S.B. 276: FIRST ANALYSIS

JUVENILE COURT: REMOVE PUBLIC BAN

SFA BILL ANALYSIS

Senate Fiscal Agency • Lansing, Michigan 48909 • (517) 373-5383

Senate Bill 276 (as reported with amendments)
Sponsor: Senator Rudy J. Nichols
Committee: Judiciary

Date Completed: 5-26-87

RATIONALE

The juvenile code specifies that in a hearing of any case before the Juvenile Division of Probate Court, the general public can be excluded and admittance allowed only to persons having a "direct interest" in the case. Likewise, the code states that records of all cases before the court are open only by order of the court and only to persons who have a "legitimate interest". Some people contend that, although such closures sometimes are necessary and beneficial, a closed hearing should not be optional for all cases before the Juvenile Division of Probate Court. They argue that these provisions should be stricken from the code and that closure should be an option only for portions of specific types of cases where concerns for the protection of a child witness outweigh the public's right to know.

CONTENT

Senate Bill 276 would amend the juvenile code to delete provisions pertaining to the Juvenile Division of Probate Court under which the general public, except "those persons admitted as having a direct interest in the case", can be excluded from the hearing of any case and the court records can "be open only by order of the court to persons having a legitimate interest".

The bill instead would allow the court, upon a motion of any party, to close the hearing of a case brought under the code's abuse and neglect provision and for child custody cases waived to Probate Court by the Circuit Court in divorce cases, if the court found that a closed hearing was necessary to protect a child witness' welfare. In determining whether a hearing should be closed, the court would have to consider the age and psychological maturity of the child witness; the nature of the proceedings; and the desire of the child or the child's family or guardian to have the hearing closed to the public. The records of such a hearing that was closed to the public would "be open only by order of the court to persons having a legitimate interest".

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

ARGUMENTS

Supporting Argument

Closed hearings, while desirable for the protection of children in some cases, should not be permitted for all cases before the Juvenile Division of Probate Court. The public's right to know and public review of judicial performance are important in a democratic society. While the bill would facilitate such freedom of information, it also would protect the privacy and well-being of children who were witnesses in an abuse and neglect case or a child custody case that was waived to Probate Court by the Circuit Court and based upon a divorce complaint, because the bill would allow the children's testimony, and the court's record of that testimony, to be closed to the public.

Supporting Argument

The measures that the bill would adopt are based on recommendations of the Probate Court Task Force, which was headed by Dorothy Comstock Riley, Chief Justice of the Michigan Supreme Court.

Supporting Argument

The bill would be consistent with the child witness protection package (House Bills 4118-4121) that recently passed both Houses of the Legislature.

Legislative Analyst: P. Affholter
Fiscal Analyst: B. Bowerman