

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 amending s. 985.125, F.S.; encouraging law enforcement
21 agencies, school districts, counties, municipalities and
22 the Department of Juvenile Justice to establish prearrest
23 or postarrest diversion programs for first-time
24 misdemeanor offenders who are 9 years of age or younger;
25 amending s. 985.245, F.S.; modifying the size and
26 composition of the risk assessment committee; requiring
27 that the risk assessment instrument be independently
28 validated; amending s. 985.664, F.S.; authorizing each

29 juvenile justice circuit board to increase the number of
 30 board members from three to five; amending s. 985.43,
 31 F.S.; providing a legislative declaration concerning the
 32 determination whether to commit a juvenile to the
 33 department and the most appropriate placement level if the
 34 juvenile is committed; amending s. 985.433, F.S.; revising
 35 provisions relating to recommendations by probation
 36 officers to the court concerning placement and any
 37 proposed treatment plan of juveniles; requiring that
 38 reasons for a disposition be stated for the record;
 39 providing an effective date.

40

41 Be It Enacted by the Legislature of the State of Florida:

42

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

45 394.492 Definitions.--As used in ss. 394.490-394.497, the
 46 term:

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

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

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

55 984.03 Definitions.--When used in this chapter, the term:

56 (9) "Child in need of services" means a child for whom

57 | there is no pending investigation into an allegation or
58 | suspicion of abuse, neglect, or abandonment; no pending referral
59 | alleging the child is delinquent, except for a child 9 years of
60 | age or younger who is referred to the department; or no current
61 | supervision by the department ~~of Juvenile Justice~~ or the
62 | Department of Children and Family Services for an adjudication
63 | of dependency or delinquency. The child must also, pursuant to
64 | this chapter, be found by the court:

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

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

80 | (c) To have persistently disobeyed the reasonable and
81 | lawful demands of the child's parents or legal custodians, and
82 | to be beyond their control despite efforts by the child's
83 | parents or legal custodians and appropriate agencies to remedy
84 | the conditions contributing to the behavior. Reasonable efforts

85 may include such things as good faith participation in family or
 86 individual counseling; or

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

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

91 985.02 Legislative intent for the juvenile justice
 92 system.--

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

106 (10) RESTORATIVE JUSTICE.--

107 (a) It is the intent of the Legislature that the juvenile
 108 justice system advance the principles of restorative justice.
 109 The department shall focus on repairing the harm to victims of
 110 delinquent behavior, ensuring that the child understands the
 111 effect of his or her delinquent behavior on the victim and the
 112 community, and restoring the loss suffered by the victim. The

113 department shall ensure that victims of juvenile crime are
114 afforded all rights as enumerated in the State Constitution,
115 chapter 960, and this chapter.

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

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

141 reduce juvenile delinquency. For purposes of this subsection,
142 term "at-risk youth" means that identified portion of
143 adjudicated youth who, whether based on age, gender, ethnicity,
144 or socioeconomic status, are numerically overrepresented in the
145 juvenile justice system. For the purpose of this subsection, the
146 term "overrepresented" means a condition whereby a larger
147 proportion of a particular group is present at various stages of
148 the juvenile justice system than would be expected based on the
149 percentage of youth in the state's overall youth population.

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

152 985.03 Definitions.--As used in this chapter, the term:

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

162 (a) To have persistently run away from the child's parents
163 or legal custodians despite reasonable efforts of the child, the
164 parents or legal custodians, and appropriate agencies to remedy
165 the conditions contributing to the behavior. Reasonable efforts
166 shall include voluntary participation by the child's parents or
167 legal custodians and the child in family mediation, services,
168 and treatment offered by the department or the Department of

169 Children and Family Services;

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

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

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

186 Section 5. Subsection (1) of section 985.125, Florida
 187 Statutes, is amended to read:

188 985.125 Prearrest or postarrest diversion programs.--

189 (1) A law enforcement agency, ~~or~~ school district, county,
 190 municipality, or the department, in cooperation with the state
 191 attorney, is encouraged to may establish a prearrest or
 192 postarrest diversion programs for first-time misdemeanor
 193 offenders and offenders who are 9 years of age or younger
 194 program.

195 Section 6. Subsection (2) of section 985.245, Florida
 196 Statutes, is amended to read:

197 985.245 Risk assessment instrument.--

198 (2) (a) The risk assessment instrument for detention care
199 placement determinations and court orders shall be developed by
200 the department in agreement with a committee composed of two
201 representatives appointed by the ~~following associations:~~ the
202 Conference of Circuit Judges of Florida, the Prosecuting
203 Attorneys Association, the Public Defenders Association, the
204 Florida Sheriffs Association, and the Florida Association of
205 Chiefs of Police. Each association shall appoint two
206 individuals, one representing an urban area and one representing
207 a rural area. The committee must also include two
208 representatives from child advocacy organizations appointed by
209 the secretary of the department. The parties involved shall
210 evaluate and revise the risk assessment instrument as is
211 considered necessary using the method for revision as agreed by
212 the parties.

