

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA**BILL ANALYSIS**

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 114 (Substitute S-2 as passed by the Senate)
Sponsor: Senator Michael J. Bouchard
Committee: Judiciary

Date Completed: 2-20-97

RATIONALE

The Revised Judicature Act (RJA) specifies procedures for a person to petition the circuit court to issue a personal protection order (PPO) to restrain or enjoin 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 residing or having resided in the same household as the petitioner from engaging in certain activities. The RJA also specifies procedures for a person to petition the circuit court to issue a PPO to restrain or enjoin an individual from engaging in conduct that would constitute stalking or aggravated stalking. Both types of PPOs may prohibit the enjoined or restrained person from purchasing or possessing a firearm.

The RJA's personal protection order provisions allow an ex parte PPO to be issued and effective without notice to the individual restrained or enjoined or that person's attorney if it appears from specific facts that immediate and irreparable injury, loss, or damage will result from the delay required to effectuate notice or that notice will precipitate adverse action before a PPO can be issued. The RJA provides that an ex parte PPO is valid for at least 182 days, but that the restrained or enjoined individual may file a motion to modify or rescind the PPO and request a hearing. A motion to modify or rescind a PPO must be filed within 14 days after the order is served or after the restrained or enjoined individual receives actual notice of the PPO, and the court must schedule a hearing on the motion to modify or rescind within 14 days after the motion is filed.

Some people feel that the personal protection order provisions can cause problems when the respondent in an ex parte PPO is a police or corrections officer who carries a firearm during the course of his or her employment. They believe

that, if an officer is the respondent in an ex parte motion to issue a PPO, the RJA should provide for an expedited hearing on a motion to modify or rescind the order and that a petitioner seeking a PPO should be required to notify the court of the respondent's occupation if he or she is a law enforcement or corrections officer who carries a firearm during the course of employment.

CONTENT

The bill would amend the Revised Judicature Act to provide that, if the respondent in an ex parte motion to issue a domestic violence or stalking personal protection order were a police officer certified by the Michigan Law Enforcement Training Council Act, a sheriff, a deputy sheriff, a member of the Michigan Department of State Police, or a local corrections officer or a Department of Corrections employee who carried a firearm during the normal course of employment, the petitioner would have to notify the court of the respondent's occupation prior to the issuance of the PPO. The requirement would not apply if the petitioner did not know the respondent's occupation. If the respondent had one of those occupations and the PPO prohibited him or her from purchasing or possessing a firearm, the court would have to schedule a hearing on the motion within five days after its filing.

MCL 600.2950 & 600.2950a

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

A series of 1994 public acts streamlined the procedures for securing a PPO and added specific activities that may be enjoined or restrained,

including the purchase or possession of a firearm. Since those employed in law enforcement may routinely carry a firearm in the course of employment, a PPO prohibiting an officer from possessing a weapon could cause an unintended hardship, especially if the judge is not informed of the occupation of the person to be restrained by the PPO. At least one such instance reportedly occurred when a Lapeer County judge issued an ex parte PPO prohibiting an Oakland County sheriff's deputy from possessing a weapon. In this case, the judge apparently was unaware of the occupation of the person being restrained by the PPO, but later amended the order so that the weapons restriction applied only in Lapeer County. While the RJA provides for a quick hearing on motions to modify or rescind an ex parte PPO, the Act should allow an expedited hearing if a police officer were limited in his or her activities to the point of not being able to perform his or her duties as a result of a PPO's restrictions.

In addition, although PPOs can be an effective tool to provide protection to some people, a PPO should not cause undue hardship to the person subject to it. Since a judge should have access to all relevant information when deciding whether to issue a PPO, it would be appropriate to require notification of the court when a person to be restrained was employed in law enforcement. If the Lapeer County judge in the case discussed above had been informed of the deputy's occupation at the time the PPO was sought, the weapons restriction could have been limited from the date of the PPO's issuance, rather than forcing the deputy to seek the modification at some later date.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: M. Ortiz

A9798\S114A

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.