



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



BILL ANALYSIS

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

Senate Bill 83 (Substitute S-2 as passed by the Senate)
Senate Bills 84 through 86 (as passed by the Senate)
Sponsor: Senator Mallory McMorrow (S.B. 83)
 Senator Dayna Polehanki (S.B. 84)
 Senator Sarah Anthony (S.B. 85)
 Senator Sam Singh (S.B. 86)
Committee: Civil Rights, Judiciary, and Public Safety

Date Completed: 4-5-23

INTRODUCTION

Collectively, the bills would enact the Extreme Risk Protection Order Act and amend provisions of other acts to implement the Act. The Act would allow specified individuals to file an action requesting that a circuit court enter an extreme risk protection order (ERPO) for an individual. If the court determined that an ERPO was necessary because the individual posed a significant risk of personal injury to himself or herself or others by possessing a firearm, the court would have to issue the order. An ERPO would prohibit the restrained individual from possessing or purchasing a firearm, among other prohibitions. The bills also would prescribe penalties for noncompliance with an ERPO and for knowingly and intentionally making a false statement to the court while filing an action.

Senate Bill 83 and Senate Bill 84 are tie-barred. Senate Bill 83 and Senate Bill 86 are also tie-barred. Senate Bill 85 and Senate Bill 86 are tie-barred to Senate Bill 83. In addition, Senate Bill 83 specifies that it is severable.

BRIEF RATIONALE

Evidently, when an individual is under extreme duress, certain people, such as family members, often are the first to notice. So-called "red flag laws" purport to prevent suicide and violence perpetrated by an individual under extreme duress by allowing people who are close to the individual to petition a court to issue an ERPO against that individual, which allows the court to order certain actions, such as seizing the individual's firearms. Some people believe that ERPOs would be effective in preventing suicides and violence in the State.

BRIEF FISCAL IMPACT

Taken together, the bills would have indeterminate, but negative, fiscal impacts on State and local government. These impacts would arise as a result of, among other things, increased workloads in local court systems and the Supreme Court Administrative Office (SCAO); increased administrative and training costs for local law enforcement agencies; increased resource demands on community supervision, jails, and correctional facilities; and programing costs to allow for data entry of ERPOs within the Law Enforcement Information Network (LEIN).

MCL 28.422 et al. (S.B. 84)
Proposed MCL 777.15e (S.B. 85)
MCL 600.1908 et al. (S.B. 86)

Legislative Analyst: Tyler P. VanHuyse
Fiscal Analyst: Bruce Baker
Joe Carrasco, Jr.
Michael Siracuse

CONTENT

Senate Bill 83 (S-2) would enact the Extreme Risk Protection Order Act to do the following:

- Allow specified individuals, such as a spouse or family member, to file an action with a circuit court requesting the court to enter ERPO for an individual.
- Require an action to state facts that showed that the issuance of an ERPO was necessary because the respondent posed a significant risk of personal injury to the respondent or others by possessing a firearm.
- Require the petitioner to provide specified information in a filed action, such as the knowledge that the respondent owned or possessed firearms.
- Require the court in which the action was filed to expedite a hearing on the issuance of an ERPO.
- Require the court to issue an ERPO if it determined that the respondent posed a significant risk of personal injury to the respondent or others by possessing a firearm and require the court to consider specified information in that determination, such as a respondent's previous convictions.
- Specify timelines for a hearing on an ERPO, its issuance, and its service on a restrained individual.
- Require an ERPO to include specified provisions, such as a provision specifying that the restrained individual could not purchase or possess a firearm.
- Prescribe the actions a restrained individual could take in response to an ERPO.
- Prescribe the process for serving an ERPO on a restrained individual.
- Specify the process that a designated law enforcement agency would have to follow when seizing and returning a firearm under an ERPO.
- Prescribe penalties for failing to comply with an ERPO and for knowingly and intentionally making a false statement to the court in a complaint.
- Require the SCAO to prepare an annual report on and relating to the application of the Act.

