

1 A bill to be entitled
2 An act relating to juvenile justice; creating s. 985.031,
3 F.S.; authorizing the court to set reasonable conditions
4 of preadjudicatory release for children charged with
5 specified acts or who have previously been charged with or
6 committed delinquent acts; providing examples of such
7 conditions; amending s. 985.101, F.S.; permitting a child
8 to be taken into custody for violations of preadjudicatory
9 release conditions; providing that a child taken into
10 custody for a violation of preadjudicatory release
11 conditions must appear before a judge within 24 hours;
12 providing that conditions of preadjudicatory release may
13 not be used to impose home detention when not otherwise
14 authorized; amending s. 985.24, F.S.; providing an
15 additional finding to support the use of secure,
16 nonsecure, or home detention care; amending s. 985.245,
17 F.S.; providing that placement in detention care under a
18 specified provision does not require a risk assessment;
19 amending s. 985.25, F.S.; providing additional grounds for
20 placement of a child in secure detention care; amending s.
21 985.255, F.S.; providing for continuing home or nonsecure
22 or home detention care or secure detention care prior to a
23 detention hearing in certain circumstances; amending s.
24 985.26, F.S.; requiring that children who have been
25 released comply with preadjudicatory release conditions;
26 providing that certain time limits do not apply to secure
27 detention under specified provisions; amending s. 985.265,
28 F.S.; specifying some changed circumstances that permit

29 | the Department of Juvenile Justice to transfer a child
30 | from home or nonsecure or home detention care to secure
31 | detention care; amending s. 985.27, F.S.; specifying
32 | circumstances under which a child who is awaiting
33 | placement in a low-risk or minimum-risk residential
34 | program may be held in secure detention care; providing
35 | time limits on such detention care; providing for secure
36 | detention care for absconders from specified types of
37 | care; revising provisions for detention care of a child
38 | awaiting placement in a moderate-risk residential program;
39 | providing for secure detention care in specified
40 | circumstances; creating s. 985.28, F.S.; providing for
41 | secure detention of a child in specified circumstances;
42 | permitting a parent or legal guardian of a child to be
43 | held in contempt of court if he or she knowingly and
44 | willfully fails to bring or otherwise prevents the child
45 | from appearing for trial; amending s. 985.35, F.S.;
46 | conforming a cross-reference to changes made by the act;
47 | amending s. 985.43, F.S.; conforming a cross-reference to
48 | changes made by the act; providing a legislative
49 | declaration concerning the determination whether to commit
50 | a juvenile to the department and the most appropriate
51 | placement level if the juvenile is committed; amending s.
52 | 985.433, F.S.; revising provisions relating to
53 | recommendations by probation officers to the court
54 | concerning placement and any proposed treatment plan of
55 | juveniles; specifying that the court has the power to
56 | determine appropriate dispositions; requiring that reasons

57 | for a disposition be stated for the record; amending s.
 58 | 985.439, F.S.; permitting a child to be detained in a
 59 | facility other than a consequence unit if one is not
 60 | available for a violation of probation or postcommitment
 61 | probation under specified provisions; creating s. 938.20,
 62 | F.S.; permitting each county to create a juvenile crime
 63 | prevention fund; providing for an additional court cost;
 64 | providing that no juvenile shall be assessed the
 65 | additional court cost if the juvenile and the juvenile's
 66 | parents or other legal guardian are found to be indigent;
 67 | providing for administration and use of funds; amending s.
 68 | 790.22, F.S.; conforming a cross-reference; providing that
 69 | the act fulfills an important state interest; providing
 70 | legislative intent; providing an effective date.

