

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

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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 that the state attorney file a
16 petition seeking civil commitment.

17 (3) The Secretary of Children and Family Services
18 shall establish a multidisciplinary team, which shall include
19 two licensed psychiatrists or psychologists, or one licensed
20 psychiatrist and one licensed psychologist, designated by the
21 Secretary of Children and Family Services. Both evaluators
22 must concur. If one of the professionals performing the
23 evaluation does not concur that the person meets the criteria
24 for civil commitment, but the other professional concludes
25 that the person meets the criteria, the Secretary of Children
26 and Family Services shall arrange for further examination of
27 the person by two independent licensed psychiatrists or
28 psychologists or by one independent licensed psychiatrist and
29 one independent licensed psychologist. If an examination by
30 independent professionals is conducted, a petition to seek
31 commitment under this act shall only be filed if both

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1 independent professionals who evaluate the person pursuant to
2 this subsection concur that the person meets the criteria for
3 civil commitment. The Attorney General's Office shall serve as
4 legal counsel to the multidisciplinary team. The team, within
5 45 days after receiving notice, shall assess whether the
6 person meets the definition of a sexually violent predator and
7 provide the state attorney with its written assessment and
8 recommendation.

9 Section 7. Section 916.34, Florida Statutes, is
10 created to read:

11 916.34 Petition; time; contents.--When a
12 multidisciplinary team determines that a person meets the
13 definition of a sexually violent predator as provided in s.
14 916.32, the state attorney in the judicial circuit where the
15 person committed the sexually violent offense may file a
16 petition with the circuit court alleging that the person is a
17 sexually violent predator and stating facts sufficient to
18 support such allegation.

19 Section 8. Section 916.35, Florida Statutes, is
20 created to read:

21 916.35 Determination of probable cause; hearing;
22 evaluation; respondent taken into custody; bail.--

23 (1) When the state attorney files a petition seeking
24 to have a person declared a sexually violent predator, the
25 judge shall determine whether probable cause exists to believe
26 that the person named in the petition is a sexually violent
27 predator. If the judge determines that there is probable cause
28 to believe that the person is a sexually violent predator, the
29 judge shall direct that the person be taken into custody and
30 held in an appropriate secure facility.

31 (2) Before the release from custody of a person whom

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1 the multidisciplinary team recommends for civil commitment,
2 but after the state attorney files a petition under s. 916.33,
3 the state attorney may further petition the court for an
4 adversarial probable cause hearing. The person shall be
5 provided with notice of, and an opportunity to appear in
6 person at, an adversary hearing. At this hearing, the judge
7 shall:

8 (a) Receive evidence and hear argument from the person
9 and the state attorney; and

10 (b) Determine whether probable cause exists to believe
11 that the person is a sexually violent predator.

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

14 (a) Be represented by counsel;

15 (b) Present evidence;

16 (c) Cross-examine any witnesses who testify against
17 the person; and

18 (d) View and copy all petitions and reports in the
19 court file.

20 (4) If the court again concludes that there is
21 probable cause to believe that the person is a sexually
22 violent predator, the court shall direct that the person be
23 held in an appropriate secure facility in the county where the
24 petition was filed for an evaluation by a mental health
25 professional.

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

30 Section 9. Section 916.36, Florida Statutes, is
31 created to read:

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1 916.36 Trial; counsel and experts; indigent persons;
2 jury.--

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

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

10 (3) At all adversarial proceedings under this act, the
11 person subject to this act is entitled to the assistance of
12 counsel, and, if the person is indigent, the court shall
13 appoint the public defender or, if a conflict exists, other
14 counsel to assist the person.

15 (4) If the person is subjected to a mental health
16 examination under this chapter, the person also may retain
17 experts or mental health professionals to perform an
18 examination. If the person wishes to be examined by a
19 professional of the person's own choice, the examiner must be
20 provided reasonable access to the person, as well as to all
21 relevant medical and mental health records and reports. In the
22 case of a person who is indigent, the court, upon the person's
23 request, shall determine whether such an examination is
24 necessary. If the court determines that an examination is
25 necessary, the court shall appoint a mental health
26 professional and determine the reasonable compensation for the
27 professional's services.

