



HOUSE BILL No. 4515

March 18, 1993, Introduced by Reps. Hoffman, Nye and Griffin and referred to the Committee on Judiciary.

A bill to amend sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15 of chapter XII of Act No. 175 of the Public Acts of 1927, entitled as amended

"The code of criminal procedure,"

sections 1, 2, 8, 9, 10, 11, 12, 14, and 15 as amended by Act No. 506 of the Public Acts of 1980, section 4 as amended by Act No. 89 of the Public Acts of 1988, and section 13 as amended by Act No. 471 of the Public Acts of 1980, being sections 772.1, 772.2, 772.3, 772.4, 772.5, 772.6, 772.7, 772.8, 772.9, 772.10, 772.11, 772.12, 772.13, 772.14, and 772.15 of the Michigan Compiled Laws; and to add sections 13a and 13b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12,
2 13, 14, and 15 of chapter XII of Act No. 175 of the Public Acts
3 of 1927, sections 1, 2, 8, 9, 10, 11, 12, 14, and 15 as amended

1 by Act No. 506 of the Public Acts of 1980, section 4 as amended
 2 by Act No. 89 of the Public Acts of 1988, and section 13 as
 3 amended by Act No. 471 of the Public Acts of 1980, being
 4 sections 772.1, 772.2, 772.3, 772.4, 772.5, 772.6, 772.7, 772.8,
 5 772.9, 772.10, 772.11, 772.12, 772.13, 772.14, and 772.15 of the
 6 Michigan Compiled Laws, are amended and sections 13a and 13b are
 7 added to read as follows:

8 CHAPTER XII

9 Sec. 1. A ~~magistrate shall have power to~~ DISTRICT OR
 10 MUNICIPAL JUDGE MAY cause all the laws made for the preservation
 11 of the public peace to be kept and, in the execution of this
 12 authority, may require a person to give security to keep the
 13 peace in the manner provided in this chapter.

14 Sec. 2. If a complaint is made in writing and on oath to ~~a~~
 15 ~~magistrate~~ THE COURT that a person has threatened to commit an
 16 offense against the ~~person~~ BODY or property of another PERSON,
 17 the ~~magistrate~~ COURT shall examine on oath the complainant and
 18 any witnesses who may be produced.

19 Sec. 3. If ~~it shall appear from such~~ THE COURT DETERMINES
 20 FROM THE examination ~~—~~ that there is just reason to ~~fear~~
 21 BELIEVE the ~~commission of any such~~ PERSON WILL COMMIT AN
 22 offense DESCRIBED IN SECTION 2, ~~such magistrate shall~~ THE COURT
 23 MAY ENTER AN ORDER DIRECTING THE PERSON TO APPEAR ON A DATE CER-
 24 TAIN WITHIN 7 DAYS. IF THE PERSON FAILS TO APPEAR AS ORDERED,
 25 THE COURT SHALL ISSUE A WARRANT. ALTERNATIVELY, THE COURT MAY
 26 issue a warrant ~~under his hand,~~ directed to the sheriff or any
 27 ~~constable of the county~~ PEACE OFFICER, reciting the substance

1 of the complaint and commanding ~~him forthwith to apprehend the~~
2 ~~person so complained of, and bring him before such magistrate~~
3 THAT THE PERSON BE PROMPTLY APPREHENDED AND BROUGHT BEFORE THE
4 COURT.

5 Sec. 4. If a person is brought before the ~~magistrate~~
6 COURT by a complaint made under section 2 of this chapter ~~the~~
7 ~~person shall have a right to a trial by jury. The person may,~~
8 ~~with the consent of the prosecutor and approval of the magis-~~
9 ~~trate, waive a determination of the facts by a jury and elect to~~
10 ~~be tried before the magistrate without a jury. The trial and the~~
11 ~~selection of a jury shall be conducted in the same manner as a~~
12 ~~trial and selection of a jury in the same court for a minor~~
13 ~~offense. If the magistrate or jury finds the accused guilty, the~~
14 ~~magistrate~~ AND DOES NOT CONSENT TO POST A RECOGNIZANCE, THE
15 COURT SHALL HOLD A HEARING AND SHALL DETERMINE IF A RECOGNIZANCE
16 SHOULD BE REQUIRED. EITHER PARTY MAY HAVE THE ISSUE DETERMINED
17 BY JURY. IF THE COURT FINDS THE PERSON IS LIKELY TO BREACH THE
18 PEACE, THE COURT may require the ~~accused~~ RESPONDENT to enter
19 into a recognizance ~~with sufficient sureties to be~~
20 approved by the ~~magistrate,~~ COURT to keep the peace towards all
21 the people of this state, and especially towards the ~~person~~
22 ~~requiring the sureties~~ PERSONS NAMED IN THE COMPLAINT. The
23 ~~recognizance shall be in a sum set by the magistrate, for a term~~
24 ~~as the magistrate directs, but not exceeding 2 years~~ COURT MAY
25 REQUIRE SPECIFIC CONDITIONS TO BE A REQUIREMENT OF THE
26 RECOGNIZANCE. The ~~magistrate or the jury~~ COURT may return a
27 ~~special~~ verdict that the complaint and accusation is groundless