71 |
 72 | Be It Enacted by the Legislature of the State of Florida:

73 |
 74 | Section 1. Section 985.031, Florida Statutes, is created
 75 | to read:

76 | 985.031 Preadjudicatory release; circuit court
 77 | authority.--The circuit court shall have the authority to set
 78 | reasonable conditions of preadjudicatory release for a child
 79 | charged with the commission of a delinquent act which
 80 | constitutes a felony or when the child has previously been
 81 | charged with or found to have committed, regardless of
 82 | adjudication, a delinquent act. The child shall comply with all
 83 | such preadjudicatory release conditions prior to an adjudicatory
 84 | hearing. Reasonable conditions of preadjudicatory release may

85 include, but are not limited to, the following:

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

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

88 (3) The child shall not possess or use any alcoholic
 89 beverage or illegal drug or associate with those who are
 90 currently possessing or using any alcoholic beverage or illegal
 91 drug.

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

93 (5) The child shall attend school regularly, including all
 94 classes.

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

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

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

101 Section 2. Paragraph (d) of subsection (1) of section
 102 985.101, Florida Statutes, is amended, and subsection (5) is
 103 added to that section, to read:

104 985.101 Taking a child into custody; preadjudicatory
 105 release conditions.--

106 (1) A child may be taken into custody under the following
 107 circumstances:

108 (d) By a law enforcement officer who has probable cause to
 109 believe that the child is in violation of the conditions of the
 110 child's preadjudicatory release, conditions of the child's
 111 probation, home detention, postcommitment probation, or
 112 conditional release supervision; has absconded from

113 nonresidential commitment; or has escaped from residential
 114 commitment.

115
 116 Nothing in this subsection shall be construed to allow the
 117 detention of a child who does not meet the detention criteria in
 118 part V.

119 (5) If a child is taken into custody under paragraph
 120 (1) (d) for a violation of the conditions of preadjudicatory
 121 release, the child must appear before a judge within 24 hours.

122 Section 3. Subsection (1) of section 985.24, Florida
 123 Statutes, is amended to read:

124 985.24 Use of detention; prohibitions.--

125 (1) All determinations and court orders regarding the use
 126 of secure, nonsecure, or home detention care shall be based
 127 primarily upon findings that the child:

128 (a) Presents a substantial risk of not appearing at a
 129 subsequent hearing;

130 (b) Presents a substantial risk of inflicting bodily harm
 131 on others as evidenced by recent behavior;

132 (c) Presents a history of committing a property offense
 133 prior to adjudication, disposition, or placement;

134 (d) Has been adjudicated delinquent and committed to the
 135 department in a residential facility, but is on home or
 136 nonsecure detention care while awaiting placement, and:

137 1. Absconds from home or nonsecure detention care or
 138 otherwise violates the terms of release; or

139 2. There is probable cause to believe that the child has
 140 committed a new violation of law;

141 (e) ~~(d)~~ Has committed contempt of court by:
 142 1. Intentionally disrupting the administration of the
 143 court;
 144 2. Intentionally disobeying a court order; or
 145 3. Engaging in a punishable act or speech in the court's
 146 presence which shows disrespect for the authority and dignity of
 147 the court; or

148 (f) ~~(e)~~ Requests protection from imminent bodily harm.

149 Section 4. Subsection (1) of section 985.245, Florida
 150 Statutes, is amended to read:

151 985.245 Risk assessment instrument.--

152 (1) All determinations and court orders regarding
 153 placement of a child into detention care shall comply with all
 154 requirements and criteria provided in this part and shall be
 155 based on a risk assessment of the child, unless the child is
 156 placed into detention care as provided in s. 985.255(2) or s.
 157 985.28.

158 Section 5. Paragraph (b) of subsection (1) of section
 159 985.25, Florida Statutes, is amended to read:

160 985.25 Detention intake.--

161 (1) The juvenile probation officer shall receive custody
 162 of a child who has been taken into custody from the law
 163 enforcement agency and shall review the facts in the law
 164 enforcement report or probable cause affidavit and make such
 165 further inquiry as may be necessary to determine whether
 166 detention care is required.

