



**House
Legislative
Analysis
Section**

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REVISE PEACE BOND LAW

**House Bill 4515 as enrolled
Second Analysis (7-27-94)**

**Sponsor: Rep. Philip Hoffman
House Committee: Judiciary
Senate Committee: Judiciary**

THE APPARENT PROBLEM:

Since 1838, Michigan has had a law that provides for judicial orders and the setting of bonds to keep the peace. That law is at present laid out by Chapter XII of the Code of Criminal Procedure, entitled "Proceedings to Prevent Crime." Under the peace bond statute as now written, a person may swear out a complaint that someone had threatened the person or property of another, and a magistrate, after examining the complainant and any witnesses under oath, may issue a warrant for the alleged offender's arrest. That person may demand a trial by magistrate or jury; if found guilty, he or she may be required to "enter into a recognizance, with sufficient sureties" to "keep the peace towards all the people of this state, and especially towards the person requiring the sureties." Refusal to provide the bond can result in the jailing of the person for the period of the bond, which can be up to two years. Failure to meet the conditions of the bond can result in the forfeiture of the bond.

Recent amendments to the peace bond statute have done two things worth noting. Public Act 471 of 1980 emphasized the use of peace bonds in domestic relations matters, adding a section that authorized a \$500 fine and criminal contempt sanctions (in addition to existing sanctions) for violating a peace bond issued in a domestic relations matter. Public Act 89 of 1988 (part of that session's 69-bill crime package) required the consent of the prosecutor before a jury trial could be waived in favor of a bench trial.

Reports are that in at least one county, Jackson County, peace bonds were used with some success in domestic relations matters, enabling complainants to obtain court intervention when prosecutors may have been reluctant to proceed in domestic violence cases, or when formal prosecution may not have been necessary or appropriate. That county's experimentation with the approach ended, however, when a circuit judge interpreted the 1988

amendment to mean that the prosecutor also had to participate in the filing of the initial complaint.

Many find this interpretation of the law to be contrary to a plain English reading of it, as well as contrary to its historical spirit. Amendments have been proposed to clarify the matter, to update and clarify other aspects of the law, much of which is couched in archaic language, and to make various changes based on the experience of the 12th district court in Jackson County.

THE CONTENT OF THE BILL:

The bill would amend Chapter XII of the Code of Criminal Procedure, "Proceedings to Prevent Crime," to do the following:

**** replace references to magistrates with references to district or municipal judges.**

**** provide that when a judge determines there to be reason to believe that the person in question will commit the offense complained of, he or she may enter an order directing the person to appear on a date certain within seven days. If the person failed to appear as ordered, the judge could issue a bench warrant or issue a warrant and direct a peace officer to promptly apprehend the person and bring him or her before the court.**

**** specify that when the person does not consent to a recognizance, the court must conduct a trial and determine if a recognizance is required. The person would, as currently provided, have the right to a trial by jury. However, instead of prosecutorial consent for a bench trial, the consent of the complainant would be required if the person elected to be tried by the judge.**

**** extend from two years to five years the period of time that a recognizance can apply, explicitly**

House Bill 4515 (7-27-94)

authorize the court to require specific conditions to be a requirement of the recognizance, and require the court, in determining the amount of a recognizance, to consider various factors reflecting a person's ability to pay. The person required to post the bond could at any time petition the court to reduce or eliminate the amount of recognizance.

**** forbid the court from incarcerating a person for failing to pay a recognizance unless the court has first conducted a hearing and determined that the person had the resources to pay.**

**** include the Detroit Recorder's Court in a provision that allows appeal to the circuit court.**

**** authorize the warrantless arrest of a person whom a peace officer had reasonable cause to believe was violating the conditions of a peace bond.**

**** provide for the court to order the appearance within seven days of a person alleged to have violated the conditions of a peace bond. The court would issue a warrant if the person failed to appear. If the person appeared and denied violating the peace bond, the court could schedule a hearing to be held within seven days. That hearing would be conducted in the same manner as a probation violation hearing. If the court found that the conditions of a recognizance were violated, it could declare the recognizance forfeited; it also could require an additional recognizance with sufficient sureties to secure the peace. Failure to provide the recognizance would subject the person to jailing for the period of the recognizance.**

**** expand provisions on the use of peace bonds in domestic relations matters to include situations where the people involved had a child in common, as well as situations where the people were current or former spouses or current or former members of the same household.**

**** specify an effective date of July 1, 1994.**

FISCAL IMPLICATIONS:

The Senate Fiscal Agency said that the bill could increase costs to the local courts. The costs would be associated with the judge's time in examining complaints, hearings, warrants issued, and the use of jury trials if requested by the parties. The number of these complaints issued but not brought forth by the prosecutor's office would indicate how much

court costs could rise; however, this information is currently not available. (3-3-94)

ARGUMENTS:

For:

For many years, the peace bond law has enabled threatened people to obtain court intervention without the need for prosecutorial involvement. In the past decade or so, the tendency seems to have been to use the law as a means to compel nonviolent behavior in domestic relations; that, at least, describes the way the law has been used--apparently with some success--in Jackson County. However, at least one circuit court has interpreted the law to require prosecutorial approval before any proceedings can commence under it, and this has halted the use of the law in Jackson County. The bill would eliminate language that has led to confusion over the role of the prosecutor; that language, which requires prosecutorial approval for bench trials, would be replaced with language requiring the approval of the complainant. The bill thus would restore and emphasize the original spirit of the law.

Against:

The bill may go too far in eliminating all involvement for the local prosecutor. A prosecutor's perspective and expertise may be of benefit to the court and the interests of justice. As an alternative, the bill should perhaps do something along the lines of allowing either the complainant or the prosecutor to approve of a bench trial.

For:

The bill would update and clarify procedures in the peace bond law, allowing for mailed notices of required appearances and hearings, providing for hearings and further orders when bond violations were alleged, clarifying the roles of various courts, and generally revising antiquated language.

Response:

Although the bill would make improvements, much in the law would remain murky. It is not clear how peace bond "trials" are to be "prosecuted," what procedures are to govern hearings on violations of peace bond conditions, or whether peace bond procedures are civil or criminal in nature. Such matters need to be resolved, for to the degree that the peace bond statute is used, this lack of clarity will lead to continued confusion and disparities in the administration of justice.

Against:

The bill would extend the allowable term of a peace bond recognizance to five years, which would in turn allow a person to be jailed for up to that time for failing to provide that bond. Even though a person would have the right to a hearing, the law seems to provide scant protection for the rights of a person who might be deprived of liberty for so long without a formal criminal prosecution. Further, the act provides for "jailing" a person, not "imprisonment," which raises additional issues of whether a person could be incarcerated in a county jail for several times over the customary period of one year; if a person is to be incarcerated for longer than that period, he or she should be placed under the jurisdiction of the state Department of Corrections.