

**SUBSTITUTE FOR
SENATE BILL NO. 111**

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
(MCL 600.101 to 600.9947) by adding section 2950p.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2950p. (1) An individual who is 60 years of age or older,
2 is a vulnerable adult as defined in section 174a of the Michigan
3 penal code, 1931 PA 328, MCL 750.174a, or has a developmental
4 disability as defined in section 100a of the mental health code,
5 1974 PA 258, MCL 330.1100a, may, by commencing an independent
6 action to obtain relief under this section, by joining a claim to
7 an action, or by filing a motion in an action in which the
8 petitioner and the respondent are parties, petition the circuit
9 court to enter an elder and vulnerable adult personal protection

1 order.

2 (2) An elder and vulnerable adult personal protection order
3 may restrain or enjoin an individual from doing 1 or more of the
4 following:

5 (a) Entering onto or refusing to leave premises.

6 (b) Assaulting, attacking, beating, molesting, or wounding the
7 petitioner.

8 (c) Threatening to kill, physically injure, or sexually
9 assault the petitioner.

10 (d) Purchasing or possessing a firearm.

11 (e) Engaging in conduct that is prohibited under section 411h
12 or 411i of the Michigan penal code, 1931 PA 328, MCL 750.411h and
13 750.411i, unless the individual to be restrained has decision-
14 making authority under an order of another court that requires
15 contact with the petitioner.

16 (f) Any of the following with the intent to cause the
17 petitioner mental distress or to exert control over the petitioner
18 with respect to an animal in which the petitioner has an ownership
19 interest:

20 (i) Injuring, killing, torturing, neglecting, or threatening to
21 injure, kill, torture, or neglect the animal. A restraining order
22 that enjoins conduct under this subparagraph does not prohibit the
23 lawful killing or other use of the animal as described in section
24 50(12) of the Michigan penal code, 1931 PA 328, MCL 750.50.

25 (ii) Removing the animal from the petitioner's possession.

26 (iii) Retaining or obtaining possession of the animal.

27 (g) Threatening to destroy or destroying the petitioner's
28 owned or leased property, both real and personal.

29 (h) Exercising decision-making authority over the petitioner,

1 unless the decision-making authority was granted under an order of
2 another court.

3 (i) Any other specific act or conduct that imposes on or
4 interferes with the petitioner's personal liberty, safety, or
5 health, or that causes a reasonable apprehension of violence.

6 (3) In addition to the relief available in subsection (2), an
7 elder and vulnerable adult personal protection order may include
8 any relief the court considers necessary to prevent or remedy the
9 financial exploitation of the petitioner, including, but not
10 limited to, any of the following:

11 (a) Prohibiting the respondent from accessing, exercising, or
12 transferring control over the funds, benefits, property, resources,
13 belongings, or assets of the petitioner.

14 (b) Requiring the respondent to submit the paperwork necessary
15 to remove the respondent as the petitioner's representative payee
16 within a time period set by the court.

17 (c) After an evidentiary hearing, requiring the respondent to
18 return custody or control of personal property to the petitioner.

19 (d) Awarding any of the following after an evidentiary
20 hearing:

21 (i) Actual damages to the petitioner not exceeding the amount
22 in section 8401.

23 (ii) Actual attorney fees for the petitioner.

24 (e) Requiring the respondent to furnish a bond for a
25 reasonable period of time, set by the court, in the amount
26 necessary to safeguard money, benefits, property, resources,
27 belongings, or assets that are in dispute.

28 (f) Allowing the petitioner to file a notice lis pendens for a
29 reasonable period of time, set by the court, regarding any property

1 that is in dispute. Except as provided in this subdivision, the
2 notice must comply with chapter 27.

3 (4) All of the following apply to an elder and vulnerable
4 adult personal protection order issued under this section:

5 (a) If the petitioner is a ward or protected individual in a
6 guardianship or conservatorship proceeding, the issuing court,
7 after issuing the protection order, shall immediately transfer the
8 action to the probate court with continuing jurisdiction over the
9 guardianship or conservatorship proceeding. The transferring court
10 shall inform the receiving court of the transfer.

11 (b) After transfer under subdivision (a), any responsive
12 proceeding must be commenced in the receiving court. If a
13 responsive proceeding is commenced erroneously in the issuing
14 court, that court, on learning of the error, shall transfer the
15 responsive proceeding to the receiving court. The transferring
16 court must inform the receiving court of the transfer.

17 (c) A court that orders a transfer under subdivision (a) shall
18 send all pertinent records to the receiving court. The clerk of the
19 transferring court shall prepare the court records for transfer in
20 accordance with the transfer order and the Michigan trial court
21 records management standards. The records must be sent to the
22 receiving court by a secure method within 1 business day after the
23 date of the transfer order.

