

By Representative Murman

1 A bill to be entitled
2 An act relating to sexual predators; providing
3 a short title; creating s. 916.30, F.S.;
4 providing findings and intent; creating s.
5 916.31, F.S.; defining terms; creating s.
6 916.32, F.S.; requiring notice of release from
7 custody of a person alleged to be a sexually
8 violent predator; providing for evaluation of
9 such person; creating s. 916.33, F.S.;
10 providing for petition to have such person
11 declared a sexually violent predator; creating
12 s. 916.34, F.S.; providing for determination of
13 probable cause, hearings, taking such person
14 into custody; creating s. 916.35, F.S.;
15 providing for trial on issue of whether person
16 is a sexually violent predator; creating s.
17 916.36, F.S.; providing for commitment of a
18 person determined to be a sexually violent
19 predator; creating s. 916.37, F.S.; requiring
20 annual examination of persons committed;
21 creating s. 916.38, F.S.; requiring detention
22 and commitment to conform to constitutional
23 requirements; creating s. 916.39, F.S.;
24 providing for petitions for release; creating
25 s. 916.40, F.S.; requiring certain findings
26 before conditional release to a
27 less-restrictive form of treatment; creating s.
28 916.41, F.S.; authorizing conditional release
29 to a less-restrictive form of treatment;
30 creating s. 916.42, F.S.; requiring certain
31 findings before conditional release; providing

1 for conditions and annual review; creating s.
2 916.43, F.S.; providing for revocation or
3 modification of less-restrictive treatment;
4 creating s. 916.44, F.S.; providing that the
5 Department of Children and Family Services is
6 responsible for costs; creating s. 916.45,
7 F.S.; providing for notice to victims; creating
8 s. 916.46, F.S.; providing severability;
9 creating s. 916.47, F.S.; providing for access
10 to certain records; providing an effective
11 date.

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. This act may be cited as "The Sexually
16 Violent Predator Treatment Act."

17 Section 2. Section 916.30, Florida Statutes, is
18 created to read:

19 916.30 Legislative findings and intent.--The
20 Legislature finds that a small but extremely dangerous number
21 of sexually violent predators exist who do not have a mental
22 disease or defect that renders them appropriate for
23 involuntary treatment under the "Baker Act," ss.
24 394.453-394.4788, which is intended to provide short-term
25 hospital treatment to individuals with serious mental
26 disorders and then return them to the community. In contrast
27 to persons appropriate for commitment under the Baker Act,
28 sexually violent predators generally have antisocial
29 personality features that are unamenable to existing mental
30 illness treatment modalities, and those features render them
31 likely to engage in criminal sexually violent behavior. The

1 Legislature further finds that the likelihood of sexually
2 violent predators engaging in repeat acts of predatory sexual
3 violence is high. The existing procedures under the Baker Act
4 for involuntary commitment and treatment for mentally ill
5 persons are inadequate to address the risk these sexually
6 violent predators pose to society. The Legislature further
7 finds that the prognosis for rehabilitating sexually violent
8 predators in a prison setting is poor, the treatment needs of
9 this population are very long term, and the treatment
10 modalities for this population are very different than the
11 traditional treatment modalities for people appropriate for
12 commitment under the Baker Act. It is therefore the intent of
13 the Legislature to create a civil commitment procedure for the
14 long-term care and treatment of sexually violent predators.

15 Section 3. Section 916.31, Florida Statutes, is
16 created to read:

17 916.31 Definitions.--As used in ss. 916.30-916.47, the
18 term:

19 (1) "Agency with jurisdiction" means the agency that
20 releases upon lawful order or authority a person serving a
21 sentence in the custody of the Department of Corrections, a
22 person adjudicated delinquent and committed to the custody of
23 the Department of Juvenile Justice, or a person who was
24 involuntarily committed to the custody of the Department of
25 Children and Family Services upon an adjudication of not
26 guilty by reason of insanity.

27 (2) "Court" means the circuit court that most recently
28 sentenced the sexually violent offender in a criminal case or
29 the circuit court in the location where the sexually violent
30 offender resides or proposes to reside upon release from
31 custody or commitment.

1 (3) "Less-restrictive alternative" means court-ordered
2 treatment in a setting less restrictive than total
3 confinement.

4 (4) "Likely to engage in predatory acts of sexual
5 violence" means that the person more probably than not will
6 engage in such acts. Such likelihood must be evidenced by a
7 recent overt act if the person is not totally confined at the
8 time the petition is filed under s. 916.33.

