

Legislative Analysis



PPO FOR SEXUAL ASSAULT VICTIM

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House Bill 4221 as enrolled
Public Act 20 of 2010

House Bill 4222 as enrolled
Public Act 19 of 2010
Sponsor: Rep. Kate Ebli
House Committee: Judiciary
Senate Committee: Judiciary

First Analysis (1-10-11)

BRIEF SUMMARY: The bills would allow a court to issue a PPO to a victim of sexual assault to enjoin a person from engaging in numerous specified acts even if only one event has occurred. The bills are tie-barred to each other.

FISCAL IMPACT: House Bill 4221 has no fiscal impact on state or local government. House Bill 4222 would have an indeterminate fiscal impact on state and local government.

THE APPARENT PROBLEM:

According to testimony offered by a representative of the Michigan Domestic Violence Prevention & Treatment Board, within the Department of Human Services, House Bill 4222 is needed to fill a gap in current law that prevents many victims of sexual violence from obtaining a personal protection order (PPO) against the assailant.

Currently, a sexual assault victim can obtain a PPO to prevent stalking if he or she can show the person feared has engaged in two or more unconsented contacts that constitute stalking under the penal laws. A victim can also get a domestic relationship PPO if the person feared is a spouse, former spouse, past or present boyfriend or girlfriend, past or present roommate, or they have a child in common. However, an individual who was sexually assaulted on just one occasion by a person with whom he or she did not have a domestic relationship cannot obtain a PPO.

This means that an individual sexually assaulted on a single occasion cannot get a PPO against a perpetrator who remains at large, against a perpetrator released from prison after completing a sentence for the crime, or against a person causing fear of a sexual assault through that person's words or actions unless the conduct meets the criteria for stalking.

The inability to obtain a PPO after a single act of sexual assault is particularly egregious for those who were minors at the time of the assault, according to testimony offered by a Monroe County circuit court judge. Children do not make good witnesses, so perpetrators of sexual assault against minors often get reduced sentences, meaning they

are soon back on the streets. Again, unless two separate events constituting stalking occur, the victim cannot obtain a PPO against the assailant.

Legislation has been offered to address the matter.

THE CONTENT OF THE BILLS:

Generally speaking, a person must engage in at least two nonconsecutive events of stalking before a personal protection order (PPO) can be petitioned for or granted. House Bills 4221 and 4222 would amend two different laws, in the case of sexual assault, to allow the victim to petition for and be granted a PPO to prevent another person from engaging in numerous acts as listed in House Bill 4222. Specifically, the bills would do the following.

House Bill 4222 would amend the Revised Judicature Act (MCL 600.2950a). The bill would allow a victim of sexual assault, or a victim threatened with sexual assault, to petition for a PPO. The bill's provisions would apply to situations where the individual that the PPO was against (respondent) had been convicted of sexually assaulting the petitioner or had been convicted of furnishing obscene material to a minor under Section 142 of the Michigan Penal Code. The PPO would have to be granted if the court determined that the respondent had been convicted of sexually assaulting or furnishing obscene material to the petitioner. Moreover, a sexual assault PPO would be granted whether the violations were under Michigan law or under a substantially similar federal law, law of another state, or law of a foreign country, or Tribal or military law.

In addition, the bill would apply to a person who had been subjected to, threatened with, or placed in reasonable apprehension of sexual assault by another person. In order for the PPO to be granted, the petition would have to allege facts that demonstrate the respondent had perpetrated or threatened sexual assault against the petitioner. Evidence that a respondent had furnished obscene material to a minor petitioner would constitute evidence that the respondent threatened sexual assault against the petitioner. A PPO could be granted under this provision regardless of whether the respondent had been charged with or convicted of sexual assault or furnishing obscene material to a minor petitioner.

Numerous acts would be prohibited under the PPO, some of which do not currently apply to PPOs granted for other reasons. Prohibited or enjoined acts would include:

- Entering onto premises; entering onto or remaining on property owned, leased, or occupied by the petitioner; appearing at the petitioner's workplace or residence; or approaching or confronting the petitioner in a public place or on private property.
- Threatening to sexually assault, kill, or physically injure the petitioner or a named individual.
- Purchasing or possessing a firearm.

- Contacting the petitioner by various forms of communication, including telephone; email; or placing an object on, or delivering an object to, property owned, leased, or occupied by the petitioner.
- Engaging in acts of stalking.
- Interfering with the petitioner's efforts to remove his or her children or personal property from premises solely owned or leased by the respondent.
- Interfering with the petitioner at his or her place of employment or education that impairs his or her employment or educational relationship or environment.
- Any other specific act or conduct that imposes upon or interferes with personal liberty or that causes a reasonable apprehension of violence or sexual assault.

Section 520j of the Michigan Penal Code (the rape-shield law, which provides that the victim's sexual conduct cannot be admitted in sexual assault cases except in narrowly defined circumstances) would apply in any hearing on a petition for, a motion to modify or terminate, or an alleged violation of a PPO requested or issued under the bill's provisions as follows:

****** The written motion and offer of proof would have to be filed at least 24 hours before a hearing on a petition to issue a PPO or on an alleged violation of a PPO.

****** The written motion and offer of proof must be filed at the same time that a motion to modify or terminate a PPO was filed.

The bill would define the terms "convicted" and "sexual assault." Further, the RJA currently allows an individual to petition for and a court to grant a PPO to enjoin a person from engaging in acts of stalking. The bill would amend this provision to also allow a PPO to enjoin a person from conduct that is prohibited under Section 411s of the Michigan Penal Code (posting a message through electronic medium), even if the person had not been charged with or convicted of such conduct.

House Bill 4221 would amend Public Act 372 of 1927 (MCL 28.422), which regulates the possession and carrying of concealed pistols, to revise numerous references to provisions within the Revised Judicature Act renumbered by House Bill 4222.

ARGUMENTS:

For:

It is important for sexual assault victims to obtain a PPO against their assailants because sexual assault is a particularly devastating crime. According to rape counselors, rape is a life-changing event, one that affects a victim to the core of her or his being. Many victims feel an overwhelming loss of power and control that takes both a physical and emotional toll, leading some victims to take their own lives.

House Bill 4222 would give a sense of power and control back to victims of sexual assault. Sometimes just seeing the assailant, or knowing that the assailant is nearby or has been at the victim's home, is enough to trigger all the emotions of the attack. Under the bill, an individual would not have to fear victimization over and over again before

being able to access the courts for protection. A minor could obtain a sexual assault PPO upon a single occurrence of someone furnishing her or him with obscene material. Plus, the bill would enable an individual to petition for a PPO if the person he or she feared was engaging in cyber-attacks by posting certain types of messages on the Internet or via other electronic medium.

Victims of a sexual assault or threatened assault often relocate to avoid contact with their attackers. However, sometimes the offender tracks the new location of the victim. The bill would enable victims of sexual assault to file for a PPO in Michigan even if the offense had taken place in a different state or country or the conduct was a violation of federal, Tribal, or military law.

All current safeguards, notices, and hearings in place for PPOs would pertain to sexual assault PPOs. Currently, at least 17 other states allow sexual assault PPOs. The bill package would go a long way in increasing the physical safety of victims of sexual assault, and would help restore a sense of control necessary for healing and reintegration into society.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.