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House Bill 4572 (Substitute S-2 as reported)

Sponsor: Representative Nick Ciaramitaro

House Committee: Judiciary

Senate Committee: Judiciary

Date Completed: 2-9-88

RATIONALE

The juvenile code allows the juvenile court to exclude the general public from hearings, and judges generally have done so. The closing of juvenile hearings reportedly is a practice that was initiated as a reflection of the origins of separate legal procedures for juveniles, i.e., the belief that the proper role of the State is to protect and reform young offenders, not subject them to open trial and the punishment of criminal law. In recent years, however, the perspective of many people has shifted to a point where they now 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 may be appropriate to limit public access (in abuse and neglect cases, for instance), many people believe that the closing of juvenile hearings impedes the public's ability to assess the juvenile justice system, evaluate juvenile judges, and learn the extent of the juvenile crime problem. These people contend that juvenile court proceedings should be opened to the public except where closure is warranted by individual circumstances.

CONTENT

The bill would amend the juvenile code to specify circumstances under which the juvenile court could exclude the general public from juvenile proceedings, upon the motion of any party or victim. This would replace the current authorization that allows all juvenile proceedings to be closed.

Under the bill, upon the motion of any party or victim, in cases in which a juvenile was charged with a violation of law or a status offense, or in abuse or neglect cases (and for divorce custody disputes in which the circuit court waived jurisdiction to the juvenile court), the court could close the hearing during the testimony of a child witness or victim if the court found that closure was necessary to protect the welfare of the child witness or victim. In making that determination, the court would have to consider the age and psychological maturity of the child witness or victim; the nature of the proceeding; and the desire of the child witness or his or her family or guardian, or of the victim, to have the testimony taken in a room closed to the public.

In addition, current law provides that all records of juvenile cases are open only by court order to persons having a legitimate interest. Under the bill, this would apply only to records of a closed hearing, subject to the Crime Victim's Rights Act. The bill would take effect June 1, 1988.

MCL 712A.17 and 712A.28

SENATE COMMITTEE ACTION

The Senate Judiciary Committee adopted a substitute (S-2) to the bill that does not include a provision of the House-passed version that would have established a separate standard for closure in cases in which a juvenile was charged with a violation of law or a status offense; that standard would have allowed closure if 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 was narrowly tailored to accommodate that interest. In abuse and neglect cases, the House-passed version would have allowed closure during testimony of a child witness, if the court found that closure was necessary to protect the child's welfare. The Senate substitute adopted this standard for all juvenile cases and included the testimony of a "child witness or victim".

The Senate substitute also added an effective date of June 1, 1988.

FISCAL IMPACT

The bill would have an indeterminate impact on local units of government. The requirement that the prosecuting attorneys appear in delinquency proceedings would result in additional costs.

ARGUMENTS**Supporting Argument**

Juvenile proceedings generally should 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 studied the juvenile justice system extensively, both 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 currently is hampered by the common practice of closing juvenile proceedings. An informed public would be better able to assess the system, examine 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 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 general benefits of open proceedings, there are instances in which it may be more appropriate to close a hearing to the public. The bill would accommodate such occasions by allowing a hearing to be closed to protect a

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child witness or victim. The bill would make the juvenile justice system more accountable to the public while retaining sufficient flexibility to respond appropriately to individual circumstances.

Opposing Argument

There is little to gain from opening abuse and neglect hearings to the general public. Any desire to subject an offender 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. Juvenile court proceedings are very sensitive and inquisitive; they probe into many private family matters. The privacy of the child and the family should be protected more than they would be in the bill. Privacy concerns could be guarded better 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 also would argue that the courts should continue to protect identities in delinquency hearings, where public identification could stigmatize some youngsters and encourage others toward more flagrant violations. To discourage such occurrences, courts should be able to retain the degree of discretion that they now are permitted to exercise.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.