

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 the  
14          department to examine and revise its strategies, policies,  
15          and practices to ensure that all youth are treated  
16          equally, without jeopardizing public safety; amending s.  
17          985.03, F.S.; redefining the term "child in need of  
18          services" to provide that a child is eligible to receive  
19          comprehensive services if the child is 9 years of age or  
20          younger at the time of referral for delinquency; amending  
21          s. 985.125, F.S.; encouraging law enforcement agencies,  
22          school districts, counties, municipalities and the  
23          Department of Juvenile Justice to establish prearrest or  
24          postarrest diversion programs for first-time misdemeanor  
25          offenders who are 9 years of age or younger; amending s.  
26          985.245, F.S.; modifying the size and composition of the  
27          risk assessment committee; requiring that the risk  
28          assessment instrument be independently validated; amending

29 s. 985.664, F.S.; authorizing each juvenile justice  
 30 circuit board to increase the number of board members from  
 31 three to five; amending s. 985.43, F.S.; providing a  
 32 legislative declaration concerning the determination  
 33 whether to commit a juvenile to the department and the  
 34 most appropriate placement level if the juvenile is  
 35 committed; amending s. 985.433, F.S.; revising provisions  
 36 relating to recommendations by probation officers to the  
 37 court concerning placement and any proposed treatment plan  
 38 of juveniles; requiring that reasons for a disposition be  
 39 stated for the record; 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 child's parent, custodian, or legal guardian and the Department  
 105 of Children and Family Services, as appropriate, to identify the  
 106 most appropriate services and supports and available funding  
 107 sources to meet the needs of the child.

108 (10) RESTORATIVE JUSTICE.--

109 (a) It is the intent of the Legislature that the juvenile  
 110 justice system advance the principles of restorative justice.  
 111 The department shall focus on repairing the harm to victims of  
 112 delinquent behavior, ensuring that the child understands the

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

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

128 (11) EQUAL TREATMENT OF YOUTH.--The department shall  
129 examine and, if necessary, revise its strategies, policies, and  
130 practices to ensure that all youth are treated equally,  
131 regardless of their gender, ethnicity, or socioeconomic status,  
132 without jeopardizing public safety. The department shall solicit  
133 input from community stakeholders and affected citizens to  
134 assist in the modification of strategies, policies, and  
135 practices to ensure equal treatment.

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

138 985.03 Definitions.--As used in this chapter, the term:

139 (7) "Child in need of services" means a child for whom  
140 there is no pending investigation into an allegation or

141 suspicion of abuse, neglect, or abandonment; no pending referral  
 142 alleging the child is delinquent, except for a child 9 years of  
 143 age or younger who is referred to the department; or no current  
 144 supervision by the department or the Department of Children and  
 145 Family Services for an adjudication of dependency or  
 146 delinquency. The child must also, under this chapter, be found  
 147 by the court:

148 (a) To have persistently run away from the child's parents  
 149 or legal custodians despite reasonable efforts of the child, the  
 150 parents or legal custodians, and appropriate agencies to remedy  
 151 the conditions contributing to the behavior. Reasonable efforts  
 152 shall include voluntary participation by the child's parents or  
 153 legal custodians and the child in family mediation, services,  
 154 and treatment offered by the department or the Department of  
 155 Children and Family Services;

156 (b) To be habitually truant from school, while subject to  
 157 compulsory school attendance, despite reasonable efforts to  
 158 remedy the situation under ss. 1003.26 and 1003.27 and through  
 159 voluntary participation by the child's parents or legal  
 160 custodians and by the child in family mediation, services, and  
 161 treatment offered by the department ~~of Juvenile Justice~~ or the  
 162 Department of Children and Family Services; ~~or~~

163 (c) To have persistently disobeyed the reasonable and  
 164 lawful demands of the child's parents or legal custodians, and  
 165 to be beyond their control despite efforts by the child's  
 166 parents or legal custodians and appropriate agencies to remedy  
 167 the conditions contributing to the behavior. Reasonable efforts  
 168 may include such things as good faith participation in family or

169 individual counseling; or

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

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

174 985.125 Prearrest or postarrest diversion programs.--

175 (1) A law enforcement agency, ~~or~~ school district, county,  
 176 municipality, or the department, in cooperation with the state  
 177 attorney, is encouraged to ~~may~~ establish a prearrest or  
 178 postarrest diversion programs for first-time misdemeanor  
 179 offenders and offenders who are 9 years of age or younger  
 180 program.

