

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7169 PCB JUVJ 06-02 Judicial Discretion to Select Commitment Programs

SPONSOR(S): Juvenile Justice Committee

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Juvenile Justice Committee	6 Y, 0 N	White	White
1) Criminal Justice Appropriations Committee	6 Y, 0 N	DeBeaugrine	DeBeaugrine
2) Justice Council	11 Y, 0 N	White	De La Paz
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

House Bill 7169 implements recommendations made in the House Juvenile Justice Committee's Interim Report entitled, "Judicial Discretion to Select Juvenile Commitment Programs," and during the Committee's workshop on the bill. Specifically, the bill:

- Creates a pilot program in the First, Eleventh, and Thirteenth Judicial Circuits, which authorizes judges to select commitment programs within the restrictiveness level ordered by the court.
- Requires the Department of Juvenile Justice (DJJ) prior to the beginning of the pilot program to:
 - Publish on its Internet website information that identifies and describes each commitment program.
 - Develop procedures, in consultation with judges, to implement the pilot program.
- Requires the DJJ, when requested by the court, to provide a list of commitment programs for which the youth is eligible, along with expected wait periods, and authorizes the court to select a program from the list if the expected wait period is 20 days or less for a maximum-risk program or 30 days or less for a program in the other restrictiveness levels. Alternatively, the court may select a commitment program with a longer wait period or that is not on the list, if the court provides reasons establishing that the youth is eligible for the program and that the program is in the youth's best interest.
- Requires the Office of Program Policy Analysis and Government Accountability (OPPAGA) to evaluate the pilot program and to periodically submit written reports that include:
 - Data on the frequency of court-specified placements and on the impact of such placements on commitment program wait periods, including secure detention stays.
 - Comparisons of successful completion, educational achievement, and recidivism data for court-specified and DJJ-specified placements.
 - Findings by the OPPAGA, DJJ, and delinquency courts regarding the benefits and disadvantages of court-specified placements, and recommendations by these entities for amendments to the statutes addressing commitment.

The DJJ has indicated that the fiscal impact of this bill will be \$13,000 for modifications of the Juvenile Juvenile Information System and an indeterminate amount for potential increases in secure detention utilization.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Disposition and Commitment of Delinquent Youth: Under current law, when a youth is found to have committed a delinquent act, the options available to the court for disposition include: (1) withholding adjudication and probation; or (2) adjudication and probation or commitment to the minimum-, low-, moderate-, high-, or maximum-risk restrictiveness levels.¹

Prior to committing a youth, the court must consider a predisposition report (PDR) that is based upon a multidisciplinary assessment of the youth by the Department of Juvenile Justice (DJJ) and that includes:

- A description of the youth's criminal history, educational background, and needs, and if residential commitment is considered, a comprehensive evaluation of the youth's physical and mental health and of substance abuse, academic, educational, or vocational problems.
- The DJJ's recommendation for a treatment plan and restrictiveness level as determined during a commitment staffing² conducted by the DJJ for the youth.³

The PDR must be provided to the court at least 48 hours before the disposition hearing.⁴ The court may follow the DJJ's recommendation in the PDR, or it may reject the recommendation if it states reasons that establish by a preponderance of the evidence why it is rejecting the recommendation.^{5 6}

If the court orders commitment for the youth, it must specify the restrictiveness level, but it may not select a program within the level.⁷ Instead, the DJJ is responsible for placing the youth in a program within the court-ordered restrictiveness level.

Placement of Committed Youth: Once a court has committed a youth to a restrictiveness level, a DJJ commitment manager utilizes the Juvenile Justice Information System (JJIS), which manages the availability of commitment slots, to determine the appropriate program placement. For each committed youth, a DJJ commitment manager enters the following information into the JJIS:

- **The restrictiveness level ordered by the court.**
- **Whether the youth needs any of the following services:** pregnancy services; restitution services; a staff, fence, or hardware secure facility; sex offender treatment; behavior overlay services; residential substance abuse overlay services; intensive mental health services; special needs mental health services; mental health overlay services; developmentally disabled services;

¹ See Section 985.03(46), F.S. (defining each restrictiveness level).

² According to DJJ representatives, invitees to the commitment staffing include the JPO, a DJJ commitment manager, the youth, the youth's parent(s) or guardian(s), the state attorney, the public defender, school officials, mental health staff, and other parties with information regarding the youth.

