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BILL ANALYSIS

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Senate Fiscal Agency

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House Bill 4595 (Substitute S-4 as reported)**Sponsor: Representative Perry Bullard****House Committee: Judiciary****Senate Committee: Judiciary****Date Completed: 2-17-88****RATIONALE**

Among the various proposed approaches to addressing the juvenile crime problem is the standardization and extension of recordkeeping on juveniles adjudicated for serious offenses. The suggestion that permanent, 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 in the system that are often 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 the law. If juvenile offenders are to be burdened with what in essence are criminal records, it is argued, then the law should do more to ensure that juvenile proceedings and their results are recorded accurately, completely, and equitably under the due process of law protections accorded adult criminals.

CONTENT

The bill would amend the juvenile code to do all of the following:

- Provide that when a juvenile was before the juvenile court for a criminal violation, the referee for any hearing, 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 designated to act and had acted as a referee before January 1, 1988.)
- Require that the prosecuting attorney represent the people in criminal offense proceedings that require a hearing and the taking of testimony (instead of only when requested by the court).
- Limit to prosecuting attorneys the authority to initiate proceedings involving a juvenile's alleged criminal offense.
- Replace and broaden current provisions regarding the appointment of legal counsel, as discussed below.
- Incorporate language from House Bill 4572 that would allow the closure of juvenile court proceedings upon the motion of any party or victim, and from House Bill 4599, which would require the juvenile court to ensure that an accused juvenile's fingerprints were taken.

Under current law, if a juvenile or his or her parents desire but are unable to procure legal counsel, the court has the discretion to appoint legal counsel to represent the juvenile, and appointed counsel is entitled to "reasonable compensation" from the county. Under the bill, in a delinquency proceeding (one involving an alleged criminal

or status offense), the court would be required to advise the child at each stage of the proceeding that he or she could be represented by an attorney. In such a proceeding, the court would have to appoint an attorney to represent the child if any of the following applied:

- The child's parent refused or failed to appear and participate in the proceeding.
- The child's parent was either the complainant or victim.
- The child and those responsible for his or her support were financially unable to employ an attorney and the child did not waive the right to an attorney.
- Those responsible for the child's support refused or neglected to employ an attorney for the child and the child did not waive the right to an attorney.
- The court determined that the best interest of the child or the public required appointment of an attorney.

A child could "voluntarily and understandingly" waive the right to legal representation, but only in open court and on the record. The right could not be waived if the child's parent or guardian objected or if an attorney were appointed by the court after a determination that the appointment was in the best interest of the child or the public.

In abuse and neglect proceedings, the court would have to advise a respondent, at his or her first court appearance, of all of the following:

- The right to an attorney at each stage of the proceeding.
- The right to a court-appointed attorney if the respondent were financially unable to employ an attorney.
- If the respondent were not represented by an attorney, the right to request and receive a court-appointed attorney at a later proceeding.

If it appeared that a respondent in an abuse or neglect proceeding wanted an attorney and was financially unable to retain one, the court would be required to appoint legal counsel. A respondent could waive the right to an attorney unless he or she were a minor and his or her parent objected. In abuse and neglect proceedings, the court would have to appoint an attorney to represent the child, and the child could not waive such assistance.

An attorney appointed by the court in delinquency, abuse, or neglect proceedings would have to serve until discharged by the court. The court could assess attorney costs against the party or the person responsible for the support of the party for whom legal counsel was appointed. Such an order could be enforced through contempt proceedings.

The bill would take effect June 1, 1988.

H.B. 4595 (2-17-87)

SENATE COMMITTEE ACTION

The Senate Judiciary Committee adopted a substitute (S-4) to the bill that differs from the House-passed version of the bill in its provisions regarding the appointment of legal counsel. The House-passed version would require the court to advise the child and his or her parent, guardian, or custodian at their first hearing before the court that they could be represented by an attorney and that an attorney could be appointed to represent them.

The House-passed version would allow a child to waive the right to an attorney only if the waiver were concurred in by the parent, guardian, custodian, or guardian ad litem (appointed to appear on the child's behalf for purposes of the proceeding). In addition, the House-passed version specifies that a custodial confession made by a juvenile to a peace officer or prosecutor could only be admissible in a subsequent juvenile court proceeding against the child if the child were represented by an attorney or waived the right to an attorney.

In addition, the House-passed version provides that, unless an attorney were waived, legal counsel would have to be appointed on the court's own initiative to represent the parent of a child at a neglect, abuse, or custodial dispute hearing that could involve termination of that parent's rights, if legal aid or public defender assistance were not available and the parent could not afford to hire an attorney. The House-passed version specifies that the court would have to appoint an attorney at public expense if it appeared that the party or person responsible for the juvenile's support did not have the means to pay for an attorney.

The House-passed version included an effective date of January 1, 1988, rather than June 1, 1988, as in the substitute, and did not include the language from other bills regarding the closure of juvenile proceedings and the fingerprinting of juveniles.

FISCAL IMPACT

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.

ARGUMENTS

Supporting Argument

The bill would ensure that accused juveniles received a number of basic due process of law protections. Although the right to counsel is provided by court rule, fixing the rule in statute would provide a stronger assurance that legal representation would be made available to people facing proceedings under the juvenile code, whether a juvenile accused of breaking a law, a child who was the object of an abuse or neglect hearing, or an adult who could lose parental rights. Requiring the prosecutor to appear in delinquency proceedings would ensure that the referee or judge had 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 also would do more to ensure that juvenile proceedings were conducted thoroughly and professionally. Proper regard for and knowledge of the demands of due process of law similarly would be assured by requiring referees, who conduct many of the court's delinquency hearings, to be trained in the law.

Opposing Argument

The bill could prove costly for the State. Although the local prosecutor's office typically participates in most delinquency hearings, including all such proceedings in Wayne County, the bill could be considered to mandate new costs for local units of government by making prosecutorial appearance a statutory requirement. The same point could be made regarding the requirement that referees be attorneys. Although juvenile court referees commonly are attorneys, as are all of Wayne County's referees, the State does not currently require them to be. The bill would raise the threat of expensive demands from counties seeking reimbursement under the so-called Headlee Amendment to the State 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 were available statewide. Further, due process requirements are exempt from the definition of "state requirement" in Public Act 101 of 1979 (MCL 21.234), which implemented the Headlee Amendment; if the bill were interpreted to fall within that exemption, the State would not have to pay for any local cost increases.

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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.