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

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1 Section 10. Section 916.37, Florida Statutes, is
2 created to read:

3 916.37 Determination; commitment procedure; mistrials;
4 housing.--

5 (1) The court or jury shall determine by clear and
6 convincing evidence whether the person is a sexually violent
7 predator. If the determination is made by a jury, the decision
8 must be unanimous. If a majority of the jury finds that the
9 person is a sexually violent predator, but the decision is not
10 unanimous, the state attorney may refile the petition and
11 proceed according to the provisions of ss. 916.30-916.49. Any
12 retrial must occur within 90 days after the previous trial,
13 unless the subsequent proceeding is continued in accordance
14 with s. 916.36(2). The determination that a person is a
15 sexually violent predator may be appealed.

16 (2) If the court or jury determines that the person is
17 a sexually violent predator, the person shall be committed to
18 the custody of the Department of Children and Family Services
19 for control, care, and treatment until such time as the
20 person's mental abnormality or personality disorder has so
21 changed that it is safe for the person to be at large. At all
22 times, sexually violent predators who are committed for
23 control, care, and treatment by the Department of Children and
24 Family Services under this section shall be kept in a secure
25 facility segregated from patients who are not committed under
26 this section.

27 Section 11. Section 916.38, Florida Statutes, is
28 created to read:

29 916.38 Examinations.--

30 (1) A person committed under ss. 916.30-916.49 shall
31 have an examination of his or her mental condition once every

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1 3 years or more frequently at the court's discretion. The
2 person may retain or, if the person is indigent and so
3 requests, the court may appoint, a qualified professional to
4 examine the person. Such a professional shall have access to
5 all records concerning the person. The results of the
6 examination shall be provided to the court that committed the
7 person under ss. 916.30-916.49. Upon receipt of the report,
8 the court shall conduct a review of the person's status.

9 (2) The department shall provide the person with
10 annual written notice of the person's right to petition the
11 court for release over the objection of the director of the
12 facility where the person is housed. The notice must contain a
13 waiver of rights. The director of the facility shall forward
14 the notice and waiver form to the court.

15 (3) The court shall hold a limited hearing to
16 determine whether there is probable cause to believe that the
17 person's condition has so changed that it is safe for the
18 person to be at large and that the person will not engage in
19 acts of sexual violence if discharged. The person has the
20 right to be represented by counsel at the probable cause
21 hearing, but the person is not entitled to be present. If the
22 court determines that there is probable cause to believe it is
23 safe to release the person, the court shall set a trial before
24 the court on the issue.

25 (4) At the trial before the court, the person is
26 entitled to be present and is entitled to the benefit of all
27 constitutional protections afforded the person at the initial
28 trial, except for the right to a jury. The state attorney
29 shall represent the state and has the right to have the person
30 examined by professionals chosen by the state. At the hearing
31 the state bears the burden of proving, by clear and convincing

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1 evidence, that the person's mental condition remains such that
2 it is not safe for the person to be at large and that, if
3 released, the person is likely to engage in acts of sexual
4 violence.

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

7 916.39 Authorized petition for release; procedure.--

8 (1) If the Secretary of Children and Family Services
9 or the secretary's designee at any time determines that the
10 person is not likely to commit acts of sexual violence if
11 conditionally discharged, the secretary or the secretary's
12 designee shall authorize the person to petition the court for
13 release. The petition shall be served upon the court and the
14 state attorney. The court, upon receipt of such a petition,
15 shall order a trial before the court within 30 days, unless
16 continued for good cause.

17 (2) The state attorney shall represent the state, and
18 has the right to have the person examined by professionals of
19 the state attorney's choice. The state bears the burden of
20 proving, by clear and convincing evidence, that the person's
21 mental condition remains such that it is not safe for the
22 person to be at large and that, if released, the person is
23 likely to engage in acts of sexual violence.

