The uniform crime reporting Act requires city, village, and township chiefs of police and county sheriffs to report to the Department of State Police certain information related to domestic violence. The bill refers to "domestic violence incidents", instead of "crimes of domestic assault". Police chiefs and sheriffs must report the number of all of the following crimes reported (previously "assaults reported") and their disposition:

- Assaults that involve an adult and a minor.
- Assaults that involve two male adults or two female adults.
- Assaults that involve one male adult and one female adult.
- Assaults that involve a person and his or her spouse.

In addition to assaults that involve a person and his or her spouse, the bill requires the reporting of assaults that involve a person and his or her former spouse, an individual with whom he or she has had a child in common, an individual with whom he or she has or has had a dating relationship, or an individual who resides or has resided in the same household.

House Bill 5273

The Revised Judicature Act allows an individual to petition the family division of circuit court to enter a PPO to restrain or enjoin another person from engaging in conduct that is prohibited as stalking under the Michigan Penal Code. If a court refuses to grant a stalking PPO, it must immediately state in writing the specific reasons for refusal. If a hearing is held, the court immediately must state on the record the specific reasons it refuses to issue a PPO.

The bill extended these requirements to the *issuance* of a stalking PPO. A court must state in writing, and on the record if a hearing is held, the specific reasons for issuing a stalking PPO.

The bill also prohibits a court from issuing a PPO to restrain or enjoin stalking activity if the respondent is under 10 years old.

House Bill 5276

The bill amended Public Act 44 of 1961, which provides for the release of a person arrested on a misdemeanor charge upon the payment of an interim bond or on his or her own recognizance under some circumstances, to prohibit such release in domestic violence cases until the person is arraigned or a judge or district court magistrate has set interim bond.

Specifically, under the bill, a person may not be released on an interim bond or on his or her own recognizance, but must be held until he or she can be arraigned or have interim bond set by a judge or district court magistrate, if the person is arrested with a warrant for simple or aggravated assault and the person is a spouse or former spouse of the victim, has or has had a dating relationship with the victim, has had a child in common with the victim, or resides or has resided in the same household as the victim. (Previously, a person arrested with a warrant for simple or aggravated assault had to be held until he or she could be brought before a magistrate for arraignment or, if a magistrate was not available or immediate trial could not be held within 24 hours, the person had to be held for 20 hours before being released on interim bond or his or her own recognizance, if the person was a spouse or former spouse of the victim or presently or formerly resided with the victim.)

(Like the previous restriction on releasing a person arrested with a warrant, the bill also applies to someone arrested without a warrant for domestic assault, as authorized by the Code of Criminal Procedure.)

If interim bond is set under the bill, the judge or magistrate must consider and may impose the condition that the person released must not have or attempt to have contact of any kind with the victim. The order must contain the information specified in the bill, including a statement of the conditions imposed, the date they become effective, and the date on which the order will expire.

If the judge or magistrate releases a person subject to protective conditions, the judge or magistrate must inform the person of the specific conditions imposed, and that if the

person violates a condition of release, he or she will be subject to arrest without a warrant and may have his or her bond forfeited or revoked and new conditions of release imposed, in addition to any others penalties that may be imposed for contempt of court.

The judge or magistrate also must direct a law enforcement agency to enter the order into the Law Enforcement Information Network (LEIN). If the order is rescinded, the judge or magistrate must direct the law enforcement agency to remove it from LEIN.

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

House Bill 5278

The bill amended the handgun licensure Act to prohibit the Department of State Police from sending to a person subject to a domestic violence or stalking PPO, written notice that an order or disposition has been entered into LEIN, as required by the Revised Judicature Act, until the Department receives notice that the person has been served with or has received notice of the PPO.