213 (b) The risk assessment instrument shall take into
214 consideration, but need not be limited to, prior history of
215 failure to appear, prior offenses, offenses committed pending
216 adjudication, any unlawful possession of a firearm, theft of a
217 motor vehicle or possession of a stolen motor vehicle, and
218 probation status at the time the child is taken into custody.
219 The risk assessment instrument shall also take into
220 consideration appropriate aggravating and mitigating
221 circumstances, and shall be designed to identify target a
222 narrower population of children than the population identified
223 under s. 985.255. The risk assessment instrument shall also
224 include any information concerning the child's history of abuse

225 and neglect. The risk assessment shall indicate whether
 226 detention care is warranted, and, if detention care is
 227 warranted, whether the child should be placed into secure,
 228 nonsecure, or home detention care.

229 (c) The risk assessment instrument shall be independently
 230 validated. The department shall review the population, policies,
 231 and procedures affecting the use of detention every 7 years and
 232 determine the necessity of revalidating the risk assessment
 233 instrument. Validation shall include an assessment of the
 234 effectiveness of the instrument's ability to measure the risk
 235 that the child will commit a repeat offense or fail to appear
 236 for court proceedings. The risk assessment instrument shall also
 237 be evaluated to determine if the instrument contributes to
 238 disproportionate minority contact.

239 Section 7. Subsection (8) of section 985.664, Florida
 240 Statutes, is amended to read:

241 985.664 Juvenile justice circuit boards and juvenile
 242 justice county councils.--

243 (8) At any time after the adoption of initial bylaws
 244 pursuant to subsection (12), a juvenile justice circuit board
 245 may revise the bylaws to increase the number of members by not
 246 more than five ~~three~~ in order to adequately reflect the
 247 diversity of the population and community organizations or
 248 agencies in the circuit.

249 Section 8. Subsection (4) is added to section 985.43,
 250 Florida Statutes, to read:

251 985.43 Predisposition reports; other evaluations.--

252 (4) The Legislature finds that the court is in the best

253 position to weigh all facts and circumstances to determine
 254 whether or not to commit a juvenile to the department and to
 255 determine the most appropriate restrictiveness level for a
 256 juvenile committed to the department.

257 Section 9. Paragraphs (a) and (b) of subsection (7) of
 258 section 985.433, Florida Statutes, are amended to read:

259 985.433 Disposition hearings in delinquency cases.--When a
 260 child has been found to have committed a delinquent act, the
 261 following procedures shall be applicable to the disposition of
 262 the case:

263 (7) If the court determines that the child should be
 264 adjudicated as having committed a delinquent act and should be
 265 committed to the department, such determination shall be in
 266 writing or on the record of the hearing. The determination shall
 267 include a specific finding of the reasons for the decision to
 268 adjudicate and to commit the child to the department, including
 269 any determination that the child was a member of a criminal
 270 gang.

271 (a) The juvenile probation officer shall make a
 272 recommendation to the court concerning placement and any
 273 proposed treatment plan ~~recommend to the court the most~~
 274 ~~appropriate placement and treatment plan, specifically~~
 275 ~~identifying the restrictiveness level most appropriate for the~~
 276 ~~child~~. If the court has determined that the child was a member
 277 of a criminal gang, that determination shall be given great
 278 weight in identifying the most appropriate restrictiveness level
 279 for the child. The court shall consider the department's
 280 recommendation in making its commitment decision.

281 (b) The court may ~~shall~~ commit the child to the department
282 at the restrictiveness level identified by the department, or
283 the court may order placement at a different restrictiveness
284 level. The court may determine the disposition on the same
285 factors as the department considered in the department's
286 predisposition report and placement recommendation even if the
287 court reaches a different conclusion. The court may commit the
288 child to a different restrictiveness level than recommended by
289 the department. The court shall state for the record the reasons
290 for the disposition imposed ~~that establish by a preponderance of~~
291 ~~the evidence why the court is disregarding the assessment of the~~
292 ~~child and the restrictiveness level recommended by the~~
293 ~~department.~~ Any party may appeal the court's findings resulting
294 in a modified level of restrictiveness under this paragraph. The
295 department shall maintain data to identify the extent to which
296 the courts agree with the department's recommendation.

297 Section 10. This act shall take effect July 1, 2009.