Senate Bill 84 would amend the handgun licensure Act to do the following:

- Prohibit an individual who was subject to an ERPO from qualifying for a pistol license.
- Prohibit an individual who was subject to an ERPO from qualifying for a concealed pistol license (CPL).

Senate Bill 85 would amend the Code of Criminal Procedure to add the felonies proposed in Senate Bill 83 (S-2) to the Code's sentencing guidelines.

Senate Bill 86 would amend the Revised Judicature Act to create specified exemptions when processing or filing a civil action for the proposed Extreme Risk Protection Order Act (see Senate Bill 83 (S-2)).

Senate Bill 83 (S-2)

Definitions

"Dating relationship" would mean a relationship that consists of frequent, intimate associations primarily characterized by the expectation of affectional involvement. Dating relationship would not include a casual relationship or an ordinary fraternization between two individuals in a business or social context.

"Family member" would mean an individual who is related to the defendant as any of the following:

- A parent.
- A son or daughter.
- A sibling.
- A grandparent.
- A grandchild.
- An uncle or aunt.
- A first cousin.

"Guardian" would mean that term as defined in Section 1104 of the Estates and Protected Individuals Code: a person who has qualified as a guardian of a minor or a legally incapacitated individual under a parental or spousal nomination or a court appointment and includes a limited guardian as described in the Code.

"Law enforcement agency" would mean any of the following:

- A sheriff's department.
- The Department of State Police (MSP).
- A police department of a township, village, or incorporated city.
- The public safety department of an institution of higher education created under or described in the State Constitution of 1963.
- The public safety department of a community or junior college.
- The public safety department or office of a private college.

"Law enforcement officer" would mean an individual to whom any of the following apply:

- The individual is a law enforcement officer as that term is defined in Section 2 of the Michigan Commission on Law Enforcement Standards Act.
- The individual is a county prosecuting attorney or assistant prosecuting attorney.

"Mental health professional" would mean that term as defined in Section 100b of the Mental Health Code: an individual who is trained and experienced in the area of mental illness or developmental disabilities and who is 1) a physician; 2) a psychologist; 3) a registered professional nurse; 4) a licensed master's social worker; 5) a licensed professional counselor; or 6) a marriage and family therapist.

"Petitioner" would mean the individual who requests an extreme risk protection order in an action.

"Possession or control" would include actual possession or constructive possession by which the individual has the right to control the firearm or ammunition, even though the firearm or ammunition is in a different location than the individual. Possession or control would not require the individual to own the firearm or ammunition.

"Respondent" would mean the individual against whom an ERPO is requested in an action under the Act.

Filing for an ERPO

The Extreme Risk Protection Order Act would allow the following individuals to file an action with the circuit court requesting the court to enter an ERPO:

- The spouse of the respondent.
- A former spouse of the respondent.
- An individual who has a child in common with the respondent.
- An individual who has or has had a dating relationship with the respondent.
- An individual who resides or has resided in the same household with the respondent.
- A family member.
- A guardian of the respondent.
- A law enforcement officer.
- A mental health professional.

The Act would require an individual who filed an action to do so by filing a summons and complaint on forms approved by SCAO as directed by the Michigan Supreme Court. The complaint would have to state facts that showed that the issuance of an ERPO was necessary because the respondent posed a significant risk of personal injury to the respondent or others by possessing a firearm.

If the respondent were one of the following individuals, and if the petitioner knew the respondent was one of the following individuals, the petitioner would have to state that in the complaint:

- An individual who was required to carry a pistol as a condition of the individual's employment.
- A police officer licensed or certified under the Michigan Commission on Law Enforcement Standards Act.
- A sheriff.
- A deputy sheriff.
- A member of the Department of State Police.
- A local corrections officer.
- An employee of the Department of Corrections.
- A Federal law enforcement officer who carried the pistol during the normal course of the officer's employment.
- An officer employed by the Federal Bureau of Prisons.

In addition, if the petitioner knew or believed that the respondent owned or possessed one or more firearms, the petitioner would have to state that and identify the firearms in the complaint. The petitioner's address could not be disclosed in any pleading or paper or otherwise in an action under the Act.

