

SENATE BILL No. 728

October 17, 2001, Introduced by Senators GARCIA, JOHNSON, BULLARD, MC COTTER, HAMMERSTROM and GOSCHKA and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
by amending section 2950a (MCL 600.2950a), as amended by 1999 PA 268.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2950a. (1) Except as provided in subsections (25) and
2 (26), by commencing an independent action to obtain relief under
3 this section, by joining a claim to an action, or by filing a
4 motion in an action in which the petitioner and the individual to
5 be restrained or enjoined are parties, an individual may petition
6 the family division of circuit court to enter a personal protec-
7 tion order to restrain or enjoin an individual from engaging in
8 conduct that is prohibited under section 411h or 411i of the
9 Michigan penal code, 1931 PA 328, MCL 750.411h and 750.411i.
10 Relief shall not be granted unless the petition alleges facts

1 that constitute stalking as defined in section 411h or 411i of
2 the Michigan penal code, 1931 PA 328, MCL 750.411h and 750.411i.
3 Relief may be sought and granted under this section whether or
4 not the individual to be restrained or enjoined has been charged
5 or convicted under section 411h or 411i of the Michigan penal
6 code, 1931 PA 328, MCL 750.411h and 750.411i, for the alleged
7 violation.

8 (2) If the respondent is a person who is issued a license to
9 carry a concealed weapon and is required to carry a weapon as a
10 condition of his or her employment, a police officer certified by
11 the commission on law enforcement standards act, 1965 PA 203, MCL
12 28.601 to 28.616, a sheriff, a deputy sheriff or a member of the
13 Michigan department of state police, a local corrections officer,
14 a department of corrections employee, or a federal law enforce-
15 ment officer who carries a firearm during the normal course of
16 his or her employment, the petitioner shall notify the court of
17 the respondent's occupation prior to the issuance of the personal
18 protection order. This subsection does not apply to a petitioner
19 who does not know the respondent's occupation.

20 (3) A petitioner may omit his or her address of residence
21 from documents filed with the court ~~pursuant to~~ UNDER this
22 section. If a petitioner omits his or her address of residence,
23 the petitioner shall provide the court a mailing address.

24 (4) ~~If the court refuses to grant a personal protection~~
25 ~~order, it~~ A COURT shall immediately state in writing the spe-
26 cific reasons ~~it refused~~ FOR ISSUING OR REFUSING to issue a
27 personal protection order. If a hearing is held, the court shall

1 also immediately state on the record the specific reasons ~~it~~
2 ~~refuses~~ FOR ISSUING OR REFUSING to issue a personal protection
3 order.

4 (5) A personal protection order shall not be made mutual.
5 Correlative separate personal protection orders are prohibited
6 unless both parties have properly petitioned the court ~~pursuant~~
7 ACCORDING to subsection (1).

8 (6) A personal protection order is effective and immediately
9 enforceable when signed by a judge.

10 (7) The court shall designate the law enforcement agency
11 that is responsible for entering the personal protection order
12 into the ~~law law enforcement information network as provided by~~
13 ~~the L.E.I.N. policy council act of 1974, 1974 PA 163, MCL 28.211~~
14 ~~to 28.216~~ L.E.I.N.

15 (8) A personal protection order issued under this section
16 shall include all of the following, and to the extent practicable
17 ~~the following shall be~~ contained in a single form:

18 (a) A statement that the personal protection order has been
19 entered to enjoin or restrain conduct listed in the order and
20 that violation of the personal protection order will subject the
21 individual restrained or enjoined to either of the following:

22 (i) If the respondent is 17 years of age or more, immediate
23 arrest and the civil and criminal contempt powers of the court,
24 and that if he or she is found guilty of criminal contempt, he or
25 she shall be imprisoned for not more than 93 days and may be
26 fined not more than \$500.00.

1 (ii) If the respondent is less than 17 years of age, to
2 immediate apprehension or being taken into custody, and subject
3 to the dispositional alternatives listed in section 18 of chapter
4 XIIIA of THE PROBATE CODE OF 1939, 1939 PA 288, MCL 712A.18.

