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PPOS; RESTRICT DISCLOSURE OF CERTAIN INFORMATION

House Bill 5880 as introduced
Sponsor: Rep. Jessie Dalman

House Bill 5881 as introduced
Sponsor: Rep. Paul Wojno

House Bill 5884 as introduced
Sponsor: Rep. Martha Scott

First Analysis (6-2-98)
Committee: Judiciary

THE APPARENT PROBLEM:

In 1994, 22 new domestic violence laws were passed by Michigan's legislature. One of the results of that legislation was the creation of domestic violence personal protection orders (PPOs). Personal protection orders are a distinctly new creation of the legislature: they are civil injunctions that have criminal penalties. Under the Revised Judicature Act (RJA) a victim of domestic violence may petition the circuit court to issue a personal protection order to prohibit a spouse, a former spouse, an individual with whom the petitioner has had a child in common, an individual with whom the petitioner has or has had a dating relationship, or an individual who resides or has resided in the petitioner's household from engaging in certain activities. The personal protection order provisions allow an ex parte PPO to be issued and to become effective without providing notice to the individual who is to be restrained or that person's attorney where the facts reveal that immediate and irreparable injury, loss, or damage could result from the delay required to provide notice or that the provision of notice, in and of itself, will precipitate adverse action by the respondent before the order could be issued.

In the fall of 1995, the Prosecuting Attorneys Association of Michigan (PAAM) and the Domestic Violence Prevention and Treatment Board (DVPTB) met to discuss the implementation of the domestic violence laws enacted by the legislature in 1994. The two groups then agreed to co-chair a statewide, multi-disciplinary task force (the Domestic Violence Law Implementation Task Force) to gather information on the problems and successes encountered in implementing the new laws, and to make

recommendations for legislative and court rule change, police policy, training needs, forms changes, and best practices. In July of 1996, the task force issued its report, including recommendations for changes. Some legislation that was introduced as a result of the task force's recommendations has already been passed by the House. One of these bills, House Bill 5657, passed recently by the House, allows for a domestic violence PPO to prohibit the restrained party (the respondent) from access to information regarding the address and telephone number of the petitioner and the parties' minor child. In conjunction with the restrictions provided in House Bill 5657, it has been suggested that restrictions should be enacted prohibiting holders of medical, school, and mental health records from releasing prohibited information.

THE CONTENT OF THE BILLS:

The bills would provide for essentially the same requirements to be inserted into three different acts. Each bill would prohibit certain individuals and/or facilities from releasing certain information about certain minors. If the individuals and/or facilities had received a copy of a personal protection order barring a parent's access to records or other information pertaining to his or her minor child's or the other parent's address or telephone number or the other parent's place of employment, the individuals and/or facilities would be prohibited from releasing or providing that information.

House Bill 5880 would amend the Revised School Code (MCL 380.1137) to prohibit a school district, local act school district, public school academy, or

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intermediate school district from providing such information.

House Bill 5881 would amend the Mental Health Code (MCL 330.1746 and 330.1747) to prohibit mental health professionals who have mental health records or other mental health care information pertaining to the minor from releasing such information. The bill would also prohibit facilities, licensed facilities, psychiatric hospitals, or centers in which the minor has received health care treatment or services and are holding mental health records or other mental health care information regarding the minor from providing such information.

House Bill 5884 would amend the Public Health Code (MCL 333.16290 and 330.20175a) to prohibit licensees or registrants that treated the minor patient and have medical records or other health care information about the minor from providing the information. The bill would also apply to a health facility or agency that had provided health care treatment or services and has medical records or other health care information regarding the minor.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

The bills would help to implement the recommendations made by the Domestic Violence Prevention and Treatment Board (DVPTB). Many perpetrators of domestic violence fail to take responsibility for their actions and blame the victim; to the degree that society fails to hold these people accountable for their actions, it reinforces this belief and decreases the chances that the person will change his or her behavior. Domestic violence is not a private matter, and legal intervention can effectively get this message across. To this end, laws have been enacted to strengthen law enforcement's response to domestic violence. By addressing various shortcomings of the law on domestic violence restraining orders as recommended by the DVPTB, the bills would significantly improve protections to victims of domestic violence and clarify many of the

issues that have been confusing for law enforcement and judges.

The task force recommended that domestic violence PPOs be allowed to include provisions prohibiting the abuser from having access to information that could help him or her find out where the petitioner is living or working. In order to do this effectively, it is necessary that those entities that hold or maintain school, medical, or mental health records be required to withhold information from abusers when the entity has knowledge of the restrictions of the PPO. The bills are needed to help protect both the victims of domestic violence and their children. Many studies have shown that the victims of domestic violence are at greater risk of being seriously harmed or even killed by their abusers when they attempt to leave the relationship. Therefore anything that helps to conceal a victim's whereabouts from his or her abuser could help to save that victim's life.

Against:

The opportunities for misuse of these restrictions are immeasurable. The restrictions will interfere with existing court orders regarding custody and parenting time; a parent who successfully obtained a PPO could easily hide the child and block the other parent's parenting time until the non-custodial parent has the opportunity to be heard before the court and have the PPO rescinded. Given that these PPOs may be obtained without the other parent having the opportunity to be heard, restrictions like this should not be added to the PPO without giving the other parent a chance to present his or her side of the story.

Furthermore, barring access to school, medical and mental health records will interfere with the ability of a non-custodial parent to learn about the level and quality of the health care and education that his or her child is receiving. This is information that every parent should be entitled to; barring access to this information interferes directly with the ability of the parent to be a parent. Not merely information about where the other parent was living or working would be blocked, but more than likely, the entities affected by these bills would simply block access to all information rather than risk liability for letting out restricted information. This is a possible consequence that is entirely unacceptable and is not covered in the legislation.

POSITIONS:

The Family Independence Agency supports the bills.
(5-28-98)

The Capitol Area Fathers for Equal Rights opposes the
bills. (5-28-98)

Analyst: W. Flory

■ 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.