

Bill No. CS/HB 3327, 2nd Eng.

Amendment No. ____

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Senators Klein and Gutman moved the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. The Division of Statutory Revision of the Joint Legislative Management Committee shall change the name of chapter 916, Florida Statutes, from "Mentally Deficient and Mentally Ill Defendants" to "Mentally Deficient and Mentally Ill Defendants; Civil Commitment of Sexually Violent Predators."

Section 2. Section 916.10, Florida Statutes, is amended to read:

916.10 Short title.--Sections 916.10-916.20 ~~This chapter~~ may be cited as the "Forensic Client Services Act."

Section 3. Section 916.30, Florida Statutes, is created to read:

916.30 Sections 916.30-916.49 may be cited as the "The Jimmy Ryce Act of 1998."

Section 4. Section 916.31, Florida Statutes, is

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1 created to read:

2 916.31 Legislative findings and intent.--The
3 Legislature finds that a mentally abnormal and extremely
4 dangerous group of sexually violent predators exists and
5 requires involuntary civil commitment for long-term control,
6 care, and treatment. The Legislature further finds that the
7 likelihood that sexually violent predators will engage in
8 repeat acts of sexual violence, if not treated for their
9 mental conditions, is significant. Because the existing civil
10 commitment process under the Baker Act is inadequate to
11 address the special needs of sexually violent predators and
12 the risks that they present to society, the Legislature
13 determines that a separate involuntary civil commitment
14 process for the long-term control, care, and treatment of
15 sexually violent predators is necessary. The Legislature also
16 determines that, because of the nature of the mental
17 conditions from which sexually violent predators suffer and
18 the dangers they present, it is necessary to house
19 involuntarily committed sexually violent predators in an
20 environment separate from persons involuntarily committed
21 under traditional civil commitment statutes.

22 Section 5. Section 916.32, Florida Statutes, is
23 created to read:

24 916.32 Definitions.--As used in ss. 916.30-916.49, the
25 term:

26 (1) "Agency with jurisdiction" means the agency that
27 releases, upon lawful order or authority, a person serving a
28 sentence in the custody of the Department of Corrections, a
29 person adjudicated delinquent and committed to the custody of
30 the Department of Juvenile Justice or a person who was
31 involuntarily committed to the custody of the Department of

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1 Children and Family Services upon an adjudication of not
2 guilty by reason of insanity.

3 (2) "Convicted of a sexually violent offense" means a
4 person who has been:

5 (a) Adjudicated guilty of a sexually violent offense
6 after a trial, guilty plea, or plea of nolo contendere;

7 (b) Adjudicated not guilty by reason of insanity of a
8 sexually violent offense; or

9 (c) Adjudicated delinquent of a sexually violent
10 offense after a trial, guilty plea, or plea of nolo
11 contendere.

12 (3) "Department" means the Department of Children and
13 Family Services.

14 (4) "Likely to engage in acts of sexual violence"
15 means the person's propensity to commit acts of sexual
16 violence is of such a degree as to pose a menace to the health
17 and safety of others.

18 (5) "Mental abnormality" means a mental condition
19 affecting a person's emotional or volitional capacity which
20 predisposes the person to commit sexually violent offenses.

21 (6) "Person" means an individual 18 years of age or
22 older who is a potential or actual subject of proceedings
23 under ss. 916.30-916.49.

24 (7) "Sexually motivated" means that one of the
25 purposes for which the defendant committed the crime was for
26 sexual gratification.

27 (8) "Sexually violent offense" means:

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

30 (b) Kidnapping of a child under the age of 16 and, in
31 the course of that offense, committing:

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1 1. Sexual battery; or
 2 2. A lewd, lascivious, or indecent assault or act upon
 3 or in the presence of the child;

4 (c) Committing the offense of false imprisonment upon
 5 a child under the age of 16 and, in the course of that
 6 offense, committing:

7 1. Sexual battery; or
 8 2. A lewd, lascivious or indecent assault or act upon
 9 or in the presence of the child;

10 (d) Sexual battery in violation of s. 794.011;