9 (5) "Mental abnormality" means a congenital or
10 acquired condition affecting the emotional or volitional
11 capacity which predisposes the person to commit sexually
12 violent offenses in a degree such that the person constitutes
13 a menace to the health and safety of others.

14 (6) "Predatory" means that acts were directed towards
15 strangers or individuals with whom relationships have been
16 established or promoted for the primary purpose of
17 victimization.

18 (7) "Recent overt act" means any act that has either
19 caused harm of a sexually violent nature or creates a
20 reasonable apprehension of such harm.

21 (8) "Respondent" means the person alleged to be a
22 sexually violent offender in a petition filed by the state
23 attorney.

24 (9) "Sexually violent offense" means:

25 (a) Murder of a human being while engaged in sexual
26 battery in violation of s. 782.04(1)(a)2.;

27 (b) Kidnapping of a child under the age of 13 and, in
28 the course of that offense, committing:

29 1. Sexual battery;

30 2. A lewd, lascivious, or indecent assault or act upon
31 or in the presence of the child; or

1 3. A violation of s. 796.03 or s. 796.04, relating to
2 prostitution, upon the child; in violation of s. 787.01(3)(a);
3 (c) Committing the offense of false imprisonment upon
4 a child under the age of 13 and, in the course of that
5 offense, committing:
6 1. Sexual battery;
7 2. A lewd, lascivious or indecent assault or act upon
8 or in the presence of the child; or
9 3. A violation of s. 796.03 or s. 796.04, relating to
10 prostitution, upon the child in violation of s. 787.02(3)(a);
11 (d) Sexual battery in violation of s. 794.011;
12 (e) Procuring a person under the age of 18 for
13 prostitution in violation of s. 796.03;
14 (f) Lewd, lascivious, or indecent assault or act upon
15 or in presence of child in violation of s. 800.04;
16 (g) Purchasing or obtaining custody or control of a
17 minor, or offering to purchase or obtain custody or control of
18 a minor, to engage in sexually explicit conduct as defined by
19 s. 847.0145(2);
20 (h) Any conviction for a felony offense in effect at
21 any time before the effective date of this act that is
22 comparable to a sexually violent offense as defined in
23 paragraphs (a)-(g) or any federal conviction or conviction in
24 another state for a felony offense that in this state would be
25 a sexually violent offense;
26 (i) An attempt, criminal solicitation, or conspiracy,
27 in violation of s. 777.04, of a sexually violent offense; or
28 (j) Any act that either at the time of sentencing for
29 the offense or subsequently during civil commitment
30 proceedings under this act has been determined beyond a
31 reasonable doubt to have been sexually motivated.

1 (10) "Sexually violent predator" means any person who
2 has been convicted of or charged with a sexually violent
3 offense and who suffers from a mental abnormality or
4 personality disorder that makes the person likely to engage in
5 predatory acts of sexual violence if not confined in a secure
6 facility.

7 Section 4. Section 916.32, Florida Statutes, is
8 created to read:

9 916.32 Notice to state attorney and multidisciplinary
10 team of release of sexually violent predator; immunity from
11 liability; establishing multidisciplinary team.--

12 (1) When it appears that the person may meet the
13 criteria of a sexually violent predator, the agency with
14 jurisdiction shall give written notice of that fact to the
15 state attorney of the county where that person was charged and
16 the multidisciplinary team established under subsection (4) 90
17 days before:

18 (a) The anticipated discharge from the custody of the
19 Department of Corrections of a person who has been convicted
20 of a sexually violent offense;

21 (b) The anticipated release from a juvenile
22 delinquency commitment program of a person found to have
23 committed a sexually violent offense as a juvenile;

24 (c) The anticipated release of a person who has been
25 charged with a sexually violent offense and who has been
26 determined to be incompetent to stand trial under s. 916.12;
27 or

28 (d) The anticipated release of a person who has been
29 adjudicated not guilty by reason of insanity of a sexually
30 violent offense and involuntarily committed under s. 916.15.

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1 (2) The agency with jurisdiction shall provide the
2 state attorney and multidisciplinary team all relevant
3 information, including, but not limited to:

4 (a) The person's name, identifying factors,
5 anticipated future residence, and offense history;

6 (b) A complete copy of the institutional records
7 compiled by the agency with jurisdiction relating to the
8 person and any out-of-state correctional records, if
9 available;

10 (c) All records relating to the psychological or
11 psychiatric evaluation and treatment of the person; and

12 (d) A current mental health evaluation or mental
13 health records review.

