

1 A bill to be entitled
 2 An act relating to juvenile justice; amending s. 394.492,
 3 F.S.; including children 9 years of age or younger at the
 4 time of referral for delinquency within the definition of
 5 those children who are eligible to receive comprehensive
 6 mental health services; amending s. 984.03, F.S.;
 7 redefining the term "child in need of services" to provide
 8 that a child is eligible to receive comprehensive services
 9 if the child is 9 years of age or younger at the time of
 10 referral for delinquency; amending s. 985.02, F.S.;
 11 providing additional legislative findings and intent;
 12 directing the Department of Juvenile Justice to focus on
 13 the principles of restorative justice; requiring that the
 14 department direct services toward at-risk children in
 15 order to divert them from the juvenile justice system;
 16 amending s. 985.03, F.S.; redefining the term "child in
 17 need of services" to provide that a child is eligible to
 18 receive comprehensive services if the child is 9 years of
 19 age or younger at the time of referral for delinquency;
 20 creating s. 985.031, F.S.; authorizing the circuit court
 21 to set reasonable conditions of preadjudicatory release
 22 for children charged with specified acts or who have
 23 previously been charged with or committed delinquent acts;
 24 providing examples of such conditions; amending s.
 25 985.125, F.S.; encouraging law enforcement agencies,
 26 school districts, counties, municipalities and the
 27 Department of Juvenile Justice to establish prearrest or
 28 postarrest diversion programs for first-time misdemeanor

29 offenders who are 9 years of age or younger; amending s.
 30 985.245, F.S.; modifying the size and composition of the
 31 risk assessment committee; requiring that the risk
 32 assessment instrument be independently validated; amending
 33 s. 985.664, F.S.; authorizing each juvenile justice
 34 circuit board to increase the number of board members from
 35 three to five; amending s. 985.43, F.S.; providing a
 36 legislative declaration concerning the determination
 37 whether to commit a juvenile to the department and the
 38 most appropriate placement level if the juvenile is
 39 committed; amending s. 985.433, F.S.; revising provisions
 40 relating to recommendations by probation officers to the
 41 court concerning placement and any proposed treatment plan
 42 of juveniles; requiring that reasons for a disposition be
 43 stated for the record; providing an effective date.

44
 45 Be It Enacted by the Legislature of the State of Florida:

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 47 Section 1. Paragraph (i) is added to subsection (4) of
 48 section 394.492, Florida Statutes, to read:

49 394.492 Definitions.--As used in ss. 394.490-394.497, the
 50 term:

51 (4) "Child or adolescent at risk of emotional disturbance"
 52 means a person under 18 years of age who has an increased
 53 likelihood of becoming emotionally disturbed because of risk
 54 factors that include, but are not limited to:

55 (i) Being 9 years of age or younger at the time of
 56 referral for committing a delinquent act.

57 Section 2. Subsection (9) of section 984.03, Florida
 58 Statutes, is amended to read:

59 984.03 Definitions.--When used in this chapter, the term:

60 (9) "Child in need of services" means a child for whom
 61 there is no pending investigation into an allegation or
 62 suspicion of abuse, neglect, or abandonment; no pending referral
 63 alleging the child is delinquent, except for a child 9 years of
 64 age or younger who is referred to the department; or no current
 65 supervision by the department ~~of Juvenile Justice~~ or the
 66 Department of Children and Family Services for an adjudication
 67 of dependency or delinquency. The child must also, pursuant to
 68 this chapter, be found by the court:

69 (a) To have persistently run away from the child's parents
 70 or legal custodians despite reasonable efforts of the child, the
 71 parents or legal custodians, and appropriate agencies to remedy
 72 the conditions contributing to the behavior. Reasonable efforts
 73 shall include voluntary participation by the child's parents or
 74 legal custodians and the child in family mediation, services,
 75 and treatment offered by the department ~~of Juvenile Justice~~ or
 76 the Department of Children and Family Services;

77 (b) To be habitually truant from school, while subject to
 78 compulsory school attendance, despite reasonable efforts to
 79 remedy the situation pursuant to ss. 1003.26 and 1003.27 and
 80 through voluntary participation by the child's parents or legal
 81 custodians and by the child in family mediation, services, and
 82 treatment offered by the department ~~of Juvenile Justice~~ or the
 83 Department of Children and Family Services; ~~or~~

84 (c) To have persistently disobeyed the reasonable and

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85 lawful demands of the child's parents or legal custodians, and
86 to be beyond their control despite efforts by the child's
87 parents or legal custodians and appropriate agencies to remedy
88 the conditions contributing to the behavior. Reasonable efforts
89 may include such things as good faith participation in family or
90 individual counseling; or

91 (d) To be 9 years of age or younger and have been referred
92 to the department for committing a delinquent act.