5 (b) A statement that the personal protection order is effec-
6 tive and immediately enforceable when signed by a judge.

7 (c) A statement listing ~~the~~ EACH type ~~or types~~ of con-
8 duct enjoined.

9 (d) An expiration date stated clearly on the face of the
10 order.

11 (e) A statement that the personal protection order is
12 enforceable anywhere in Michigan by any law enforcement agency.

13 (f) The law enforcement agency designated by the court to
14 enter the personal protection order into the ~~law enforcement~~
15 ~~information network~~ L.E.I.N.

16 (g) For AN ex parte ~~orders~~ ORDER, a statement that the
17 individual restrained or enjoined may file a motion to modify or
18 rescind the personal protection order and request a hearing
19 within 14 days after the individual restrained or enjoined has
20 been served or has received actual notice of the personal protec-
21 tion order and that motion forms and filing instructions are
22 available from the clerk of the court.

23 (9) An ex parte personal protection order shall not be
24 issued and effective without written or oral notice to the indi-
25 vidual enjoined or his or her attorney unless it clearly appears
26 from specific facts shown by verified complaint, written motion,
27 or affidavit that immediate and irreparable injury, loss, or

1 damage will result from the delay required to effectuate notice
2 or that the notice will ~~itself~~ precipitate adverse action
3 before a personal protection order can be issued.

4 (10) A personal protection order issued under subsection (9)
5 is valid for not less than 182 days. The individual restrained
6 or enjoined may file a motion to modify or rescind the personal
7 protection order and request a hearing ~~pursuant to~~ UNDER the
8 Michigan court rules. The motion to modify or rescind the per-
9 sonal protection order shall be filed within 14 days after the
10 order is served or after the individual restrained or enjoined
11 has received actual notice of the personal protection order
12 unless good cause is shown for filing the motion after ~~the~~ 14
13 days have elapsed.

14 (11) Except as otherwise provided in this subsection, the
15 court shall schedule a hearing on the motion to modify or rescind
16 the ex parte personal protection order within 14 days after the
17 filing of the motion to modify or rescind. If the respondent is
18 a person described in subsection (2) and the personal protection
19 order prohibits him or her from purchasing or possessing a fire-
20 arm, the court shall schedule a hearing on the motion to modify
21 or rescind the ex parte personal protection order within 5 days
22 after the filing of the motion to modify or rescind.

23 (12) The clerk of the court that issues a personal protec-
24 tion order shall do all of the following immediately upon issu-
25 ance ~~and~~ without requiring ~~a~~ proof of service on the individ-
26 ual restrained or enjoined:

1 (a) File a true copy of the personal protection order with
2 the law enforcement agency designated by the court in the
3 personal protection order.

4 (b) Provide petitioner with not less than 2 true copies of
5 the personal protection order.

6 (c) If respondent is identified in the pleadings as a law
7 enforcement officer, notify the officer's employing law enforce-
8 ment agency about the existence of the personal protection
9 order.

10 (d) If the personal protection order prohibits THE respon-
11 dent from purchasing or possessing a firearm, notify the con-
12 cealed weapon licensing board in respondent's county of residence
13 about the existence and ~~contents~~ CONTENT of the personal pro-
14 tection order.

15 (e) If the respondent is identified in the pleadings as a
16 department of corrections employee, notify the state department
17 of corrections about the existence of the personal protection
18 order.

19 (f) If the respondent is identified in the pleadings as
20 being a person who may have access to information concerning the
21 petitioner or a child of the petitioner or respondent and that
22 information is contained in friend of the court records, notify
23 the friend of the court for the county in which the information
24 is located about the existence of the personal protection order.

25 (13) The clerk of the court shall inform the petitioner that
26 he or she may take a true copy of the personal protection order
27 to the law enforcement agency designated by the court in

1 subsection (7) to be immediately entered into the ~~law~~
2 ~~enforcement information network~~ L.E.I.N.