14 (3) The agency with jurisdiction and the state
15 attorney and their employees and individuals contracting,
16 appointed, or volunteering to perform services are immune from
17 liability for any good-faith conduct under this section.

18 (4) The Secretary of the Department of Children and
19 Family Services shall establish a multidisciplinary team,
20 which may include individuals from other state agencies, to
21 review available records of each person referred to such team
22 under subsection (1). The team, within 30 days after
23 receiving notice, shall assess whether or not the person meets
24 the definition of a sexually violent predator. The team shall
25 provide the state attorney with its written assessment within
26 60 days after it received notice.

27 Section 5. Section 916.33, Florida Statutes, is
28 created to read:

29 916.33 Petition; time; contents.--When it appears that
30 a person presently confined may be a sexually violent
31 predator, or it appears that a person who is not presently

1 confined but who has previously been convicted of a sexually
2 violent offense has committed a recent overt act and the state
3 attorney has determined that the person meets the definition
4 of a sexually violent predator, the state attorney may file a
5 petition alleging that the person is a sexually violent
6 predator. The petition must state sufficient facts to support
7 such allegation.

8 Section 6. Section 916.34, Florida Statutes, is
9 created to read:

10 916.34 Determination of probable cause; hearing;
11 evaluation; respondent taken into custody.--

12 (1) Upon the filing of a petition under s. 916.33, the
13 court shall make a nonadversary determination whether the
14 petition sets forth sufficient grounds to believe probable
15 cause exists that the respondent is a sexually violent
16 predator. If a preliminary determination of probable cause is
17 made, the court shall direct that the respondent be taken into
18 custody.

19 (2) Within 72 hours after a respondent is taken into
20 custody under subsection (1), the respondent shall be provided
21 with notice of, and an opportunity to appear in person at, an
22 adversary probable-cause hearing. At this hearing, the court
23 shall verify the respondent's identity and find whether
24 probable cause exists to believe that the respondent is a
25 sexually violent predator. The state may rely upon the
26 petition and supplement the petition with additional evidence
27 or live testimony.

28 (3) At the adversary probable-cause hearing, the
29 respondent shall have the right to be represented by counsel,
30 to present evidence on the respondent's behalf, to
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1 cross-examine witnesses and to view and copy all petitions and
2 reports in the court file.

3 (4) If at the conclusion of the hearing the court
4 finds probable cause to believe that the respondent is a
5 sexually violent predator, the court shall direct that the
6 respondent be transferred to an appropriate secure facility,
7 including, but not limited to, a county jail, for an
8 evaluation as to whether the respondent is a sexually violent
9 predator. The evaluation shall be conducted by a person who is
10 professionally qualified to conduct such an examination.

11 Section 7. Section 916.35, Florida Statutes, is
12 created to read:

13 916.35 Trial; counsel and experts; indigent persons;
14 jury.--

15 (1) Within 60 days after the completion of an
16 adversary probable-cause hearing, the court shall conduct a
17 trial to determine whether the respondent is a sexually
18 violent predator. The trial may be continued upon a showing of
19 good cause by either party, or by the court on its own motion
20 in the due administration of justice and when the respondent
21 will not be substantially prejudiced.

22 (2) Beginning with the adversary probable-cause
23 hearing, a respondent is entitled to the assistance of counsel
24 at all stages of the proceedings, and, if the respondent is
25 indigent, the court shall appoint the public defender or, if a
26 conflict exists, other counsel to represent the respondent.
27 Whenever a respondent is subjected to an examination under
28 this section, the respondent may retain experts or
29 professional persons to perform an examination on his or her
30 own behalf. When the respondent wishes to be examined by a
31 qualified expert or professional person of the respondent's

1 choice, such examiner shall have reasonable access to the
2 respondent for the purpose of performing the examination, as
3 well as to all relevant medical and psychological records and
4 reports. In the case of a respondent who is indigent, the
5 court, upon the respondent's request and upon a finding that
6 expert services are necessary, shall order reasonable
7 compensation for such services as provided in s. 914.06.

8 (3) The respondent or the state attorney may demand,
9 or the court on its own motion may order, that the trial be
10 before a jury of six persons. Such demand for a jury trial
11 shall be filed, in writing, or such order entered, at least 4
12 days before the trial. If no demand or order is made, the
13 trial shall be before the court.