93 Section 3. Subsections (9), (10), and (11) are added to
94 section 985.02, Florida Statutes, to read:

95 985.02 Legislative intent for the juvenile justice
96 system.--

97 (9) CHILDREN 9 YEARS OF AGE OR YOUNGER.--The Legislature
98 finds that very young children need age-appropriate services in
99 order to prevent and reduce future acts of delinquency. Children
100 who are 9 years of age or younger, who have been determined by
101 the court to pose no danger to the community and are unlikely to
102 recidivate, should be diverted into prearrest or postarrest
103 programs, civil citation programs, or children-in-need-of-
104 services and families-in-need-of-services programs, as
105 appropriate. If, following a needs assessment, the child is
106 found to be in need of mental health services or substance abuse
107 treatment services, the department shall cooperate with the
108 Department of Children and Family Services to provide the most
109 appropriate services for the child.

110 (10) RESTORATIVE JUSTICE.--

111 (a) It is the intent of the Legislature that the juvenile
112 justice system advance the principles of restorative justice.

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113 The department shall focus on repairing the harm to victims of
114 delinquent behavior, ensuring that the child understands the
115 effect of his or her delinquent behavior on the victim and the
116 community, and restoring the loss suffered by the victim. The
117 department shall ensure that victims of juvenile crime are
118 afforded all rights as enumerated in the State Constitution,
119 chapter 960, and this chapter.

120 (b) Offender accountability is one of the basic principles
121 of restorative justice. The premise of this principle is that
122 the juvenile justice system must respond to delinquent behavior
123 in such a way that the offender is made aware of and takes
124 responsibility for repaying or restoring loss, damage, or injury
125 to the victim and the community. This goal is achieved when the
126 offender understands the consequences of delinquent behavior in
127 terms of harm to others, and when the offender compensates for
128 the harm, loss, or damage through restitution, community
129 service, or other appropriate payback.

130 (11) IMPLEMENTATION OF PREVENTION AND DIVERSION
131 INITIATIVES.--The Legislature finds that the leadership role of
132 community stakeholders and citizens is invaluable to any effort
133 aimed at reducing juvenile delinquency and of the contact of at-
134 risk youth with the juvenile justice system. Services must be
135 directed toward youth who reside in communities that generate
136 the most juvenile delinquency referrals to the juvenile justice
137 system. Prevention and diversion initiatives serve at-risk youth
138 best when facilitated by community or faith-based organizations
139 that do not benefit financially from the delivery or
140 facilitation of these services, and which are designed to

141 prevent at-risk youth from entering the justice system. State
 142 entities that comprise the justice system are encouraged to
 143 maintain an active role in supporting the localized planning and
 144 implementation efforts of community organizations which seek to
 145 reduce juvenile delinquency. For purposes of this subsection,
 146 term "at-risk youth" means that identified portion of
 147 adjudicated youth who, whether based on age, gender, ethnicity,
 148 or socioeconomic status, are numerically overrepresented in the
 149 juvenile justice system. For the purpose of this subsection, the
 150 term "overrepresented" means a condition whereby a larger
 151 proportion of a particular group is present at various stages of
 152 the juvenile justice system than would be expected based on the
 153 percentage of youth in the state's overall youth population.