The Act also specifies that it would be appropriate to file an action in a county in which the respondent resided, had a place of business, or conducted business, or, unless the petitioner was a law enforcement officer, a county in which the petitioner resided, had a place of business, or conducted business.

Timing & Venue

Under the Act, the court in which the action was filed would have to expedite and give priority to a hearing on the issuance of an ERPO and to any other hearings required by the Act. The court could enter an order to change the venue of an action filed for any reason allowed under the Michigan Court Rules, including the convenience of the parties and witnesses. The court also could consider the location of firearms owned or possessed by the respondent in deciding whether to enter an order under to change the venue.

The court could allow proceedings in an action filed under the Act to be conducted using video conferencing technology or communication equipment as allowed under Michigan Court Rules and administrative orders.

Issuance of an ERPO

In an action under the Act, the court would have to issue an ERPO if it determined by a preponderance of the evidence that the respondent posed a significant risk of personal injury to the respondent or others by possessing a firearm. In making this determination, the court would have to consider all the following:

- Any history of use, attempted use, or threatened use of physical force by the respondent against another individual, or against the respondent, regardless of whether the violence or threat of violence involved a firearm.
- Any evidence that the mental illness of the respondent made the respondent dangerous to the respondent or others.
- Any previous or existing ERPO, or personal protection order (PPO) under the Revised Judicature Act issued against the defendant.
- Any previous or existing pretrial release order, probation order, parole order, or another injunctive order.
- Any violation by the respondent of a previous or existing ERPO.
- Any violation by the respondent of a previous or existing PPO issued under the Revised Judicature Act.
- Any previous or existing criminal charges or juvenile delinquency petitions against the respondent for the commission or attempted commission of an offense that had an assaultive element, an element involving a threat to person or property, and was a crime committed against a person or property of a spouse or intimate partner.
- Any evidence of recent excessive alcohol use by the respondent.
- Any evidence of recent unlawful use of controlled substances by the respondent.
- Any previous unlawful or reckless use, display, or brandishing of a deadly weapon by the respondent.
- Any evidence that the defendant acquired or attempted to acquire a deadly weapon or ammunition within the preceding 180 days.
- Any additional information the court found to be reliable, including a statement by the respondent, or relevant information from family and household members concerning the respondent.
- Any other facts that the court believed were relevant.

The court could issue an ERPO without written or oral notice to the respondent if it determined that evidence of specific facts had been submitted under oath or affirmation that clearly established that immediate and irreparable injury would result from the delay required to effectuate notice or that the notice itself would precipitate adverse action before an ERPO could be issued. If the petitioner requested the court to issue an ERPO, the court would have to make its determination on the request within 24 hours after the request was filed.

The Act specifies that, if a court issued an ERPO, the court would have to conduct a hearing on the order within 14 days after the order was served on the restrained individual or after the restrained individual received actual notice of the order, unless the individual had a CPL and was member of the law enforcement and corrections agencies described above; in that case, the court would have to conduct a hearing within five days after the order was served on the restrained individual or after the restrained individual received actual notice of the order.

The Act also specifies that the court could issue an ERPO whether the respondent owned or possessed a firearm. The Court could issue an ERPO against a minor, as well.

Required Provisions of an Order

Under the Act, if the court determined that an ERPO was necessary, the court would have to include all the following provisions in the order:

