

HOUSE BILL No. 4741

May 10, 2007, Introduced by Reps. Bieda, Rocca, Warren, Condino and Pastor and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
by amending section 2950 (MCL 600.2950), as amended by 2001 PA 200.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2950. (1) Except as provided in subsections (27) and
2 (28), 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 protection
7 order to restrain or enjoin a spouse, a former spouse, an
8 individual with whom he or she has had a child in common, an
9 individual with whom he or she has or has had a dating

1 relationship, or an individual residing or having resided in the
2 same household as the petitioner from doing 1 or more of the
3 following:

4 (a) Entering onto premises.

5 (b) Assaulting, attacking, beating, molesting, or wounding a
6 named individual.

7 (c) Threatening to kill or physically injure a named
8 individual.

9 (d) Removing minor children from the individual having legal
10 custody of the children, except as otherwise authorized by a
11 custody or parenting time order issued by a court of competent
12 jurisdiction.

13 (e) Purchasing or possessing a firearm.

14 (f) Interfering with petitioner's efforts to remove
15 petitioner's children or personal property from premises that are
16 solely owned or leased by the individual to be restrained or
17 enjoined.

18 (g) Interfering with petitioner at petitioner's place of
19 employment or education or engaging in conduct that impairs
20 petitioner's employment or educational relationship or environment.

21 (h) Having access to information in records concerning a minor
22 child of both petitioner and respondent that will inform respondent
23 about the address or telephone number of petitioner and
24 petitioner's minor child or about petitioner's employment address.

25 (i) Engaging in conduct that is prohibited under section 411h
26 or 411i of the Michigan penal code, 1931 PA 328, MCL 750.411h and
27 750.411i.

1 (J) DOING ANY OF THE FOLLOWING WITH RESPECT TO AN ANIMAL IN
2 WHICH THE PETITIONER HAS AN OWNERSHIP INTEREST:

3 (i) INJURING, KILLING, TORTURING, NEGLECTING, OR THREATENING TO
4 INJURE, KILL, TORTURE, OR NEGLECT THE ANIMAL.

5 (ii) REMOVING THE ANIMAL FROM THE PETITIONER'S POSSESSION.

6 (iii) INTERFERING WITH THE PETITIONER'S EFFORTS TO REMOVE THE
7 ANIMAL FROM PREMISES THAT ARE SOLELY OWNED OR LEASED BY THE
8 INDIVIDUAL TO BE RESTRAINED OR ENJOINED.

9 (K) ~~(j)~~—Any other specific act or conduct that imposes upon or
10 interferes with personal liberty or that causes a reasonable
11 apprehension of violence.

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

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

1 (4) The court shall issue a personal protection order under
2 this section if the court determines that there is reasonable cause
3 to believe that the individual to be restrained or enjoined may
4 commit 1 or more of the acts listed in subsection (1). In
5 determining whether reasonable cause exists, the court shall
6 consider all of the following:

7 (a) Testimony, documents, or other evidence offered in support
8 of the request for a personal protection order.

9 (b) Whether the individual to be restrained or enjoined has
10 previously committed or threatened to commit 1 or more of the acts
11 listed in subsection (1).

12 (5) A court shall not issue a personal protection order that
13 restrains or enjoins conduct described in subsection (1)(a) if all
14 of the following apply:

15 (a) The individual to be restrained or enjoined is not the
16 spouse of the moving party.

17 (b) The individual to be restrained or enjoined or the parent,
18 guardian, or custodian of the minor to be restrained or enjoined
19 has a property interest in the premises.

20 (c) The moving party or the parent, guardian, or custodian of
21 a minor petitioner has no property interest in the premises.

22 (6) A court shall not refuse to issue a personal protection
23 order solely due to the absence of any of the following:

24 (a) A police report.

25 (b) A medical report.

26 (c) A report or finding of an administrative agency.

27 (d) Physical signs of abuse or violence.

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

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

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

15 (10) The court shall designate the law enforcement agency that
16 is responsible for entering the personal protection order into the
17 law enforcement information network as provided by the ~~L.E.I.N.~~
18 **C.J.I.S.** policy council act, ~~of 1974,~~ 1974 PA 163, MCL 28.211 to
19 ~~28.216-28.215.~~

20 (11) A personal protection order shall include all of the
21 following, and to the extent practicable the following shall be
22 contained in a single form:

23 (a) A statement that the personal protection order has been
24 entered to restrain or enjoin conduct listed in the order and that
25 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 court, and
2 that if he or she is found guilty of criminal contempt, he or she
3 shall be imprisoned for not more than 93 days and may be fined not
4 more than \$500.00.

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

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

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

19 (c) A statement listing the type or types of conduct enjoined.

20 (d) An expiration date stated clearly on the face of the
21 order.

