

Common Questions for PPO Enforcement

1. Does the violation have to occur in the presence of the law enforcement officer?

No. The “reasonable cause” standard in MCL 764.15b(1); MSA 28.874(2)(1) authorizes police officers to make a warrantless arrest regardless of whether the alleged PPO violation takes place in the officer’s presence. See *People v Richardson*, 204 Mich App 71,79 (1994) (Construing “reasonable cause” for purposes of the warrantless arrest provisions of MCL 764.15(1) (c) ; MSA 28.874 (1)(c), and *Model Policy: The Law Enforcement Response to Domestic Violence*, P 2,7 (Michigan Law Enforcement Officers Training Council/Domestic Violence Prevention and Treatment Board, April, 1995).

2. What if the PPO violator had left the scene before law enforcement arrives?

MCL 764.15b(1); MSA 28.874(2)(1) imposes no time limit on the police officer’s arrest authority, so that a warrantless arrest may still take place after the respondent has left the scene of an alleged violation. If the police are unable to locate the respondent, they should always consider a warrant for stalking. Repeated violations of a PPO most likely will constitute the crime of aggravated stalking. MCL 750.411i(2); MSA 28.643(9)(2). At the very least, the petitioner should be advised to file a “motion to show cause” with the court who issued the PPO.

3. What happens if petitioner resumes contact with the respondent after a PPO has been issued prohibiting contact between the parties?

Only a court can change a PPO; the parties cannot. The respondent may move to modify or rescind the PPO within 14 days after service or actual notice, or for good cause shown after the 14 days have elapsed. A hearing must be held within 14 days from the date the respondent files a request for modification or rescission. Most importantly, the PPO is directed to the respondent’s behavior NOT that of the petitioner. Regardless of the petitioner’s wishes for contact, the respondent has violated the PPO. The petitioner’s invitation may mitigate the sanctions, but it is no defense to the violation. In deciding whether to mitigate sanctions, the court might inquire whether the petitioner actually consented to resume contact with the respondent, or whether the respondent coerced the petitioner to resume contact.

4. Can a respondent be charged with a PPO violation and a separate criminal offense for the same behavior?

Yes. In the case of PPO violations, the Michigan Legislature has clearly indicated its intent that criminal sanctions be imposed in addition to whatever other criminal penalties may apply for a separate criminal offense:

“The criminal penalty provided for under [the PPO statutes] may be imposed in addition to [any] penalty that may be imposed for [any other] criminal offense arising from the same conduct.” MCL 600.2950(23); MSA 27A.2950(23), and MCL 600.2950a(20); MSA 27A.2950(1)(20).”

In *People v Coones*, 216 Mich App 721, 727-728 (1996), the Michigan Court of Appeals held that separate convictions of aggravated stalking and criminal contempt for violation of a temporary restraining order were not multiple punishments in violation of double jeopardy, even though they were based on the same conduct.

5. What is the Prosecutor’s role in PPO contempt proceedings?

The prosecuting attorney must prosecute criminal contempt proceedings initiated by the court following arrest of the respondent, unless the petitioner retains his or her own attorney for this purpose. MCR 3.708(F)(2),(G). See also MCR 764.15b(2)(C), (5); MSA 28.874(2)(2)(C),(5). The statute does not address the role of the prosecutor in contempt proceedings initiated by show cause. If the alleged violation is based upon a criminal offense that is a basis for a separate criminal prosecution, upon motion of the prosecution, the court may postpone for the outcome of that prosecution. MCR 3.708(F). If the prosecutor prosecutes the criminal contempt proceeding, the court shall grant an adjournment for not less than 14 days or a lesser period requested if the prosecutor moves for an adjournment. If the prosecutor prosecutes the contempt proceeding, the court may dismiss the proceeding upon motion of the prosecutor for good cause shown. MCL 764.15b(5); MSA 28.874(2)(5).