167 (b) The juvenile probation officer shall base the decision
 168 whether ~~or not~~ to place the child into secure detention care,

169 home detention care, or nonsecure detention care on an
 170 assessment of risk in accordance with the risk assessment
 171 instrument and procedures developed by the department under s.
 172 985.245. However, a child shall be placed in secure detention
 173 care if:

174 1. The child is charged with possessing or discharging a
 175 firearm on school property in violation of s. 790.115;

176 2. The child is alleged to have absconded from home or
 177 nonsecure detention care or the child otherwise violates the
 178 terms of release after adjudication and commitment to the
 179 department but before placement in a residential facility; or

180 3. There is probable cause to believe the child has
 181 committed a new violation of law while on home or nonsecure
 182 detention care after adjudication and commitment but before
 183 placement in a residential facility ~~shall be placed in secure~~
 184 ~~detention care.~~

185
 186 Under no circumstances shall the juvenile probation officer or
 187 the state attorney or law enforcement officer authorize the
 188 detention of any child in a jail or other facility intended or
 189 used for the detention of adults, without an order of the court.

190 Section 6. Subsections (1) and (3) of section 985.255,
 191 Florida Statutes, are amended to read:

192 985.255 Detention criteria; detention hearing.--

193 (1) Subject to s. 985.25(1), a child taken into custody
 194 and placed into nonsecure or home detention care or detained in
 195 secure detention care prior to a detention hearing may continue
 196 to be detained by the court if:

197 (a) The child is alleged to have absconded from home or
 198 nonsecure detention care or otherwise violates the terms of
 199 release after adjudication and commitment but while awaiting
 200 placement in a residential facility.

201 (b) There is probable cause to believe the child has
 202 committed a new violation of law while on home or nonsecure
 203 detention care after adjudication and commitment but while
 204 awaiting placement in a residential facility.

205 (c)~~(a)~~ The child is alleged to be an escapee from a
 206 residential commitment program; or an absconder from a
 207 nonresidential commitment program, a probation program, or
 208 conditional release supervision; or is alleged to have escaped
 209 while being lawfully transported to or from a residential
 210 commitment program.

211 (d)~~(b)~~ The child is wanted in another jurisdiction for an
 212 offense which, if committed by an adult, would be a felony.

213 (e)~~(c)~~ The child is charged with a delinquent act or
 214 violation of law and requests in writing through legal counsel
 215 to be detained for protection from an imminent physical threat
 216 to his or her personal safety.

217 (f)~~(d)~~ The child is charged with committing an offense of
 218 domestic violence as defined in s. 741.28 and is detained as
 219 provided in subsection (2).

220 (g)~~(e)~~ The child is charged with possession or discharging
 221 a firearm on school property in violation of s. 790.115.

222 (h)~~(f)~~ The child is charged with a capital felony, a life
 223 felony, a felony of the first degree, a felony of the second
 224 degree that does not involve a violation of chapter 893, or a

225 felony of the third degree that is also a crime of violence,
 226 including any such offense involving the use or possession of a
 227 firearm.

228 (i)~~(g)~~ The child is charged with any second degree or
 229 third degree felony involving a violation of chapter 893 or any
 230 third degree felony that is not also a crime of violence, and
 231 the child:

- 232 1. Has a record of failure to appear at court hearings
- 233 after being properly notified in accordance with the Rules of
- 234 Juvenile Procedure;
- 235 2. Has a record of law violations prior to court hearings;
- 236 3. Has already been detained or has been released and is
- 237 awaiting final disposition of the case;
- 238 4. Has a record of violent conduct resulting in physical
- 239 injury to others; or
- 240 5. Is found to have been in possession of a firearm.

241 (j)~~(h)~~ The child is alleged to have violated the
 242 conditions of the child's probation or conditional release
 243 supervision. However, a child detained under this paragraph may
 244 be held only in a consequence unit as provided in s. 985.439. If
 245 a consequence unit is not available, the child may be placed in
 246 secure detention care, home detention care, or home detention
 247 care with electronic monitoring ~~shall be placed on home~~
 248 ~~detention with electronic monitoring.~~

249 (k)~~(i)~~ The child is detained on a judicial order for
 250 failure to appear and has previously willfully failed to appear,
 251 after proper notice, for an adjudicatory hearing on the same
 252 case regardless of the results of the risk assessment

CS/CS/HB 173

2009

253 instrument. A child may be held in secure detention for up to 72
254 hours in advance of the next scheduled court hearing pursuant to
255 this paragraph. The child's failure to keep the clerk of court
256 and defense counsel informed of a current and valid mailing
257 address where the child will receive notice to appear at court
258 proceedings does not provide an adequate ground for excusal of
259 the child's nonappearance at the hearings.