14 Section 8. Section 916.36, Florida Statutes, is
15 created to read:

16 916.36 Determination; commitment procedure;
17 interagency agreements; mistrials.

18 (1) The court or jury shall determine beyond a
19 reasonable doubt whether, the respondent is a sexually violent
20 predator. When the determination is made by a jury, the
21 verdict must be unanimous. Such determination may be
22 appealed.

23 (2) When the court or jury determines that the
24 respondent is a sexually violent predator, the respondent
25 shall be committed to the custody of the Department of
26 Children and Family Services for control, care, and treatment
27 until such time as the respondent's mental abnormality or
28 personality disorder has so changed that the respondent is
29 safe to be at large or to be placed in a less-restrictive
30 alternative under s. 916.40. Such control, care, and treatment
31 shall be provided at a facility operated by the Department of

1 Children and Family Services. At all times, sexually violent
2 predators who are committed for control, care, and treatment
3 by the Department of Children and Family Services under this
4 section shall be kept in a secure facility segregated from
5 patients who are not committed under this section.

6 (3) The Department of Children and Family Services is
7 authorized to enter into an interagency agreement with the
8 Department of Corrections for the confinement of sexually
9 violent predators. Such persons who are in the confinement of
10 the Department of Corrections under an interagency agreement
11 shall be housed and managed separately from criminal offenders
12 sentenced to the custody of the Department of Corrections and,
13 except for occasional instances of supervised incidental
14 contact, shall be segregated from such offenders.

15 (4) If the court or jury is not satisfied beyond a
16 reasonable doubt that the person is a sexually violent
17 predator, the court shall direct the person's release. If a
18 mistrial is declared, the court shall direct that the person
19 be held at an appropriate secure facility, including, but not
20 limited to, a county jail, until another trial is conducted.
21 Any subsequent trial following a mistrial must be held within
22 90 days of the previous trial unless such subsequent trial is
23 continued as provided in the Florida Rules of Criminal
24 Procedure.

25 (5) If the respondent has been found incompetent to
26 stand trial and is about to be released pursuant to s. 916.13
27 or s. 916.17 and such person's commitment is sought under
28 subsection (1), the court shall first hear evidence and
29 determine whether the respondent did commit the act or acts
30 charged. The hearing on this issue must comply with all the
31 procedures specified in this section. In addition, the rules

1 of evidence applicable in criminal cases shall apply, and all
2 constitutional rights available to defendants at criminal
3 trials, other than the right not to be tried while
4 incompetent, shall apply. After hearing evidence on this
5 issue, the court shall make specific findings on whether the
6 person did commit the act or acts charged, the extent to which
7 the person's incompetence or developmental disability affected
8 the outcome of the hearing, including its effect on the
9 person's ability to consult with and assist counsel and to
10 testify on such person's own behalf, the extent to which the
11 evidence could be reconstructed without the assistance of the
12 person, and the strength of the prosecution's case. If, after
13 the conclusion of the hearing on this issue, the court finds
14 beyond a reasonable doubt that the person did commit the act
15 or acts charged, the court shall enter a final order,
16 appealable by the person, on that issue and may proceed to
17 consider whether the person should be committed pursuant to
18 this section.

19 Section 9. Section 916.37, Florida Statutes, is
20 created to read:

21 916.37 Annual examinations.--Each sexually violent
22 predator committed under s. 916.36 shall have an examination
23 of his or her mental condition made annually. The report shall
24 include consideration of whether conditional release to a
25 less-restrictive alternative is in the best interest of the
26 person and will adequately protect the community. The
27 committed person may retain a qualified professional person to
28 examine such person, and the expert or professional person
29 shall have access to all records concerning the person. If the
30 committed person is indigent and so requests, the court may
31 appoint a qualified professional person to examine the person.

1 The yearly report shall be provided to the court that
2 committed the person and the state attorney. The court shall
3 conduct an annual review of the status of the committed
4 person.

5 Section 10. Section 916.38, Florida Statutes, is
6 created to read:

7 916.38 Detention and commitment to conform to
8 constitutional requirements.--The involuntary detention or
9 commitment of sexually violent predators must conform to
10 constitutional requirements for care and treatment.