24 (d) If a respondent in an action under this section is
25 currently serving as a court-appointed fiduciary for the petitioner
26 under a prior valid guardianship or conservatorship order, the
27 respondent shall notify the court that has jurisdiction over the
28 guardianship or conservatorship proceeding within 7 days after
29 being served with a protection order issued under this section.

1 (5) The court shall issue an elder and vulnerable adult
2 personal protection order under this section if the court
3 determines that there is reasonable cause to believe that the
4 individual to be restrained or enjoined may commit 1 or more of the
5 following acts:

6 (a) Entering onto or refusing to leave the premises.

7 (b) Assaulting, attacking, beating, molesting, or wounding the
8 petitioner.

9 (c) Threatening to kill, physically injure, or sexually
10 assault the petitioner.

11 (d) Purchasing or possessing a firearm.

12 (e) Engaging in conduct that is prohibited under section 411h
13 or 411i of the Michigan penal code, 1931 PA 328, MCL 750.411h and
14 750.411i.

15 (f) Any of the following with the intent to cause the
16 petitioner mental distress or to exert control over the petitioner
17 with respect to an animal in which the petitioner has an ownership
18 interest:

19 (i) Injuring, killing, torturing, neglecting, or threatening to
20 injure, kill, torture, or neglect the animal.

21 (ii) Removing the animal from the petitioner's possession.

22 (iii) Retaining or obtaining possession of the animal.

23 (g) The actual or threatened withholding or prevention of the
24 petitioner's access to goods, services, or basic amenities required
25 to avoid physical harm or mental suffering, including, but not
26 limited to, safe and sanitary household goods, food, medical or
27 mental health care or treatment, medication, transportation, law
28 enforcement, communication technologies, and individuals who
29 provide formal or informal supports to the petitioner.

1 (h) Destroying or threatening to destroy the petitioner's
2 owned or leased property, including either real or personal
3 property.

4 (i) Using a pattern of derogatory or inappropriate names,
5 phrases or profanity, threats of forced change of residence or
6 institutionalization, ridicule, harassment, coercion, threats,
7 cursing, intimidation, or inappropriate sexual comments or conduct
8 of such a nature as to cause emotional distress to the petitioner
9 with whom the respondent resides.

10 (j) Engaging in financial exploitation of the petitioner.

11 (k) Any other specific act or conduct that imposes on or
12 interferes with the petitioner's personal liberty, safety, or
13 health, or that causes a reasonable apprehension of violence.

14 (6) In determining under subsection (5) whether reasonable
15 cause exists, the court shall consider all of the following:

16 (a) Testimony, documents, or other evidence offered in support
17 of the request for an elder and vulnerable adult personal
18 protection order.

19 (b) Whether the individual to be restrained or enjoined has
20 previously committed or threatened to commit 1 or more of the acts
21 listed in subsection (5).

22 (c) Evidence of the respondent's commission of other acts of
23 domestic violence, sexual assault, or financial exploitation.
24 Evidence described in this subdivision is admissible for any
25 purpose to which it is relevant.

26 (7) A court shall not issue a personal protection order that
27 restrains or enjoins conduct described in subsection (2)(a) if both
28 of the following apply:

29 (a) The individual to be restrained or enjoined has a property

1 interest in the premises.

2 (b) The petitioner has no property interest in the premises.

3 (8) A court shall not refuse to issue an elder and vulnerable
4 adult personal protection order solely because of the absence of
5 any of the following:

6 (a) A police report.

7 (b) A medical report.

8 (c) A report or finding of an administrative agency.

9 (d) Physical signs of abuse or violence.

10 (e) Physical access to the petitioner or the petitioner's
11 residence.

12 (9) If the court refuses to grant an elder and vulnerable
13 adult personal protection order, it shall state immediately in
14 writing the specific reasons it refused to issue an order. If a
15 hearing is held, the court shall also immediately state on the
16 record the specific reasons it refuses to issue an elder and
17 vulnerable adult personal protection order.

18 (10) If the respondent is an individual who is issued a
19 license to carry a concealed weapon and is required to carry a
20 weapon as a condition of his or her employment, a police officer
21 licensed or certified under the Michigan commission on law
22 enforcement standards act, 1965 PA 203, MCL 28.601 to 28.615, a
23 sheriff, a deputy sheriff, a member of the state police, a local
24 corrections officer, a department of corrections employee, or a
25 federal law enforcement officer who carries a firearm during the
26 normal course of the officer's employment, the petitioner shall
27 notify the court of the respondent's occupation before issuance of
28 the elder and vulnerable adult personal protection order. This
29 subsection does not apply to a petitioner who does not know the

1 respondent's occupation.