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

24 (f) The law enforcement agency designated by the court to
25 enter the personal protection order into the law enforcement
26 information network.

27 (g) For ex parte orders, a statement that the individual

1 restrained or enjoined may file a motion to modify or rescind the
2 personal protection order and request a hearing within 14 days
3 after the individual restrained or enjoined has been served or has
4 received actual notice of the order and that motion forms and
5 filing instructions are available from the clerk of the court.

6 (12) An ex parte personal protection order shall be issued and
7 effective without written or oral notice to the individual
8 restrained or enjoined or his or her attorney if it clearly appears
9 from specific facts shown by verified complaint, written motion, or
10 affidavit that immediate and irreparable injury, loss, or damage
11 will result from the delay required to effectuate notice or that
12 the notice will itself precipitate adverse action before a personal
13 protection order can be issued.

14 (13) A personal protection order issued under subsection (12)
15 is valid for not less than 182 days. The individual restrained or
16 enjoined may file a motion to modify or rescind the personal
17 protection order and request a hearing under the Michigan court
18 rules. The motion to modify or rescind the personal protection
19 order shall be filed within 14 days after the order is served or
20 after the individual restrained or enjoined has received actual
21 notice of the personal protection order unless good cause is shown
22 for filing the motion after the 14 days have elapsed.

23 (14) Except as otherwise provided in this subsection, the
24 court shall schedule a hearing on the motion to modify or rescind
25 the ex parte personal protection order within 14 days after the
26 filing of the motion to modify or rescind. If the respondent is a
27 person described in subsection (2) and the personal protection

1 order prohibits him or her from purchasing or possessing a firearm,
2 the court shall schedule a hearing on the motion to modify or
3 rescind the ex parte personal protection order within 5 days after
4 the filing of the motion to modify or rescind.

5 (15) The clerk of the court that issues a personal protection
6 order shall do all of the following immediately upon issuance and
7 without requiring a proof of service on the individual restrained
8 or enjoined:

9 (a) File a true copy of the personal protection order with the
10 law enforcement agency designated by the court in the personal
11 protection order.

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

14 (c) If respondent is identified in the pleadings as a law
15 enforcement officer, notify the officer's employing law enforcement
16 agency, if known, about the existence of the personal protection
17 order.

18 (d) If the personal protection order prohibits respondent from
19 purchasing or possessing a firearm, notify the concealed weapon
20 licensing board in respondent's county of residence about the
21 existence and contents of the personal protection order.

22 (e) If the respondent is identified in the pleadings as a
23 department of corrections employee, notify the state department of
24 corrections about the existence of the personal protection order.

25 (f) If the respondent is identified in the pleadings as being
26 a person who may have access to information concerning the
27 petitioner or a child of the petitioner or respondent and that

1 information is contained in friend of the court records, notify the
2 friend of the court for the county in which the information is
3 located about the existence of the personal protection order.

4 (16) The clerk of the court shall inform the petitioner that
5 he or she may take a true copy of the personal protection order to
6 the law enforcement agency designated by the court in subsection
7 (10) to be immediately entered into the law enforcement information
8 network.

9 (17) The law enforcement agency that receives a true copy of
10 the personal protection order under subsection (15) or (16) shall
11 immediately and without requiring proof of service enter the
12 personal protection order into the law enforcement information
13 network as provided by the ~~L.E.I.N.-C.J.I.S.~~ policy council act, ~~of~~
14 ~~1974,~~ 1974 PA 163, MCL 28.211 to ~~28.216~~ **28.215**.

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

1 respondent is less than 18 years of age, the parent, guardian, or
2 custodian of that individual shall also be served personally or by
3 registered or certified mail, return receipt requested, delivery
4 restricted to the addressee at the last known address or addresses
5 of the parent, guardian, or custodian of the individual restrained
6 or enjoined. A proof of service or proof of oral notice shall be
7 filed with the clerk of the court issuing the personal protection
8 order. This subsection does not prohibit the immediate
9 effectiveness of a personal protection order or its immediate
10 enforcement under subsections (21) and (22).

11 (19) The clerk of the court shall immediately notify the law
12 enforcement agency that received the personal protection order
13 under subsection (15) or (16) if either of the following occurs:

14 (a) The clerk of the court has received proof that the
15 individual restrained or enjoined has been served.

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

18 (20) The law enforcement agency that receives information
19 under subsection (19) shall enter the information or cause the
20 information to be entered into the law enforcement information
21 network as provided by the ~~L.E.I.N.-C.J.I.S.~~ policy council act, of
22 ~~1974,~~ 1974 PA 163, MCL 28.211 to ~~28.216~~ 28.215.