(Under the handgun licensure Act, if a person is subject to certain orders or dispositions entered into LEIN, he or she is excluded from handgun licensure. Among the entries that disqualify a person for licensure is a PPO restraining or enjoining domestic violence or stalking activity. When an order or disposition is entered into LEIN under any provision that excludes a person from licensure to purchase, carry, or transport a pistol, the Department of State Police immediately must send written notice of that LEIN entry to the person who is the subject of the order or disposition.

Under the Revised Judicature Act, when a court issues a PPO enjoining or restraining domestic violence or stalking activity, or modifies, rescinds, or extends such a PPO, the court clerk must file a copy of the order with the law enforcement agency designated in it. The law enforcement agency must enter the PPO or the information into LEIN.)

House Bill 5280

The bill amends the domestic violence prevention and treatment Act to allow the State or a county to establish an interagency

domestic violence fatality review team, for the purpose of learning how to prevent domestic violence homicides and suicides by improving the response of individuals and agencies to domestic violence. Two or more counties may establish a single team for those counties.

A team may review fatal and near-fatal incidents of domestic violence, including suicides. The review of an incident may include a review of events leading up to it, available community resources, current laws and policies, actions taken by the agencies and individuals related to the incident and the parties, and any information considered relevant by the team. The team may determine the number and type of incidents it wishes to review and must make policy and other recommendations as to how incidents of domestic violence may be prevented.

A fatality review team must include, at least, an individual trained in forensic pathology; a health care professional with training and experience in responding to domestic violence; a medical examiner; a prosecuting attorney or a prosecutor's designated assistant; a representative of a domestic violence shelter that receives funding from the Michigan Domestic Violence Prevention and Treatment Board; and a law enforcement officer. If a State team is established, it must be convened by the Board.

Information obtained or created by a team will be confidential and not subject to civil discovery or the Freedom of Information Act. Documents created by a team will not be subject to subpoena. Information relevant to a criminal investigation may be disclosed only to a prosecutor or law enforcement agency. Information required to be reported under the Child Protection Law must be disclosed to the Family Independence Agency (FIA). A prosecutor, a law enforcement agency, and the FIA may use information received under these provisions in carrying out their lawful responsibilities.

Team meetings will be closed to the public and not subject to the Open Meetings Act. Information identifying a victim of domestic violence whose case is being reviewed, that person's family members, or an alleged or suspected perpetrator of abuse upon the victim, or regarding the involvement of any agency with the victim or his or her family, may not be disclosed in any report that is available to the public.

A fatality review team must prepare an annual report of aggregate findings, recommendations, and steps taken to implement recommendations. The report may not contain information identifying any domestic violence victim, that person's family members, or an alleged or suspected perpetrator, or regarding the involvement of any agency with a victim or his or her family. The team must provide the report to the Michigan Domestic Violence Prevention and Treatment Board by March 1 in the year following the calendar year covered by the report.

A person who violates the bill's confidentiality provisions will be guilty of a misdemeanor.

Subject to available funding, the Board may develop a protocol and a form for use by the teams, and may develop and provide training concerning them. The Board also may prepare a report to the Governor and the Legislature summarizing teams' findings and making recommendations to reduce and eradicate domestic violence incidents.

The bill also provides for immunity from civil liability for team members, people providing information to teams, the State, political subdivisions, and employees of the State or political subdivisions, acting within the scope of the bill, except in cases of willful misconduct, gross negligence, or bad faith.

MCL 750.81 & 750.81a (S.B. 723)
600.2972 (S.B. 725)
764.15c (S.B. 731)
764.9c et al. (S.B. 735)
552.519 (S.B. 736)
28.257 (H.B. 5271)
600.2950a (H.B. 5273)
780.582a (H.B. 5276)
28.422b (H.B. 5278)
400.1511 (H.B. 5280)
750.81 & 750.81a (H.B. 5281)

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

Senate Bill 723 & House Bill 5281

The bill will have an indeterminate fiscal impact on State and local government.