154 Section 4. Subsection (7) of section 985.03, Florida
 155 Statutes, is amended to read:

156 985.03 Definitions.--As used in this chapter, the term:

157 (7) "Child in need of services" means a child for whom
 158 there is no pending investigation into an allegation or
 159 suspicion of abuse, neglect, or abandonment; no pending referral
 160 alleging the child is delinquent, except for a child 9 years of
 161 age or younger who is referred to the department; or no current
 162 supervision by the department or the Department of Children and
 163 Family Services for an adjudication of dependency or
 164 delinquency. The child must also, under this chapter, be found
 165 by the court:

166 (a) To have persistently run away from the child's parents
 167 or legal custodians despite reasonable efforts of the child, the
 168 parents or legal custodians, and appropriate agencies to remedy

169 the conditions contributing to the behavior. Reasonable efforts
 170 shall include voluntary participation by the child's parents or
 171 legal custodians and the child in family mediation, services,
 172 and treatment offered by the department or the Department of
 173 Children and Family Services;

174 (b) To be habitually truant from school, while subject to
 175 compulsory school attendance, despite reasonable efforts to
 176 remedy the situation under ss. 1003.26 and 1003.27 and through
 177 voluntary participation by the child's parents or legal
 178 custodians and by the child in family mediation, services, and
 179 treatment offered by the department ~~of Juvenile Justice~~ or the
 180 Department of Children and Family Services; ~~or~~

181 (c) To have persistently disobeyed the reasonable and
 182 lawful demands of the child's parents or legal custodians, and
 183 to be beyond their control despite efforts by the child's
 184 parents or legal custodians and appropriate agencies to remedy
 185 the conditions contributing to the behavior. Reasonable efforts
 186 may include such things as good faith participation in family or
 187 individual counseling; or

188 (d) To be 9 years of age or younger and have been referred
 189 to the department for committing a delinquent act.

190 Section 5. Section 985.031, Florida Statutes, is created
 191 to read:

192 985.031 Preadjudicatory release; circuit court
 193 authority.--The circuit court shall have the authority to set
 194 reasonable conditions of preadjudicatory release for a child
 195 charged with the commission of a delinquent act which
 196 constitutes a felony or when the child has previously been

197 charged with or found to have committed, regardless of
 198 adjudication, a delinquent act. The child shall comply with all
 199 such preadjudicatory release conditions prior to an adjudicatory
 200 hearing. Reasonable conditions of preadjudicatory release may
 201 include, but are not limited to, the following:

202 (1) The child shall not engage in a violation of law.

203 (2) The child shall not possess or carry any weapon.

204 (3) The child shall not possess or use any alcoholic
 205 beverage or illegal drug or associate with those who are
 206 currently possessing or using any alcoholic beverage or illegal
 207 drug.

208 (4) The child shall obey all reasonable household rules.

209 (5) The child shall attend school regularly, including all
 210 classes.

211 (6) The child shall abide by the curfew set by his or her
 212 parents or guardians, or as set by the court.

213 (7) The child shall have no contact with any codefendants,
 214 an alleged victim, or the family of any alleged victim.

215 (8) The child shall not return to the scene of the alleged
 216 crime, unless approved by the court.

217 Section 6. Subsection (1) of section 985.125, Florida
 218 Statutes, is amended to read:

219 985.125 Prearrest or postarrest diversion programs.--

220 (1) A law enforcement agency, ~~or~~ school district, county,
 221 municipality, or the department, in cooperation with the state
 222 attorney, is encouraged to ~~may~~ establish a prearrest or
 223 postarrest diversion programs for first-time misdemeanor
 224 offenders and offenders who are 9 years of age or younger

225 ~~program.~~

226 Section 7. Subsection (2) of section 985.245, Florida
 227 Statutes, is amended to read:

228 985.245 Risk assessment instrument.--

229 (2) (a) The risk assessment instrument for detention care
 230 placement determinations and court orders shall be developed by
 231 the department in agreement with a committee composed of two
 232 representatives appointed by the ~~following associations:~~ the
 233 Conference of Circuit Judges of Florida, the Prosecuting
 234 Attorneys Association, the Public Defenders Association, the
 235 Florida Sheriffs Association, and the Florida Association of
 236 Chiefs of Police. Each association shall appoint two
 237 individuals, one representing an urban area and one representing
 238 a rural area. The committee must also include two
 239 representatives from child advocacy organizations appointed by
 240 the secretary of the department. The parties involved shall
 241 evaluate and revise the risk assessment instrument as is
 242 considered necessary using the method for revision as agreed by
 243 the parties.