- That the restrained individual could not purchase or possess a firearm or ammunition.
- If the individual had been issued a license under Section 2 of the handgun licensure Act that the individual had not used and that was not yet void, the individual could not use it and would have to surrender it to a specified law enforcement agency.
- That the restrained individual could not apply for a CPL and, if the restrained individual had been issued a CPL, it would have to be suspended or revoked under Section 8 of the handgun licensure Act once the order was entered into the LEIN and that the individual would have to surrender it.
- That the restrained individual would have to, within in 24 hours or at the court's discretion, surrender all firearms and ammunition in his or her possession or control to the law enforcement agency designated in the order immediately after being served with the order.
- If the petitioner had identified any firearms, a specific description of the firearms to be surrendered or seized.
- If the order were issued without written or oral notice, a statement that a hearing would be held within 14 days or five days, as applicable, after the restrained individual was served with or received actual notice of the order and that he or she could appear at the hearing and request the court to modify or rescind the order.
- A statement that the restrained individual, one time while the order was in effect, could file a motion to modify or rescind the order and that motion forms and filing instructions were available from the clerk of the court.
- A designation of the law enforcement agency that would be responsible for entering the order into the LEIN and forwarding the order to the Federal Bureau of Investigation (FBI) and the Bureau of Alcohol, Tobacco, Firearms, and Explosives; the designated law enforcement agency would have to be an agency within whose jurisdiction the restrained individual resided.
- If the court ordered the restrained individual to surrender the individual's firearms and ammunition immediately, a statement that the designated law enforcement agency would have to proceed to seize the firearms and ammunition within 24 hours after the restrained individual was served or received actual notice of the ERPO, after first giving the restrained individual to surrender the firearms and ammunition.
- Directions to a local entering authority or the designated law enforcement agency to enter the order into the LEIN.
- A statement that violation of the order would subject the restrained individual to immediate arrest, the contempt powers of the court, an automatic extension of the order, and misdemeanor or criminal penalties, including up to 93 days' imprisonment for an initial violation and up to five years for a subsequent violation.
- A statement that the restrained individual would have a right to seek the advice of an attorney.
- An expiration date that was one year after the date of issuance.

(Section 2 of the handgun licensure Act provides the process for obtaining a pistol license, which is required before purchasing, carrying, possessing, or transporting under the Act.)

The Act specifies that an ERPO would be effective and enforceable immediately after it was served on the restrained individual or after the restrained individual received actual notice of the order. The order could be enforced anywhere in the State by a law enforcement agency

that received a true copy of the order, was shown a copy of it, or had verified its existence on the LEIN as provided by the C.J.I.S. Policy Council Act or on an information network maintained by the FBI.

After the Order's Issuance

The Act specifies actions that a restrained individual could take within 24 hours after an ERPO was issued. Unless the court ordered the restrained individual to surrender the individual's firearms immediately, within 24 hours after an ERPO was served or the restrained individual received actual notice of the order, the restrained individual would have to do either of the following:

- File with the court that issued the order one or more proofs of surrender or seizure showing that all firearms and ammunition previously in the individual's possession or control were surrendered to or removed by the local designated law enforcement agency or seized by the agency, and that any CPL was surrendered to the county clerk as required; the individual also would have to verify to the court that at the time of the verification the individual did not have any firearms or a CPL in the individual's possession or control.
- Verify to the court that at the time the order was issued and at the time of verification the individual did not have a firearm, ammunition, or a CPL in the individual's possession or control.

If a restrained individual had not done either of the above within 24 hours after the ERPO was issued, or if the court has ordered the restrained individual to surrender the individual's firearms immediately, the clerk of the court that issued the order would have to notify the appropriate local law enforcement agency of that fact. A local law enforcement agency that received that notification would have to make a good-faith effort to determine whether there was evidence that the restrained individual had failed to surrender a firearm, ammunition, or CPL in the restrained individual's possession or control as required.

The court would have to schedule a compliance hearing to be held within three days after an ERPO was served on the restrained individual or after the restrained individual received actual notice of the order. If the restrained individual had completed one of the allowable actions described above before the hearing, the court could cancel the hearing.

At any time while an ERPO was in effect, the petitioner or a law enforcement officer could file an affidavit with the court that issued the order alleging that the restrained individual had a firearm, ammunition, or a CPL in his or her possession or control. If an affidavit were filed, the court would have to determine whether probable cause existed to believe that the restrained individual had a firearm, ammunition, or a CPL in his or her possession or control. If the court found that probable cause existed, the court would have to find the restrained individual in contempt of court and issue an arrest warrant. The court also would have to enter an accompanying order describing the firearm or firearms, the ammunition, or the CPL believed to be in the restrained individual's possession or control and authorizing a designated law enforcement agency to search the location or locations where the firearm or firearms, ammunition, or CPL was believed to be and to seize any firearm or CPL discovered by the search.

