

SENATE BILL NO. 866

February 5, 1998, Introduced by Senator VAN REGENMORTER 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 1997 PA 115.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2950a. (1) By commencing an independent action to
2 obtain relief under this section, by joining a claim to an
3 action, or by filing a motion in an action in which the peti-
4 tioner and the individual to be restrained or enjoined are par-
5 ties, an individual may petition the circuit court to enter a
6 personal protection order to restrain or enjoin an individual
7 from engaging in conduct that is prohibited under section 411h or
8 411i of the Michigan penal code, 1931 PA 328, MCL 750.411h and
9 750.411i. Relief may be sought and granted under this section
10 whether or not the individual to be restrained or enjoined has

1 been charged or convicted under section 411h or 411i of the
2 Michigan penal code, 1931 PA 328, MCL 750.411h and 750.411i for
3 the alleged violation.

4 (2) If the respondent is a person who is issued a license to
5 carry a concealed weapon and is required to carry a weapon as a
6 condition of his or her employment, a police officer certified by
7 the Michigan law enforcement training council act of 1965, 1965
8 PA 203, MCL 28.601 to 28.616, a sheriff, a deputy sheriff or a
9 member of the Michigan department of state police, a local cor-
10 rections officer, a department of corrections employee, or a fed-
11 eral law enforcement officer who carries a firearm during the
12 normal course of his or her employment, the petitioner shall
13 notify the court of the respondent's occupation prior to the
14 issuance of the personal protection order. This subsection does
15 not apply to a petitioner who does not know the respondent's
16 occupation.

17 (3) A petitioner may omit his or her address of residence
18 from documents filed with the court pursuant to this section. If
19 a petitioner omits his or her address of residence, the peti-
20 tioner shall provide the court a mailing address.

21 (4) A COURT SHALL NOT ISSUE A PERSONAL PROTECTION ORDER THAT
22 RESTRAINS OR ENJOINS CONDUCT DESCRIBED IN SUBSECTION (1) IF
23 EITHER OF THE FOLLOWING APPLIES:

24 (A) THE RESPONDENT IS THE MINOR CHILD OF THE PETITIONER.

25 (B) THE PETITIONER IS THE MINOR CHILD OF THE RESPONDENT.

26 (5) ~~(4)~~ If the court refuses to grant a personal
27 protection order, it shall IMMEDIATELY state in writing the

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

5 (6) ~~-(5)-~~ A personal protection order shall not be made
6 mutual. Correlative separate personal protection orders are pro-
7 hibited unless both parties have properly petitioned the court
8 pursuant to subsection (1).

9 (7) ~~-(6)-~~ A personal protection order is effective AND IMME-
10 DIATELY ENFORCEABLE when signed by a judge.

11 (8) ~~-(7)-~~ The court shall designate the law enforcement
12 agency that is responsible for entering the personal protection
13 order into the law enforcement information network as provided by
14 the L.E.I.N. policy council act of 1974, 1974 PA 163, MCL 28.211
15 to 28.216.

16 (9) ~~-(8)-~~ A personal protection order issued under this sec-
17 tion shall include all of the following:

18 (A) EITHER OF THE FOLLOWING:

19 (i) ~~-(a)-~~ IF THE RESPONDENT IS 17 YEARS OF AGE OR MORE, A
20 statement that the personal protection order has been entered to
21 enjoin or restrain conduct listed in the order and that violation
22 of the personal protection order will subject the individual
23 restrained or enjoined to immediate arrest and the civil and
24 criminal contempt powers of the court, and that if he or she is
25 found guilty of criminal contempt, he or she shall be imprisoned
26 for not more than 93 days and may be fined not more than
27 \$500.00.

1 (ii) IF THE RESPONDENT IS LESS THAN 17 YEARS OF AGE, A
2 STATEMENT THAT THE PERSONAL PROTECTION ORDER HAS BEEN ENTERED TO
3 ENJOIN OR RESTRAIN CONDUCT LISTED IN THE ORDER AND THAT VIOLATION
4 OF THE ORDER WILL SUBJECT THE INDIVIDUAL RESTRAINED OR ENJOINED
5 TO THE DISPOSITIONAL ALTERNATIVES LISTED IN SECTION 18 OF CHAPTER
6 XIIIA OF 1939 PA 288, MCL 712A.18.

7 (b) A statement that the personal protection order is effec-
8 tive ~~when signed by a judge~~ and ~~is~~ immediately enforceable
9 WHEN SIGNED BY A JUDGE.

