



**House
Legislative
Analysis
Section**

Washington Square Building, Suite 1025
Lansing, Michigan 48909
Phone: 517/373-6466

OPEN JUVENILE PROCEEDINGS

House Bill 4572 with committee amendments
First Analysis (5-20-87)

Sponsor: Rep. Nick Ciaramitaro
Committee: Judiciary

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THE APPARENT PROBLEM:

The juvenile code allows the court to exclude the general public from hearings, and juvenile court judges have generally done so. The closing of juvenile hearings is a practice that reflects the origins of separate juvenile procedure: the belief that the proper role of the state is to protect and reform young offenders, not subject them to the open trial and punishment of adult criminal law, and the continuing stigma attached to them. In recent years, however, perspectives have shifted so that now many people believe that the benefits of opening juvenile proceedings to public scrutiny outweigh the risk of harm to juvenile offenders. Although there are occasions when it is appropriate to limit public access, especially in abuse and neglect cases, the closing of juvenile hearings impedes the public's ability to assess the juvenile justice system, evaluate juvenile judges, and learn the extent of juvenile crime. It has been proposed that juvenile court proceedings be opened to the public except where warranted by individual circumstances.

THE CONTENT OF THE BILL:

The juvenile code allows a juvenile court judge to exclude the general public in any juvenile case. The bill would delete this broad authorization and replace it with conditions under which the court may close juvenile proceedings.

For abuse or neglect cases (and for divorce custody disputes where the circuit court waived jurisdiction to the juvenile court), the court could, upon the motion of any party, close the hearing during the testimony of a child witness if necessary to protect the welfare of that child. In determining whether closing the hearing was necessary, the court would consider the age of the child and his or her psychological maturity, the nature of the proceeding, and the desire of the child or his or her family or guardian to have the testimony taken in a room closed to the public.

For delinquency proceedings, the court could close the hearing upon the motion of any party if both of the following conditions were met: the court found on the record that a compelling governmental interest outweighed the public's right of access to the hearing, and the denial of access to the hearing was narrowly tailored to accommodate a compelling governmental interest.

MCL 712A.17 and 712A.28

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill has no fiscal implications for the state. (5-20-87)

ARGUMENTS:

For:

Juvenile proceedings, especially delinquency hearings, should generally be open to the public. The Probate Court Task Force (the "Riley Commission") and the House Ad-hoc

Special Committee on Youthful Offenders, two groups that extensively studied the juvenile justice system and released reports in April 1987, recommended that juvenile proceedings be opened. Open hearings would foster a better public understanding of the juvenile justice system and its needs, an understanding that is at present hampered by the common practice of closing juvenile proceedings. An informed public would be better able to assess the system, its problems, and proposed solutions, and evaluate judicial candidates. An open courtroom would act as a check on potential abuses of judicial authority. Hearings could become more formal in order to prevent the appearance of arbitrariness, and that formality could assure better due process of law to all parties. Formality and public scrutiny could help to make both juveniles and their parents aware of the seriousness of the matter at hand.

Despite these benefits of open proceedings generally, there will be instances where it will be more appropriate to close a hearing to the public. The bill accommodates those occasions by allowing an abuse and neglect hearing to be closed to protect the victim (using criteria paralleling that in House Bills 4119 - 4121, to allow videotaped testimony and support people for children in certain court proceedings), and allowing a delinquency hearing to be closed when there is a compelling governmental interest to do so (using criteria adopted by the United States Supreme Court with regard to closing adult criminal proceedings). The bill would make the juvenile justice system more accountable to the public while retaining sufficient flexibility to respond appropriately to individual circumstances.

Against:

There is little to gain from opening abuse and neglect hearings to the general public. Any desire to subject the wrongdoer to public scrutiny can be met in criminal court where charges would be brought; the purpose of the juvenile court hearing is to determine the disposition of the child. These proceedings are very sensitive and inquisitory; they probe into many private family matters. The privacy of the child and the family should be protected more than the bill would do. Privacy could be better guarded by allowing the court to close a hearing upon its own initiative, rather than only in response to a motion, by conditioning public and media access on an assurance that parties' identities would be kept confidential, by prohibiting publication of names, or by some combination of such protections. Indeed, many would argue that the courts should continue to protect identities in delinquency hearings, where public identification could unfairly stigmatize some youngsters and encourage others toward more flagrant violations. To this end, some may argue, courts should be able to retain the degree of discretion which they now have.

H.B. 4572 (5-20-87)

OVER

POSITIONS:

The Office of Children and Youth Services within the Department of Social Services supports the bill. (5-20-87)

The Coalition for Juvenile Justice Reform supports the bill. (5-19-87)

The Michigan Council on Crime and Delinquency supports the bill. (5-19-87)

The Michigan Federation of Private Child and Family Agencies would support the bill with an amendment protecting the anonymity of the parties in neglect and abuse cases. (5-19-87)

The Children's Charter of the Courts of Michigan is examining the bill and does not have a formal position at this time. (5-19-87)

The Probate Judges' Association has no position on the bill at this time. (5-19-87)