Court Clerk's Responsibilities

Under the Act, the clerk of a court that issued an ERPO would have to do all the following immediately after issuance and without requiring a proof of service on the restrained individual:

- Provide a true copy of the order to the appropriate law enforcement agency.
- Provide the petitioner with at least two true copies of the order.
- If the restrained individual was identified in the complaint as an individual who was issued a CPL and was a member of a law enforcement or corrections agency, notify the individual's employer, if known, of the existence of the order.
- Notify the MSP and the clerk of the restrained individual's county of residence of the existence of the order for purposes of performing their duties under the handgun licensure Act.
- Inform the petitioner that he or she could take a true copy of the order to the appropriate law enforcement agency to be immediately entered into the LEIN and provided to the FBI and the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

The clerk of the court that issued an ERPO would have to immediately notify the designated law enforcement agency if the clerk received proof that the restrained individual had been served by a law enforcement officer other than an officer employed by the designated law enforcement agency, if the order was rescinded, modified, or extended, or if the order expired without being extended. A local entering authority designated by the Act would have to enter the order into LEIN.

Serving an ERPO

The proposed Act would require a law enforcement officer to personally serve an ERPO on the restrained individual. If the restrained individual had not been served, a law enforcement officer who knew that the order existed could, at any time, serve the restrained individual with a true copy of the order or advise the restrained individual of the existence of the order, the specific conduct enjoined, the penalties for violating the order, and where the restrained individual could obtain a copy of the order. If the restrained individual was a law enforcement officer, the ERPO could be served by another law enforcement officer employed by the agency that employed the restrained individual; service in this manner could be made outside of the jurisdiction served by the employing agency.

The law enforcement officer who served an ERPO or gave oral notice of the order would have to file proof of service or proof of oral notice with the clerk of the court that issued the order and notify the petitioner immediately of the service.

A law enforcement agency designated in an ERPO as the agency responsible for entering information into LEIN that received a true copy of the order would have to immediately and without requiring proof of service do both of the following:

- Unless a local entering authority was designated by the Act, enter the order into LEIN as provided by the C.J.I.S. Policy Council Act.
- Report the entry of the order to the Criminal Justice Information Services Division of the FBI for purposes of the National Crime Information Center and to the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

A law enforcement agency that received information or proof of service of an order would have to enter the information into LEIN as provided by the C.J.I.S. Policy Council Act and report the information to the FBI and to the Bureau of Alcohol, Tobacco, Firearms, and Explosives. A law enforcement agency designated in an ERPO that received a true copy of the ERPO would have to comply with the Act's requirements for a designated law enforcement agency.

If an ERPO had not been served on the restrained individual, a law enforcement agency or officer responding to a call alleging a violation of the order would have to serve the restrained

individual with a true copy of the order or advise the restrained individual of the existence of the order, the specific conduct enjoined, the penalties for violating the order, and where the restrained individual could obtain a copy of the order. The law enforcement officer would have to enforce the order and immediately enter or cause to be entered into LEIN and report or cause to be reported to the FBI and the Bureau of Alcohol, Tobacco, Firearms, and Explosives that the restrained individual had actual notice of the order. However, the law enforcement officer would have to give the restrained individual an opportunity to comply with the ERPO before the law enforcement officer made a custodial arrest for violation of the order. The failure of a restrained individual to immediately comply with the order would be grounds for an immediate custodial arrest. This provision would not preclude an arrest under Section 15 or 15a of Chapter IV of the Code of Criminal Procedure.

(Section 15 of Chapter IV of the Code of Criminal Procedures provides the circumstances under which a peace officer could arrest a person without a warrant. Section 15a allows a peace officer to arrest an individual for assault or battery, whether the officer has a warrant or whether the violation was committed in the officer's presence if the officer has reasonable cause to believe the assault is occurring or has occurred and is domestic in nature.)

