



**House  
Legislative  
Analysis  
Section**

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**DELINQUENTS: DUE PROCESS**

House Bill 4595 as enrolled  
Third Analysis (6-29-88)

**RECEIVED**

**AUG 04 1988**

Sponsor: Rep. Perry Bullard  
House Committee: Judiciary  
Senate Committee: Judiciary

Mich. State Law Library

**THE APPARENT PROBLEM:**

Among recent legislative initiatives 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 (this would not apply, however, to a probation officer or county agent who was a referee as of January 1, 1988);
- 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 new juvenile court rules for appointment of counsel, which took effect January 1, 1988.

The bill would incorporate language from Public Act 72 of 1988, which required the fingerprinting of juveniles under certain circumstances, and Public Act 91 of 1988, which provided for open, rather than closed, juvenile proceedings.

MCL 712A.10 et al.

**FISCAL IMPLICATIONS:**

According to the Senate Fiscal Agency, the bill would have an indeterminate impact on local units of government. Requirements limiting the authority of referees who are not attorneys and the requirement that prosecuting attorneys appear at certain hearings would result in increased costs. (2-17-88)

**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 new referees, who may conduct many of the delinquency hearings, to be trained in the law.

**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.

**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.

H.B. 4595 (6-29-88)