

HOUSE BILL No. 5825

May 29, 1990, Introduced by Rep. Dunaskiss and referred to the Committee on Judiciary.

A bill to amend sections 1 and 4 of chapter VI and section 4 of chapter VII of Act No. 175 of the Public Acts of 1927, entitled as amended

"The code of criminal procedure,"

section 4 of chapter VI as amended by Act No. 64 of the Public Acts of 1988, being sections 766.1, 766.4, and 767.4 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 1 and 4 of chapter VI and section 4 of
2 chapter VII of Act No. 175 of the Public Acts of 1927, section 4
3 of chapter VI as amended by Act No. 64 of the Public Acts of
4 1988, being sections 766.1, 766.4, and 767.4 of the Michigan
5 Compiled Laws, are amended to read as follows:

CHAPTER VI

1
2 Sec. 1. (1) ~~The~~ EXCEPT AS PROVIDED IN SUBSECTION (2), THE
3 state and accused ~~shall be~~ ARE entitled to a prompt PRELIMINARY
4 examination and determination by the examining magistrate in all
5 criminal causes, and ~~it is hereby made the duty of~~ all courts
6 and public officers having duties to perform in connection with
7 ~~such~~ A PRELIMINARY examination, ~~to~~ SHALL bring them to a
8 final determination without delay except as it may be necessary
9 to secure to the accused a fair and impartial PRELIMINARY
10 examination.

11 (2) A PERSON INDICTED FOR A CRIMINAL OFFENSE PURSUANT TO
12 CHAPTER VII IS NOT ENTITLED TO A PRELIMINARY EXAMINATION.

13 Sec. 4. Except as provided in SECTION 1 OF THIS CHAPTER AND
14 section 4 of chapter XIIA of Act No. 288 of the Public Acts of
15 1939, being section 712A.4 of the Michigan Compiled Laws, the
16 magistrate before whom any person is brought on a charge of
17 having committed a felony shall set a day for a preliminary exam-
18 ination not exceeding 12 days thereafter, at which time a magis-
19 trate shall examine the complainant and the witnesses in support
20 of the prosecution, on oath in the presence of the accused, in
21 regard to the offense charged and in regard to any other matters
22 connected with the charge which the magistrate considers
23 pertinent.

CHAPTER VII

24
25 Sec. 4. (1) If upon ~~such~~ AN inquiry AS PROVIDED IN
26 SECTION 3 the judge ~~shall be~~ IS satisfied that ~~any~~ AN offense
27 has been committed and that there is probable cause to suspect

1 ~~any person to be guilty thereof, he may cause the apprehension~~
2 ~~of such person by proper process and, upon the return of such~~
3 ~~process served or executed, the judge having jurisdiction shall~~
4 ~~proceed with the case, matter or proceeding in like manner as~~
5 ~~upon formal complaint~~ THAT A PERSON IS GUILTY OF THE OFFENSE,
6 THE JUDGE MAY ISSUE CRIMINAL PROCESS AGAINST THAT PERSON. The
7 judge conducting the inquiry under section 3 ~~shall be~~ IS dis-
8 qualified from ~~acting as the examining magistrate in connection~~
9 ~~with the hearing on the complaint or indictment, or from presid-~~
10 ~~ing at any~~ A trial arising ~~therefrom,~~ FROM THE INDICTMENT, or
11 from hearing ~~any~~ A motion to dismiss or quash ~~any complaint~~
12 ~~or~~ THE indictment, or from hearing ~~any~~ A charge of contempt
13 under section 5, except alleged contempt for neglect or refusal
14 to appear in response to a summons or subpoena.

15 (2) If upon ~~such~~ AN inquiry ~~the judge shall find~~ AS PRO-
16 VIDED IN SECTION 3 A JUDGE FINDS from the evidence that there is
17 probable cause to believe that ~~any~~ A public officer, elective
18 or appointive and subject to removal by law, has been guilty of
19 misfeasance or malfeasance in office or ~~wilful~~ WILLFUL neglect
20 of duty or of any other offense prescribed as a ground of remov-
21 al, the judge shall make a written finding ~~setting up~~ STATING
22 the offense ~~so~~ found DURING THE INQUIRY and shall serve ~~said~~
23 THE finding upon the public officer, public board, or PUBLIC body
24 having jurisdiction under the law to conduct removal proceedings
25 against the officer. The finding shall be a sufficient complaint
26 as a basis for removal of ~~said~~ THE officer and the public
27 officer, public board, or public body having jurisdiction of

1 removal proceedings against the officer shall proceed in the
2 method prescribed by law for a hearing and determination of
3 ~~said~~ THE charges. ~~Except in cases of prosecutions for con-~~
4 ~~tempt or perjury against witnesses who may have been summoned~~
5 ~~before the judge conducting such inquiry, or for the purpose of~~
6 ~~determining whether the testimony of a witness examined before~~
7 ~~the judge is consistent with or different from the testimony~~
8 ~~given by such witness before a court in any subsequent proceed-~~
9 ~~ing, or in cases of disciplinary action against attorneys and~~
10 ~~counselors in this state, any~~