Seizure and Return of a Firearm

Under the proposed Act, the law enforcement agency ordered to seize a firearm would have to do all the following:

- Seize a firearm and ammunition identified in an order from any place or from any individual who had possession or control of the firearm and ammunition.
- Seize any other firearms or ammunition discovered that were owned by or in the possession or control of the restrained individual or if allowed under other applicable law.

A law enforcement officer who seized a firearm or ammunition would have to give a receipt for the firearm or ammunition to the individual from whom it was taken, specifying the firearm or ammunition in detail. If no individual were present at the time of seizure, the officer would have to leave the receipt in the place where the officer found the firearm or ammunition.

The law enforcement agency that seized a firearm or ammunition would have to retain and store the firearm or ammunition subject to order of the court that issued the ERPO under which the firearm or ammunition was seized. In addition to any other order that the court determined appropriate, the court would have to order that the firearm or ammunition be returned to the restrained individual when the ERPO expired or was terminated, unless he or she was prohibited from owning or possessing a firearm for another reason, or order that the firearm or ammunition be transferred to a licensed firearm dealer if the restrained individual sold or transferred ownership of the firearm to the dealer. Before returning a firearm or ammunition to the restrained individual, and to determine whether the restrained individual was prohibited from owning or possessing a firearm for another reason, the law enforcement agency would have to conduct a verification under LEIN and the National Instant Criminal Background Check System (NICBCS) in the same manner as required under Section 5b(6) of the handgun licensure Act.

(Section 5b(6) of the handgun licensure Act requires the MSP to verify specified requirements for a background check through LEIN and NICBCS for an individual applying for a concealed pistol license.)

A law enforcement agency that returned a firearm to a restrained individual would have to enter that into LEIN and notify the FBI and the Bureau of Alcohol, Tobacco, Firearms, and Explosives that the court had ordered the firearm returned on expiration of the ERPO. If an

individual other than the restrained individual claimed title to a firearm or ammunition seized under the Act, the firearm or ammunition would have to be returned to the claimant if the court determined that the claimant was the lawful owner. The other individual would have to ensure that the restrained individual did not have access to the firearm or ammunition.

Motion to Modify or Rescind Order

The Act would allow an individual restrained under an ERPO to file a motion to modify or rescind the order at any time and request a hearing under Supreme Court Rules. The restrained individual could not file a motion for modification or rescindment of an ERPO until three months after the later of any of the following:

- The date the ERPO was issued.
- The date an extended order was issued as prescribed by the Act.
- The date a previous motion to modify or rescind the order was denied.

At a hearing on a motion, the restrained individual would have to prove by the preponderance of the evidence that there had been a material change in circumstances and the ERPO was no longer justified.

Extension of an ERPO

The petitioner could move the court to issue, or the court on its own motion could issue, one or more extended ERPOs, each effective for one year after the expiration of the preceding order. The court could issue an extended order only if the preponderance of the evidence showed that the restrained individual continued to pose a significant risk of personal injury to the restrained individual or others by possessing a firearm. The court, as applicable, would have to give the restrained individual written notice of a hearing on a motion to extend the order.

Penalties

An individual who refused or failed to comply with an ERPO would be subject to penalties as follows, which could be imposed in addition to a penalty imposed for another criminal offense arising from the same conduct:

- For a first offense, guilty of a misdemeanor punishable by up to 93 days' imprisonment or a fine of up to \$500, or both.
- For a second offense, guilty of a felony punishable by imprisonment for up to four years or a fine of up to \$2,000, or both.
- For a third or subsequent offense, guilty of a felony punishable by imprisonment for up to five years or a fine of up to \$20,000, or both.

If a court or a jury found that the restrained individual had refused or failed to comply with an ERPO, the court that issued it would have to issue an extended ERPO effective for one year after the expiration of the preceding order. An ERPO also could be enforced as contempt of court or otherwise under Chapter 17 of the Revised Judicature Act.