³ Sections 985.229(1) and 985.23(2) and (3)(b), F.S.

⁴ Section 985.229(1), F.S.

⁵ See Section 985.23(3)(c), F.S.

⁶ Data provided by the DJJ indicates that judges agreed with DJJ's disposition recommendation approximately 76 percent (n=8500) of the time in Fiscal Year 2004-2005.

⁷ See *Department of Juvenile Justice v. J.R.*, 716 So.2d 872 (Fla 1st DCA 1998) and *Department of Juvenile Justice v. E.R., J.R., M.C., and C.A.*, 724 So.2d 129 (Fla 3rd DCA 1998) (holding that the court has no statutory authority to require placement of a committed youth in a particular facility).

social and life skills; vocational training; educational services; residential substance abuse treatment; or specialized mental health services.

- **Whether any of the following disqualifying factors apply to the youth:** documented arson history; extremely aggressive behavior; DSM IV diagnosis; psychotropic medications; IQ below 70; serious habitual offender; intensive residential treatment; asthma; diabetes; heart condition; seizures; sickle cell anemia; cancer; sexually transmitted disease; tuberculosis; or pregnancy.

Based on this information, the JJIS produces a list of programs that will meet the youth's needs and for which the youth has no disqualifying factors. The JJIS also indicates the expected wait list for the listed programs. The commitment manager selects a program from the JJIS list after considering which program best meets the youth's needs and which is closest to the youth's home.

The JJIS does not factor Program Accountability Measures (PAM)⁸ and Quality Assurance⁹ ratings into the placement process; however, DJJ representatives have stated that the commitment manager may be aware of the ratings and may factor these into his or her final placement choice for a youth.¹⁰

Interim Project on Judicial Discretion to Select Commitment Programs: During the 2006 Interim, the House Juvenile Justice Committee conducted a project that reviewed the issue of statutorily affording judges the discretion to select particular commitment programs for youth. This issue had been considered by the Legislature in three bills filed during the 2003 and 2005 Regular Sessions.¹¹

The interim project report indicates that a survey of Florida's 81 juvenile delinquency judges was conducted to obtain feedback regarding whether they desire judicial discretion. Out of 41 judges responding to the survey, more than half (23 judges or 56 percent) believed that statute should be amended to afford judicial discretion. The judges indicated that judicial discretion would be advantageous because it would assist in insuring that placements are based on youth needs and the most effective programming available, rather than on program availability and budgetary concerns.¹²

The report also notes disadvantages to affording judicial discretion, which were cited by judges responding to the survey and by the DJJ. These disadvantages include that: (a) sufficient information on the content and effectiveness of commitment programs may not be readily available to judges in order for them to make informed placement decisions; (b) DJJ employees, who attend the commitment staffing, are in the best position to know which programs are available and for which the youth meets eligibility requirements; and (c) the time youth spend awaiting commitment placements may increase if judges over utilize the most effective programs.¹³ In order to mitigate these disadvantages, the report made recommendations that included the following for the Legislature to consider should it desire to grant judicial discretion in the future:

- To offer juvenile delinquency judges greater information on the content and effectiveness of commitment programs, the Legislature could require the DJJ to annually: (a) provide judges with a publication providing a comprehensive overview of each commitment program, including recidivism rates, and PAM and QA ratings; and (b) training at judicial conferences.

⁸ PAM scores consist of a program recidivism effectiveness measure and a cost effectiveness measure. Recidivism effectiveness is calculated as the standardized difference between the program's expected recidivism and observed recidivism. Cost effectiveness is calculated as the standardized difference between each program's average cost per youth completing the program and the statewide average cost per completion of \$34,083. See *The 2005 PAM Report*, Department of Juvenile Justice, December 2004, p. 5.

⁹ Quality Assurance ratings are based upon an evaluation of the following three elements in each program: (1) level of performance and quality of services; (2) immediate and long-term outcomes; and (3) cost. See *An Introduction to Florida's Juvenile Justice Quality Assurance System*, Department of Juvenile Justice, May 2004, p. 4.

¹⁰ *Judicial Discretion to Select Juvenile Commitment Programs*, House of Representatives Juvenile Justice Committee, January 2006, pp. 4-6.

¹¹ See HB 1741 and SB 1900 (2003) and HB 1917 (2005).

¹² *Judicial Discretion to Select Juvenile Commitment Programs* at pp. 6, 9, 11.