23 (21) Subject to subsection (22), a personal protection order
24 is immediately enforceable anywhere in this state by any law
25 enforcement agency that has received a true copy of the order, is
26 shown a copy of it, or has verified its existence on the law
27 enforcement information network as provided by the ~~L.E.I.N.-~~

1 C.J.I.S. policy council act, ~~of 1974,~~ 1974 PA 163, MCL 28.211 to
2 ~~28.216-28.215.~~

3 (22) If the individual restrained or enjoined has not been
4 served, the law enforcement agency or officer responding to a call
5 alleging a violation of a personal protection order shall serve the
6 individual restrained or enjoined with a true copy of the order or
7 advise the individual restrained or enjoined about the existence of
8 the personal protection order, the specific conduct enjoined, the
9 penalties for violating the order, and where the individual
10 restrained or enjoined may obtain a copy of the order. The law
11 enforcement officer shall enforce the personal protection order and
12 immediately enter or cause to be entered into the law enforcement
13 information network that the individual restrained or enjoined has
14 actual notice of the personal protection order. The law enforcement
15 officer also shall file a proof of service or proof of oral notice
16 with the clerk of the court issuing the personal protection order.
17 If the individual restrained or enjoined has not received notice of
18 the personal protection order, the individual restrained or
19 enjoined shall be given an opportunity to comply with the personal
20 protection order before the law enforcement officer makes a
21 custodial arrest for violation of the personal protection order.
22 The failure to immediately comply with the personal protection
23 order ~~shall be~~ **IS** grounds for an immediate custodial arrest. This
24 subsection does not preclude an arrest under section 15 or 15a of
25 chapter IV of the code of criminal procedure, 1927 PA 175, MCL
26 764.15 and 764.15a, or a proceeding under section 14 of chapter
27 XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.14.

1 (23) An individual who is 17 years of age or more and who
2 refuses or fails to comply with a personal protection order under
3 this section is subject to the criminal contempt powers of the
4 court and, if found guilty, shall be imprisoned for not more than
5 93 days and may be fined not more than \$500.00. An individual who
6 is less than 17 years of age and who refuses or fails to comply
7 with a personal protection order issued under this section is
8 subject to the dispositional alternatives listed in section 18 of
9 chapter XIIIA of the probate code of 1939, 1939 PA 288, MCL 712A.18.
10 The criminal penalty provided for under this section may be imposed
11 in addition to a penalty that may be imposed for another criminal
12 offense arising from the same conduct.

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

17 (25) A personal protection order issued under this section is
18 also enforceable under chapter XIIIA of the probate code of 1939,
19 1939 PA 288, MCL 712A.1 to 712A.32, and section 15b of chapter IV
20 of the code of criminal procedure, 1927 PA 175, MCL 764.15b.

21 (26) A personal protection order issued under this section is
22 also enforceable under chapter 17.

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

26 (a) The respondent is the unemancipated minor child of the
27 petitioner.

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

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

4 (28) If the respondent is less than 18 years of age, issuance
5 of a personal protection order under this section is subject to
6 chapter XIIIA of the probate code of 1939, 1939 PA 288, MCL 712A.1
7 to 712A.32.

8 (29) A personal protection order that is issued prior to ~~the~~
9 ~~effective date of the amendatory act that added this subsection~~
10 **MARCH 1, 1999** is not invalid on the ground that it does not comply
11 with 1 or more of the requirements added by ~~this amendatory act~~
12 **1998 PA 477.**

13 (30) **FOR PURPOSES OF SUBSECTION (1)(J), A PETITIONER HAS AN**
14 **OWNERSHIP INTEREST IN AN ANIMAL IF 1 OR MORE OF THE FOLLOWING ARE**
15 **APPLICABLE:**

16 (A) **THE PETITIONER HAS A RIGHT OF PROPERTY IN THE ANIMAL.**

17 (B) **THE PETITIONER KEEPS OR HARBORS THE ANIMAL.**

18 (C) **THE ANIMAL IS IN THE PETITIONER'S CARE.**

19 (D) **THE PETITIONER PERMITS THE ANIMAL TO REMAIN ON OR ABOUT**
20 **PREMISES OCCUPIED BY THE PETITIONER.**

21 (31) ~~(30)~~As used in this section:

22 (a) "Dating relationship" means frequent, intimate
23 associations primarily characterized by the expectation of
24 affectional involvement. This term does not include a casual
25 relationship or an ordinary fraternization between 2 individuals in
26 a business or social context.

27 (b) "Federal law enforcement officer" means an officer or

1 agent employed by a law enforcement agency of the United States
2 government whose primary responsibility is the enforcement of laws
3 of the United States.

4 (C) "NEGLECT" MEANS THAT TERM AS DEFINED IN SECTION 50 OF THE
5 MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.50.

6 (D) ~~(e)~~—"Personal protection order" means an injunctive order
7 issued by the circuit court or the family division of circuit court
8 restraining or enjoining activity and individuals listed in
9 subsection (1).