

HOUSE BILL No. 4066

January 28, 2003, Introduced by Reps. Wojno, Gielegem, Condino, Bieda and Accavitti 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 2001
PA 201.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

HOUSE BILL No. 4066

1 Sec. 2950a. (1) Except as provided in subsections (25) and
2 ~~—(26)— (28)~~, by commencing an independent action to obtain relief
3 under this section, by joining a claim to an action, or by filing
4 a motion in an action in which the petitioner and the individual
5 to be restrained or enjoined are parties, an individual may
6 petition the family division of circuit court to enter a personal
7 protection order to restrain or enjoin an individual from
8 engaging in conduct that is prohibited under section 411h or 411i
9 of the Michigan penal code, 1931 PA 328, MCL 750.411h and
10 750.411i. Relief shall not be granted unless the petition

1 alleges facts that constitute stalking as defined in section 411h
2 or 411i of the Michigan penal code, 1931 PA 328, MCL 750.411h and
3 750.411i, **except that it is not necessary to allege or show a**
4 **course of conduct involving repeated or continuing conduct as**
5 **required for stalking under section 411h or 411i of the Michigan**
6 **penal code, 1931 PA 328, MCL 750.411h and 750.411i.** Relief may
7 be sought and granted under this section whether or not the
8 individual to be restrained or enjoined has been charged or
9 convicted under section 411h or 411i of the Michigan penal code,
10 1931 PA 328, MCL 750.411h and 750.411i, for the alleged
11 violation.

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

25 (3) A petitioner may omit his or her address of residence
26 from documents filed with the court under this section. If a
27 petitioner omits his or her address of residence, the petitioner

1 shall provide the court a mailing address.

2 (4) If a court refuses to grant a personal protection order,
3 the court shall immediately state in writing the specific reasons
4 for issuing or refusing to issue a personal protection order. If
5 a hearing is held, the court shall also immediately state on the
6 record the specific reasons for issuing or refusing to issue a
7 personal protection order.

8 (5) A personal protection order shall not be made mutual.
9 Correlative separate personal protection orders are prohibited
10 unless both parties have properly petitioned the court according
11 to subsection (1).

12 (6) A personal protection order is effective and immediately
13 enforceable anywhere in this state when signed by a judge. Upon
14 service, a personal protection order also may be enforced by
15 another state, an Indian tribe, or a territory of the United
16 States.

17 (7) The court shall designate the law enforcement agency that
18 is responsible for entering the personal protection order into
19 the L.E.I.N.

20 (8) A personal protection order issued under this section
21 shall include all of the following, and to the extent practicable
22 contained in a single form:

23 (a) A statement that the personal protection order has been
24 entered to enjoin or restrain conduct listed in the order and
25 that violation of the personal protection order will subject the
26 individual restrained or enjoined to 1 or more of the following:

27 (i) If the respondent is 17 years of age or more, immediate

1 arrest, ~~and~~ the civil and criminal contempt powers of the
2 court, and, ~~that~~ if he or she is found guilty of criminal
3 contempt, ~~he or she shall be imprisoned~~ **imprisonment** for not
4 more than 93 days and ~~may be fined~~ **a fine of** not more than
5 \$500.00.

6 (ii) If the respondent is less than 17 years of age, ~~to~~
7 immediate apprehension or being taken into custody ~~—~~ and
8 ~~subject to~~ the dispositional alternatives listed in section 18
9 of chapter XIIIA of the probate code of 1939, 1939 PA 288,
10 MCL 712A.18.

11 (iii) If the respondent violates the personal protection
12 order in a jurisdiction other than this state, ~~the respondent is~~
13 ~~subject to~~ the enforcement procedures and penalties of the
14 state, Indian tribe, or United States territory under whose
15 jurisdiction the violation occurred.

16 (b) A statement that the personal protection order is
17 effective and immediately enforceable anywhere in this state when
18 signed by a judge, and that upon service, a personal protection
19 order also may be enforced by another state, an Indian tribe, or
20 a territory of the United States.

21 (c) A statement listing each type of conduct enjoined.

22 (d) An expiration date stated clearly on the face of the
23 order.

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

26 (f) The law enforcement agency designated by the court to
27 enter the personal protection order into the L.E.I.N.

1 (g) For an ex parte order, a statement that the individual
2 restrained or enjoined may file a motion to modify or rescind the
3 personal protection order and request a hearing within 14 days
4 after the individual restrained or enjoined ~~has been~~ **was** served
5 or ~~has~~ received actual notice of the personal protection order
6 and that motion forms and filing instructions are available from
7 the clerk of the court.

8 (9) An ex parte personal protection order shall not be issued
9 and effective without written or oral notice to the individual
10 enjoined or his or her attorney unless it clearly appears from
11 specific facts shown by verified complaint, written motion, or
12 affidavit that immediate and irreparable injury, loss, or damage
13 will result from the delay required to effectuate notice or that
14 the notice will precipitate adverse action before a personal
15 protection order can be issued.

