

HOUSE BILL No. 5810

April 29, 1998, Introduced by Rep. Callahan 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) If the court refuses to grant a personal protection
22 order, it shall state in writing the specific reasons it refused
23 to issue a personal protection order. If a hearing is held, the
24 court shall also immediately state on the record the specific
25 reasons it refuses to issue a personal protection order.

26 (5) A personal protection order shall not be made mutual.
27 Correlative separate personal protection orders are prohibited

1 unless both parties have properly petitioned the court pursuant
2 to subsection (1).

3 (6) A personal protection order is effective when signed by
4 a judge.

5 (7) The court shall designate the law enforcement agency
6 that is responsible for entering the personal protection order
7 into the law enforcement information network as provided by the
8 L.E.I.N. policy council act of 1974, 1974 PA 163, MCL 28.211 to
9 28.216.

10 (8) A personal protection order issued under this section
11 shall include all of the following:

12 (a) A statement that the personal protection order has been
13 entered to enjoin or restrain conduct listed in the order and
14 that violation of the personal protection order will subject the
15 individual restrained or enjoined to immediate arrest and the
16 civil and criminal contempt powers of the court, and that if he
17 or she is found guilty of criminal contempt, he or she shall be
18 imprisoned for not more than 93 days and may be fined not more
19 than \$500.00.

20 (b) A statement that the personal protection order is effec-
21 tive when signed by a judge and is immediately enforceable.

22 (c) A statement listing the type or types of conduct
23 enjoined.

24 (d) An expiration date stated clearly on the face of the
25 order.

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

1 (f) The law enforcement agency designated by the court to
2 enter the personal protection order into the law enforcement
3 information network.

4 (g) For ex parte orders, a statement that the individual
5 restrained or enjoined may file a motion to modify or rescind the
6 personal protection order and request a hearing within 14 days
7 after the individual restrained or enjoined has been served or
8 has received actual notice of the personal protection order and
9 that motion forms and filing instructions are available from the
10 clerk of the court.

11 (9) An ex parte personal protection order shall be issued
12 and effective without written or oral notice to the individual
13 enjoined or his or her attorney if it clearly appears from spe-
14 cific facts shown by verified complaint, written motion, or affi-
15 davit that immediate and irreparable injury, loss, or damage will
16 result from the delay required to effectuate notice or that the
17 notice will itself precipitate adverse action before a personal
18 protection order can be issued.

19 (10) A personal protection order issued under subsection (9)
20 is valid for not less than 182 days. The individual restrained
21 or enjoined may file a motion to modify or rescind the personal
22 protection order and request a hearing pursuant to the Michigan
23 court rules. The motion to modify or rescind the personal pro-
24 tection order shall be filed within 14 days after the order is
25 served or after the individual restrained or enjoined has
26 received actual notice of the personal protection order unless

1 good cause is shown for filing the motion after the 14 days have
2 elapsed.

3 (11) Except as otherwise provided in this subsection, the
4 court shall schedule a hearing on the motion to modify or rescind
5 the ex parte personal protection order within 14 days after the
6 filing of the motion to modify or rescind. If the respondent is
7 a person described in subsection (2) and the personal protection
8 order prohibits him or her from purchasing or possessing a fire-
9 arm, the court shall schedule a hearing on the motion to modify
10 or rescind the ex parte personal protection order within 5 days
11 after the filing of the motion to modify or rescind.

12 (12) The clerk of the court that issues a personal protec-
13 tion order shall do both of the following immediately upon issu-
14 ance and without requiring a proof of service on the individual
15 restrained or enjoined:

16 (a) File a true copy of the personal protection order with
17 the law enforcement agency designated by the court in the per-
18 sonal protection order.

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

21 (13) The clerk of the court shall inform the petitioner that
22 he or she may take a true copy of the personal protection order
23 to the law enforcement agency designated by the court in subsec-
24 tion (7) to be immediately entered into the law enforcement
25 information network.