2 (11) A petitioner may omit the petitioner's address of
3 residence from documents filed with the court under this section.
4 If a petitioner omits the petitioner's address of residence, the
5 petitioner shall provide the court with a mailing address.

6 (12) A court shall not issue a mutual elder and vulnerable
7 adult personal protection order. A court shall not issue
8 correlative separate elder and vulnerable adult personal protection
9 orders unless both parties have properly petitioned the court under
10 subsection (1).

11 (13) An elder and vulnerable adult personal protection order
12 is effective and immediately enforceable anywhere in this state
13 after being signed by a judge. On service, an elder and vulnerable
14 adult personal protection order may also be enforced by another
15 state, an Indian tribe, or a territory of the United States.

16 (14) The issuing court shall designate a law enforcement
17 agency that is responsible for entering an elder and vulnerable
18 adult personal protection order into the law enforcement
19 information network as provided by the C.J.I.S. policy council act.

20 (15) An elder and vulnerable adult personal protection order
21 must include all of the following, to the extent practicable in a
22 single form:

23 (a) A statement that the order has been entered to restrain,
24 enjoin, or compel conduct listed in the order and that violation of
25 the elder and vulnerable adult personal protection order will
26 subject the respondent to 1 or more of the following:

27 (i) If the respondent is 18 years of age or older, immediate
28 arrest and the civil and criminal contempt powers of the court and,
29 if the respondent is found guilty of criminal contempt,

1 imprisonment for not more than 93 days and a fine of not more than
2 \$500.00.

3 (ii) If the respondent is less than 18 years of age, immediate
4 apprehension or being taken into custody and the dispositional
5 alternatives listed in section 18 of chapter XIIIA of the probate
6 code of 1939, 1939 PA 288, MCL 712A.18.

7 (iii) If the respondent violates the elder and vulnerable adult
8 personal protection order in a jurisdiction other than this state,
9 the enforcement procedures and penalties of the state, Indian
10 tribe, or United States territory under whose jurisdiction the
11 violation occurred.

12 (b) A statement that the elder and vulnerable adult personal
13 protection order is effective and immediately enforceable anywhere
14 in this state after being signed by a judge and that, on service, a
15 personal protection order also may be enforced by another state, an
16 Indian tribe, or a territory of the United States.

17 (c) A statement listing the type or types of conduct enjoined
18 or compelled.

19 (d) An expiration date stated clearly on the face of the
20 order.

21 (e) A statement that the elder and vulnerable adult personal
22 protection order is enforceable anywhere in this state by any law
23 enforcement agency.

24 (f) The name of the law enforcement agency designated by the
25 court to enter the elder and vulnerable adult personal protection
26 order into the law enforcement information network.

27 (g) For ex parte orders, a statement that the individual
28 restrained or enjoined may file a motion to modify or rescind the
29 elder and vulnerable adult personal protection order and request a

1 hearing within 14 days after the individual restrained or enjoined
2 has been served or has received actual notice of the order and that
3 motion forms and filing instructions are available from the clerk
4 of the court.

5 (h) A statement providing the respondent a designated period
6 of time to collect personal belongings from the petitioner's
7 premises only when accompanied by law enforcement and with
8 reasonable prior notice to the petitioner.

9 (i) Notice of any monetary award to the petitioner that
10 provides an exact amount for actual damages, costs, and reasonable
11 attorney fees, a date on which payment is due, the manner in which
12 payment may be made, and notice that failure to pay may result in a
13 money judgment against the respondent.

14 (16) A court shall issue an ex parte elder and vulnerable
15 adult personal protection order without written or oral notice to
16 the individual restrained or enjoined or the individual's attorney
17 if it clearly appears from specific facts shown by a verified
18 complaint, written motion, or affidavit that immediate and
19 irreparable injury, loss, or damage will result from the delay
20 required to effectuate notice or that the notice will itself
21 precipitate adverse action before a personal protection order can
22 be issued.

23 (17) An elder and vulnerable adult personal protection order
24 issued under subsection (16) is valid for not less than 182 days.
25 The individual restrained or enjoined may file a motion to modify
26 or rescind the order and request a hearing under the Michigan court
27 rules. A motion to modify or rescind the order must be filed not
28 later than 14 days after the order is served or after the
29 individual restrained or enjoined has received actual notice of the

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

3 (18) Except as otherwise provided in this subsection, the
4 court shall schedule a hearing on a motion to modify or rescind the
5 ex parte elder and vulnerable adult personal protection order not
6 later than 14 days after the motion is filed. If the respondent is
7 a person described in subsection (10) and the order prohibits the
8 respondent from purchasing or possessing a firearm, the court shall
9 schedule a hearing on the motion to modify or rescind the ex parte
10 order not later than 5 days after the motion is filed.