244 (b) The risk assessment instrument shall take into
 245 consideration, but need not be limited to, prior history of
 246 failure to appear, prior offenses, offenses committed pending
 247 adjudication, any unlawful possession of a firearm, theft of a
 248 motor vehicle or possession of a stolen motor vehicle, and
 249 probation status at the time the child is taken into custody.
 250 The risk assessment instrument shall also take into
 251 consideration appropriate aggravating and mitigating
 252 circumstances, and ~~shall~~ be designed to identify target a

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253 narrower population of children than the population identified
254 under s. 985.255. The risk assessment instrument shall also
255 include any information concerning the child's history of abuse
256 and neglect. The risk assessment shall indicate whether
257 detention care is warranted, and, if detention care is
258 warranted, whether the child should be placed into secure,
259 nonsecure, or home detention care.

260 (c) The risk assessment instrument shall be independently
261 validated. The department shall review the population, policies,
262 and procedures affecting the use of detention every 7 years and
263 determine the necessity of revalidating the risk assessment
264 instrument. Validation shall include an assessment of the
265 effectiveness of the instrument's ability to measure the risk
266 that the child will commit a repeat offense or fail to appear
267 for court proceedings. The risk assessment instrument shall also
268 be evaluated to determine if the instrument contributes to
269 disproportionate minority contact.

270 Section 8. Subsection (8) of section 985.664, Florida
271 Statutes, is amended to read:

272 985.664 Juvenile justice circuit boards and juvenile
273 justice county councils.--

274 (8) At any time after the adoption of initial bylaws
275 pursuant to subsection (12), a juvenile justice circuit board
276 may revise the bylaws to increase the number of members by not
277 more than five ~~three~~ in order to adequately reflect the
278 diversity of the population and community organizations or
279 agencies in the circuit.

280 Section 9. Subsection (4) is added to section 985.43,

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281 Florida Statutes, to read:

282 985.43 Predisposition reports; other evaluations.--

283 (4) The Legislature finds that the court is in the best
 284 position to weigh all facts and circumstances to determine
 285 whether or not to commit a juvenile to the department and to
 286 determine the most appropriate restrictiveness level for a
 287 juvenile committed to the department.

288 Section 10. Paragraphs (a) and (b) of subsection (7) of
 289 section 985.433, Florida Statutes, are amended to read:

290 985.433 Disposition hearings in delinquency cases.--When a
 291 child has been found to have committed a delinquent act, the
 292 following procedures shall be applicable to the disposition of
 293 the case:

294 (7) If the court determines that the child should be
 295 adjudicated as having committed a delinquent act and should be
 296 committed to the department, such determination shall be in
 297 writing or on the record of the hearing. The determination shall
 298 include a specific finding of the reasons for the decision to
 299 adjudicate and to commit the child to the department, including
 300 any determination that the child was a member of a criminal
 301 gang.

302 (a) The juvenile probation officer shall make a
 303 recommendation to the court concerning placement and any
 304 proposed treatment plan ~~recommend to the court the most~~
 305 ~~appropriate placement and treatment plan, specifically~~
 306 ~~identifying the restrictiveness level most appropriate for the~~
 307 ~~child.~~ If the court has determined that the child was a member
 308 of a criminal gang, that determination shall be given great

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309 weight in identifying the most appropriate restrictiveness level
310 for the child. The court shall consider the department's
311 recommendation in making its commitment decision.

312 (b) The court may ~~shall~~ commit the child to the department
313 at the restrictiveness level identified by the department, or
314 the court may order placement at a different restrictiveness
315 level. The court may determine the disposition on the same
316 factors as the department considered in the department's
317 predisposition report and placement recommendation even if the
318 court reaches a different conclusion. The court may commit the
319 child to a different restrictiveness level than recommended by
320 the department. The court shall state for the record the reasons
321 for the disposition imposed ~~that establish by a preponderance of~~
322 ~~the evidence why the court is disregarding the assessment of the~~
323 ~~child and the restrictiveness level recommended by the~~
324 ~~department.~~ Any party may appeal the court's findings resulting
325 in a modified level of restrictiveness under this paragraph. The
326 department shall maintain data to identify the extent to which
327 the courts agree with the department's recommendation.

328 Section 11. This act shall take effect July 1, 2009.