1 or malicious. ~~, and, in that event, the magistrate shall enter~~
2 ~~that finding or verdict upon the magistrate's docket.~~

3 Sec. 5. Upon complying with the order of the ~~magistrate~~
4 COURT, the party complained of shall be discharged.

5 Sec. 6. If the person so ordered to recognize ~~shall refuse~~
6 ~~or neglect to comply with such order~~ REFUSES OR NEGLECTS TO PRO-
7 VIDE THAT RECOGNIZANCE, the ~~magistrate~~ COURT shall commit ~~him~~
8 THE PERSON to the county jail during the period for which ~~he~~
9 SECURITY was required, ~~to give security,~~ or until ~~he shall so~~
10 ~~recognize, stating~~ THE PERSON PROVIDES THAT RECOGNIZANCE. THE
11 COURT SHALL STATE in the warrant the cause of commitment with the
12 sum and the time for which ~~such~~ THE security was required.

13 Sec. 7. If ~~upon examination it shall not appear that~~
14 AFTER A HEARING THE COURT DETERMINES there is NOT just cause to
15 ~~fear~~ BELIEVE that ~~any such~~ AN offense will be committed by
16 the ~~party complained of, he~~ PERSON, THE PERSON shall
17 ~~forthwith~~ PROMPTLY be discharged. ~~, and if the magistrate~~
18 ~~shall deem the complaint unfounded, frivolous or malicious, he~~
19 ~~shall order the complainant to pay the costs of the prosecution,~~
20 ~~who shall thereupon be answerable to the magistrate and the offi-~~
21 ~~cers for their fees, as for his own debt, and execution may issue~~
22 ~~therefor.~~

23 Sec. 8. ~~If an order respecting the costs is not made by~~
24 ~~the magistrate, costs shall be allowed and paid in the same~~
25 ~~manner as costs in a prosecution of a minor offense in the same~~
26 ~~court.~~ If a person is required to give security to keep the
27 peace, the ~~magistrate~~ COURT may further order that the costs of

1 prosecution ~~or~~ or any part of ~~the~~ THOSE costs ~~shall~~ be
2 paid by that person. ~~who~~ THE PERSON shall be committed until
3 the costs are paid or until the person is otherwise legally
4 discharged.

5 Sec. 9. A person ordered by ~~a magistrate~~ THE COURT to
6 recognize to keep the peace may, on giving the recognizance,
7 appeal from the order in the same manner as provided for an
8 appeal from a judgment on a misdemeanor prosecution entered in
9 the same court.

10 Sec. 10. The CIRCUIT court ~~before which the appeal is~~
11 ~~prosecuted,~~ may affirm the order of the ~~magistrate~~ JUDGE, dis-
12 charge the appellant, or require the appellant to enter into a
13 new recognizance with sufficient sureties ~~in~~ in a sum and for a
14 ~~time,~~ PERIOD not exceeding 2 years ~~as~~ as the court considers
15 proper. The ~~appellate~~ CIRCUIT court also may order the payment
16 of the costs of the prosecution as the court considers just.