16 (10) A personal protection order issued under subsection (9)
17 is valid for not less than 182 days. The individual restrained
18 or enjoined may file a motion to modify or rescind the personal
19 protection order and request a hearing under the Michigan court
20 rules. The motion to modify or rescind the personal protection
21 order shall be filed within 14 days after the order is served or
22 after the individual restrained or enjoined ~~has received~~
23 **receives** actual notice of the personal protection order unless
24 good cause is shown for filing the motion after 14 days have
25 elapsed.

26 (11) Except as otherwise provided in this subsection, the
27 court shall schedule a hearing on the motion to modify or rescind

1 the ex parte personal protection order within 14 days after ~~the~~
2 ~~filing of~~ the motion to modify or rescind **is filed**. If the
3 respondent is a person described in subsection (2) and the
4 personal protection order prohibits him or her from purchasing or
5 possessing a firearm, the court shall schedule a hearing on the
6 motion to modify or rescind the ex parte personal protection
7 order within 5 days after the ~~filing of the~~ motion to modify or
8 rescind **is filed**.

9 (12) The clerk of the court that issues a personal protection
10 order shall do all of the following immediately upon issuance
11 without requiring proof of service on the individual restrained
12 or enjoined:

13 (a) File a true copy of the personal protection order with
14 the law enforcement agency designated by the court in the
15 personal protection order.

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

18 (c) If ~~respondent~~ **the individual restrained or enjoined** is
19 identified in the pleadings as a law enforcement officer, notify
20 the officer's employing law enforcement agency about the
21 existence of the personal protection order.

22 (d) If the personal protection order prohibits the
23 ~~respondent~~ **individual restrained or enjoined** from purchasing or
24 possessing a firearm, notify the concealed weapon licensing board
25 in ~~respondent's~~ **the individual's** county of residence about the
26 existence and content of the personal protection order.

27 (e) If the ~~respondent~~ **individual restrained or enjoined** is

1 identified in the pleadings as a department of corrections
2 employee, notify the state department of corrections about the
3 existence of the personal protection order.

4 (f) If the ~~respondent~~ **individual restrained or enjoined** is
5 identified in the pleadings as being a person who may have access
6 to information concerning the petitioner or a child of the
7 petitioner or ~~respondent~~ **the individual** and that information is
8 contained in friend of the court records, notify the friend of
9 the court for the county in which the information is located
10 about the existence of the personal protection order.

11 (13) The clerk of ~~the~~ **a court that issues a personal**
12 **protection order** shall inform the petitioner that he or she may
13 take a true copy of the personal protection order to the law
14 enforcement agency designated by the court in subsection (7) to
15 be immediately entered into the L.E.I.N.

16 (14) The law enforcement agency that receives a true copy of
17 ~~the~~ **a personal protection order** under subsection (12) or (13)
18 shall immediately, without requiring proof of service, enter the
19 personal protection order into the L.E.I.N.

20 (15) A personal protection order issued under this section
21 shall be served personally, ~~or~~ by registered or certified mail,
22 return receipt requested, delivery restricted to the addressee at
23 the last known address or addresses of the individual restrained,
24 or enjoined, or by any other ~~manner provided in~~ **method allowed**
25 **by** the Michigan court rules. If the individual restrained or
26 enjoined has not been served, a law enforcement officer or clerk
27 of the court who knows that a personal protection order exists

1 may, at any time, serve the individual restrained or enjoined
2 with a true copy of the order or advise the individual restrained
3 or enjoined about the existence of the personal protection order,
4 the specific conduct enjoined, the penalties for violating the
5 order, and where the individual restrained or enjoined may obtain
6 a copy of the order. If the ~~respondent~~ **individual restrained**
7 **or enjoined** is less than 18 years of age, the parent, guardian,
8 or custodian of ~~that~~ **the** individual shall also be served
9 personally or by registered or certified mail, return receipt
10 requested, delivery restricted to the addressee at the last known
11 address or addresses of the parent, guardian, or custodian. ~~of~~
12 ~~the individual restrained or enjoined.~~ A proof of service or
13 proof of oral notice shall be filed with the clerk of the court
14 issuing the personal protection order. This subsection does not
15 prohibit the immediate effectiveness of a personal protection
16 order or immediate enforcement under subsection (18) or (19).

17 (16) The clerk of the court **that issued a personal protection**
18 **order** shall immediately notify the law enforcement agency that
19 received the personal protection order under subsection (12) or
20 (13) if either **or both** of the following ~~occurs~~ **occur**:

21 (a) The clerk of the court ~~has received~~ **receives** proof that
22 the individual restrained or enjoined has been served.

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

25 (17) The law enforcement agency that receives information
26 under subsection (16) shall enter the information or cause the
27 information to be entered into the L.E.I.N.