11 (e) Lewd, lascivious, or indecent assault or act upon
 12 or in presence of the child in violation of s. 800.04;

13 (f) An attempt, criminal solicitation, or conspiracy,
 14 in violation of s. 777.04, of a sexually violent offense;

15 (g) Any conviction for a felony offense in effect at
 16 any time before July 1, 1998, which is comparable to a
 17 sexually violent offense under paragraphs (a)-(f) or any
 18 federal conviction or conviction in another state for a felony
 19 offense that in this state would be a sexually violent
 20 offense; or

21 (h) Any criminal act that, either at the time of
 22 sentencing for the offense or subsequently during civil
 23 commitment proceedings under ss. 916.30-916.49, has been
 24 determined beyond a reasonable doubt to have been sexually
 25 motivated.

26 (9) "Sexually violent predator" means any person who:

27 (a) Has been convicted of a sexually violent offense;
 28 and

29 (b) Suffers from a mental abnormality or personality
 30 disorder that makes the person likely to engage in acts of
 31 sexual violence if not confined in a secure facility for

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1 long-term control, care, and treatment.

2 (10) "Total confinement" means that the person is
3 currently being held in any physically secure facility being
4 operated or contractually operated for the Department of
5 Corrections, the Department of Juvenile Justice, or the
6 Department of Children and Family Services.

7 Section 6. Section 916.33, Florida Statutes, is
8 created to read:

9 916.33 Notice to state attorney and multidisciplinary
10 team of release of sexually violent predator; establishing
11 multidisciplinary team.--

12 (1) The agency having jurisdiction over a person who
13 has been convicted of a sexually violent offense shall give
14 written notice to the multidisciplinary team, and a copy to
15 the state attorney of the circuit where that person was last
16 convicted of a sexually violent offense, 180 days or, in the
17 case of an adjudicated committed delinquent, 90 days before:

18 (a) The anticipated release from total confinement of
19 a person who has been convicted of a sexually violent offense,
20 except that in the case of persons who have been returned to
21 confinement for no more than 90 days, written notice must be
22 given as soon as practicable following the person's return to
23 confinement; or

24 (b) The anticipated hearing regarding possible release
25 of a person who has been found not guilty by reason of
26 insanity or mental incapacity of a sexually violent offense.

27 (2) The agency having jurisdiction shall provide the
28 multidisciplinary team with the following information:

29 (a) The person's name; identifying characteristics;
30 anticipated future residence; the type of supervision the
31 person will receive in the community, if any; and the person's

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1 offense history; and

2 (b) Documentation of institutional adjustment and any
3 treatment received and, in the case of an adjudicated
4 delinquent committed to the Department of Juvenile Justice,
5 copies of the most recent performance plan and performance
6 summary.

7
8 The provisions of this section are not jurisdictional, and
9 failure to comply with them in no way prevents the state
10 attorney from proceeding against a person otherwise subject to
11 the provisions of ss. 916.30-916.49. However, the state
12 attorney has no lawful authority to file a petition with the
13 circuit court alleging that a person is a sexually violent
14 predator without a written assessment and recommendation from
15 the multidisciplinary team.

16 (3) The Secretary of Children and Family Services
17 shall establish a multidisciplinary team, which shall include
18 a person knowledgeable in the field of law enforcement
19 designated by the Department of Law Enforcement, a licensed
20 psychologist, a licensed psychiatrist, a person who is
21 knowledgeable in the treatment of sexual offenders, and a
22 mental health counselor licensed under chapter 491, to review
23 available records of each person referred to such team under
24 subsection (1). The Attorney General's Office shall serve as
25 legal counsel to the multidisciplinary team. The team, within
26 45 days after receiving notice, shall assess whether the
27 person meets the definition of a sexually violent predator and
28 provide the state attorney with its written assessment and
29 recommendation.

30 Section 7. Section 916.34, Florida Statutes, is
31 created to read:

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1 916.34 Petition; time; contents.--When a
2 multidisciplinary team determines that a person meets the
3 definition of a sexually violent predator as provided in s.
4 916.32, the state attorney in the judicial circuit where the
5 person committed the sexually violent offense may file a
6 petition with the circuit court alleging that the person is a
7 sexually violent predator and stating facts sufficient to
8 support such allegation.