11 Section 11. Section 916.39, Florida Statutes, is
12 created to read:

13 916.39 Petition for release; procedure.--

14 (1) If the Department of Children and Family Services
15 determines that the mental abnormality or personality disorder
16 of a person committed as a sexually violent predator has so
17 changed that the person is not likely to commit predatory acts
18 of sexual violence if conditionally released to a
19 less-restrictive alternative or unconditionally discharged,
20 the department shall authorize the person to petition the
21 court for release. The petition shall be served upon the court
22 and the state attorney. The court, upon receipt of the
23 petition for release to a less-restrictive alternative or
24 unconditional discharge, shall order a hearing within 45 days.
25 The state attorney shall represent the state and shall have
26 the right to have the committed person examined by an expert
27 of the state attorney's choice. The hearing shall be before a
28 jury if demanded by either the committed person or the state
29 attorney. The burden of proof shall be upon the state attorney
30 to show beyond a reasonable doubt that the committed person's
31 mental abnormality or personality disorder remains such that

1 the person is not safe to be at large and that if discharged
2 is likely to commit predatory acts of sexual violence.
3 (2) At any time, a person committed as a sexually
4 violent predator may petition the court for conditional
5 release to a less-restrictive alternative or unconditional
6 discharge without the approval of the Department of Children
7 and Family Services. The department shall provide the
8 committed person with an annual written notice of the person's
9 right to petition the court for conditional release to a
10 less-restrictive alternative or unconditional discharge over
11 the department's objection. The notice shall contain a waiver
12 of rights. The department shall forward the notice and waiver
13 form to the court with the annual report. If the person files
14 a petition for conditional release to a less-restrictive
15 alternative or unconditional discharge over the department's
16 objection, the court shall review the petition to determine
17 whether there are reasonable grounds to support the petition.
18 If the court finds that the petition is based upon frivolous
19 grounds, it shall deny the petition without a hearing. If the
20 court finds that the petition is based upon reasonable
21 grounds, the court shall set a show-cause hearing to determine
22 whether facts exist that warrant an adversary hearing on
23 whether the committed person's condition has so changed that
24 he or she is safe to be conditionally released to a
25 less-restrictive alternative or unconditionally discharged.
26 The committed person has the right to have an attorney
27 represent him or her at the show-cause hearing, but the person
28 is not entitled to be present at the show-cause hearing. If
29 the court at the show-cause hearing determines that probable
30 cause exists to believe that the committed person's mental
31 abnormality or personality disorder has so changed that the

1 person is not likely to engage in predatory acts of sexual
2 violence if conditionally released to a less-restrictive
3 alternative or unconditionally discharged, the court shall set
4 an adversary hearing on the issue. At the adversary hearing,
5 the committed person shall be entitled to be present and to
6 the benefit of all constitutional protections that were
7 afforded to the person at the initial commitment proceeding.
8 The state attorney shall represent the state and shall have a
9 right to a jury trial and to have the committed person
10 evaluated by experts chosen by the state. The committed
11 person shall also have the right to have experts evaluate him
12 or her on his or her behalf, and the court shall appoint an
13 expert if the person is indigent and requests an appointment.
14 The burden of proof at the hearing shall be upon the state
15 attorney to prove beyond a reasonable doubt that the committed
16 person's mental abnormality or personality disorder remains
17 such that the person is likely to engage in predatory acts of
18 sexual violence if conditionally released to a
19 less-restrictive alternative or unconditionally discharged.
20 (3) If a committed person has previously filed a
21 petition for release to a less-restrictive alternative or for
22 unconditional discharge without the approval of the Department
23 of Children and Family Services and the court determined upon
24 review of the petition, or following a hearing, that the
25 petition was frivolous or that the committed person's
26 condition had not so changed that the person was safe to be at
27 large, the court shall deny any subsequent petition unless the
28 petition contains facts upon which a court could find the
29 condition of the petitioner had so changed that a hearing was
30 warranted.
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1 (4) The jurisdiction of the court over a person
2 committed as a sexually violent predator continues until such
3 time as the person is unconditionally discharged.

