

Legislative Analysis



Mary Ann Cleary, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

REPEAL PEACE BOND LAW

House Bill 4139 (reported from committee without amendment)

Sponsor: Rep. Tom McMillin

Committee: Judiciary

First Analysis (4-9-13)

BRIEF SUMMARY: The bill would repeal the peace bond statute.

FISCAL IMPACT: To the extent that the 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 significant. To the extent that the bill reduces imprisonment due to failure to pay recognizance or for noncompliance with a court order, the bill could reduce locals costs related to incarceration in county jails. It also could reduce civil fine revenue related to these violations, which is dedicated to public libraries. Data is not available on the number of individuals incarcerated or fined for these purposes.

THE APPARENT PROBLEM:

For 175 years, residents of Michigan have had recourse to obtain judicial orders to keep the peace. The current statute enables people to go to district court and obtain a peace bond against an individual who has made threats against their persons or property. A peace bond essentially provides a financial incentive for a person not to carry out threats or a breach of the peace against another person. (For more information on peace bonds, see the **Background Information** section.)

Reportedly, however, peace bonds are rarely used these days. When a credible threat involving domestic violence or stalking exists, the threatened person usually seeks a Personal Protection Order, or PPO, from a circuit court. In other situations, a restraining order (or non-contact bond) may be sought to prohibit one person from contacting another. This type of bond is often used in criminal cases to protect a victim if the defendant is released from jail while charges are pending. Peace bonds, on the other hand, have historically been used in neighbor disputes or non-violent family disputes that do not support the issuance of a PPO or restraining order.

Reportedly, the most recent use in the state of a peace bond came two years ago when Pastor Terry Jones, the leader of a small congregation in Gainesville, Florida, requested, and was subsequently denied, a permit to hold a demonstration outside of the Islamic Center of America in Dearborn. Pastor Jones announced, however, that he would hold the demonstration even without the permit. It should be noted that previous to the permit request, Pastor Jones had set fire to a copy of the Quran. The reaction in Afghanistan to this act was two days of protests in which 21 people died, including seven United Nations workers. In an attempt to mitigate any breach of peace that might occur should Pastor

Jones proceed with his planned demonstration outside the mosque, the Wayne County Prosecutor's Office filed a peace bond petition against him. After Pastor Jones refused to abide by the peace bond, a jury determined that a breach of the peace was likely if the demonstration went forward. The judge then ordered Pastor Jones and his companion, Wayne Sapp, to stay away from the mosque for three years and post a \$1 bond fee each. Pastor Jones and Mr. Sapp initially refused to post the \$1 bond fee and were jailed until the bond was posted a short time later. Pastor Jones and Mr. Sapp left town shortly thereafter, never holding their planned demonstration and claiming that their constitutionally-protected free speech rights had been violated.

Since the incident with Pastor Jones and Mr. Sapp, others have raised concerns about possible abuses of governmental power and constitutionality issues regarding the peace bond statute, especially in relation to the exercise of free speech and the right to assemble. Legislation has therefore been offered to repeal the peace bond statute.

THE CONTENT OF THE BILL:

The bill would repeal the peace bond statute. Specifically, House Bill 4139 would repeal Chapter XII of the Code of Criminal Procedure, entitled "Proceedings to Prevent Crime."

MCL 772.1-772.15

BACKGROUND INFORMATION:

Since 1838, Michigan has had a law that provides for judicial orders and the setting of bonds to keep the peace. Presently, that law is contained in Chapter XII of the Code of Criminal Procedure. It was last amended in 1994. Under the peace bond statute, a person may swear out a complaint in district court that someone has threatened the person or property of another, and a judge, after examining the complainant and any witnesses under oath and determining that there is just reason to believe the person will commit the threatened offense, may enter an order directing the person to appear before the court; the appearance must be set within seven days. If the person fails to appear, the judge may issue a bench warrant or a warrant for the person's immediate arrest. If the person does not consent to post a recognizance, the court must conduct a trial and determine if a recognizance is required. The person may request a jury trial or elect to be tried by the judge (known as a bench trial).