9 Section 8. Section 916.35, Florida Statutes, is
10 created to read:

11 916.35 Determination of probable cause; hearing;
12 evaluation; respondent taken into custody; bail.--

13 (1) When the state attorney files a petition seeking
14 to have a person declared a sexually violent predator, the
15 judge shall determine whether probable cause exists to believe
16 that the person named in the petition is a sexually violent
17 predator. If the judge determines that there is probable cause
18 to believe that the person is a sexually violent predator, the
19 judge shall direct that the person be taken into custody and
20 held in an appropriate secure facility.

21 (2) Before the release from custody of a person whom
22 the multidisciplinary team recommends for civil commitment,
23 but after the state attorney files a petition under s. 916.33,
24 the state attorney may further petition the court for an
25 adversarial probable cause hearing. The person shall be
26 provided with notice of, and an opportunity to appear in
27 person at, an adversary hearing. At this hearing, the judge
28 shall:

29 (a) Receive evidence and hear argument from the person
30 and the state attorney; and

31 (b) Determine whether probable cause exists to believe

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1 that the person is a sexually violent predator.

2 (3) At the probable cause hearing, the person has the
3 right to:

4 (a) Be represented by counsel;

5 (b) Present evidence;

6 (c) Cross-examine any witnesses who testify against
7 the person; and

8 (d) View and copy all petitions and reports in the
9 court file.

10 (4) If the court again concludes that there is
11 probable cause to believe that the person is a sexually
12 violent predator, the court shall direct that the person be
13 held in a county jail or a detention facility in the county
14 where the petition was filed for an evaluation by a mental
15 health professional.

16 (5) After a court finds probable cause to believe that
17 the person is a sexually violent predator, the person must be
18 held in custody in a secure facility without opportunity for
19 pretrial release or release during the trial proceedings.

20 Section 9. Section 916.36, Florida Statutes, is
21 created to read:

22 916.36 Trial; counsel and experts; indigent persons;
23 jury.--

24 (1) Within 30 days after the determination of probable
25 cause, the court shall conduct a trial to determine whether
26 the person is a sexually violent predator.

27 (2) The trial may be continued upon the request of
28 either party and a showing of good cause, or by the court on
29 its own motion in the interests of justice, when the person
30 will not be substantially prejudiced.

31 (3) At all adversarial proceedings under this act, the

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1 person subject to this act is entitled to the assistance of
2 counsel, and, if the person is indigent, the court shall
3 appoint the public defender or, if a conflict exists, other
4 counsel to assist the person.

5 (4) If the person is subjected to a mental health
6 examination under this chapter, the person also may retain
7 experts or mental health professionals to perform an
8 examination. If the person wishes to be examined by a
9 professional of the person's own choice, the examiner must be
10 provided reasonable access to the person, as well as to all
11 relevant medical and mental health records and reports. In the
12 case of a person who is indigent, the court, upon the person's
13 request, shall determine whether such an examination is
14 necessary. If the court determines that an examination is
15 necessary, the court shall appoint a mental health
16 professional and determine the reasonable compensation for the
17 professional's services.

18 (5) The person or the state attorney has the right to
19 demand that the trial be before a jury. A demand for a jury
20 trial must be filed, in writing, at least 5 days before the
21 trial. If no demand is made, the trial shall be to the court.

22 Section 10. Section 916.37, Florida Statutes, is
23 created to read:

24 916.37 Determination; commitment procedure; mistrials;
25 housing.--

26 (1) The court or jury shall determine by clear and
27 convincing evidence whether the person is a sexually violent
28 predator. If the determination is made by a jury, the decision
29 must be unanimous. If a majority of the jury finds that the
30 person is a sexually violent predator, but the decision is not
31 unanimous, the state attorney may refile the petition and

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1 proceed according to the provisions of ss. 916.30-916.49. Any
2 retrial must occur within 90 days after the previous trial,
3 unless the subsequent proceeding is continued in accordance
4 with s. 916.36(2). The determination that a person is a
5 sexually violent predator may be appealed.