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

12 (d) An expiration date stated clearly on the face of the
13 order.

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

16 (f) The law enforcement agency designated by the court to
17 enter the personal protection order into the law enforcement
18 information network.

19 (g) For ex parte orders, a statement that the individual
20 restrained or enjoined may file a motion to modify or rescind the
21 personal protection order and request a hearing within 14 days
22 after the individual restrained or enjoined has been served or
23 has received actual notice of the personal protection order and
24 that motion forms and filing instructions are available from the
25 clerk of the court.

26 (10) ~~(9)~~ An ex parte personal protection order shall NOT
27 be issued and effective without written or oral notice to the

1 individual enjoined or his or her attorney ~~if~~ UNLESS it clearly
2 appears from specific facts shown by verified complaint, written
3 motion, or affidavit that immediate and irreparable injury, loss,
4 or damage will result from the delay required to effectuate
5 notice or that the notice will itself precipitate adverse action
6 before a personal protection order can be issued.

7 (11) ~~(10)~~ A personal protection order issued under subsec-
8 tion ~~(9)~~ (10) is valid for not less than 182 days. The indi-
9 vidual restrained or enjoined may file a motion to modify or
10 rescind the personal protection order and request a hearing pur-
11 suant to the Michigan court rules. The motion to modify or
12 rescind the personal protection order shall be filed within 14
13 days after the order is served or after the individual restrained
14 or enjoined has received actual notice of the personal protection
15 order unless good cause is shown for filing the motion after the
16 14 days have elapsed.

17 (12) ~~(11)~~ Except as otherwise provided in this subsection,
18 the court shall schedule a hearing on the motion to modify or
19 rescind the ex parte personal protection order within 14 days
20 after the filing of the motion to modify or rescind. If the
21 respondent is a person described in subsection (2) and the per-
22 sonal protection order prohibits him or her from purchasing or
23 possessing a firearm, the court shall schedule a hearing on the
24 motion to modify or rescind the ex parte personal protection
25 order within 5 days after the filing of the motion to modify or
26 rescind.

1 (13) ~~-(12)-~~ The clerk of the court that issues a personal
2 protection order shall do both of the following immediately upon
3 issuance and without requiring a proof of service on the individ-
4 ual restrained or enjoined:

5 (a) File a true copy of the personal protection order with
6 the law enforcement agency designated by the court in the per-
7 sonal protection order.

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

10 (14) ~~-(13)-~~ The clerk of the court shall inform the peti-
11 tioner that he or she may take a true copy of the personal pro-
12 tection order to the law enforcement agency designated by the
13 court in subsection ~~-(7)-~~ (8) to be immediately entered into the
14 law enforcement information network.

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

21 (16) ~~-(15)-~~ A personal protection order issued under this
22 section shall be served personally or by registered or certified
23 mail, return receipt requested, delivery restricted to the
24 addressee at the last known address or addresses of the individ-
25 ual restrained or enjoined or by any other manner provided in the
26 Michigan court rules. IF THE RESPONDENT IS LESS THAN 17 YEARS OF
27 AGE, THE PARENT, GUARDIAN, OR CUSTODIAN OF THAT INDIVIDUAL SHALL

1 ALSO BE SERVED PERSONALLY OR BY REGISTERED OR CERTIFIED MAIL,
2 RETURN RECEIPT REQUESTED, DELIVERY RESTRICTED TO THE ADDRESSEE AT
3 THE LAST KNOWN ADDRESS OR ADDRESSES OF THE PARENT, GUARDIAN, OR
4 CUSTODIAN OF THE INDIVIDUAL RESTRAINED OR ENJOINED. A proof of
5 service shall be filed with the clerk of the court issuing the
6 personal protection order. This subsection does not prohibit the
7 immediate effectiveness of a personal protection order or its
8 immediate enforcement under subsections ~~(18) and~~ (19) AND
9 (20).

10 (17) ~~(16)~~ The clerk of the court shall immediately notify
11 the law enforcement agency that received the personal protection
12 order under subsection ~~(12) or~~ (13) OR (14) if either of the
13 following occurs:

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

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

18 (18) ~~(17)~~ The law enforcement agency that receives infor-
19 mation under subsection ~~(16)~~ (17) shall enter the information
20 or cause the information to be entered into the law enforcement
21 information network as provided by the L.E.I.N. policy council
22 act of 1974, 1974 PA 163, MCL 28.211 to 28.216.