A petitioner who knowingly and intentionally made a false statement to the court in the complaint or in support of the complaint under the proposed Act would be guilty and subject to penalties as follows:

- For a first offense, guilty of a misdemeanor punishable by up to 93 days' imprisonment or a fine of up to \$500, or both.

- For a second offense, guilty of a felony punishable by imprisonment for up to four years or a fine of up to \$2,000, or both.
- For a third or subsequent offense, guilty of a felony punishable by imprisonment for up to five years or a fine of not more than \$20,000, or both.

An individual who knowingly placed a firearm or ammunition in the possession of an individual who was restrained under an ERPO would be guilty of a misdemeanor punishable by imprisonment for up to 93 days or a fine of up to \$500, or both.

Reporting Requirements

The SCAO, acting at the direction of the Michigan Supreme Court, would have to prepare an annual report on and relating to the application of the Act by the courts. The report would have to contain all the following:

- The number of actions filed for ERPOs.
- The number of requests made for ERPOs to be issued without notice.
- The number of ERPOs issued and the number denied.
- The number of ERPOs issued without notice and the number denied.
- The number of ERPOs that were rescinded.
- The number of ERPOs entered without notice that were rescinded.
- The number of ERPOs that were renewed.
- To the extent ascertainable from available State court data, the number of individuals who were restrained under an ERPO who, within 30 days after entry of the order, were charged with a criminal offense, giving the nature of the criminal offense, whether it was an offense for the violation of the ERPO, and the disposition or status of the offense.
- Demographic data regarding the individuals who were petitioners and individual who were respondents in actions for ERPOs.

The SCAO, acting at the direction of the Michigan Supreme Court, would have to publish a report on the Michigan courts website and provide the report to the Legislature and the legislative committees with jurisdiction over judicial matters. The SCAO also would have to make data on which the report was based available to individuals conducting research, including researchers affiliated with higher education institutions conducting academic or policy research.

Senate Bill 84

Pistol Licensure

The handgun licensure Act prohibits a person from purchasing, carrying, possessing, or transporting a pistol in the State without first having obtained a license for the pistol. The Act prescribes the process for applying for a pistol license, including the requirements that an applicant must meet to qualify for the license. Among other qualifications, an individual must not be subject to specified orders or dispositions that were entered into LEIN and for which the individual has received notice and an opportunity for a hearing, such as an order for involuntary hospitalization under the Mental Health Code. Under the bill, an individual could not be subject to an ERPO (as proposed under Senate Bill 83) that was entered into LEIN and for which the individual had received notice and an opportunity for a hearing.

The handgun licensure Act requires the MSP to send written notice immediately to an individual after an order or disposition specified in the Act is entered into LEIN. Upon notification, the Act allows an individual subject to an order entered into LEIN to request that the MSP either amend an inaccuracy in the information entered into LEIN or expunge the

individual's name and other information from LEIN because certain circumstances apply, including a circumstance in which the individual is not subject to an order of involuntary commitment in an inpatient or outpatient setting because of mental illness. Under the bill, an individual who was the subject of an order entered into LEIN could request that the MSP expunge the individual's name and other information from the LEIN because he or she was not subject to an ERPO.

The Act prohibits the MSP from sending written notice of an entry into LEIN, as required by the Act for specified orders, until the MSP has received notice that the respondent of the order has been served with or has received notice of the order. Under the bill, this provision would apply to an ERPO.

Concealed Pistol License

The handgun licensure Act requires an individual to apply to the county clerk in the county which the individual resides to obtain a CPL. An individual must meet certain requirements to qualify for a CPL, and the county clerk verifies those requirements. Among other requirements, a county clerk must determine that an applicant is not subject to specified orders or dispositions, such as an order for involuntary hospitalization under the Mental Health Code. Under the bill, the county clerk would have to determine that the applicant was not subject to an ERPO.