260 (1)~~(j)~~ The child is detained on a judicial order for
261 failure to appear and has previously willfully failed to appear,
262 after proper notice, at two or more court hearings of any nature
263 on the same case regardless of the results of the risk
264 assessment instrument. A child may be held in secure detention
265 for up to 72 hours in advance of the next scheduled court
266 hearing pursuant to this paragraph. The child's failure to keep
267 the clerk of court and defense counsel informed of a current and
268 valid mailing address where the child will receive notice to
269 appear at court proceedings does not provide an adequate ground
270 for excusal of the child's nonappearance at the hearings.

271 (3) (a) A child who meets any of the criteria in subsection
272 (1) and who is ordered to be detained under that subsection
273 shall be given a hearing within 24 hours after being taken into
274 custody. The purpose of the detention hearing is to determine
275 the existence of probable cause that the child has committed the
276 delinquent act or violation of law that he or she is charged
277 with and the need for continued detention. Unless a child is
278 detained under paragraph (1) (a), paragraph (1) (b), paragraph
279 (1) (f) ~~(d)~~, or paragraph (1) (g) ~~(e)~~, the court shall use the
280 results of the risk assessment performed by the juvenile

281 probation officer and, based on the criteria in subsection (1),
282 shall determine the need for continued detention. A child placed
283 into secure, nonsecure, or home detention care may continue to
284 be so detained by the court. A child detained under paragraph
285 (1) (a) or paragraph (1) (b) may be placed into secure detention
286 care pending placement in a residential facility.

287 (c) Except as provided in paragraph (1) (a), paragraph
288 (1) (b), s. 790.22 (8), or ~~in~~ s. 985.27, when a child is placed
289 into secure or nonsecure detention care, or into a respite home
290 or other placement pursuant to a court order following a
291 hearing, the court order must include specific instructions that
292 direct the release of the child from such placement no later
293 than 5 p.m. on the last day of the detention period specified in
294 s. 985.26 or s. 985.27, whichever is applicable, unless the
295 requirements of such applicable provision have been met or an
296 order of continuance has been granted under s. 985.26(4).

297 Section 7. Section 985.26, Florida Statutes, is amended to
298 read:

299 985.26 Length of detention.--

300 (1) A child may not be placed into or held in secure,
301 nonsecure, or home detention care for longer than 24 hours
302 unless the court orders such detention care, and the order
303 includes specific instructions that direct the release of the
304 child from such detention care, in accordance with s. 985.255.
305 The order shall be a final order, reviewable by appeal under s.
306 985.534 and the Florida Rules of Appellate Procedure. Appeals of
307 such orders shall take precedence over other appeals and other
308 pending matters.

309 (2) A child may not be held in secure, nonsecure, or home
310 detention care under a special detention order for more than 21
311 days unless an adjudicatory hearing for the case has been
312 commenced in good faith by the court. However, upon good cause
313 being shown that the nature of the charge requires additional
314 time for the prosecution or defense of the case, the court may
315 extend the length of detention for an additional 9 days if the
316 child is charged with an offense that would be, if committed by
317 an adult, a capital felony, a life felony, a felony of the first
318 degree, or a felony of the second degree involving violence
319 against any individual. For purposes of this subsection, if a
320 child is released, the child must comply with all conditions of
321 preadjudicatory release set by the circuit court.

322 (3) Except as provided in subsection (2), a child may not
323 be held in secure, nonsecure, or home detention care for more
324 than 15 days following the entry of an order of adjudication.