1 (18) Subject to subsection (19), a personal protection order
2 is immediately enforceable anywhere in this state by any law
3 enforcement agency that has received a true copy of the order, is
4 shown a copy of it, or has verified its existence on the
5 L.E.I.N.

6 (19) If the individual restrained or enjoined **by a personal**
7 **protection order** has not been served, ~~the~~ a law enforcement
8 agency or officer responding to a call alleging a violation of
9 ~~a~~ **the** personal protection order shall serve the individual
10 restrained or enjoined with a true copy of the order or advise
11 the individual restrained or enjoined about the existence of the
12 personal protection order, the specific conduct enjoined, the
13 penalties for violating the order, and where the individual
14 restrained or enjoined may obtain a copy of the order. The law
15 enforcement officer shall enforce the personal protection order
16 and immediately enter or cause to be entered into the
17 L.E.I.N. that the individual restrained or enjoined has actual
18 notice of the personal protection order. The law enforcement
19 officer also shall file a proof of service or proof of oral
20 notice with the clerk of the court ~~issuing~~ **that issued** the
21 personal protection order. If the individual restrained or
22 enjoined has not received notice of the personal protection
23 order, the individual restrained or enjoined shall be given an
24 opportunity to comply with the personal protection order before
25 the law enforcement officer makes a custodial arrest for
26 violation of the personal protection order. Failure to
27 immediately comply with the personal protection order is grounds

1 for an immediate custodial arrest. This subsection does not
2 preclude an arrest under section 15 or 15a of chapter IV of the
3 code of criminal procedure, 1927 PA 175, MCL 764.15 and 764.15a,
4 or a proceeding under section 14 of chapter XIIIA of the probate
5 code of 1939, 1939 PA 288, MCL 712A.14.

6 (20) An individual 17 years of age or more who refuses or
7 fails to comply with a personal protection order issued under
8 this section is subject to the criminal contempt powers of the
9 court and, if found guilty of criminal contempt, shall be
10 imprisoned for not more than 93 days and may be fined not more
11 than \$500.00. An individual less than 17 years of age who
12 refuses or fails to comply with a personal protection order
13 issued under this section is subject to the dispositional
14 alternatives listed in section 18 of chapter XIIIA of the probate
15 code of 1939, 1939 PA 288, MCL 712A.18. The criminal penalty
16 ~~provided for~~ under this section may be imposed in addition to
17 any penalty that may be imposed for any other criminal offense
18 arising from the same conduct.

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

23 (22) A personal protection order issued under this section is
24 also enforceable under chapter XIIIA of the probate code of 1939,
25 1939 PA 288, MCL 712A.1 to 712A.32, and section 15b of chapter IV
26 of the code of criminal procedure, 1927 PA 175, MCL 764.15b.

27 (23) A personal protection order issued under this section

1 may enjoin or restrain an individual from purchasing or
2 possessing a firearm.

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

5 (25) A court shall not issue a personal protection order that
6 restrains or enjoins conduct described in subsection (1) if any
7 of the following apply:

8 (a) The respondent is the unemancipated minor child of the
9 petitioner.

10 (b) The petitioner is the unemancipated minor child of the
11 respondent.

12 (c) The respondent is a minor child less than 10 years of
13 age.

14 (26) If the respondent is less than 18 years of age, issuance
15 of a personal protection order under this section is subject to
16 chapter XIIIA of the probate code of 1939, 1939 PA 288, MCL 712A.1
17 to 712A.32.

18 (27) A personal protection order that is issued before March
19 1, 1999 is not invalid on the ground that it does not comply with
20 1 or more of the requirements added by 1998 PA 476.

21 (28) A court shall not issue a personal protection order
22 under this section if the petitioner is a prisoner. If a
23 personal protection order is issued in violation of this
24 subsection, a court shall rescind the personal protection order
25 upon notification and verification that the petitioner is a
26 prisoner.

27 (29) As used in this section:

1 (a) "Federal law enforcement officer" means an officer or
2 agent employed by a law enforcement agency of the United States
3 government whose primary responsibility is the enforcement of
4 laws of the United States.

5 (b) "L.E.I.N." means the law enforcement information network
6 administered under the L.E.I.N. policy council act of 1974, 1974
7 PA 163, MCL 28.211 to 28.216.

8 (c) "Personal protection order" means an injunctive order
9 issued by **the** circuit court or the family division of **the** circuit
10 court restraining or enjoining conduct prohibited under section
11 411h or 411i of the Michigan penal code, 1931 PA 328,
12 MCL 750.411h and 750.411i.

13 (d) "Prisoner" means a person subject to incarceration,
14 detention, or admission to a prison who is accused of, convicted
15 of, sentenced for, or adjudicated delinquent for violations of
16 federal, state, or local law or the terms and conditions of
17 parole, probation, pretrial release, or a diversionary program.