If found likely to breach the peace, the person is required to "enter into a recognizance with sufficient sureties" to keep the peace towards all people of the state and especially toward the individual or individuals named in the complaint. Refusal to provide the bond can result in the person being jailed until the bond is paid, although a hearing must be conducted before a person can be jailed to determine if the person has the resources to pay the bond.

The statute also requires a court to dismiss a frivolous or malicious action, allows a court to order a person to pay prosecution costs, and establishes a right of appeal. Once the

peace bond is paid, the person is released from jail (if the person had been jailed for failure to pay the bond). Violating the conditions of a recognizance can result in arrest and forfeiture of the recognizance. A person who violates an order to keep the peace in domestic violence cases is subject to the contempt powers of the court and may be imprisoned for not more than 90 days or fined not more than \$500, or both.

ARGUMENTS:

For:

At one time, peace bonds were a useful tool for people to obtain in order to protect themselves or their property when threatened by another person, generally a neighbor or family member. Over the past two decades, their use has declined significantly in favor of PPOs and restraining orders, which allow law enforcement officers to arrest a person who violates conditions of an order. Reportedly, the incident involving Pastor Terry Jones described earlier in this analysis is the last known use of a peace bond in the state.

Proponents of repealing the statute emphasize that the peace bond is rife for abuse, especially if used to interfere with a person's constitutionally-protected free speech rights and/or right to assemble. Under the peace bond statute, a person can be required to post large sums of money or even jailed not for what the person actually *does*, but what someone else thinks or fears that person *might do*. In the Dearborn case, a peace bond wasn't sought because Pastor Jones had threatened a violent or destructive act, but because of what a crowd *might do* in response to anything he said. Even though the message Pastor Jones preaches is one that many find objectionable, he still has a right under the First Amendment to deliver it. And some would argue that the manner in which Wayne County used a peace bond to silence him borders on governmental censorship. This just is not acceptable for a nation founded on the principle of freedom of speech. Further, to require an individual in the absence of any stated threats to post a large sum of money because of what *someone else* may or may not do does not seem just.

Therefore, in light of the potential for governmental abuse in stifling free speech or assembly, and that other judicial tools are available to protect individuals from others who threaten to do them harm, it is time for this archaic law to be abolished.

Response:

Some might question whether it is prudent to call for a repeal of a judicial tool that has been useful in keeping the peace for almost two hundred years because some *fear* potential abuses, absent a clear pattern of abuses. Further, some might argue that Pastor Jones' free speech rights were not infringed on, as he could have held his demonstration in any of Dearborn's four zones in which a permit to assemble or demonstrate is not needed.

According to testimony presented on an identical bill last session (House Bill 5179 of 2012), a public record is not generated for a peace bond. Therefore, it would be impossible to tell how often or in what instances peace bonds have been used over the past few years. It also was noted in the testimony that there are more due process rights for a person who is the subject of a peace bond than there are for the subject of a PPO.

Further, the peace bond statute may still be useful for those types of neighbor-to-neighbor disputes or family disputes that do not meet the elements needed to support issuance of a PPO or restraining order, even if most cases do fit within those orders. In addition, PPOs, which require the involvement of the local prosecutor, could be harder to obtain in some jurisdictions. For instance, Wayne County recently announced that due to staffing cuts, hearings on PPOs will have to be limited to one day a week, instead of daily. A peace bond, which is obtained by an individual at a district court, may be a quicker, yet effective, alternative to a PPO in some situations. Unless a clear record of abuses regarding suppression of Constitutional rights under peace bonds can be demonstrated, is it necessary for the peace bond statute to be repealed?

POSITIONS:

A representative of the ACLU of Michigan testified in support of the bill. (3-14-13)

The American Law Center submitted written testimony in support of the bill. (3-13-13)

The Michigan District Judges Association (MDJA) has no position on the bill.

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Robin Risko

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