325 (4) The time limits in subsections (2) and (3) do not
326 include periods of delay resulting from a continuance granted by
327 the court for cause on motion of the child or his or her counsel
328 or of the state. Upon the issuance of an order granting a
329 continuance for cause on a motion by either the child, the
330 child's counsel, or the state, the court shall conduct a hearing
331 at the end of each 72-hour period, excluding Saturdays, Sundays,
332 and legal holidays, to determine the need for continued
333 detention of the child and the need for further continuance of
334 proceedings for the child or the state.

335 (5) The time limits required under this section do not
 336 apply to children held in secure detention care pursuant to ss.
 337 985.255(1)(a) and (b) and (3), 985.27(1)(a) and (b), and 985.28.

338 (6)~~(5)~~ A child who was not in secure detention care at the
 339 time of the adjudicatory hearing, but for whom residential
 340 commitment is anticipated or recommended, may be placed under a
 341 special detention order for a period not to exceed 72 hours,
 342 excluding weekends and legal holidays, for the purpose of
 343 conducting a comprehensive evaluation as provided in s. 985.185.
 344 Motions for the issuance of such special detention order may be
 345 made subsequent to a finding of delinquency. Upon said motion,
 346 the court shall conduct a hearing to determine the
 347 appropriateness of such special detention order and shall order
 348 the least restrictive level of detention care necessary to
 349 complete the comprehensive evaluation process that is consistent
 350 with public safety. Such special detention order may be extended
 351 for an additional 72 hours upon further order of the court.

352 (7)~~(6)~~ If a child is detained and a petition for
 353 delinquency is filed, the child shall be arraigned in accordance
 354 with the Florida Rules of Juvenile Procedure within 48 hours
 355 after the filing of the petition for delinquency.

356 Section 8. Subsection (1) of section 985.265, Florida
 357 Statutes, is amended to read:

358 985.265 Detention transfer and release; education; adult
 359 jails.--

360 (1) If a child is detained under this part, the department
 361 may transfer the child from nonsecure or home detention care to
 362 secure detention care only if significantly changed

363 | circumstances warrant such transfer. Such circumstances include,
 364 | but are not necessarily limited to:

365 | (a) Where a child is alleged to have absconded from home
 366 | or nonsecure detention care or otherwise violates the terms of
 367 | release after adjudication and commitment but while awaiting
 368 | placement in a residential facility; or

369 | (b) Where probable cause exists that a child has committed
 370 | a new violation of law while on home or nonsecure detention care
 371 | after adjudication and commitment but while awaiting placement
 372 | in a residential facility.

373 | Section 9. Subsection (1) of section 985.27, Florida
 374 | Statutes, is amended to read:

375 | 985.27 Postcommitment detention while awaiting
 376 | placement.--

377 | (1) The court must place all children who are adjudicated
 378 | and awaiting placement in a commitment program in secure
 379 | detention care, home detention care, or nonsecure detention
 380 | care. Children who are in home detention care or nonsecure
 381 | detention care may be placed on electronic monitoring.

382 | (a) A child who is awaiting placement in a low-risk
 383 | residential program must be removed from detention within 5
 384 | days, excluding Saturdays, Sundays, and legal holidays. Any
 385 | child held in secure detention during the 5 days must meet
 386 | detention admission criteria under this part. A child who is
 387 | placed in home detention care, nonsecure detention care, or home
 388 | or nonsecure detention care with electronic monitoring, while
 389 | awaiting placement in a minimum-risk or low-risk program, may be
 390 | held in secure detention care for 5 days, if the child violates

391 the conditions of the home detention care, the nonsecure
 392 detention care, or the electronic monitoring agreement. For any
 393 subsequent violation, the court may impose an additional 15 ~~5~~
 394 days, excluding Saturdays, Sundays, and legal holidays, in
 395 secure detention care.

396 (b)1. A child who is awaiting placement in a moderate-risk
 397 residential program must be placed in secure detention care,
 398 home detention care, or nonsecure detention care. Any child held
 399 in secure detention care must meet detention admission criteria
 400 under this part.