¹³ As discussed in the report, however, this alleged disadvantage might ultimately result in the DJJ either expanding the most effective programs or opening new ones that are equally effective. *Id.* at 9.

- To insure that judges only place youth in commitment programs for which they are eligible, the Legislature could require the DJJ to provide judges, upon request, the list of programs produced by the JJIS for the youth and the wait list for those programs.
- To minimize the risk that judicial placements might result in substantially longer commitment wait lists, the Legislature could provide that such placements must occur within 30 days, rather than within 45 days as specified in the 2005 proposed legislation. For Fiscal Years 2003 through 2005, the average wait list time for placement in a low-, moderate-, or high-risk program was 28 days and in a maximum-risk program was 17.7 days.
- To more fully evaluate the advantages and disadvantages of affording judicial discretion prior to statewide adoption, the Legislature could initially implement such discretion as a pilot program and require the collection of data during the project that includes: (a) the number of youth committed by circuit; (b) the number of youth placed in judicially-specified programs by circuit; (c) the number of times judges deviated from JJIS-listed programs; (d) the average wait list time for judicially- and DJJ-specified program placements; (e) the average time spent by youth in secure detention while awaiting judicially- and DJJ-specified program placements; and (f) a description of any written documents and training provided by the DJJ to judges regarding the content and effectiveness of commitment programs.¹⁴

Effect of Bill: The bill implements recommendations made in the House Juvenile Justice Committee's Interim Report entitled, "Judicial Discretion to Select Juvenile Commitment Programs," and during the Committee's workshop on the bill. Under the bill, a pilot program for the time period of September 1, 2006 through July 1, 2010, is created in the First (Escambia, Okaloosa, Santa Rosa, and Walton Counties), Eleventh (Dade County) and Thirteenth (Hillsborough County) Judicial Circuits in order to authorize specification of commitment program placements for youth by delinquency courts in those circuits.¹⁵

The bill requires the DJJ before August 31, 2006, to:

- *Develop, in consultation with affected delinquency court judges, procedures to implement the pilot program.*
- *Publish on its Internet website, and to continually update as changes occur, information that identifies the name and address of each commitment program and that describes for each identified program: the population of youth served; the maximum capacity; the services offered; the admission criteria; the most recent recidivism rates; and the most recent cost-effectiveness, i.e., PAM, rankings and QA results under s. 985.412, Florida Statutes.*
- *Develop, in consultation with the Office of Program Policy Analysis and Government Accountability (OPPAGA), reporting protocols to collect and maintain data necessary for OPPAGA's required reports on the pilot program.*

¹⁴ *Id.* at 10-11.

¹⁵ These judicial circuits were selected based upon the number of referrals annually received, the number of commitments annually imposed, and the expressed desire of judges within the circuit to utilize judicial discretion to select commitment programs. The First Judicial Circuit: had the 13th highest number of referrals in the state for Fiscal Years 2000 through 2005; had the third highest number of commitments in the state for Fiscal Years 2000 through 2005; and two out of four judges responding to the interim project survey indicated that the law should be amended to afford judicial discretion. The Eleventh Judicial Circuit had the highest number of referrals in the state for Fiscal Years 2000 through 2005; had the sixth highest number of commitments in the state for Fiscal Years 2000 through 2005; and four out of four judges responding to the interim project survey indicated that the law should be amended to afford judicial discretion. The Thirteenth Judicial Circuit: had the fifth highest number of referrals in the state for Fiscal Years 2000 through 2005; had the eighth highest number of commitments in the state for Fiscal Years 2000 through 2005; and two out of four judges responding to the interim project survey indicated that the law should be amended to afford judicial discretion.

The bill authorizes delinquency court judges¹⁶ during the pilot program period to require the DJJ to include in a youth's PDR the list of commitment programs produced by the JJIS for the youth, including the wait period for each program. The judge may select a program from the list, which has a wait period of 20 calendar days or less for a maximum-risk program or 30 calendar days or less for another program. If the judge wishes to select a program from the list with a longer wait period, the judge must state reasons on the record establishing by a preponderance of the evidence that the placement is in the youth's best interest. Further, if the judge wishes to place the youth in a commitment program not on the list, the judge must state reasons on the record establishing by a preponderance of the evidence that the youth is eligible for the commitment program and that the commitment program is in the youth's best interest. The bill defines "eligible" as meaning a determination that the youth satisfies admission criteria for the commitment program.

