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House Bill 4221 (as passed by the House)

House Bill 4222 (Substitute H-3 as passed by the House)

Sponsor: Representative Kate Ebli

House Committee: Judiciary Senate Committee: Judiciary

Date Completed: 3-8-10

CONTENT

<u>House Bill 4221</u> would amend the handgun licensure Act to revise citations to various statutes regarding the qualification of an applicant for a license to purchase, carry, possess, or transport a pistol.

<u>House Bill 4222 (H-3)</u> would amend the Revised Judicature Act (RJA) to do all of the following:

- -- Allow a court to issue a personal protection order (PPO) for activity known as "cyberstalking".
- -- Allow a court to issue a PPO restraining or enjoining a person convicted of sexual assault or furnishing obscene material to a minor.
- -- Allow a court to issue a PPO if a petitioner were subjected to, threatened with, or placed in reasonable apprehension of sexual assault.
- -- Limit the admissibility of evidence of a petitioner's sexual conduct in any hearing on a PPO petition relating to sexual assault or furnishing obscene material to a minor.

The bills are tie-barred.

House Bill 4221

Under the handgun licensure Act, various law enforcement officials must issue licenses to purchase, carry, possess, or transport pistols to qualified applicants, except under certain circumstances. An applicant is considered qualified if, among other things, he or she is not subject to particular orders or dispositions that have been entered into the Law Enforcement Information Network (LEIN). These include the following:

- -- An order of involuntary hospitalization and/or alternative treatment, under the Mental Health Code.
- -- A PPO issued under the RJA for domestic violence or stalking activity.
- -- A condition of release on bail.
- -- A finding of not guilty by reason of insanity on a criminal charge.

The bill would revise citations to the sections of law regarding those orders or dispositions, making them consistent with current law and amendments proposed by House Bill 4222 (H-3).

House Bill 4222 (H-3)

Stalking PPOs

Under the RJA, an individual may petition the family division of circuit court (family court) to enter a PPO to restrain or enjoin another individual from engaging in stalking or aggravated

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stalking under the Michigan Penal Code (MCL 750.411h or 750.411i). The bill also would allow a petitioner to seek a PPO to restrain or enjoin cyberstalking activity prohibited by the Michigan Penal Code (MCL 750.411s).

(Section 411s of the Penal Code prohibits a person from posting a message through the use of any medium of communication, including the internet, a computer, a computer program, system, or network, or other electronic medium, without the victim's consent, if the person knows or has reason to know that posting the message could cause two or more separate noncontinuous acts of unconsented contact with the victim, posting the message is intended to cause conduct that would make the victim feel terrorized, frightened, intimidated, threatened, harassed, or molested; conduct arising from the posting would cause a reasonable person to suffer emotional distress and to feel terrorized, frightened, intimidated, threatened, harassed, or molested; and conduct arising from the posting causes the victim to suffer emotional distress and to feel terrorized, frightened, intimidated, threatened, harassed, or molested.)

Sexual Assault/Obscene Material PPOs

Under the bill, an individual could petition the family court for a PPO to restrain or enjoin an individual from engaging in certain activities (described below) if the respondent had been convicted of a sexual assault of the petitioner or of furnishing obscene material to the petitioner. Relief would have to be granted if the court determined that the respondent had been so convicted.

Also, an individual could petition for a PPO to restrain or enjoin an individual from engaging in certain activities if the petitioner had been subjected to, threatened with, or placed in reasonable apprehension of sexual assault by the individual to be restrained. Relief could not be granted unless the petition alleged facts demonstrating that 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 had threatened sexual assault against the petitioner. Relief could be sought and granted regardless of whether the individual to be restrained or enjoined had been charged with or convicted of sexual assault or furnishing obscene material to a minor.

For PPO petitions for sexual assault or furnishing obscene material, the court could restrain or enjoin an individual from one or more of the following:

- -- Entering onto premises.
- -- Threatening to sexually assault, kill, or physically injure the petitioner or a named individual.
- -- Purchasing or possessing a firearm.
- -- Interfering with the petitioner's efforts to remove his or her children or personal property from premises that were solely owned or leased by the individual to be restrained or enjoined.
- -- Interfering with the petitioner at his or her place of employment or education or engaging in conduct that impaired the petitioner's employment or educational relationship or environment.
- -- Following or appearing within the sight of the petitioner in a public place or on private property.
- -- Appearing at the petitioner's workplace or residence.
- -- Entering onto or remaining on property owned, leased, or occupied by the petitioner.
- -- Contacting the petitioner by telephone.
- -- Sending mail or electronic communications to the petitioner.
- -- Placing an object on, or delivering an object to, property owned, leased, or occupied by the petitioner.
- -- Engaging in cyberstalking conduct.
- -- Any other specific act or conduct that imposed upon or interfered with personal liberty or that caused a reasonable apprehension of violence or sexual assault.

Inadmissibility of Evidence

Section 520j of the Michigan Penal Code limits the admission of evidence of the victim's sexual conduct and reputation in criminal sexual conduct (CSC) prosecutions. Under the bill, Section 520j 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 for sexual assault or furnishing obscene material to a minor, except as follows:

- -- The written motion and offer of proof would have to be filed at least 24 hours before a hearing on a petition for a PPO or on an alleged violation of a PPO.
- -- The written motion and offer of proof would have to be filed at the same time that a motion to modify or terminate a PPO was filed.

(Under Section 520j, evidence of specific instances of the victim's sexual conduct, opinion evidence of the victim's sexual conduct, and reputation evidence of the victim's sexual conduct may not be admitted in CSC cases unless and only to the extent that the judge finds that the following proposed evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value:

- -- Evidence of the victim's past sexual conduct with the accused.
- -- Evidence of specific instances of sexual activity showing the source or origin of semen, pregnancy, or disease.

If the defendant proposes to offer such evidence, he or she must file a written motion and offer of proof within 10 days after arraignment.)

As used in these provisions, the bill would define "convicted" as one of the following:

- -- The subject of a judgment of conviction or a probation order entered in a court that has jurisdiction over criminal offenses, including a tribal court or a military court.
- -- Assignment to youthful trainee status under the Holmes Youthful Trainee Act, if the individual's youthful trainee status is revoked and an adjudication of guilt is entered.
- -- The subject of an order of disposition entered under the juvenile code that is open to the general public.
- -- The subject of an order of disposition or other adjudication in a juvenile matter in another state or country.

"Sexual assault" would mean an act, attempted act, or conspiracy to engage in an act of criminal conduct as defined in Sections 520b to 520e and 520g of the Michigan Penal Code (which prohibit CSC and assault with intent to commit CSC), or a substantially similar offense under a law of the United States, another state or foreign country, or tribal or military law.

MCL 28.422 (H.B. 4221) 600.2950a (H.B. 4222) Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills would have an indeterminate impact on State and local units of government.

Fiscal Analyst: Bill Bowerman

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.