6 (2) If the court or jury determines that the person is
7 a sexually violent predator, the person shall be committed to
8 the custody of the Department of Children and Family Services
9 for control, care, and treatment until such time as the
10 person's mental abnormality or personality disorder has so
11 changed that it is safe for the person to be at large. Such
12 control, care, and treatment shall be provided at a facility
13 operated by the Department of Children and Family Services. At
14 all times, sexually violent predators who are committed for
15 control, care, and treatment by the Department of Children and
16 Family Services under this section shall be kept in a secure
17 facility segregated from patients who are not committed under
18 this section.

19 Section 11. Section 916.38, Florida Statutes, is
20 created to read:

21 916.38 Examinations.--

22 (1) A person committed under ss. 916.30-916.49 shall
23 have an examination of his or her mental condition once every
24 3 years or more frequently at the court's discretion. The
25 person may retain or, if the person is indigent and so
26 requests, the court may appoint, a qualified professional to
27 examine the person. Such a professional shall have access to
28 all records concerning the person. The results of the
29 examination shall be provided to the court that committed the
30 person under ss. 916.30-916.49. Upon receipt of the report,
31 the court shall conduct a review of the person's status.

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1 (2) The department shall provide the person with
2 annual written notice of the person's right to petition the
3 court for release over the objection of the director of the
4 facility where the person is housed. The notice must contain a
5 waiver of rights. The director of the facility shall forward
6 the notice and waiver form to the court.

7 (3) The court shall hold a limited hearing to
8 determine whether there is probable cause to believe that the
9 person's condition has so changed that it is safe for the
10 person to be at large and that the person will not engage in
11 acts of sexual violence if discharged. The person has the
12 right to be represented by counsel at the probable cause
13 hearing, but the person is not entitled to be present. If the
14 court determines that there is probable cause to believe it is
15 safe to release the person, the court shall set a trial before
16 the court on the issue.

17 (4) At the trial before the court, the person is
18 entitled to be present and is entitled to the benefit of all
19 constitutional protections afforded the person at the initial
20 trial, except for the right to a jury. The state attorney
21 shall represent the state and has the right to have the person
22 examined by professionals chosen by the state. At the hearing
23 the state bears the burden of proving, by clear and convincing
24 evidence, that the person's mental condition remains such that
25 it is not safe for the person to be at large and that, if
26 released, the person is likely to engage in acts of sexual
27 violence.

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

30 916.39 Authorized petition for release; procedure.--

31 (1) If the Secretary of Children and Family Services

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1 or the secretary's designee at any time determines that the
2 person is not likely to commit acts of sexual violence if
3 conditionally discharged, the secretary or the secretary's
4 designee shall authorize the person to petition the court for
5 release. The petition shall be served upon the court and the
6 state attorney. The court, upon receipt of such a petition,
7 shall order a trial before the court within 30 days, unless
8 continued for good cause.

9 (2) The state attorney shall represent the state, and
10 has the right to have the person examined by professionals of
11 the state attorney's choice. The state bears the burden of
12 proving, by clear and convincing evidence, that the person's
13 mental condition remains such that it is not safe for the
14 person to be at large and that, if released, the person is
15 likely to engage in acts of sexual violence.

16 Section 13. Section 916.40, Florida Statutes, is
17 created to read:

18 916.40 Petition for release.--Sections 916.30-916.49
19 do not prohibit a person from filing a petition for discharge
20 at any time. However, if the person has previously filed such
21 a petition without the approval of the Secretary of Children
22 and Family Services or the secretary's designee and the court
23 determined that the petition was without merit, a subsequent
24 petition shall be denied unless the petition contains facts
25 upon which a court could find that the person's condition has
26 so changed that a probable-cause hearing is warranted.

27 Section 14. Section 916.41, Florida Statutes, is
28 created to read:

29 916.41 Release of records to state attorney.--

30 (1) In order to protect the public, relevant
31 information and records that are otherwise confidential or

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1 privileged shall be released to the agency having jurisdiction
2 or to the state attorney for the purpose of meeting the notice
3 requirements of ss. 916.30-916.49 and determining whether a
4 person is or continues to be a sexually violent predator.

5 (2) Psychological or psychiatric reports, drug and
6 alcohol reports, treatment records, medical records, or victim
7 impact statements that have been submitted to the court or
8 admitted into evidence under ss. 916.30-916.49 shall be part
9 of the record, but shall be sealed and may be opened only
10 pursuant to a court order.

11 Section 15. Section 916.42, Florida Statutes, is
12 created to read:

13 916.42 Constitutional requirements.--The long-term
14 control, care, and treatment of a person committed under ss.
15 916.30-916.49 must conform to constitutional requirements.

16 Section 16. Section 916.43, Florida Statutes, is
17 created to read:

18 916.43 Immunity from civil liability.--The agency with
19 jurisdiction and its officers and employees; the department
20 and its officers and employees; members of the
21 multidisciplinary team; the state attorney and the state
22 attorney's employees; and those involved in the evaluation,
23 care, and treatment of sexually violent persons committed
24 under ss. 916.30-916.49, are immune from any civil liability
25 for good-faith conduct under ss. 916.30-916.49.

26 Section 17. Section 916.44, Florida Statutes, is
27 created to read:

28 916.44 Severability.--If any section, subsection, or
29 provision of ss. 916.30-916.49 is held to be unconstitutional
30 or invalid by a court of competent jurisdiction, the remaining
31 portions of ss. 916.30-916.49 shall be unaffected because the

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1 Legislature declares that the provisions of ss. 916.30-916.49
2 are severable from each other.

3 Section 18. Section 916.45, Florida Statutes, is
4 created to read:

5 916.45 Applicability of act.--Sections 916.30-916.49
6 apply to all persons currently in custody who have been
7 convicted of a sexually violent offense, as that term is
8 defined in s. 916.32(8), as well as to all persons convicted
9 of a sexually violent offense in the future.

10 Section 19. Section 916.46, Florida Statutes, is
11 created to read:

12 916.46 Notice to victims of release of persons
13 committed as sexually violent predators.--As soon as is
14 practicable, the department shall give written notice of the
15 release of a person committed as a sexually violent predator
16 to any victim of the committed person who is alive and whose
17 address is known to the department or, if the victim is
18 deceased, to the victim's family, if the family's address is
19 known to the department. Failure to notify is not a reason for
20 postponement of release. This section does not create a cause
21 of action against the state or an employee of the state acting
22 within the scope of the employee's employment as a result of
23 the failure to notify pursuant to ss. 916.30-916.49.

24 Section 20. Section 916.47, Florida Statutes, is
25 created to read:

26 916.47 Escape while in lawful custody.--A person who
27 is held in lawful custody pursuant to a judicial finding of
28 probably cause under s. 916.35 or pursuant to a commitment as
29 a sexually violent predator under s. 916.36 and who escapes or
30 attempts to escape while in such custody commits a felony of
31 the second degree, punishable as provided in s. 775.082, s.

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1 775.083, or s. 775.084.

2 Section 21. Section 916.48, Florida Statutes, is
3 created to read:

4 916.48 Subsistence fees and costs of treatment.--

5 (1) In recognition of the fact that persons committed
6 under ss. 916.30-916.49 may have sources of income and assets,
7 which may include bank accounts, inheritances, real estate,
8 social security payments, veteran's payments, and other types
9 of financial resources, and in recognition of the fact that
10 the daily subsistence cost and costs of treatment of persons
11 committed under ss. 916.30-916.49 are a burden on the
12 taxpayers of the state, each person so committed shall:

13 (a) Upon order of the court committing the person,
14 disclose all revenue or assets to the department.

15 (b) Pay from such income and assets, except where such
16 income is exempt by state or federal law, all or a fair
17 portion of the person's daily subsistence and treatment costs,
18 based upon the person's ability to pay, the liability or
19 potential liability of the person to the victim or the
20 guardian or the estate of the victim, and the needs of his or
21 her dependents.