4 Section 12. Section 916.40, Florida Statutes, is
5 created to read:

6 916.40 Conditional release to less-restrictive
7 alternative; findings.--Before the court may enter an order
8 directing conditional release to a less-restrictive
9 alternative for a person committed as a sexually violent
10 predator, it must find the following:

11 (1) The person will be treated by a treatment provider
12 who is qualified in this state to provide such treatment;

13 (2) The treatment provider has presented a specific
14 course of treatment, has agreed to assume responsibility for
15 such treatment, has agreed to report progress to the court
16 regularly, and will report violations immediately to the
17 court, the state attorney, and the sheriff of the county where
18 the less-restrictive alternative is located;

19 (3) Housing exists that is sufficiently secure to
20 protect the community and the person and the treatment
21 provider has agreed in writing to accept the person, to
22 provide the level of security required by the court, and
23 immediately to report to the court, the state attorney, and
24 the sheriff if the person leaves the housing to which he or
25 she has been assigned without authorization;

26 (4) The person is willing to comply with the course of
27 treatment presented by the treatment provider and all
28 requirements imposed by the treatment provider and by the
29 court; and

30 (5) The person is willing to comply with all
31 supervision requirements imposed by the court.

1 Section 13. Section 916.41, Florida Statutes, is
2 created to read:

3 916.41 Conditional release to less restrictive
4 alternative.--

5 (1) Upon the conclusion of the evidence in an
6 adversary hearing held under s. 916.39, if the court finds
7 that there is no legally sufficient evidentiary basis for a
8 reasonable jury to find that the conditions set forth in s.
9 916.40 have been met, the court shall grant a motion by the
10 state for a judgment as a matter of law on the issue of
11 conditional release to a less-restrictive alternative.

12 (2) Whenever the issue of conditional release to a
13 less-restrictive alternative is submitted to the jury, the
14 court shall instruct the jury to return a verdict in
15 substantially the following form: Has the state proved beyond
16 a reasonable doubt that the proposed less-restrictive
17 alternative is not in the best interests of (name of the
18 committed person) or will not adequately protect the
19 community? Answer: Yes or No.

20 Section 14. Section 916.42, Florida Statutes, is
21 created to read:

22 916.42 Conditional release to less-restrictive
23 environment; judgment; conditions; annual review.--

24 (1) If the court or jury determines that conditional
25 release to a less-restrictive alternative is in the best
26 interest of the committed person and will adequately protect
27 the community and the court determines that the minimum
28 conditions set forth in s. 916.40 are met, the court shall
29 enter judgment and direct a conditional release.

30 (2) The court shall impose any additional conditions
31 necessary to ensure compliance with treatment and to protect

1 the community. If the court finds that conditions do not
2 exist that will both ensure compliance by the committed person
3 with treatment and protect the community, the person shall be
4 remanded to the custody of the Department of Children and
5 Family Services for control, care, and treatment in a secure
6 facility.

7 (3) If the service provider designated to provide
8 inpatient or outpatient treatment or to monitor or supervise
9 any other terms and conditions of a committed person's
10 placement in a less-restrictive alternative is other than the
11 Department of Children and Family Services or the Department
12 of Corrections, the service provider so designated must agree
13 in writing to provide such treatment.

14 (4) Before authorizing any release to a
15 less-restrictive alternative, the court shall impose such
16 conditions upon the committed person as are necessary to
17 ensure the safety of the community. The court shall order the
18 Department of Children and Family Services to investigate the
19 less-restrictive alternative and recommend any additional
20 conditions to the court. Conditions shall include, but are not
21 limited to, the following: specification of residence,
22 prohibition of contact with potential or past victims,
23 prohibition of alcohol and other drug use, participation in a
24 specific course of inpatient or outpatient treatment that may
25 include monitoring by the use of polygraph and plethysmograph,
26 community supervision, a requirement that the person remain
27 within the state unless he or she receives prior authorization
28 by the court, and any additional conditions that the court
29 determines are in the best interest of the person or others.
30 A copy of the conditions of release shall be given to the
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1 conditionally released person and to any designated service
2 providers.
3 (5) Any service provider designated to provide
4 inpatient or outpatient treatment shall monthly, or as
5 otherwise directed by the court, submit to the court, to the
6 Department of Children and Family Services facility from which
7 the committed person was released, and to the state attorney
8 of the county in which the person was found to be a sexually
9 violent predator a report stating whether the person is
10 complying with the terms and conditions of the conditional
11 release to a less-restrictive alternative.
12 (6) Each committed person released to a
13 less-restrictive alternative shall have his or her case
14 reviewed by the court that released him or her no later than 1
15 year after such release and annually thereafter until the
16 person is unconditionally discharged. Review may occur more
17 frequently if the court, in its discretion on its own motion
18 or on motion of the conditionally released person, the
19 Department of Children and Family Services, or the state
20 attorney, so determines. The sole question to be determined
21 by the court is whether the person shall continue to be
22 conditionally released to a less-restrictive alternative. The
23 court in making its determination shall be aided by the
24 periodic reports filed pursuant to subsection (5) and the
25 opinions of experts from the Department of Children and Family
26 Services and of other experts.
27 Section 15. Section 916.43, Florida Statutes, is
28 created to read:
29 916.43 Conditional release to less-restrictive
30 alternative; hearing on revocation or modification; authority
31 to apprehend conditionally released person.--

