



The Florida Senate

Interim Project Report 2004-126

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Committee on Criminal Justice

James E. "Jim" King, Jr., President

JUDICIAL DISCRETION PLACING JUVENILES IN SPECIFIC COMMITMENT PROGRAMS

SUMMARY

Legislation was filed during the 2003 Regular Legislative Session that would have allowed a judge, when ordering a juvenile to be committed to the Department of Juvenile Justice (DJJ), to specify a particular program or facility within a residential commitment level. (Currently, a judge may only order placement in a residential commitment level. The DJJ determines the specific program.)

The DJJ expressed some concerns about this proposed change and there was no testimony by the judiciary for committee members to hear during the session. Since this legislation did not pass and is expected to resurface during the upcoming session, this report is intended to provide legislators with relevant input from the judiciary as well as the DJJ on this issue.

Surveys were distributed to 82 juvenile judges. Out of this number, 38 were returned answered for a response rate of 46 percent. The majority of judges (32) who responded to the survey are satisfied with the way the current law is operating. Most of the respondents indicated that the current law allowing a judge to commit an adjudicated juvenile to the appropriate residential commitment level and the DJJ to place the juvenile in a particular residential program within that specified commitment level is effective and does not need to be changed.

However, five judges found the law to be ineffective and several expressed a desire to be able to override the department's recommendation based upon exceptional circumstances and/or written reasons in the commitment order.

As a result of these findings, legislators now have documented input from the judiciary, in addition to the

department, to assist them with the policy question of changing the law to provide judicial discretion in placing adjudicated juveniles in specific commitment programs.

BACKGROUND

An issue surfaced during the 2003 Regular Legislative Session in the form of legislation (SB 1900) that would have allowed a judge, when ordering a juvenile to be committed to the DJJ, to specify a particular program or facility within a residential commitment level. (Currently, a judge may not specify a particular program or facility, only the residential commitment level, which includes low-risk, moderate-risk, high-risk, or maximum-risk, when committing a juvenile.)

The DJJ maintained that this new practice would infringe upon its ability and authority to manage the placement of adjudicated juveniles in commitment programs. There were no juvenile judges that testified before the Senate Criminal Justice Committee when this bill was heard. (The Senate Bill died in the Judiciary Committee. The companion bill, HB 1741, passed the House and died in the Senate Criminal Justice Committee.)

Because this issue is likely to resurface during the upcoming 2004 Regular Legislative Session, this report is intended to provide legislators with relevant information from all affected parties to help them make a well informed policy decision.

METHODOLOGY

Staff examined the current residential commitment placement process and how it would be affected by a change similar to the one proposed in SB 1900. Input from juvenile judges as well as the department was solicited. A questionnaire was sent to juvenile judges

requesting information on the desirability of making this statutory change. (The questionnaire responses are on file with the Senate Criminal Justice Committee in Room 510 Knott Building, Tallahassee, Florida.)

FINDINGS

Current Law

Section 985.231, F.S., allows a judge to commit a juvenile to the DJJ and to specify a residential commitment level, including low-risk, moderate-risk, high-risk, or maximum-risk as defined in s. 985.03(45), F.S. A judge is not statutorily authorized to order a juvenile to be placed into a specific commitment program or facility within a commitment level. (According to the DJJ, as of October 2002, there were more than 170 residential commitment programs operating within the State.)

In *Department of Juvenile Justice v. J.R.*, 716 So.2d 872 (Fla. 1st DCA 1998), the First District Court of Appeal reviewed a case in which Circuit Judge William J. Gary ordered a juvenile into a particular facility. The DJJ appealed the court order, claiming the judge lacked statutory authority. The First District Court of Appeal agreed and reversed that portion of the order requiring placement in a particular facility. See also *Florida Dep't of Juvenile Justice v. E.W.*, 704 So.2d 1148 (Fla. 4th DCA 1998) (affirming commitment at restrictiveness level 8, but reversing portion of order requiring placement in a specific facility.)

Section 985.23(3), F.S., requires the juvenile probation officer to recommend to the court the most appropriate placement and treatment plan and to specifically identify the restrictiveness level most appropriate for the juvenile, if the judge decides to commit the juvenile to the department. The DJJ compiles a predisposition report on the juvenile to assist the court in determining the case disposition and recommendation for the restrictiveness level placement.

The predisposition report is essentially a multidisciplinary assessment of the juvenile. During the assessment process, the DJJ determines the juvenile's primary needs, his or her risk classification, and a treatment plan recommending the most appropriate placement setting.

The most appropriate residential placement should meet the juvenile's needs with the least amount of program security while also ensuring public safety. A comprehensive evaluation of the juvenile's physical

health, mental health, substance abuse, and academic, educational, or vocational needs may be ordered in connection with the predisposition report. s. 985.229, F.S.