The bill provides that youth, who are subject to a judicially-specified placement, shall be placed in the next regularly scheduled opening for the program ordered; i.e., delinquency courts are not authorized to order placement prioritization for youth subject to a judicially-specified placement.

The bill also requires the OPPAGA to evaluate the pilot program and to submit a report to the Governor and Legislature on January 1, 2008, and annually thereafter, which identifies, according to judicial circuit and restrictiveness level, the following data, as it becomes available, for the pilot program period:

- *The number of youth committed to the department by the delinquency court.*
- *The number of youth placed by the delinquency court in a program: on the JJIS list with a wait period of 20 or 30 calendar days or less, as applicable; on the JJIS list with a wait period in excess of 20 or 30 calendar days, as applicable; and that was not on the JJIS list.*
- *The number of youth placed in DJJ-specified commitment programs.*
- *The average wait period for, and the average number of days spent by youth in secure detention while awaiting placement in, delinquency court-specified commitment programs and DJJ-specified commitment programs.*
- *The number of youth who complete, and who are otherwise released from, delinquency court-specified commitment programs and DJJ-specified commitment programs.*
- *Educational achievements made by youth while participating in delinquency court-specified commitment programs and department-specified commitment programs.*
- *The number of youth who recidivate within six-months following completion of delinquency court-specified commitment programs and DJJ-specified commitment programs.¹⁷*

Further, the bill requires that the reports submitted by the OPPAGA on January 1, 2009 and January 1, 2010, contain: (a) findings by the OPPAGA, DJJ, and delinquency courts regarding the benefits and disadvantages of authorizing courts to select commitment programs; and (b) recommendations by the OPPAGA, DJJ, and delinquency courts, if found to be warranted, for amendments to current statute addressing commitment.

Finally, the bill provides for the repeal of the pilot program on July 1, 2010.

¹⁶ Some interested parties have raised concerns about the bill indicating that judges may be unduly influenced by private providers to select certain commitment programs. Judges, however, are governed by the Code of Judicial Conduct, which: (1) requires a judge to disqualify himself or herself in any case where his or her impartiality may be questioned, including where a judge or a family member has anything more than a de minimis interest that could be affected by a proceeding; and (2) prohibits the acceptance of a gift by a judge if the donor's interests are likely to come before the judge. See Canons 3.E. and 5.D. of the Code of Judicial Conduct. Compliance with the Code of Judicial Conduct is enforced by the Judicial Qualifications Commission. See Florida Judicial Qualifications Commission Rules.

¹⁷ The bill directs the OPPAGA, in consultation with staff of the appropriate substantive and fiscal committees of the Legislature, to develop common terminology and operational definitions for the measurement of data required to be included in the report.

C. SECTION DIRECTORY:

Section 1. Creates a pilot program for the period of September 1, 2006 through July 1, 2010, which authorizes delinquency courts to select commitment programs in the First, Eleventh, and Thirteenth Judicial Circuits; provides definitions; requires the DJJ before August 31, 2006, to develop procedures to implement the pilot program, to publish on its Internet website specified information about commitment programs, and to develop reporting protocols for specified data; specifies requirements applicable to the selection of commitment programs by judges; requires the OPPAGA to submit a report containing specified data to the Governor and Legislature regarding the pilot program on January 1, 2008, and annually thereafter; requires the OPPAGA, the DJJ, and judges to make findings and recommendations; provides that the section repeals on July 1, 2010.

Section 2. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The DJJ funds post-disposition secure detention costs. Under s. 985.215(10)(c) and (d), F.S., any type of detention for which a juvenile scores on his or her risk assessment instrument may be continued until the youth is placed in a high- or maximum-risk commitment program. Accordingly, the bill could increase post-disposition secure detention costs in the First, Eleventh, and Thirteenth Judicial Circuits to the extent that judicial commitment program placements increase wait lists for high- and maximum-risk commitment programs.

The DJJ has indicated that the fiscal impact of the bill's potential increase in secure detention utilization is indeterminate because the following is unknown: (a) how often judges in the three judicial circuits will place youth is unknown; and (b) whether judicial placements will increase average secure detention stays for high- and maximum-risk programs.

The DJJ has stated that the bill's data collection requirements in subsection (6) will necessitate modifications of the JJIS at a cost of \$13,000. There is no increased appropriation to the Department of Juvenile Justice to accommodate this workload. Therefore, the agency will have to absorb the impact from within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES