



**House
Legislative
Analysis
Section**

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THE APPARENT PROBLEM:

Among the legislative proposals to deal with juvenile crime is one to standardize and extend the recordkeeping on juveniles adjudicated for serious offenses. The suggestion that permanent or public records might be kept on juvenile adjudications has highlighted longstanding concerns about the adequacy of the juvenile code's provisions for due process of law. Inadequacies cited include the code's failure to assure juveniles of the right to counsel, to require the participation of the prosecutor so that the judge or referee may act as an impartial third party, or to ensure that referees, who commonly preside over juvenile proceedings, are trained in law. If juvenile offenders are to have what in essence are criminal records, it is argued, then the law should do more to ensure that those records are developed accurately, completely, and equitably under the due process of law accorded adult criminals.

THE CONTENT OF THE BILL:

The bill would amend the juvenile code to:

- provide that when a juvenile was before the court because of delinquency (that is, because of alleged lawbreaking), the referee for any hearing for that juvenile, except the preliminary inquiry or preliminary hearing, would have to be licensed to practice law in Michigan;
- require that the prosecuting attorney represent the people in delinquency proceedings requiring a hearing and the taking of testimony (the prosecutor is required to now only when requested by the court);
- replace current provisions authorizing the court to appoint an attorney to represent a child at public expense with provisions paralleling the existing juvenile court rules for appointment of counsel. Under the bill, an attorney would have to be appointed for a juvenile facing delinquency or status offense proceedings unless the juvenile waived the right to an attorney. An attorney would have to be appointed for a child who was the subject of abuse or neglect proceedings when it appeared that the child's interest may be adverse to those of a parent, guardian, or custodian, or were not otherwise adequately represented. Unless the right to an attorney was waived, an attorney would have to be appointed to represent a parent at an abuse or neglect hearing at which parental rights may be terminated, providing legal aid or public defender assistance was unavailable and the parent was financially unable to employ an attorney. (This latter provision differs from the court rules in that it applies only to parents, rather than parents, guardians, and custodians.) The court would appoint the attorney at public expense if the party or person responsible for the child's support did not have the means to pay for an attorney. The court could require a parent, guardian, or custodian to pay for the attorney.
- in effect limit to prosecutors the ability to initiate delinquency proceedings. At present, whenever any person gives information to the juvenile court regarding delinquency, a status offense, or a abuse or neglect case, the court must authorize a petition to be filed if it

House Bill 4595 as passed by the House
Second Analysis (7-27-87)

Sponsor: Rep. Perry Bullard
Committee: Judiciary

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appears that formal jurisdiction should be acquired. The bill would make separate provision for delinquency proceedings and predicate the requirement to authorize a petition on filing by the prosecutor, rather than any person.

MCL 712A.10 et al.

FISCAL IMPLICATIONS:

The House Fiscal Agency says that the bill would have fiscal implications in an amount indeterminable at this time. (7-22-87)

ARGUMENTS:

For:

The bill would assure accused juvenile delinquents of a number of basic due process of law protections. Although the right to counsel is provided by court rule, fixing the rule in statute provides a stronger assurance that an attorney will be available to people facing proceedings under the juvenile code, whether a juvenile accused of breaking the law, a child who is the object of an abuse or neglect hearing, or an adult who may lose parental rights. Requiring the prosecutor to appear in delinquency proceedings will ensure that the referee or judge has the role of impartial third party, rather than the dual and conflicting roles of both prosecutor and trier of fact. The involvement of the prosecutor's office will in addition do more to ensure that juvenile proceedings are conducted thoroughly and professionally with thorough investigation, examination of witnesses, and the like. Proper regard for and knowledge of the demands of due process of law will similarly be assured by requiring referees, who may conduct many of the delinquency hearings, to be trained in the law. While new juvenile court rules taking effect January 1, 1988 would require referees in delinquency proceedings to be attorneys, the bill would provide firmer assurances by placing the requirement in statute.

Against:

The bill may prove costly for the state. Although the local prosecutor's office typically participates in most delinquency hearings, including all in Wayne County, which represents about half of the state's delinquency caseload, by making prosecutorial appearance a statutory requirement, the bill may be considered to mandate new costs for local units of government. The same point can be made with regard to requiring that referees be attorneys; although they commonly are attorneys, and all of Wayne County's are attorneys, statute does not now require it. The bill offers little in the way of new due process protections; court rules can provide right to counsel and attorney referees without being placed in statute, and common practice can continue to afford prosecutorial involvement. What the bill does do is raise the threat of expensive demands from counties seeking reimbursement under Article 9, Section 29 of the constitution for the costs represented by newly-mandated state requirements.

H.B. 4595 (7-27-87)

Response: While Wayne County may already be in compliance with the bill, many outstate counties are not. The bill would enact good public policy and ensure that basic due process protections for accused juveniles are available statewide. Further, it is unlikely that the state would have to pay for any increased local costs imposed by the bill: Public Act 101 of 1979, which implements Article 9, Section 29 of the state constitution, exempts due process requirements from the definition of state requirement.

POSITIONS:

The Michigan Council on Crime and Delinquency strongly supports the bill. (7-22-87)

The Prosecuting Attorneys Association of Michigan has no formal position on the bill at this time, but is concerned about the costs of complying with a provision newly mandating prosecutor responsibilities in delinquency hearings. (7-22-87)

The Probate Judges Association has no formal position at this time. (7-13-87)