22 (2)(a) Any person who is directed to pay all or a fair
23 portion of daily subsistence and treatment costs is entitled
24 to reasonable advance notice of the assessment and shall be
25 afforded an opportunity to present reasons for opposition to
26 the assessment.

27 (b) An order directing payment of all or a fair
28 portion of a person's daily subsistence costs may survive
29 against the estate of the person.

30 Section 22. Section 916.49, Florida Statutes, is
31 created to read:

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1 916.49 Department of Children and Family Services
2 responsible for costs.--The Department of Children and Family
3 Services is responsible for all costs relating to the
4 evaluation and treatment of persons committed to the
5 department's custody as sexually violent predators. A county
6 is not obligated to fund costs for psychological examinations,
7 expert witnesses, court-appointed counsel, or other costs
8 required by ss. 916.30-916.49. Other costs for psychological
9 examinations, expert witnesses, and court-appointed counsel
10 required by ss. 916.30-916.49 shall be paid from state funds
11 appropriated by general law.

12 Section 23. The Department of Children and Family
13 Services may contract with a private entity or state agency
14 for use of facilities to comply with the requirements of this
15 act.

16 Section 24. There is hereby appropriated from the
17 General Revenue Fund in a lump sum to the Department of
18 Children and Family Services the sum of \$3,400,000 and 50
19 full-time equivalent positions, and from the Grants and
20 Donations Trust Fund, \$1,500,000 to the Department of
21 Corrections for the purpose of carrying out the provisions of
22 this act. From the funds appropriated to the Department of
23 Children and Family Services, the department shall, at the
24 counties' request, reimburse counties for the cost of no more
25 than one examination of each person subject to this act,
26 provided that the department's reimbursement for each
27 examination shall not exceed the cost to the department for
28 examinations that it conducts of such persons.

29 Section 25. This act shall take effect January 1,
30 1999.

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1 ===== T I T L E A M E N D M E N T =====

2 And the title is amended as follows:

3 Delete everything before the enacting clause

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5 and insert:

6 An act relating to sexually violent predators;
7 requesting that the Division of Statutory
8 Revision redesignate ch. 916, F.S.; amending s.
9 916.10, F.S.; providing a short title; creating
10 s. 916.30, F.S.; providing a short title;
11 creating s. 916.31, F.S.; providing legislative
12 findings and intent; creating s. 916.32, F.S.;
13 defining terms; creating s. 916.33, F.S.;
14 requiring notice of release from custody of a
15 person alleged to be a sexually violent
16 predator; providing for evaluation of such
17 person; providing for legal counsel to the
18 evaluation team; creating s. 916.34, F.S.;
19 providing for petition to have such person
20 declared a sexually violent predator; creating
21 s. 916.35, F.S.; providing for determination of
22 probable cause, for hearings, and for taking
23 such person into custody; creating s. 916.36,
24 F.S.; providing for trial on the issue of
25 whether such person is a sexually violent
26 predator; creating s. 916.37, F.S.; providing
27 for commitment of a person determined to be a
28 sexually violent predator; creating s. 916.38,
29 F.S.; requiring examinations of persons
30 committed; creating s. 916.39, F.S.; providing
31 for petitions for release; creating s. 916.40,

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1 F.S.; authorizing petition for release;
2 creating s. 916.41, F.S.; providing for access
3 to certain records; creating s. 916.42, F.S.;
4 requiring detention and commitment to conform
5 to constitutional requirements; creating s.
6 916.43, F.S.; providing immunity from civil
7 liability; creating s. 916.44; providing
8 severability; creating s. 916.45, F.S.;
9 providing for retrospective and prospective
10 application; creating s. 916.46, F.S.;
11 providing for notice to victims; creating s.
12 916.47, F.S.; penalizing escape; creating s.
13 916.48, F.S.; authorizing subsistence fees and
14 costs; creating s. 916.49, F.S.; providing that
15 the Department of Children and Family Services
16 is responsible for costs; providing that other
17 costs for psychological evaluations, expert
18 witnesses, and court-appointed counsel are paid
19 from state funds; authorizing the Department of
20 Children and Family Services to contract for
21 the use of facilities; providing an
22 appropriation; providing an effective date.

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