11 (19) The clerk of the court that issues an elder and
12 vulnerable adult personal protection order shall do all of the
13 following immediately on issuance and without requiring a proof of
14 service on the individual restrained or enjoined:

15 (a) File a true copy of the elder and vulnerable adult
16 personal protection order with the law enforcement agency
17 designated by the court in the order.

18 (b) Provide the petitioner with 2 or more true copies of the
19 elder and vulnerable adult personal protection order.

20 (c) If the respondent is identified in the pleadings as a law
21 enforcement officer, notify the officer's employing law enforcement
22 agency, if known, about the existence of the elder and vulnerable
23 adult personal protection order.

24 (d) If the respondent is identified in the pleadings as a
25 local corrections officer, notify the officer's employing local
26 agency, if known, about the existence of the elder and vulnerable
27 adult personal protection order.

28 (e) If the elder and vulnerable adult personal protection
29 order prohibits the respondent from purchasing or possessing a

1 firearm, notify the county clerk of the respondent's county of
2 residence about the existence and contents of the order.

3 (f) If the respondent is identified in the pleadings as a
4 department of corrections employee, notify the department of
5 corrections about the existence of the elder and vulnerable adult
6 personal protection order.

7 (20) The clerk of the court shall inform the petitioner that
8 the petitioner may take a true copy of the elder and vulnerable
9 adult personal protection order to the law enforcement agency
10 designated by the court under subsection (14) to be immediately
11 entered into the law enforcement information network.

12 (21) The law enforcement agency that receives a true copy of
13 an elder and vulnerable adult personal protection order under
14 subsection (19) or (20) shall immediately and without requiring
15 proof of service enter the order into the law enforcement
16 information network as provided by the C.J.I.S. policy council act.

17 (22) An elder and vulnerable adult personal protection order
18 issued under this section must be served personally or by
19 registered or certified mail, return receipt requested, delivery
20 restricted to the addressee at the last known address or addresses
21 of the individual restrained or enjoined or by any other manner
22 allowed by the Michigan court rules. If the individual restrained
23 or enjoined has not been served, a law enforcement officer, court
24 officer, or clerk of the court who knows that a personal protection
25 order exists may, at any time, serve the individual restrained or
26 enjoined with a true copy of the order or advise the individual
27 restrained or enjoined of the existence of the order, the specific
28 conduct enjoined, the penalties for violating the order, and where
29 the individual restrained or enjoined may obtain a copy of the

1 order. If the respondent is less than 18 years of age, the parent,
2 guardian, or custodian of the individual must also be served
3 personally or by registered or certified mail, return receipt
4 requested, delivery restricted to the addressee at the last known
5 address or addresses of the parent, guardian, or custodian. A proof
6 of service or proof of oral notice must be filed with the clerk of
7 the court issuing the order. This subsection does not prohibit the
8 immediate effectiveness of an elder and vulnerable adult personal
9 protection order or its immediate enforcement under subsection (25)
10 or (26).

11 (23) The clerk of the court that issued the elder and
12 vulnerable adult personal protection order shall immediately notify
13 the law enforcement agency that received the protection order under
14 subsection (19) or (20) if either of the following occurs:

15 (a) The clerk of the court receives proof that the individual
16 restrained or enjoined has been served.

17 (b) The order is rescinded, modified, or extended by court
18 order.

19 (24) The law enforcement agency that receives information
20 under subsection (23) shall enter the information or cause the
21 information to be entered into the law enforcement information
22 network as provided by the C.J.I.S. policy council act.

23 (25) An elder and vulnerable adult personal protection order
24 is immediately enforceable anywhere in this state by any law
25 enforcement agency that has received a true copy of the order, is
26 shown a copy of it, or has verified its existence on the law
27 enforcement information network as provided by the C.J.I.S. policy
28 council act.