1 (1) Any service provider or the state attorney may
2 petition the court, or the court on its own motion may
3 schedule an immediate hearing, for the purpose of revoking or
4 modifying the terms of a person's conditional release to a
5 less-restrictive alternative if the petitioner or the court
6 believes the conditionally released person is not complying
7 with the terms and conditions of his or her release or is in
8 need of additional care and treatment.

9 (2) If the state attorney or the court, based upon
10 information received by them, reasonably believes that a
11 conditionally released person is not complying with the terms
12 and conditions of his or her conditional release to a
13 less-restrictive alternative, the court may order that the
14 conditionally released person be apprehended and taken into
15 custody until a hearing is held to determine the facts and
16 whether or not the person's conditional release should be
17 revoked or modified. The court shall be notified following
18 the apprehension of the person's apprehension before the close
19 of the next judicial day. Both the state attorney and the
20 conditionally released person have the right to request an
21 immediate mental examination of the conditionally released
22 person. If the conditionally released person is indigent, the
23 court shall, upon request, assist him or her in obtaining a
24 qualified expert or professional person to conduct the
25 examination.

26 (3) The court, upon receiving notification of the
27 conditionally released person's apprehension, shall promptly
28 schedule a hearing. The issue to be determined is whether the
29 state has proven by a preponderance of the evidence that the
30 conditionally released person did not comply with the terms
31 and conditions of his or her release. Hearsay evidence is

1 admissible if the court finds it otherwise reliable. At the
2 hearing, the court shall determine whether the person shall
3 continue to be conditionally released on the same or modified
4 conditions or whether his or her conditional release shall be
5 revoked and he or she shall be committed to total confinement.

6 Section 16. Section 916.44, Florida Statutes, is
7 created to read:

8 916.44 Department of Children and Family Services
9 responsible for costs.--The Department of Children and Family
10 Services is responsible for all costs relating to the
11 evaluation and treatment of persons committed to the
12 department's custody as sexually violent predators.

13 Section 17. Section 916.45, Florida Statutes, is
14 created to read:

15 916.45 Notice to victims of release of persons
16 committed as sexually violent predators.--As soon as is
17 practicable, the Department of Children and Family Services
18 shall give written notice of the release of a person committed
19 as a sexually violent predator to any victim of the committed
20 person who is alive and whose address is known to the
21 department or, if the victim is deceased, to the victim's
22 family, if the family's address is known to the department.
23 Failure to notify is not a reason for postponement of release.
24 Nothing in this section creates a cause of action against the
25 state or an employee of the state acting within the scope of
26 the employee's employment as a result of the failure to notify
27 pursuant to this action.

28 Section 18. Section 916.46, Florida Statutes, is
29 created to read:

30 916.46 Severability.--If any provision of this act or
31 its application to any person or circumstance is held invalid,

1 the invalidity shall not affect other provisions or
2 applications of the act which can be given effect without the
3 invalid provisions or application and, to this end, the
4 provisions of this act are severable.

5 Section 19. Section 916.47, Florida Statutes, is
6 created to read:

7 916.47 Confidential or privileged information and
8 records.--In order to protect the public, relevant information
9 and records that are held by a governmental entity are
10 otherwise confidential or privileged shall be released to the
11 agency with jurisdiction or the state attorney for the purpose
12 of meeting the notice requirement provided in s. 916.32 and
13 determining whether a person is or continues to be a sexually
14 violent predator. This section shall be part of and
15 supplemental to the provisions of ss. 916.30-916.45.

16 Section 20. This act shall take effect July 1, 1997.

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19 SENATE SUMMARY

20 Establishes a procedure under which persons who meet the
21 criteria for classification as sexually violent
22 predators, but who do not qualify for hospitalization
23 under the Baker Act, may be committed to the Department
24 of Children and Family Services for treatment. Provides
25 for conditional release to less-restrictive forms of
26 treatment and for final, unconditional release.
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