23 (19) ~~(18)~~ Subject to subsection ~~(19)~~ (20), a personal
24 protection order is immediately enforceable anywhere in this
25 state by any law enforcement agency that has received a true copy
26 of the order, is shown a copy of it, or has verified its
27 existence on the law enforcement information network as provided

1 by the L.E.I.N. policy council act of 1974, 1974 PA 163, MCL
2 28.211 to 28.216.

3 (20) ~~(19)~~ If the individual restrained or enjoined has not
4 been served, the law enforcement agency or officer responding to
5 a ~~domestic violence~~ call alleging a violation of a personal
6 protection order shall serve the individual restrained or
7 enjoined with a true copy of the order or advise the individual
8 restrained or enjoined of the existence of the personal protec-
9 tion order, the specific conduct enjoined, the penalties for vio-
10 lating the order, and where the individual restrained or enjoined
11 may obtain a copy of the order. The law enforcement officer
12 shall enforce the personal protection order and immediately enter
13 or cause to be entered into the law enforcement information net-
14 work that the individual restrained or enjoined has actual notice
15 of the personal protection order. If the individual restrained
16 or enjoined has not received notice of the personal protection
17 order, the individual restrained or enjoined shall be given an
18 opportunity to comply with the personal protection order before
19 the law enforcement officer makes a custodial arrest for viola-
20 tion of the personal protection order. The failure to immedi-
21 ately comply with the personal protection order shall be grounds
22 for an immediate custodial arrest. This subsection does not pre-
23 clude an arrest under section 15 or 15a of chapter IV of the code
24 of criminal procedure, 1927 PA 175, MCL 764.15 and 764.15a, OR A
25 PROCEEDING UNDER SECTION 14 OF CHAPTER XIIIA OF 1939 PA 288, MCL
26 712A.14.

1 (21) ~~-(20)-~~ An individual WHO IS 17 YEARS OF AGE OR MORE AND
2 who refuses or fails to comply with a personal protection order
3 issued under this section is subject to the criminal contempt
4 powers of the court and, if found guilty of criminal contempt,
5 ~~shall be imprisoned~~ IS SUBJECT TO IMPRISONMENT for not more
6 than 93 days and may be fined not more than \$500.00. AN INDIVID-
7 UAL WHO IS LESS THAN 17 YEARS OF AGE AND WHO REFUSES OR FAILS TO
8 COMPLY WITH A PERSONAL PROTECTION ORDER ISSUED UNDER THIS SECTION
9 IS SUBJECT TO THE DISPOSITIONAL ALTERNATIVES LISTED IN SECTION 18
10 OF CHAPTER XIIA OF 1939 PA 288, MCL 712A.18. The criminal penalty
11 provided for under this section may be imposed in addition to any
12 penalty that may be imposed for any other criminal offense aris-
13 ing from the same conduct.

14 (22) ~~-(21)-~~ An individual who knowingly and intentionally
15 makes a false statement to the court in support of his or her
16 petition for a personal protection order is subject to the con-
17 tempt powers of the court.

18 (23) ~~-(22)-~~ A personal protection order issued under this
19 section is also enforceable under CHAPTER XIIA OF 1939 PA 288,
20 MCL 712A.1 TO 712A.31, AND section 15b of chapter IV of the code
21 of criminal procedure, 1927 PA 175, MCL 764.15b.

22 (24) ~~-(23)-~~ Beginning April 1, 1996, a personal protection
23 order issued under this section may enjoin or restrain an indi-
24 vidual from purchasing or possessing a firearm.

25 (25) ~~-(24)-~~ A personal protection order issued under this
26 section is also enforceable under chapter 17.

1 (26) ~~-(25)-~~ As used in this section:

2 (a) "Federal law enforcement officer" means an officer or
3 agent employed by a law enforcement agency of the United States
4 government whose primary responsibility is the enforcement of
5 laws of the United States.

6 (b) "Personal protection order" means an injunctive order
7 issued by circuit court restraining or enjoining conduct prohib-
8 ited under section 411h or 411i of the Michigan penal code, 1931
9 PA 328, MCL 750.411h and 750.411i.

10 Enacting section 1. This amendatory act does not take
11 effect unless all of the following bills of the 89th Legislature
12 are enacted in law:

13 (a) Senate Bill No. _____ or House Bill No. _____
14 (request no. 02210'97 a *).

15 (b) Senate Bill No. _____ or House Bill No. _____
16 (request no. 02210'97 b *).

17 (c) Senate Bill No. _____ or House Bill No. _____
18 (request no. 02211'97 **).