401 2. A child may not be held in secure detention care longer
 402 than 15 days, excluding Saturdays, Sundays, and legal holidays,
 403 while awaiting placement in a moderate-risk residential
 404 facility, except that any child shall be held in secure
 405 detention care until placed in a residential facility if:

406 a. The child is alleged to have absconded from home
 407 detention care or nonsecure detention care or otherwise violated
 408 the terms of release or electronic monitoring; or

409 b. Probable cause exists that a child committed a new
 410 violation of law while on home detention care, nonsecure
 411 detention care, or electronic monitoring and the child is
 412 awaiting placement in a residential program. ~~A child who is~~
 413 ~~awaiting placement in a moderate-risk residential program must~~
 414 ~~be removed from detention within 5 days, excluding Saturdays,~~
 415 ~~Sundays, and legal holidays. Any child held in secure detention~~
 416 ~~during the 5 days must meet detention admission criteria under~~
 417 ~~this part. The department may seek an order from the court~~
 418 ~~authorizing continued detention for a specific period of time~~

CS/CS/HB 173

2009

419 ~~necessary for the appropriate residential placement of the~~
420 ~~child. However, such continued detention in secure detention~~
421 ~~care may not exceed 15 days after entry of the commitment order,~~
422 ~~excluding Saturdays, Sundays, and legal holidays, and except as~~
423 ~~otherwise provided in this section. A child who is placed in~~
424 ~~home detention care, nonsecure detention care, or home or~~
425 ~~nonsecure detention care with electronic monitoring, while~~
426 ~~awaiting placement in a moderate-risk program, may be held in~~
427 ~~secure detention care for 5 days, if the child violates the~~
428 ~~conditions of the home detention care, the nonsecure detention~~
429 ~~care, or the electronic monitoring agreement. For any subsequent~~
430 ~~violation, the court may impose an additional 5 days in secure~~
431 ~~detention care.~~

432 (c) If the child is committed to a high-risk residential
433 program, the child must be held in secure detention care until
434 placement or commitment is accomplished.

435 (d) If the child is committed to a maximum-risk
436 residential program, the child must be held in secure detention
437 care until placement or commitment is accomplished.

438 Section 10. Section 985.28, Florida Statutes, is created
439 to read:

440 985.28 Appearance in court; preadjudicatory detention;
441 contempt.--

442 (1) A child may be held in secure detention care if, after
443 proper notice, the child fails to appear in court because the
444 child refuses to appear, runs away, or otherwise intentionally
445 avoids his or her appearance. The court may hold the child in

446 secure detention care until the trial concludes, regardless of
 447 the results of the risk assessment instrument.

448 (2) A parent or legal guardian, after being properly
 449 noticed, who knowingly and willfully fails to bring or otherwise
 450 prevents a child from appearing for trial may be held in
 451 contempt of court.

452 Section 11. Subsection (1) of section 985.35, Florida
 453 Statutes, is amended to read:

454 985.35 Adjudicatory hearings; withheld adjudications;
 455 orders of adjudication.--

456 (1) The adjudicatory hearing must be held as soon as
 457 practicable after the petition alleging that a child has
 458 committed a delinquent act or violation of law is filed and in
 459 accordance with the Florida Rules of Juvenile Procedure; but
 460 reasonable delay for the purpose of investigation, discovery, or
 461 procuring counsel or witnesses shall be granted. If the child is
 462 being detained, the time limitations in s. 985.26(2) ~~and (3)~~
 463 apply.

464 Section 12. Paragraph (c) of subsection (1) of section
 465 985.43, Florida Statutes, is amended, and subsection (4) is
 466 added to that section, to read:

467 985.43 Predisposition reports; other evaluations.--

468 (1) Upon a finding that the child has committed a
 469 delinquent act:

470 (c) A child who was not in secure detention at the time of
 471 the adjudicatory hearing, but for whom residential commitment is
 472 anticipated or recommended, may be placed under a special

473 detention order, as provided in s. 985.26 (6) ~~(5)~~, for the purpose
 474 of conducting a comprehensive evaluation.