The Act specifies that if a CPL is suspended because the clerk determines that an individual is subject to a PPO, and the individual surrendered the license, the county clerk must automatically reinstate the CPL upon expiration of the order, so long as the MSP verifies this information, and the CPL is not expired. Under the bill, this provision would apply to a CPL suspended because of an ERPO.

Senate Bill 85

The bill would amend the Code of Criminal Procedure to include the felonies listed in Table 1 and proposed by Senate Bill 83 in the Code's sentencing guidelines.

Table 1

Violation	Category	Class	Stat Max
Violation extreme risk protection order, 2nd offense	Public Safety	F	4
Violation extreme risk protection order 3rd/+ offense	Public Safety	E	5
False statement in complaint for an extreme risk protection order, 2nd Offense	Public Trust	F	4
False statement in complaint for an extreme risk protection order, 3rd/+ Offense	Public Trust	E	5

Senate Bill 86

The Revised Judicature Act specifies that the process in civil actions may be served by a person of suitable age and discretion who is not a party or an officer of a corporate party. If service of process is made upon an individual by leaving a summons and a copy of the complaint with the defendant personally, on a person in a governmental institution, hospital, or home, the service of process has to be made by the person in charge or staff of the institution. Under the bill, these provisions would not apply to service under the Extreme Risk Protection Order Act (see Senate Bill 83).

In addition, the bill would prohibit a person from charging or collecting a fee for service process issued in an action brought under the Extreme Risk Protection Order Act, or for serving any order issued in the action.

FISCAL IMPACT

Senate Bill 83 (S-2)

The bills' criminal penalties could have a negative fiscal impact on State and local government. Violations of the proposed Act would be punishable as misdemeanors and felonies of varying severity. More misdemeanor and felony arrests and convictions could increase resource demands on law enforcement, court systems, community supervision, jails, and correctional facilities. The average cost to State government for felony probation supervision is approximately \$3,400 per probationer per year. For any increase in prison intakes, the average annual cost of housing a prisoner in a State correctional facility is an estimated \$45,700. Per diem rates range from a low of \$98 to a high of \$192 per day, depending on the security level of the facility. Any associated increase in fine revenue would increase funding to public libraries.

The bill could have a significant impact on circuit court workloads, although it would not directly affect spending or revenue for circuit courts. Although the bill's language would create a restraining order process that is similar to that for PPOs (see Michigan Compiled Laws 600.2950, et seq.), ERPOs would be different and appear to be designed for more extreme and dangerous circumstances. Just over 26,000 PPO requests were submitted to circuit courts in 2020. No data are available to indicate how many of those PPO requests instead could be made under the proposed Extreme Risk Protection Order Act.

In addition to workload increase for circuit courts, the bill also would task SCAO with preparing an annual report on ERPOs. The bill would provide no appropriation for this requirement, and any associated costs would have to be absorbed by SCAO.

The bill would result in additional administrative costs for local law enforcement agencies, which, in a frequency not possible to determine at this time, would have to enter ERPOs received by a court into LEIN and forward them to the FBI. Law enforcement agencies also would have to serve the defendants of an ERPO with notice of an ERPO, undertake searches of property, catalog and store firearms required to be surrendered or seized (and return them, as required), and investigate and potentially perform arrests of those in violation of an ERPO.

The MSP reports that the bill's provisions would require approximately \$200,000 for necessary programming costs to allow for data entry of ERPOs within LEIN. It is also reasonable to assume that the Michigan Commission on Law Enforcement Standards would incur significant costs in their role of providing training for the proper application of the bill's requirements. Since there is no fund source included within the bill, it is assumed that additional General Fund/General Purpose dollars would be required.

Senate Bill 84

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

Senate Bill 85

The bill would have no fiscal impact on local government and an indeterminate fiscal impact on the State, in light of the Michigan Supreme Court's July 2015 opinion in *People v. Lockridge*, in which the Court ruled that the sentencing guidelines are advisory for all cases. This means that the addition to the guidelines under the bill would not be compulsory for the sentencing judge. As penalties for felony convictions vary, the fiscal impact of any given felony conviction depends on judicial decisions.

Senate Bill 86

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

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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.