3 (14) The law enforcement agency that receives a true copy of
4 the personal protection order under subsection (12) or (13) shall
5 immediately, ~~and~~ without requiring proof of service, enter the
6 personal protection order into the ~~law enforcement information~~
7 ~~network, as provided by the L.E.I.N. policy council act of 1974,~~
8 ~~1974 PA 163, MCL 28.211 to 28.216~~ L.E.I.N.

9 (15) A personal protection order issued under this section
10 shall be served personally or by registered or certified mail,
11 return receipt requested, delivery restricted to the addressee at
12 the last known address or addresses of the individual restrained
13 or enjoined or by any other manner provided in the Michigan court
14 rules. If the individual restrained or enjoined has not been
15 served, a law enforcement officer or clerk of the court who knows
16 that a personal protection order exists may, at any time, serve
17 the individual restrained or enjoined with a true copy of the
18 order or advise the individual restrained or enjoined about the
19 existence of the personal protection order, the specific conduct
20 enjoined, the penalties for violating the order, and where the
21 individual restrained or enjoined may obtain a copy of the
22 order. If the respondent is less than 18 years of age, the
23 parent, guardian, or custodian of that individual shall also be
24 served personally or by registered or certified mail, return
25 receipt requested, delivery restricted to the addressee at the
26 last known address or addresses of the parent, guardian, or
27 custodian of the individual restrained or enjoined. A proof of

1 service or proof of oral notice shall be filed with the clerk of
2 the court issuing the personal protection order. This subsection
3 does not prohibit the immediate effectiveness of a personal pro-
4 tection order or ~~its~~ immediate enforcement under ~~subsections~~
5 SUBSECTION (18) ~~and~~ OR (19).

6 (16) The clerk of the court shall immediately notify the law
7 enforcement agency that received the personal protection order
8 under subsection (12) or (13) if either of the following occurs:

9 (a) The clerk of the court has received proof that the indi-
10 vidual restrained or enjoined has been served.

11 (b) The personal protection order is rescinded, modified, or
12 extended by court order.

13 (17) The law enforcement agency that receives information
14 under subsection (16) shall enter the information or cause the
15 information to be entered into the ~~law enforcement information~~
16 ~~network as provided by the L.E.I.N. policy council act of 1974,~~
17 ~~1974 PA 163, MCL 28.211 to 28.216~~ L.E.I.N.

18 (18) Subject to subsection (19), a personal protection order
19 is immediately enforceable anywhere in this state by any law
20 enforcement agency that has received a true copy of the order, is
21 shown a copy of it, or has verified its existence on the ~~law~~
22 ~~enforcement information network as provided by the~~
23 ~~L.E.I.N. policy council act of 1974, 1974 PA 163, MCL 28.211 to~~
24 ~~28.216~~ L.E.I.N.

25 (19) If the individual restrained or enjoined has not been
26 served, the law enforcement agency or officer responding to a
27 call alleging a violation of a personal protection order shall

1 serve the individual restrained or enjoined with a true copy of
2 the order or advise the individual restrained or enjoined about
3 the existence of the personal protection order, the specific con-
4 duct enjoined, the penalties for violating the order, and where
5 the individual restrained or enjoined may obtain a copy of the
6 order. The law enforcement officer shall enforce the personal
7 protection order and immediately enter or cause to be entered
8 into the ~~law enforcement information network~~ L.E.I.N. that the
9 individual restrained or enjoined has actual notice of the per-
10 sonal protection order. The law enforcement officer also shall
11 file a proof of service or proof of oral notice with the clerk of
12 the court issuing the personal protection order. If the individ-
13 ual restrained or enjoined has not received notice of the per-
14 sonal protection order, the individual restrained or enjoined
15 shall be given an opportunity to comply with the personal protec-
16 tion order before the law enforcement officer makes a custodial
17 arrest for violation of the personal protection order. ~~The~~
18 ~~failure~~ FAILURE to immediately comply with the personal protec-
19 tion order ~~shall be~~ IS grounds for an immediate custodial
20 arrest. This subsection does not preclude an arrest under
21 section 15 or 15a of chapter IV of the code of criminal proce-
22 dure, 1927 PA 175, MCL 764.15 and 764.15a, or a proceeding under
23 section 14 of chapter XIIIA of THE PROBATE CODE OF 1939, 1939 PA
24 288, MCL 712A.14.

