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JUVENILE PROCEEDINGS; PARENTS' NOTIFICATION

House Bill 5739 (Substitute H-1) First Analysis (5-13-97)

Sponsor: Rep. Mark Schauer
Committee: Judiciary

THE APPARENT PROBLEM:

Under current law, notice statutes must be strictly construed in child protective proceedings. Thus, even if a parent appears and participates in proceedings, he or she does not waive the requirement that he or she must be personally served with notice and a petition. As a result, decisions are subject to reversal in court even if the parent had actual notice of the proceedings, appeared or was represented in the proceedings, and never objected to the court's jurisdiction while the proceedings were pending.

In other civil proceedings, a party may not appear and participate in the proceedings and then later claim that the proceedings were invalid because he or she was not properly notified. To enhance the prospect that children are afforded every opportunity for a permanent home as soon as possible, it has been suggested by the State Bar of Michigan's Task Force on Children's Justice that strictly construing notice requirements is neither justifiable nor necessary.

THE CONTENT OF THE BILL:

The bill would amend provisions of the Probate Code dealing with juveniles to provide that a parent's appearance and participation in a hearing held in conjunction with a juvenile proceeding acts as a waiver of his or her right to object to any defects in the notice and service of process. More specifically, if a parent personally appears and participates in any hearing held in conjunction with a juvenile proceeding and does not object to a lack of or a defect in a summons or notice, the parent would be deemed to have waived any right to object to a hearing, determination, order, or other action under the act based on the petition or a supplemental petition in the same case. Any appeal or other challenge to the court's decision based on a lack of or defect in a summons or notice to the parent would have to be dismissed. However, the bill specifies that this provision would not discharge the duty of the court or

other appropriate person to serve a summons on or serve notice to a parent under the act. Further, a parent would not be precluded from executing a written waiver of process or notice under Section 12 of the law, which allows a person voluntarily appearing in such proceedings to waive service of process or notice of a hearing.

MCL 712A.1

BACKGROUND INFORMATION:

In September of 1993, the State Bar of Michigan established the Task Force on Children's Justice, which began a two-year study of the state's existing rules, statutes, standards and procedures in order to make recommendations to improve the effect of the judicial system on matters that involve children.

The task force's mission was to improve the delivery of justice to Michigan's children. The group was made up of three committees: 1) officers of the court, who developed standards of practice for professionals and para-professionals who represent the interests of children in court proceedings; 2) court users, who recommended procedures and policies to guide professionals who, as a result of serving children and families, interact with the court system; and 3) court administration and jurisdiction, a committee that addressed a range of issues pertaining to the treatment of children in court proceedings and made recommendations aimed at making Michigan's court system more child-focused.

In September of 1995 the task force issued its final report. Some of the task force's recommendations necessitate legislative action.

FISCAL IMPLICATIONS:

Fiscal information is not available.

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ARGUMENTS:

For:

Personal service of process and provision of notice are increasingly difficult in today's increasingly mobile society. Child protective proceedings are not criminal proceedings; they are civil proceedings. In all other civil proceedings, a general appearance by a party constitutes a waiver of notice and service of process for purposes of personal jurisdiction. The same should be true in child protective proceedings. Allowing a parent, years later, to appeal such a decision based on what amounts to a technical flaw is grossly unfair and can seriously disrupt the child's need for permanency, stability and finality.

The current situation is quite unfair. The parent can appear and take part in the hearing, and then, if it goes badly, can contest the hearing's outcome based on the lack of service and notice. Further, forcing a party to attempt personal service can be costly and time consuming. This can delay the adjudication of the matter and increase the time that the child involved must spend in a temporary placement.

Against:

The bill should contain an effective date to provide sufficient advance warning of the change in the rules for practitioners in the system -- judges, lawyers, child protection workers, and so forth.

POSITIONS:

The State Bar of Michigan supports the bill. (5-13-98)

The Prosecuting Attorneys Association of Michigan supports the bill. (5-13-98)

Analyst: W. Flory

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.