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BILL ANALYSIS

FEB 22 1988

Senate Fiscal Agency

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House Bill 4595 (Substitute H-2)

Sponsor: Representative Perry Bullard

House Committee: Judiciary

Senate Committee: Judiciary

Date Completed: 2-4-88

SUMMARY OF HOUSE BILL 4595 (Substitute H-2) as passed by the House:

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

- Provide that when a juvenile was before the juvenile court because of delinquency (for a criminal violation or a status offense), the referee for any hearing, 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 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.

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, the court would be required to advise the child and his or her parent, guardian, or custodian at the first hearing before the court at which they appeared that they could be represented by an attorney and that an attorney could be appointed to represent them.

A juvenile could "voluntarily and understandingly" waive the right to an attorney. If the juvenile's parent, guardian, or custodian were the complainant or petitioner, the waiver would have to be concurred in by the guardian ad litem (appointed to appear on the child's behalf for purposes of the proceeding). If the parent, guardian, or custodian were not the complainant or petitioner, the juvenile's parent, guardian, custodian, or guardian ad litem would have to concur in the waiver.

A custodial confession made by a juvenile to a peace officer or prosecutor would not be admissible in a subsequent juvenile court proceeding against the child unless the child was represented by an attorney or waived the right to an attorney.

If the juvenile were before the court for a criminal violation or a status offense, an attorney would have to be appointed for the juvenile when the juvenile and those responsible for his or her support either could not afford to hire an attorney or refused to do so, unless an attorney was waived. If the child were before the court because of neglect or abuse or pursuant to a custodial dispute, an attorney would have to be appointed for the child on the court's own initiative or on request of the child or the child's parent, guardian, custodian, or guardian ad litem, when it appeared to the court that the child's interests could be adverse to those of a parent, guardian, or custodian, or were not otherwise adequately represented.

In addition, unless an attorney was waived, an attorney 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 court could, on request, appoint an attorney to represent the parent at other juvenile court hearings.

The court would have to appoint the attorney at public expense if it appeared to the court that the party or person responsible for the juvenile's support did not have the means to pay for an attorney. If the court appointed an attorney, it could assess the costs of providing an attorney against the parent, guardian, or custodian.

The bill would take effect January 1, 1988.

MCL 712A.10 et al.

Legislative Analyst: S. Margules

#### 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 hearings would result in increased costs.

Fiscal Analyst: B. Bowerman

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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.