17 Sec. 11. If a person appealing fails to prosecute the
18 appeal, the person's recognizance shall remain in full force and
19 effect ~~without~~ without an affirmation of the judgment or order of the
20 ~~magistrate~~ COURT. The recognizance shall serve as a security
21 for any costs ~~which~~ THAT may be ordered by the CIRCUIT court.
22 ~~appealed to, to~~ THE COSTS SHALL be paid by the appellant ~~and~~
23 AS a condition ~~to that effect shall be incorporated in~~ OF THE
24 RECOGNIZANCE. THE PAYMENT OF COSTS SHALL BE REQUIRED FOR all
25 recognizances given under section 8 of this chapter.

26 Sec. 12. A person committed for not finding sureties ~~or~~ or
27 FOR refusing to recognize ~~as~~ as required by the ~~magistrate,~~

1 COURT may be discharged from custody by the ~~magistrate~~ JUDGE
2 who entered the order or any other ~~magistrate~~ JUDGE from the
3 same court and judicial district ~~—~~ upon giving the security
4 ~~as~~ required.

5 Sec. 13. ~~(1) Every recognizance taken pursuant to this~~
6 ~~chapter, shall be transmitted by the magistrate to the clerk of~~
7 ~~the circuit court for the county, within 2 days after its taking,~~
8 ~~and shall be filed by the clerk. (2) The clerk OF THE COURT~~
9 shall file a true copy of a peace bond issued under this chapter
10 with the law enforcement agency OR AGENCIES having jurisdiction
11 of the area in which the complainant resides OR WORKS.

12 SEC. 13A. IF A PEACE OFFICER HAS REASON TO BELIEVE THAT THE
13 CONDITIONS OF A RECOGNIZANCE REQUIRED UNDER THIS CHAPTER ARE
14 BEING VIOLATED IN HIS OR HER PRESENCE OR WERE VIOLATED, THE PEACE-
15 OFFICER SHALL ARREST THE PERSON AND HOLD HIM OR HER FOR PRESENTA-
16 TION TO THE COURT ON THE NEXT BUSINESS DAY.

17 SEC. 13B. IF THE COURT IS PRESENTED WITH ALLEGATIONS THAT
18 THE PERSON VIOLATED 1 OR MORE CONDITIONS OF A PEACE BOND, THE
19 COURT MAY ISSUE AN ORDER DIRECTING THE PERSON TO APPEAR BEFORE
20 THE COURT ON A DATE CERTAIN WITHIN 7 DAYS OR MAY ISSUE A
21 WARRANT. IF THE PERSON FAILS TO APPEAR AS ORDERED, THE COURT
22 SHALL ISSUE A WARRANT. IF THE PERSON APPEARS AND DENIES VIOLAT-
23 ING ANY CONDITIONS OF THE RECOGNIZANCE, THE COURT SHALL SCHEDULE
24 A HEARING TO BE HELD WITHIN 7 DAYS. THE HEARING SHALL BE CON-
25 DUCTED IN THE SAME MANNER AS A PROBATION VIOLATION HEARING.

26 Sec. 14. IF THE COURT FINDS BY ADMISSION OR AFTER A HEARING
27 THAT THE CONDITIONS OF THE RECOGNIZANCE WERE VIOLATED, THE COURT

1 SHALL ORDER THE RECOGNIZANCE FORFEITED. THE COURT MAY ALSO
2 REQUIRE AN ADDITIONAL RECOGNIZANCE WITH SUFFICIENT SURETIES TO
3 SECURE THE PEACE. IF THE PERSON FAILS TO RECOGNIZE, THE COURT
4 SHALL PROCEED AS SET FORTH IN SECTION 6 OF THIS CHAPTER. If a
5 recognizance is forfeited, the ~~magistrate~~ COURT, upon a peti-
6 tion by the ~~defendant~~ PERSON, may remit a portion of the penal-
7 ty, as the circumstances render just and reasonable.

8 Sec. 15. A surety in a recognizance to keep the peace has
9 the same authority and right to take and surrender the principal
10 as in other criminal cases. Upon the surrender the surety shall
11 be discharged and exempt from all liability for an act of the
12 principal subsequent to the surrender ~~which~~ THAT would be a
13 breach of the condition of the recognizance. The surety ~~shall~~
14 IS not ~~be~~ discharged or exempt from liability for costs on an
15 appeal taken by the principal in the recognizance. The person
16 surrendered by a surety may recognize anew, with sufficient sure-
17 ties, before a ~~magistrate~~ JUDGE of the same court for the
18 remainder of the term, and, upon doing so, shall be discharged
19 from custody.