475 (4) The Legislature finds that the court is in the best
 476 position to weigh all facts and circumstances to determine
 477 whether or not to commit a juvenile to the department and to
 478 determine the most appropriate restrictiveness level for a
 479 juvenile committed to the department.

480 Section 13. Paragraphs (a) and (b) of subsection (7) of
 481 section 985.433, Florida Statutes, are amended to read:

482 985.433 Disposition hearings in delinquency cases.--When a
 483 child has been found to have committed a delinquent act, the
 484 following procedures shall be applicable to the disposition of
 485 the case:

486 (7) If the court determines that the child should be
 487 adjudicated as having committed a delinquent act and should be
 488 committed to the department, such determination shall be in
 489 writing or on the record of the hearing. The determination shall
 490 include a specific finding of the reasons for the decision to
 491 adjudicate and to commit the child to the department, including
 492 any determination that the child was a member of a criminal
 493 gang.

494 (a) The juvenile probation officer shall make a
 495 recommendation to the court concerning placement and any
 496 proposed treatment plan ~~recommend to the court the most~~
 497 ~~appropriate placement and treatment plan, specifically~~
 498 ~~identifying the restrictiveness level most appropriate for the~~
 499 ~~child.~~ If the court has determined that the child was a member
 500 of a criminal gang, that determination shall be given great

501 weight in identifying the most appropriate restrictiveness level
 502 for the child. The court shall consider the department's
 503 recommendation in making its commitment decision.

504 (b) The court may ~~shall~~ commit the child to the department
 505 at the restrictiveness level identified by the department, or
 506 the court may order placement at a different restrictiveness
 507 level. The court may determine the disposition on the same
 508 factors as the department considered in the department's
 509 predisposition report and placement recommendation even if the
 510 court reaches a different conclusion. The court may commit the
 511 child to a different restrictiveness level than recommended by
 512 the department. The court shall state for the record the reasons
 513 for the disposition imposed ~~that establish by a preponderance of~~
 514 ~~the evidence why the court is disregarding the assessment of the~~
 515 ~~child and the restrictiveness level recommended by the~~
 516 ~~department.~~ Any party may appeal the court's findings resulting
 517 in a modified level of restrictiveness under this paragraph. The
 518 department shall maintain data to identify the extent to which
 519 the courts agree with the department's recommendation.

520 Section 14. Subsection (2) of section 985.439, Florida
 521 Statutes, is amended to read:

522 985.439 Violation of probation or postcommitment
 523 probation.--

524 (2) A child taken into custody under s. 985.101 for
 525 violating the conditions of probation or postcommitment
 526 probation shall be held in a consequence unit if such a unit is
 527 available or may be detained under part V in a facility other
 528 than a consequence unit if one is not available. The child shall

CS/CS/HB 173

2009

529 be afforded a hearing within 24 hours after being taken into
530 custody to determine the existence of probable cause that the
531 child violated the conditions of probation or postcommitment
532 probation. A consequence unit is a secure facility specifically
533 designated by the department for children who are taken into
534 custody under s. 985.101 for violating probation or
535 postcommitment probation, or who have been found by the court to
536 have violated the conditions of probation or postcommitment
537 probation. If the violation involves a new charge of
538 delinquency, the child may be detained under part V in a
539 facility other than a consequence unit. If the child is not
540 eligible for detention for the new charge of delinquency, the
541 child may be held in the consequence unit pending a hearing and
542 is subject to the time limitations specified in part V.

543 Section 15. Section 938.20, Florida Statutes, is created
544 to read:

545 938.20 County juvenile crime prevention fund.--

546 (1) Notwithstanding s. 318.121, and in addition to ss.
547 938.19 and 939.185, in each county the board of county
548 commissioners may adopt a mandatory court cost to be assessed in
549 specific cases by incorporating by reference the provisions of
550 this section in a county ordinance. Assessments collected by the
551 clerk of the circuit court under this section shall be deposited
552 into an account specifically for the administration of the
553 county's juvenile crime prevention fund. The proceeds of the
554 county's juvenile crime prevention fund shall only be used to
555 fund local programs whose principal focus is the prevention of
556 juvenile crime, the creation of consequence or suspension

557 centers, and truancy programs and such other areas of local
558 concern relating to juvenile crime.

