

REPEAL “ONE-MAN GRAND JURY” PROVISIONS

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5473 as introduced
Sponsor: Rep. Luke Meerman
Committee: Judiciary
Complete to 9-27-22

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 5473 would amend Chapter VII (Grand Juries, Indictments, Informations and Proceedings Before Trial) of the Code of Criminal Procedure to repeal several sections that establish Michigan’s “one-man grand jury” process. The sections to be repealed are described below.

Section 3, along with section 4, authorizes the use of a “one-man grand jury,” in which a judge serves as the sole juror. Section 3 allows the judge to investigate a complaint that has been filed or for which an application has been made by a prosecutor or attorney general. In conducting the inquiry into the matter, the judge may call witnesses and issue subpoenas to command a witness to testify. All testimony taken or given by a witness must be done in the presence of the judge. A witness has the right to have counsel present. A judge or prosecuting attorney or the attorney general participating in an inquiry that lasts longer than 30 days is required to be disqualified, up to one year after the date the inquiry terminates, from appointment or election to any office other than that held at the time of the inquiry.

Section 4 establishes the authority of a judge when conducting an inquiry to issue an arrest warrant, if the judge is satisfied that an offense has been committed and that there is probable cause to suspect a person is guilty. The judge conducting the inquiry is disqualified from acting as the examining magistrate in connection with the hearing on the complaint or indictment, from presiding at any trial arising from the inquiry, from hearing a motion to dismiss or quash a complaint or indictment, or from generally hearing a charge of contempt. (The term “examining magistrate,” as used in other statutes, refers to a judge who conducts a preliminary examination.)

In addition, section 4 requires the judge conducting the inquiry, based on a finding of probable cause of misconduct in office on the part of a public official subject to removal for such an offense, to make a written finding of the offense and serve it on the public officer and the public board or body having jurisdiction to conduct removal proceedings.

Section 4 also creates a misdemeanor offense, punishable by a fine or imprisonment in a county jail, or both, for a judge conducting an inquiry, or a prosecutor or other person in the service of the judge, who discloses certain information relating to the inquiry. The judge may, however, file with a county clerk a report of no finding of criminal guilt regarding a person, with the person’s consent, whose involvement with an inquiry had become public but for whom no presentment of crime or wrongdoing had been made.

Section 4 also limits an inquiry or proceeding under Chapter VII to no more than six months unless extended by specific order of the judge or the judge's successor for up to an additional six months. The presiding circuit judge of Michigan could appoint a successor judge if the judge conducting an inquiry were unable to continue because of a physical disability, disqualification, termination of office, or death.

Section 5 makes it a contempt, punishable by a fine or imprisonment in a county jail, or both, for a witness to neglect or refuse to appear in response to a summons in an inquiry or neglect or refuse to answer questions a judge considers as material.¹

Section 6 pertains to incriminating answers of witnesses in an inquiry and a judge's authority to grant immunity from incrimination to a witness in exchange for truthful testimony.

Section 6a requires the docket, journal, reporters' notes, transcript, or other record of a judge in an inquiry that terminates within 30 days to be sealed and filed with the clerk of the Michigan Supreme Court, where it is to be held in secret and securely locked in a container. The section also provides for availability to a witness in certain court proceedings, such as for an appeal, and provides a mechanism for the destruction of the documents if there is no further need to preserve and retain them.

Section 6b requires a judge, within 90 days after an inquiry terminates, to file with the court clerk a public accounting of all money disbursed by the judge or at the judge's direction.

MCL 767.3 et. seq. (repealed)

BACKGROUND:

Typically, after a person is arrested and arraigned for a felony offense, the defendant has a right to a preliminary examination at which the prosecution presents witnesses and evidence against the accused, allowing the defendant to know the case being prepared against them and the chance to refute the charges. Only if the evidence supports that a crime has been committed and that there is reasonable cause to believe that the defendant committed that offense is the case bound over to circuit court for trial. A defendant, with the consent of their attorney, may waive the preliminary examination.

Although less often used, Michigan law also provides for a citizens grand jury, where a prosecutor can present a case and the 23 jurors decide whether or not to indict a defendant. Also used less often is the so-called "one-person grand jury," in which a sole judge investigates a matter, interviews witnesses, and until recently, issues an indictment.

Earlier this year, in a case involving several defendants arising from the Flint water crisis, the Michigan Supreme Court held that sections 3 and 4 described above, which House Bill 5473

¹ According to a compiler's note, section 5, "in regard to a contemnor appearing before a judge to purge himself and the discretion of the judge to commute or suspend further execution of a sentence, insofar as criminal contempt is concerned, constitutes an unconstitutional delegation by the legislature to the judicial branch of government of a power which exists only in the executive. *People v Joseph*, 384 Mich 24; 179 NW2d 383 (1970)."

would repeal, authorize a judge to “investigate, subpoena witnesses, and issue arrest warrants,” but “do not authorize the judge to issue indictments.” The court also held that if the criminal process began “with a one-man grand jury, the accused is entitled to a preliminary examination before being brought to trial.” The court reversed a lower court’s orders denying two of the defendants’ motions to remand for a preliminary hearing and denying a third defendant’s motion to dismiss on grounds that section 4 described above does not authorize a judge in a one-man grand jury to issue an indictment.²

FISCAL IMPACT:

House Bill 5473 would have an indeterminate fiscal impact on the state and on local unit of governments. It is not possible to determine with certainty either the prevalence of the “one-man grand jury” system across the state or the costs associated with it. In the court caseload reporting system, data is not compiled in a way that distinguishes between different case types filed in courts, which means there is no differentiation between a “one-man grand jury” case and a citizen grand jury case. Based on surveys conducted recently to try to determine its use in counties across the state, it appears the “one-man grand jury” is rarely used and has been used only more recently (in the last five years or so) in a small number of counties for very specific case types. Because it is not possible to get data on the actual number of “one-man grand juries” that are convened on an annual basis, it is not possible to determine the fiscal impact of the bill.

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Robin Risko

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.

² *People v Peeler, People v Baird, People v Lyon*, Docket Nos. 163667, 163672, and 164191. Argued on application for leave to appeal May 4, 2022. Decided June 28, 2022.