A department commitment staffing is set up by the juvenile probation officer. It must be attended by the DJJ commitment manager, the probation officer and his or her supervisor, and the juvenile. Others invited to participate include the juvenile's parents or guardians, the juvenile's attorney, the state attorney, and the school representative. When appropriate, other relevant persons such as the mental health or substance abuse provider are invited to participate in the commitment staffing. The results and recommendations of the commitment staffing are included in the predisposition report.

The court is required to consider the department's restrictiveness level recommendation, but is free to order placement in a different level. If the court orders the juvenile to be placed in a different restrictiveness level than is recommended by the juvenile probation officer, the court must state the reasons for the departure on the record.

The court must establish by a preponderance of the evidence why it is disregarding the department's assessment and recommending a different restrictiveness level. The court's modified restrictiveness level findings may be appealed by any party under s. 985.23(3)(c), F.S.

According to the DJJ, juvenile judges have agreed with the department's restrictiveness level recommendations 89.6 percent of the time (4,829 juveniles) from January 1, 2003 through October 5, 2003. The judges' restrictiveness level placements differed from the department's recommendations 10.4 percent of the time (561 juveniles).

Once a judge issues a commitment order, the case gets referred to the classification and placement staff in the DJJ so they can place the juvenile in an appropriate residential program within the specified commitment level. This placement decision is based on various assessments of the juvenile, including the predisposition report, any psychological/psychiatric evaluations, and any other comprehensive assessments.

The DJJ uses its bed management information system which allows the DJJ staff to assess the needs of committed juveniles and place them in appropriate programs in a timely manner. Using this system, the

DJJ can also evaluate a juvenile’s progress in a particular program and transfer him or her to a different program within the same commitment level, if necessary.

According to the DJJ, using the bed management information system reduces the time a juvenile must wait in post-adjudicatory detention before being able to receive commitment services. The following chart produced by the DJJ shows the average length-of-stay for an adjudicated juvenile in post-adjudicatory detention while awaiting placement in a residential commitment program during FY 2002-2003.

Average Length-of-Stay in Secure Detention Awaiting Placement in a Residential Commitment Facility FY 2002-03*

Commitment Level	Average Length-of-Stay (Days)
Level 4 Low Risk Residential	6
Level 6 Moderate Risk Residential	11
Level 8 High Risk Residential	20
Level 10 Maximum Risk Residential	13

*Figures calculated for youth released from detention during FY 2002-03

Average Length-of-Stay in Electronic Monitoring Awaiting Placement in a Residential Commitment Facility FY 2002-03*

Commitment Level	Average Length-of-Stay (Days)
Level 4 Low Risk Residential	19
Level 6 Moderate Risk Residential	22
Level 8 High Risk Residential	40

*Figures calculated for youth released from detention during FY 2002-03

Average Length-of-Stay in Home Detention Awaiting Placement in a Residential Commitment Facility FY 2002-03*

Commitment Level	Average Length-of-Stay (Days)
Level 4 Low Risk Residential	24
Level 6 Moderate Risk Residential	25
Level 8 High Risk Residential	31

*Figures calculated for youth released from detention during FY 2002-03

Source: *ALOS in Detention Awaiting Placement FY 2002-03, Department of Juvenile Justice, Updated November 03.*

Survey Responses

Surveys were distributed to 82 juvenile judges. Out of this number, 38 were returned answered for a response rate of 46 percent. Thirty-two judges responded that the current law allowing a judge to commit an adjudicated juvenile to the appropriate residential commitment level and the DJJ to place the juvenile in a particular program within that specified commitment level is effective. In contrast, five judges responded that the current law is not effective and one judge responded that the law’s effectiveness depends on several factors.

What follows is a summary of responses by the juvenile judges concerning the effectiveness of the current law, any problems or effective practices in implementing the law, and any suggestions for change. (The law allows a judge to commit an adjudicated juvenile to the appropriate residential commitment level and the DJJ to place the juvenile in a particular program or facility within that specified commitment level.)

Current Law’s Effectiveness:

Effective—32 judges (21 judges have no problems with the law, 10 judges have some problems, and 1 judge has many problems.)

Not effective—5 judges (4 judges have some problems and 1 judge did not respond to this question.)

Effectiveness Depends—1 judge

Comments on Effectiveness:

Found law to be effective:

- The DJJ commitment managers are more familiar with the available commitment resources (170 programs statewide) than are individual judges and are better able to match the needs of a particular child with a particular program- the DJJ has a better understanding of a child’s needs and his or her family situation. (17 judges made these or similar comments.)
- The current law allows the DJJ to use a multi-disciplinary staff to discuss and review the needs of the individual child and to assess what are the best available resources to meet the child’s needs and to direct the best residential placement within the commitment level in as timely a manner as possible.