26 (14) The law enforcement agency that receives a true copy of
27 the personal protection order under subsection (12) or (13) shall

1 immediately and without requiring proof of service enter the
2 personal protection order into the law enforcement information
3 network — as provided by the L.E.I.N. policy council act of
4 1974, 1974 PA 163, MCL 28.211 to 28.216.

5 (15) A personal protection order issued under this section
6 shall be served personally or by registered or certified mail,
7 return receipt requested, delivery restricted to the addressee at
8 the last known address or addresses of the individual restrained
9 or enjoined or by any other manner provided in the Michigan court
10 rules. A proof of service shall be filed with the clerk of the
11 court issuing the personal protection order. This subsection
12 does not prohibit the immediate effectiveness of a personal pro-
13 tection order or its immediate enforcement under subsections (18)
14 and (19).

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

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

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

22 (17) The law enforcement agency that receives information
23 under subsection (16) shall enter the information or cause the
24 information to be entered into the law enforcement information
25 network as provided by the L.E.I.N. policy council act of 1974,
26 1974 PA 163, MCL 28.211 to 28.216.

1 (18) Subject to subsection (19), a personal protection order
2 is immediately enforceable anywhere in this state by any law
3 enforcement agency that has received a true copy of the order, is
4 shown a copy of it, or has verified its existence on the law
5 enforcement information network as provided by the
6 L.E.I.N. policy council act of 1974, 1974 PA 163, MCL 28.211 to
7 28.216.

8 (19) If the individual restrained or enjoined has not been
9 served, the law enforcement agency or officer responding to a
10 domestic violence call alleging a violation of a personal protec-
11 tion order shall serve the individual restrained or enjoined with
12 a true copy of the order or advise the individual restrained or
13 enjoined of the existence of the personal protection order, the
14 specific conduct enjoined, the penalties for violating the order,
15 and where the individual restrained or enjoined may obtain a copy
16 of the order. The law enforcement officer shall enforce the per-
17 sonal protection order and immediately enter or cause to be
18 entered into the law enforcement information network that the
19 individual restrained or enjoined has actual notice of the per-
20 sonal protection order. If the individual restrained or enjoined
21 has not received notice of the personal protection order, the
22 individual restrained or enjoined shall be given an opportunity
23 to comply with the personal protection order before the law
24 enforcement officer makes a custodial arrest for violation of the
25 personal protection order. The failure to immediately comply
26 with the personal protection order shall be grounds for an
27 immediate custodial arrest. This subsection does not preclude an

1 arrest under section 15 or 15a of chapter IV of the code of
2 criminal procedure, 1927 PA 175, MCL 764.15 and 764.15a.

3 (20) An individual who refuses or fails to comply with a
4 personal protection order issued under this section is subject to
5 the criminal contempt powers of the court and, if found guilty of
6 criminal contempt, shall be imprisoned for not more than ~~93~~
7 ~~days~~ 1 YEAR and may be fined not more than ~~\$500.00~~ \$1,000.00.
8 The criminal penalty provided for under this section may be
9 imposed in addition to any penalty that may be imposed for any
10 other criminal offense arising from the same conduct.

11 (21) An individual who knowingly and intentionally makes a
12 false statement to the court in support of his or her petition
13 for a personal protection order is subject to the contempt powers
14 of the court.

15 (22) A personal protection order issued under this section
16 is also enforceable under section 15b of chapter IV of the code
17 of criminal procedure, 1927 PA 175, MCL 764.15b.

18 (23) Beginning April 1, 1996, a personal protection order
19 issued under this section may enjoin or restrain an individual
20 from purchasing or possessing a firearm.

21 (24) A personal protection order issued under this section
22 is also enforceable under chapter 17.

23 (25) As used in this section:

24 (a) "Federal law enforcement officer" means an officer or
25 agent employed by a law enforcement agency of the United States
26 government whose primary responsibility is the enforcement of
27 laws of the United States.

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