



Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bill 83 (Substitute S-1 as reported)
Senate Bills 84 through 86 (as reported without amendment)
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

CONTENT

Senate Bill 83 (S-1) 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 an Extreme Risk Protection Order (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 State Court Administrative Office (SCAO) to prepare an annual report on and relating to the application of the proposed 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 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).

Senate Bill 83 specifies that it would be severable as provided in Section 5 of the Revised Statutes of 1846. 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.

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

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.

PREVIOUS LEGISLATION

(Please note: The information in this summary provides a cursory overview of previous legislation and its progress. It does not provide a comprehensive account of all previous legislative efforts on the relevant subject matter.)

Senate Bill 83, Senate Bill 84, and Senate Bill 85 are similar to Senate Bill 856, Senate Bill 857, and Senate Bill 858, respectively, from the 2021-2022 Legislative Session.

Legislative Analyst: Tyler P. VanHuyse

FISCAL IMPACT

Senate Bill 83 (S-1) 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 programing 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 would have no fiscal impact on State or local government.

Senate Bill 85 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 would have no fiscal impact on State or local government.

Date Completed: 3-14-23

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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.