559 (2) A sum of up to \$50 shall be assessed as a court cost
560 in the circuit court in the county against each juvenile who
561 pleads guilty or nolo contendere to, or is found guilty of,
562 regardless of adjudication, a delinquent act. No juvenile shall
563 be assessed court costs under this section if the juvenile and
564 the juvenile's parents or other legal guardian are found to be
565 indigent.

566 (3) The assessment for court costs under this section
567 shall be assessed in addition to any other cost or fee and may
568 not be deducted from the proceeds of any other cost that is
569 received by the county.

570 (4) (a) The clerk of the circuit court shall collect the
571 assessments for court costs under this section and shall remit
572 the assessments to the county's juvenile crime prevention fund
573 monthly.

574 (b) The clerk of the circuit court shall withhold 3
575 percent of the assessments collected, which shall be retained as
576 fee income of the office of the clerk of the circuit court.

577 (5) A county's juvenile crime prevention fund must account
578 for all funds received and disbursed under this section in a
579 written report to the board of county commissioners of that
580 county. The report must be given to the commissioners by August
581 1 of each year unless a different date is required by the
582 commissioners.

583 (6) A county's juvenile crime prevention fund may be
584 administered by a nonprofit organization, a law enforcement

585 agency, the court administrator, the clerk of the circuit court,
 586 a county agency, or another similar agency authorized by the
 587 board of county commissioners of that county.

588 Section 16. Subsection (8) of section 790.22, Florida
 589 Statutes, is amended to read:

590 790.22 Use of BB guns, air or gas-operated guns, or
 591 electric weapons or devices by minor under 16; limitation;
 592 possession of firearms by minor under 18 prohibited;
 593 penalties.--

594 (8) Notwithstanding s. 985.24 or s. 985.25(1), if a minor
 595 under 18 years of age is charged with an offense that involves
 596 the use or possession of a firearm, as defined in s. 790.001,
 597 including a violation of subsection (3), or is charged for any
 598 offense during the commission of which the minor possessed a
 599 firearm, the minor shall be detained in secure detention, unless
 600 the state attorney authorizes the release of the minor, and
 601 shall be given a hearing within 24 hours after being taken into
 602 custody. At the hearing, the court may order that the minor
 603 continue to be held in secure detention in accordance with the
 604 applicable time periods specified in s. 985.26(1)-(6)~~(1)-(5)~~, if
 605 the court finds that the minor meets the criteria specified in
 606 s. 985.255, or if the court finds by clear and convincing
 607 evidence that the minor is a clear and present danger to himself
 608 or herself or the community. The Department of Juvenile Justice
 609 shall prepare a form for all minors charged under this
 610 subsection that states the period of detention and the relevant
 611 demographic information, including, but not limited to, the sex,
 612 age, and race of the minor; whether or not the minor was

CS/CS/HB 173

2009

613 represented by private counsel or a public defender; the current
614 offense; and the minor's complete prior record, including any
615 pending cases. The form shall be provided to the judge to be
616 considered when determining whether the minor should be
617 continued in secure detention under this subsection. An order
618 placing a minor in secure detention because the minor is a clear
619 and present danger to himself or herself or the community must
620 be in writing, must specify the need for detention and the
621 benefits derived by the minor or the community by placing the
622 minor in secure detention, and must include a copy of the form
623 provided by the department. The Department of Juvenile Justice
624 must send the form, including a copy of any order, without
625 client-identifying information, to the Office of Economic and
626 Demographic Research.

627 Section 17. The Legislature determines and declares that
628 this act fulfills an important state interest.

629 Section 18. It is the intent of the Legislature with this
630 act to ensure public safety and to provide appropriate and
631 effective treatment to address physical, social, and emotional
632 needs of juveniles, including, but not limited to, substance
633 abuse services, mental health services, family counseling, anger
634 management, other behavioral services, and health care services.

635 Section 19. This act shall take effect July 1, 2009.