25 (20) An individual ~~who is~~ 17 years of age or more ~~and~~
26 who refuses or fails to comply with a personal protection order
27 issued under this section is subject to the criminal contempt

1 powers of the court and, if found guilty of criminal contempt,
2 shall be imprisoned for not more than 93 days and may be fined
3 not more than \$500.00. An individual ~~who is~~ less than 17 years
4 of age ~~and~~ who refuses or fails to comply with a personal pro-
5 tection order issued under this section is subject to the dispo-
6 sitional alternatives listed in section 18 of chapter XIIIA of THE
7 PROBATE CODE OF 1939, 1939 PA 288, MCL 712A.18. The criminal
8 penalty provided for under this section may be imposed in addi-
9 tion to any penalty that may be imposed for any other criminal
10 offense arising from the same conduct.

11 (21) An individual who knowingly and intentionally makes a
12 false statement to the court in support of his or her petition
13 for a personal protection order is subject to the contempt powers
14 of the court.

15 (22) A personal protection order issued under this section
16 is also enforceable under chapter XIIIA of THE PROBATE CODE OF
17 1939, 1939 PA 288, MCL 712A.1 to ~~712A.31~~ 712A.32, and
18 section 15b of chapter IV of the code of criminal procedure, 1927
19 PA 175, MCL 764.15b.

20 (23) A personal protection order issued under this section
21 may enjoin or restrain an individual from purchasing or possess-
22 ing a firearm.

23 (24) A personal protection order issued under this section
24 is also enforceable under chapter 17.

25 (25) A court shall not issue a personal protection order
26 that restrains or enjoins conduct described in subsection (1) if
27 either of the following applies:

1 (a) The respondent is the unemancipated minor child of the
2 petitioner.

3 (b) The petitioner is the unemancipated minor child of the
4 respondent.

5 (26) If the respondent is less than 18 years of age, issu-
6 ance of a personal protection order under this section is subject
7 to chapter XIIA of the probate code of 1939, 1939 PA 288, MCL
8 712A.1 to 712A.32.

9 (27) A personal protection order that is issued ~~prior to~~
10 ~~the effective date of the amendatory act that added this~~
11 ~~subsection~~ BEFORE MARCH 1, 1999 is not invalid on the ground
12 that it does not comply with 1 or more of the requirements added
13 by ~~that amendatory act~~ 1998 PA 476.

14 (28) A court shall not issue a personal protection order
15 under this section if the petitioner is a prisoner. If a per-
16 sonal protection order is issued in violation of this subsection,
17 a court shall rescind the personal protection order upon notifi-
18 cation and verification that the petitioner is a prisoner.

19 (29) As used in this section:

20 (a) "Federal law enforcement officer" means an officer or
21 agent employed by a law enforcement agency of the United States
22 government whose primary responsibility is the enforcement of
23 laws of the United States.

24 (B) "L.E.I.N." MEANS THE LAW ENFORCEMENT INFORMATION NET-
25 WORK ADMINISTERED UNDER THE L.E.I.N. POLICY COUNCIL ACT OF 1974,
26 1974 PA 163, MCL 28.211 TO 28.216.

1 (C) ~~-(b)-~~ "Personal protection order" means an injunctive
2 order issued by circuit court or the family division of circuit
3 court restraining or enjoining conduct prohibited under section
4 411h or 411i of the Michigan penal code, 1931 PA 328, MCL
5 750.411h and 750.411i.

6 (D) ~~-(c)-~~ "Prisoner" means a person subject to incarceration,
7 tion, detention, or admission to a prison who is accused of, con-
8 victed of, sentenced for, or adjudicated delinquent for viola-
9 tions of federal, state, or local law or the terms and conditions
10 of parole, probation, pretrial release, or a diversionary
11 program.