- For a judge to make this specific determination in court would be unduly burdensome and time consuming. (Several judges made this comment.)
- A judge at the disposition (sentencing) hearing can order that certain needs of the child such as drug/alcohol rehabilitation or behavior modification anger management be met to ensure the most appropriate placement. (Several judges made this comment. One judge stated that the DJJ is good at taking these special conditions into consideration.)
- It is impossible as a juvenile delinquency judge to have personal knowledge of all the residential commitment facilities. If judges were responsible for determining the specific residential placement, some facilities would be full and have waiting lists and others would have openings.
- Additionally, giving the DJJ statutory authority to place a child in a specific program takes the burden off judges when parents or children ask to be placed in a local program.
- The residential commitment placement process has become more effective as more specialized treatment beds have become available statewide.

Found law to be ineffective:

- The judge is in a better position than the DJJ to place a child in a particular commitment program because he or she knows better the specific needs of the child.
- The current law only works well sometimes. Judges become very familiar with the needs of the child and should be able to order the specific program placement. (This particular judge stated he has seen children placed in inappropriate commitment programs just to fill a bed.)
- Sometimes the lack of funding, time constraints, and the unavailability of appropriate beds affect a child's placement by the DJJ and this runs contrary to the court's intent and plan for residential placement.
- The "joint approach" envisioned by the current law for planning the child's commitment plan and his or her commitment program works fine, but the judge needs to be the one who ultimately decides

on the child's residential restrictiveness level and the specific commitment program.

Found law's effectiveness depends:

- The law's effectiveness depends upon the availability of the appropriate DJJ residential commitment programs and the education, experience, and professionalism of DJJ's commitment staff.

Comments on Problems/Effective Practices:

Found law to be effective:

- The current law works well. If the judge feels an additional sanction or service is needed for the child, he or she states it on the record and includes it in the commitment order. The DJJ listens to the judge's concerns, is responsive to the judge and to the child's needs and does a good job placing the child. (Several judges agreed with these statements.)
- In general, lack of resources is the main problem with the law, especially for children who have special therapeutic needs. It is difficult to place children who are in special need of substance abuse counseling or treatment, psychiatric counseling, or sex offender treatment. These children are forced to wait for one of these special needs placements to become available. (Numerous judges agreed with this statement.)
- Occasionally, there are delays in having a child placed in an appropriate residential program which causes the child to be kept in detention or in the community too long (where he or she can commit another crime). (A couple of judges voiced this concern.)
- Placement issues arise when a child is placed in a residential program that is a good distance from his or her home and the parent has no means of transportation.
- Sometimes the DJJ places children in inappropriate programs and processes them based upon the "estimated length of stay" in the residential program.
- Placement is driven by bed space rather than appropriate programming that meets the needs of

children because waiting lists are created by a lack of appropriate commitment programs.

- High level programs (Level 8) are under funded and children are forced to wait in detention too long.

Found law to be ineffective:

- The exceptional cases, which are rare, are troublesome. Giving the DJJ exclusive authority to place a child in a specific program gives the DJJ too much control.

Found law's effectiveness depends:

- The law's effectiveness depends upon the availability of appropriate programs and the education of the commitment staff.

Comments on Suggestions for Change:

Found law to be effective:

- The law does not need to be changed. (Twenty four judges expressed this opinion. Numerous judges also stated the need to continue funding commitment programs and treatment resources, especially moderate and high risk programs.)
- In rare instances, allow a judge to order placement in a specific commitment program when exceptional circumstances exist. (One of the two judges suggesting this also recommended requiring specific, enumerated reasons to be written into the commitment order and requiring review of the placement every 60 days if the order is not complied with.)

Found law to be ineffective:

- The judge should be authorized to override the DJJ's recommendation based upon written reasons. (One of the two judges recommending this suggested the override should be based upon

exceptional circumstances and that the child should be required to be placed within 30 days of disposition.)

- The DJJ should be required to recommend to the judge specific commitment programs that the judge can select from at the disposition hearing. (One of the two judges suggesting this recommended that the DJJ submit its three potential commitment programs to the judge so that he or she could rank them in order of priority.)

Found law's effectiveness depends:

- The DJJ should be required to consider the judge's recommended commitment program and put in writing the reason the department disagrees with the judge's order.

RECOMMENDATIONS

It appears that the majority of judges (32) who responded to the survey are satisfied with the way the current law is operating. Most of the respondents indicated that the current law allowing a judge to commit an adjudicated juvenile to the appropriate residential commitment level and the DJJ to place the juvenile in a particular residential program within that specified commitment level is effective. Most also agreed that the law does not need to be changed.

However, five judges found the law to be ineffective. Several expressed a desire to be able to override the department's recommendation based upon exceptional circumstances and/or written reasons in the commitment order.

Legislators now have documented input by the judiciary, in addition to the department, to assist them with the policy question of changing the law to provide judicial discretion in committing adjudicated juveniles into specific programs. This issue will most likely surface in the form of an individually sponsored bill during the upcoming 2004 Regular Legislative Session.