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

183 985.245 Risk assessment instrument.--

184 (2) (a) The risk assessment instrument for detention care  
 185 placement determinations and court orders shall be developed by  
 186 the department in agreement with a committee composed of two  
 187 ~~representatives appointed by the following associations: the~~  
 188 Conference of Circuit Judges of Florida, the Prosecuting  
 189 Attorneys Association, the Public Defenders Association, the  
 190 Florida Sheriffs Association, and the Florida Association of  
 191 Chiefs of Police. Each association shall appoint two  
 192 individuals, one representing an urban area and one representing  
 193 a rural area. The committee must also include two  
 194 representatives from child advocacy organizations appointed by  
 195 the secretary of the department. The parties involved shall  
 196 evaluate and revise the risk assessment instrument as is

197 considered necessary using the method for revision as agreed by  
198 the parties.

199 (b) The risk assessment instrument shall take into  
200 consideration, but need not be limited to, prior history of  
201 failure to appear, prior offenses, offenses committed pending  
202 adjudication, any unlawful possession of a firearm, theft of a  
203 motor vehicle or possession of a stolen motor vehicle, and  
204 probation status at the time the child is taken into custody.  
205 The risk assessment instrument shall also take into  
206 consideration appropriate aggravating and mitigating  
207 circumstances, ~~and shall~~ be designed to identify target a  
208 narrower population of children than the population identified  
209 under s. 985.255. The risk assessment instrument shall also  
210 include any information concerning the child's history of abuse  
211 and neglect. The risk assessment shall indicate whether  
212 detention care is warranted, and, if detention care is  
213 warranted, whether the child should be placed into secure,  
214 nonsecure, or home detention care.

215 (c) The risk assessment instrument shall be independently  
216 validated. The department shall review the population, policies,  
217 and procedures affecting the use of detention every 7 years and  
218 determine the necessity of revalidating the risk assessment  
219 instrument. Validation shall include an assessment of the  
220 effectiveness of the instrument's ability to measure the risk  
221 that the child will commit a repeat offense or fail to appear  
222 for court proceedings. The risk assessment instrument shall also  
223 be evaluated to determine if the instrument contributes to  
224 disproportionate minority contact.



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

227 985.664 Juvenile justice circuit boards and juvenile  
 228 justice county councils.--

229 (8) At any time after the adoption of initial bylaws  
 230 pursuant to subsection (12), a juvenile justice circuit board  
 231 may revise the bylaws to increase the number of members by not  
 232 more than five ~~three~~ in order to adequately reflect the  
 233 diversity of the population and community organizations or  
 234 agencies in the circuit.

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

237 985.43 Predisposition reports; other evaluations.--

238 (4) The Legislature finds that the court is in the best  
 239 position to weigh all facts and circumstances to determine  
 240 whether or not to commit a juvenile to the department and to  
 241 determine the most appropriate restrictiveness level for a  
 242 juvenile committed to the department.

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

245 985.433 Disposition hearings in delinquency cases.--When a  
 246 child has been found to have committed a delinquent act, the  
 247 following procedures shall be applicable to the disposition of  
 248 the case:

249 (7) If the court determines that the child should be  
 250 adjudicated as having committed a delinquent act and should be  
 251 committed to the department, such determination shall be in  
 252 writing or on the record of the hearing. The determination shall

253 include a specific finding of the reasons for the decision to  
254 adjudicate and to commit the child to the department, including  
255 any determination that the child was a member of a criminal  
256 gang.

257 (a) The juvenile probation officer shall make a  
258 recommendation to the court concerning placement and any  
259 proposed treatment plan ~~recommend to the court the most~~  
260 ~~appropriate placement and treatment plan, specifically~~  
261 ~~identifying the restrictiveness level most appropriate for the~~  
262 ~~child.~~ If the court has determined that the child was a member  
263 of a criminal gang, that determination shall be given great  
264 weight in identifying the most appropriate restrictiveness level  
265 for the child. The court shall consider the department's  
266 recommendation in making its commitment decision.

267 (b) The court may ~~shall~~ commit the child to the department  
268 at the restrictiveness level identified by the department, or  
269 the court may order placement at a different restrictiveness  
270 level. The court may determine the disposition on the same  
271 factors as the department considered in the department's  
272 predisposition report and placement recommendation even if the  
273 court reaches a different conclusion. The court may commit the  
274 child to a different restrictiveness level than recommended by  
275 the department. The court shall state for the record the reasons  
276 for the disposition imposed ~~that establish by a preponderance of~~  
277 ~~the evidence why the court is disregarding the assessment of the~~  
278 ~~child and the restrictiveness level recommended by the~~  
279 ~~department.~~ Any party may appeal the court's findings resulting  
280 in a modified level of restrictiveness under this paragraph. The

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281 | department shall maintain data to identify the extent to which  
282 | the courts agree with the department's recommendation.

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