In 1999, 282 people were convicted of some type of attempt or act of domestic violence. There are no data available to indicate how

many more offenders a year will be convicted by including victims with whom the offender has had a dating relationship. Offenders convicted of first-offense domestic violence receive misdemeanor sentences of up to 93 days. A second-time offender may receive up to one year's imprisonment, and a third offense is a Class G felony, which has a minimum sentence range of 0-3 months to 7-23 months.

Offenders convicted of a first-time misdemeanor are subject to probation or incarceration in a local facility. In most cases, offenders convicted of a second or third offense also are subject to probation or incarceration in a local facility. Local units incur the cost of probation as well as the cost of incarceration, which may vary between \$27 and \$65 per day. Third-time offenders, however, are eligible for a prison sentence. The State incurs the cost of felony probation, estimated at \$4.38 per day, and the cost of incarceration in a State facility, at an average annual cost of \$25,000. In the absence of data, if one assumes that 10 additional offenders will be convicted, sentenced to prison, and receive the longest minimum sentence, the cost to the State will be \$479,000.

Senate Bill 725

The bill will have no fiscal impact on State or local government.

Senate Bill 731

The bill may result in an indeterminate fiscal impact on State and local police agencies with its inclusion of a "dating relationship" under the definition of "domestic violence incident" and the resultant reporting that will be required. The Department of State Police also is required to develop a standard form for reporting domestic violence incidents, which all law enforcement officers will have to use, at a cost that cannot be determined at this time.

Senate Bill 735

The bill will have no fiscal impact on the State.

To the extent that the bill decreases the number of individuals given appearance tickets by including victims with whom the offender has had a dating relationship for the purposes of Code's restriction, the bill will

increase costs to local governments. A person waiting for a hearing will be held in a local facility. Local units will incur the cost of incarceration, which may vary between \$27 and \$65 per day.

To the extent that the bill increases the use of probation as punishment for offenders who plead guilty, by including offenses against victims with whom the offender has had a dating relationship, it will have an indeterminate impact on local governments. It could potentially increase the use of probation as a diversion from incarceration, which would decrease costs to local governments. The bill also might increase the use of probation for offenders the courts otherwise might not be able to convict, thereby increasing the costs to local governments.

Senate Bill 736

The State Court Administrative Office estimated that the costs of additional training, based on training 100 Friend of the Court employees annually, will be approximately \$22,900.

House Bill 5271

The bill will have an indeterminate fiscal impact on local police agencies. The bill will increase the incidents reported to the State Police by a number that cannot be determined at this time.

House Bill 5273

The State Court Administrative Office reported that the bill will result in additional processing time for personal protection orders.

House Bill 5276

The bill will have no fiscal impact on the State.

To the extent that the bill extends the prohibition or delay of bond release to those who have a dating relationship or a child with a victim of domestic violence, it will result in increased costs to local governments. A person waiting for arraignment will be held in a local facility. Local units will incur the cost of incarceration, which may vary between \$27 and \$65 per day.

House Bill 5278

The bill will have a minimal fiscal impact on the Department of State Police. The Department will be required to perform an additional step before sending notice of an entry into LEIN under the bill.

House Bill 5280

As the language regarding the establishment of fatality review teams is permissive, the State and counties will not experience any costs unless they establish teams. If they do, then most of the costs will be associated team expenses, such as per diem or per meeting stipends. Other costs may include regular office supplies and the printing of forms and reports. While the amount of these costs is unknown, the costs associated with a similar concept, the Fetal Infant Mortality Review teams, were \$56,000 for FY 2000-01. A total of 1,100 infant deaths occurred during 2000, though only a subset of these deaths are reviewed. The estimated total number of deaths for the age cohort of women who might be victims of domestic violence was 132. About 30% or 40 women may have died at the hand of their spouse or ex-spouse.

Fiscal Analyst: Bruce Baker
Bill Bowerman
Constance Cole
John Walker
Bethany Wicksall

S0102\S723es

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.