

Legislative Analysis



REPEAL CHAPTER XII OF THE CODE OF CRIMINAL PROCEDURE

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House Bill 5179

Sponsor: Rep. Tom McMillin

1st Committee: Judiciary

2nd Committee: Oversight, Reform, and Ethics

Complete to 6-4-12

A SUMMARY OF HOUSE BILL 5179 AS INTRODUCED 11-29-11

House Bill 5179 would repeal Chapter XII of the Code of Criminal Procedure (MCL 772.1 to 772.15). This chapter of the code was adopted as Public Act 175 in 1927, and it concerns the authority of local judges to keep the peace, if there is just reason to believe a person will commit an offense against the person or property of another, and a complaint has been made in writing.

The first four sections of that law read as follows:

Sec. 1.

A district or municipal judge may cause all the laws made for the preservation of the public peace to be kept and, in the execution of this authority, may require a person to give security to keep the peace in the manner provided in this chapter.

Sec. 2.

If a complaint is made in writing and on oath to the district court or a municipal court that a person has threatened to commit an offense against the person or property of another, the judge shall examine on oath the complainant and any witnesses who may be produced.

Sec. 3.

If the judge determines from the examination that there is just reason to believe the person will commit an offense described in section 2 of this chapter, the judge may enter an order directing the person to appear on a date certain within 7 days. If the person fails to appear as ordered, the court shall issue a warrant. Alternatively, the court may issue a warrant directed to the sheriff or any peace officer, reciting the substance of the complaint and commanding that the person be promptly apprehended and brought before the court.

Sec. 4.

(1) If a person is brought before the court by a complaint made under section 2 of this chapter and does not consent to post a recognizance, the court shall conduct a trial and shall determine if a recognizance is required. The person has a right to a trial by jury. The person may, with the consent of the complainant and approval of the court, waive a determination of the facts by a jury and elect to be tried before a judge without a jury. The trial and the selection of a jury shall be conducted in the same manner as a trial and selection of a jury in the same court for a minor offense.

(2) If the judge or jury finds the accused is likely to breach the peace, the court shall require the accused to enter into a recognizance with sufficient sureties approved by the court to keep the peace towards all the people of this state, and especially towards the person or persons named in the complaint. The recognizance shall be in a sum set by the court, for a period as the court directs, but not exceeding 5 years. In determining the amount of the recognizance, the court shall consider the person's employment status, earning ability, and financial resources, and any other special circumstances that may have a bearing on the person's ability to provide that recognizance. The person ordered to post the recognizance may, at any time pursuant to the

rules of the court, petition the court to reduce the recognizance or eliminate the requirement of a recognizance. The court may require specific conditions to be a requirement of the recognizance.

(3) The judge or the jury may return a special verdict that the complaint and accusation is groundless or malicious.

FISCAL IMPACT:

To the extent that this bill reduces actions taken by district or municipal judges, courts may see reduced costs due to a decrease in caseload. The expected reduction is not known, but would not likely be a significant portion of a court's current caseload. To the extent that it reduces imprisonment due to failure to pay recognizance or noncompliance with a court order to keep the peace, the bill could also reduce local costs related to incarceration in county jails and civil fine revenue related to these violations, which is dedicated to public libraries. Data is not available on the number of persons who are incarcerated or fined for these purposes.

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