29 (26) If the individual restrained or enjoined has not been

1 served, a law enforcement agency or officer responding to a call
2 alleging a violation of an elder and vulnerable adult personal
3 protection order shall serve the individual restrained or enjoined
4 with a true copy of the order or advise the individual restrained
5 or enjoined of the existence of the order, the specific conduct
6 enjoined, the penalties for violating the order, and where the
7 individual restrained or enjoined may obtain a copy of the order.
8 The law enforcement officer shall enforce the order and immediately
9 enter or cause to be entered into the law enforcement information
10 network that the individual restrained or enjoined has actual
11 notice of the order. The law enforcement officer also shall file a
12 proof of service or proof of oral notice with the clerk of the
13 court issuing the order. If the individual restrained or enjoined
14 has not received notice of the order, the individual restrained or
15 enjoined must be given an opportunity to comply with the order
16 before the law enforcement officer makes a custodial arrest for
17 violation of the order. The failure to immediately comply with the
18 order is grounds for an immediate custodial arrest. This subsection
19 does not preclude an arrest under section 15 or 15a of chapter IV
20 of the code of criminal procedure, 1927 PA 175, MCL 764.15 and
21 764.15a, or a proceeding under section 14 of chapter XIIIA of the
22 probate code of 1939, 1939 PA 288, MCL 712A.14.

23 (27) An individual who is 18 years of age or older and who
24 refuses or fails to comply with an elder and vulnerable adult
25 personal protection order under this section is subject to the
26 criminal contempt powers of the court and, if found guilty, must be
27 imprisoned for not more than 93 days and may be fined not more than
28 \$500.00. An individual who is less than 18 years of age and who
29 refuses or fails to comply with an elder and vulnerable adult

1 personal protection order issued under this section is subject to
2 the dispositional alternatives listed in section 18 of chapter XIIIA
3 of the probate code of 1939, 1939 PA 288, MCL 712A.18. The criminal
4 penalty provided under this section may be imposed in addition to a
5 penalty that may be imposed for another criminal offense arising
6 from the same conduct.

7 (28) An individual who knowingly and intentionally makes a
8 false statement to the court in support of the individual's
9 petition for an elder and vulnerable adult personal protection
10 order is subject to the contempt powers of the court.

11 (29) An elder and vulnerable adult personal protection order
12 issued under this section is also enforceable under section 15b of
13 chapter IV of the code of criminal procedure, 1927 PA 175, MCL
14 764.15b, and chapter 17.

15 (30) A court shall not issue an elder and vulnerable adult
16 personal protection order if the respondent is the unemancipated
17 minor child of the petitioner.

18 (31) If the respondent is less than 18 years of age, issuance
19 of an elder and vulnerable adult personal protection order under
20 this section is subject to chapter XIIIA of the probate code of
21 1939, 1939 PA 288, MCL 712A.1 to 712A.32.

22 (32) For purposes of this section, a petitioner has an
23 ownership interest in an animal if 1 or more of the following are
24 applicable:

- 25 (a) The petitioner has a right of property in the animal.
- 26 (b) The petitioner keeps or harbors the animal.
- 27 (c) The animal is in the petitioner's care.
- 28 (d) The petitioner permits the animal to remain on or about
29 premises occupied by the petitioner.

1 (33) A finding that a petitioner is a vulnerable adult for
2 purposes of obtaining a personal protection order under this
3 section does not give rise to an inference that the petitioner
4 requires a guardianship or conservatorship when considering a
5 petition for a guardianship or conservatorship under article V of
6 the estates and protected individuals code, 1998 PA 386, MCL
7 700.5101 to 700.5520, or for a guardianship under the mental health
8 code, 1974 PA 258, MCL 330.1001 to 330.2106.

9 (34) As used in this section:

10 (a) "Elder and vulnerable adult personal protection order"
11 means an injunctive order issued by the family division of the
12 circuit court or a probate court restraining or enjoining activity
13 and individuals listed in subsections (2) and (3).

14 (b) "Federal law enforcement officer" means an officer or
15 agent employed by a law enforcement agency of the United States
16 government whose primary responsibility is the enforcement of laws
17 of the United States.

18 (c) "Financial exploitation" means the use of fraud, deceit,
19 misrepresentation, coercion, or unjust enrichment to obtain or use,
20 or attempt to obtain or use, money or property to directly or
21 indirectly benefit the respondent, or the respondent's improper
22 leveraging of a caregiver relationship for financial gain.

23 (d) "Institutionalization" means being removed from a
24 community residence and placed or kept in a residential
25 institution, such as a licensed long-term care facility or nursing
26 home, adult foster care, a home for the aged, a mental health or
27 drug treatment facility, or a hospital or unlicensed care facility.

28 (e) "Neglect" means that term as defined in section 50 of the
29 Michigan penal code, 1931 PA 328, MCL 750.50.

- 1 (f) "The C.J.I.S. policy council act" means the C.J.I.S.
2 policy council act, 1974 PA 163, MCL 28.211 to 28.215.