

HOUSE BILL No. 6281

June 25, 2008, Introduced by Reps. Ebli, Condino, Sheltroun, Angerer, Corriveau, Young, Bauer, Robert Jones, Vagnozzi, Mayes, Valentine, Polidori and Rick Jones 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:

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 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 an individual from engaging in conduct
8 that is prohibited under section 411h or 411i of the Michigan penal
9 code, 1931 PA 328, MCL 750.411h and 750.411i. Relief shall not be

1 granted unless the petition alleges ~~facts~~ **1 OR BOTH OF THE**
2 **FOLLOWING:**

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

10 (B) **THAT THE RESPONDENT HAS BEEN CONVICTED OF COMMITTING AN**
11 **OFFENSE UNDER SECTION 520B, 520C, 520D, 520E, OR 520G OF THE**
12 **MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.520B, 750.520C, 750.520D,**
13 **750.520E, AND 750.520G, AND THAT THE PETITIONER WAS THE VICTIM OF**
14 **THE OFFENSE.**

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

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

5 (4) If a court **ISSUES OR** refuses to ~~grant~~**ISSUE** a personal
6 protection order, the court shall immediately state in writing the
7 specific reasons for issuing or refusing to issue a ~~THE~~ personal
8 protection order. If a hearing is held, the court shall also
9 immediately state on the record the specific reasons for issuing or
10 refusing to issue a personal protection order.

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

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

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

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

26 (a) A statement that the personal protection order has been
27 entered to enjoin or restrain conduct listed in the order and that

1 violation of the personal protection order will subject the
2 individual restrained or enjoined to 1 or more of the following:

3 (i) If the respondent is 17 years of age or ~~more~~**OLDER**,
4 immediate arrest, ~~and~~ the civil and criminal contempt powers of the
5 court, and ~~that~~ if he or she is found guilty of criminal contempt,
6 ~~he or she shall be imprisoned~~**IMPRISONMENT** for not more than 93
7 days and ~~may be fined~~**A FINE OF** not more than \$500.00.

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

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

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

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

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

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

27 (f) The law enforcement agency designated by the court to

1 enter the personal protection order into the L.E.I.N.

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

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

17 (10) A personal protection order issued under subsection (9)
18 is valid for not less than 182 days. The individual restrained or
19 enjoined may file a motion to modify or rescind the personal
20 protection order and request a hearing under the Michigan court
21 rules. The motion to modify or rescind the personal protection
22 order shall be filed within 14 days after the order is served or
23 after the individual restrained or enjoined ~~has received~~ **RECEIVES**
24 actual notice of the personal protection order unless good cause is
25 shown for filing the motion after 14 days have 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 personal
4 protection order prohibits him or her from purchasing or possessing
5 a firearm, the court shall schedule a hearing on the motion to
6 modify or rescind the ex parte personal protection order within 5
7 days after the ~~filing of the~~ motion to modify or rescind **IS FILED**.

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

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

15 (b) Provide **THE** petitioner with not ~~less~~-**FEWER** than 2 true
16 copies of the personal protection order.

17 (c) If ~~respondent~~-**THE INDIVIDUAL RESTRAINED OR ENJOINED** is
18 identified in the pleadings as a law enforcement officer, notify
19 the officer's employing law enforcement agency ~~about~~-**OF** the
20 existence of the personal protection order.

21 (d) If the personal protection order prohibits the ~~respondent~~
22 **INDIVIDUAL RESTRAINED OR ENJOINED** from purchasing or possessing a
23 firearm, notify the concealed weapon licensing board in
24 ~~respondent's~~-**THE INDIVIDUAL'S** county of residence ~~about~~-**OF** the
25 existence and content of the personal protection order.

26 (e) If the ~~respondent~~-**INDIVIDUAL RESTRAINED OR ENJOINED** is
27 identified in the pleadings as a department of corrections

1 employee, notify the state department of corrections ~~about~~**OF** the
2 existence of the personal protection order.

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

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

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

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

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

16 (16) The clerk of the court **THAT ISSUED A PERSONAL PROTECTION**
17 **ORDER** shall immediately notify the law enforcement agency that
18 received the personal protection order under subsection (12) or
19 (13) if either **OR BOTH** of the following ~~occurs~~ **OCCUR**:

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

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

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

27 (18) Subject to subsection (19), a personal protection order

1 is immediately enforceable anywhere in this state by any law
2 enforcement agency that has received a true copy of the order, is
3 shown a copy of it, or has verified its existence on the L.E.I.N.

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

1 a proceeding under section 14 of chapter XIIA of the probate code
2 of 1939, 1939 PA 288, MCL 712A.14.

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

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

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

24 (23) A personal protection order issued under this section may
25 enjoin or restrain an individual from purchasing or possessing a
26 firearm.

27 (24) A personal protection order issued under this section is

1 also enforceable under chapter 17.

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

5 (a) The respondent is the unemancipated minor child of the
6 petitioner.

7 (b) The petitioner is the unemancipated minor child of the
8 respondent.

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

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

14 (27) A personal protection order ~~that is~~ issued before March
15 1, 1999 is not invalid on the ground that it does not comply with 1
16 or more of the requirements added by 1998 PA 476.

17 (28) A court shall not issue a personal protection order under
18 this section if the petitioner is a prisoner. If a personal
19 protection order is issued in violation of this subsection, a court
20 shall rescind the personal protection order upon notification and
21 verification that the petitioner is a prisoner.

22 (29) As used in this section:

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

27 (b) "L.E.I.N." means the law enforcement information network

1 administered under the ~~L.E.I.N.~~ **C.J.I.S.** policy council act, ~~of~~
2 ~~1974,~~ 1974 PA 163, MCL 28.211 to ~~28.216~~ **28.215**.

3 (c) "Personal protection order" means an injunctive order
4 issued by **THE** circuit court, ~~or~~ the family division of circuit
5 court, **OR A DISTRICT COURT** restraining or enjoining conduct
6 prohibited under section 411h or 411i of the Michigan penal code,
7 1931 PA 328, MCL 750.411h and 750.411i.

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