

REVENUE: No revenue impact
FISCAL: Fiscal statement issued

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| Action: | Do Pass as Amended and Be Printed Engrossed |
| Vote: | 3 - 0 - 2 |
| Yeas: | Kruse, Walker, Burdick |
| Nays: | 0 |
| Exc.: | Beyer, Prozanski |
| Prepared By: | Bill Taylor, Counsel |
| Meeting Dates: | 2/19, 2/21, 4/2 |

WHAT THE MEASURE DOES: Allows the juvenile panel of the Psychiatric Security Review Board (PSRB) to direct the Department of Human Services (DHS) to place a youth under the panel's jurisdiction in a specific type of facility or to direct specific care if the panel determines that the current placement is so inappropriate as to create substantial danger to others. Requires DHS to take into account the treatment needs of the youth, the resources of the department and the safety of the public when choosing a hospital or other facility for the youth. Requires the PSRB to adopt rules defining the type of dangerous behavior that requires the temporary placement of a young person with mental retardation in a secure hospital of facility. Requires the PSRB to consult with DHS before issuing proposed rules for public comment before adopting rules relating to juveniles before the PSRB.

ISSUES DISCUSSED:

- PSRB rules apply to juveniles with mental retardation as well as mental illness who are not responsible for their actions because of mental disease or defect and are a danger to others

EFFECT OF COMMITTEE AMENDMENT: Requires the Psychiatric Security Review Board (PSRB) to adopt rules defining the type of dangerous behavior that requires the temporary placement of a young person with mental retardation in a secure hospital of facility. Requires the PSRB to consult with DHS before issuing proposed rules for public comment before adopting rules relating to juveniles before the PSRB.

BACKGROUND: Juveniles with mental retardation can raise their disability as a defense in juvenile court, but if successful, the court cannot transfer jurisdiction of the juvenile to the juvenile panel of the Psychiatric Security Review Board, as could be done with a mentally ill juvenile. Rather, the law is presently silent regarding disposition of a juvenile with mental retardation.

Historically, such juveniles have been placed informally with a child welfare agency or released to their parents. Some maintain that child welfare agencies cannot provide the level of community protection needed in many cases. In addition, due to the silence of the present statutes, judges are hesitant to allow the mental disease or defect defense due to a concern for the safety of the community. Juveniles with mental retardation may end up in a correctional facility rather than a mental health facility. Present law raises constitutional questions due to the different treatment of these juveniles.