11 (3) A judge conducting ~~the inquiry, any~~ AN INQUIRY AS PRO-
12 VIDED IN SECTION 3, A prosecuting attorney, and ANY other
13 ~~persons~~ PERSON who ~~may~~ at the discretion of the judge ~~be~~ IS
14 admitted to ~~such~~ THE inquiry, who ~~shall~~ while conducting
15 ~~such~~ THE inquiry or while in the services of the judge or after
16 his OR HER services with the judge ~~shall have been discontinued,~~
17 ~~utter or publish~~ HAS ENDED, UTTERS OR PUBLISHES any statement
18 pertaining to any information or evidence involved in the inqui-
19 ry, or who ~~shall disclose the fact~~ DISCLOSES that any indict-
20 ment for a felony has been found against any person not in cus-
21 tody or under recognizance, or who ~~shall disclose~~ DISCLOSES
22 that any person has been questioned or summoned in connection
23 with the inquiry, OR who ~~shall disclose or publish or cause~~
24 DISCLOSES OR PUBLISHES OR CAUSES to be published any of the pro-
25 ceedings of the inquiry otherwise than by issuing or executing
26 processes prior to the indictment, or ~~shall disclose, publish or~~
27 ~~cause~~ WHO DISCLOSES, PUBLISHES, OR CAUSES to be published any

1 comment, opinion, or conclusions related to the proceedings of
2 the inquiry, ~~shall be~~ IS guilty of a misdemeanor punishable by
3 imprisonment in the county jail FOR not more than 1 year or by a
4 fine of not less than \$100.00 ~~nor~~ OR more than \$1,000.00, or
5 both. ~~fine and imprisonment in the discretion of the court, and~~
6 ~~the offense when committed by a~~ THIS SUBSECTION DOES NOT APPLY
7 TO ANY OF THE FOLLOWING:

8 (A) A PROCEEDING INVOLVING A PROSECUTION FOR CONTEMPT OR
9 PERJURY AGAINST A WITNESS WHO WAS SUMMONED BEFORE A JUDGE CON-
10 DUCTING AN INQUIRY AS PROVIDED IN SECTION 3.

11 (B) IN A COURT PROCEEDING HELD AFTER AN INQUIRY CONDUCTED AS
12 PROVIDED IN SECTION 3 FOR THE PURPOSE OF DETERMINING WHETHER THE
13 TESTIMONY OF A WITNESS IN A PROCEEDING IS CONSISTENT WITH OR DIF-
14 FERENT FROM HIS OR HER TESTIMONY GIVEN BEFORE THE JUDGE WHO CON-
15 DUCTED THE INQUIRY UNDER SECTION 3.

16 (C) A PROCEEDING INVOLVING ANY DISCIPLINARY ACTION AGAINST
17 ATTORNEYS IN THIS STATE.

18 (4) A public official ~~shall also constitute~~ WHO VIOLATES
19 SUBSECTION (3) IS GUILTY OF malfeasance in office.

20 (5) The limitations, restrictions, and penalties relating to
21 the uttering, publishing, or disclosing of any statement pertain-
22 ing to any information or evidence, imposed by this section, do
23 not apply to disclosures of information or evidence made by a
24 judge conducting ~~such an investigation~~ AN INQUIRY AS PROVIDED
25 IN SECTION 3 to another judge concurrently conducting an
26 ~~investigation~~ INQUIRY as provided in section 3. ~~Upon~~

1 (6) AFTER the termination of ~~the~~ AN inquiry CONDUCTED AS
2 PROVIDED IN SECTION 3, if the judge ~~shall~~ DOES NOT make ~~no~~ A
3 presentment of A crime or wrongdoing as to any person whose
4 apprehension or removal from office he OR SHE has not so caused,
5 he OR SHE may, in his OR HER discretion, with the consent of the
6 person who may be named, file with the clerk of the county in
7 which ~~such~~ THE inquiry has been conducted ~~—~~ a report of no
8 finding of criminal guilt as to any person or persons involved in
9 such inquiry, either as witness or otherwise, whose involvement
10 in ~~such~~ THE inquiry has become public.

11 (7) ~~No~~ AN inquiry or proceeding under this chapter shall
12 NOT continue longer than 6 months unless extended by specific
13 order of the judge or his OR HER successor for an additional
14 period not to exceed 6 months.

15 (8) ~~In the event any~~ IF A judge conducting ~~such~~ AN
16 inquiry ~~shall be~~ AS PROVIDED IN SECTION 3 IS unable to continue
17 because of physical disability, disqualification, termination of
18 office or death, ~~the presiding circuit judge of Michigan shall~~
19 ~~appoint~~ a successor SHALL BE APPOINTED AS PROVIDED BY LAW.