24 Section 13. Section 916.40, Florida Statutes, is
25 created to read:

26 916.40 Petition for release.--Sections 916.30-916.49
27 do not prohibit a person from filing a petition for discharge
28 at any time. However, if the person has previously filed such
29 a petition without the approval of the Secretary of Children
30 and Family Services or the secretary's designee and the court
31 determined that the petition was without merit, a subsequent

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1 petition shall be denied unless the petition contains facts
2 upon which a court could find that the person's condition has
3 so changed that a probable-cause hearing is warranted.

4 Section 14. Section 916.41, Florida Statutes, is
5 created to read:

6 916.41 Release of records to state attorney.--

7 (1) In order to protect the public, relevant
8 information and records that are otherwise confidential or
9 privileged shall be released to the agency having jurisdiction
10 or to the state attorney for the purpose of meeting the notice
11 requirements of ss. 916.30-916.49 and determining whether a
12 person is or continues to be a sexually violent predator.

13 (2) Psychological or psychiatric reports, drug and
14 alcohol reports, treatment records, medical records, or victim
15 impact statements that have been submitted to the court or
16 admitted into evidence under ss. 916.30-916.49 shall be part
17 of the record, but shall be sealed and may be opened only
18 pursuant to a court order.

19 Section 15. Section 916.42, Florida Statutes, is
20 created to read:

21 916.42 Constitutional requirements.--The long-term
22 control, care, and treatment of a person committed under ss.
23 916.30-916.49 must conform to constitutional requirements.

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

26 916.43 Immunity from civil liability.--The agency with
27 jurisdiction and its officers and employees; the department
28 and its officers and employees; members of the
29 multidisciplinary team; the state attorney and the state
30 attorney's employees; and those involved in the evaluation,
31 care, and treatment of sexually violent persons committed

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1 under ss. 916.30-916.49, are immune from any civil liability
2 for good-faith conduct under ss. 916.30-916.49.

3 Section 17. Section 916.44, Florida Statutes, is
4 created to read:

5 916.44 Severability.--If any section, subsection, or
6 provision of ss. 916.30-916.49 is held to be unconstitutional
7 or invalid by a court of competent jurisdiction, the remaining
8 portions of ss. 916.30-916.49 shall be unaffected because the
9 Legislature declares that the provisions of ss. 916.30-916.49
10 are severable from each other.

11 Section 18. Section 916.45, Florida Statutes, is
12 created to read:

13 916.45 Applicability of act.--Sections 916.30-916.49
14 apply to all persons currently in custody who have been
15 convicted of a sexually violent offense, as that term is
16 defined in s. 916.32(8), as well as to all persons convicted
17 of a sexually violent offense in the future.

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

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

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1 Section 20. Section 916.47, Florida Statutes, is
2 created to read:

3 916.47 Escape while in lawful custody.--A person who
4 is held in lawful custody pursuant to a judicial finding of
5 probably cause under s. 916.35 or pursuant to a commitment as
6 a sexually violent predator under s. 916.36 and who escapes or
7 attempts to escape while in such custody commits a felony of
8 the second degree, punishable as provided in s. 775.082, s.
9 775.083, or s. 775.084.

10 Section 21. Section 916.48, Florida Statutes, is
11 created to read:

12 916.48 Subsistence fees and costs of treatment.--
13 (1) In recognition of the fact that persons committed
14 under ss. 916.30-916.49 may have sources of income and assets,
15 which may include bank accounts, inheritances, real estate,
16 social security payments, veteran's payments, and other types
17 of financial resources, and in recognition of the fact that
18 the daily subsistence cost and costs of treatment of persons
19 committed under ss. 916.30-916.49 are a burden on the
20 taxpayers of the state, each person so committed shall:

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

23 (b) Pay from such income and assets, except where such
24 income is exempt by state or federal law, all or a fair
25 portion of the person's daily subsistence and treatment costs,
26 based upon the person's ability to pay, the liability or
27 potential liability of the person to the victim or the
28 guardian or the estate of the victim, and the needs of his or
29 her dependents.

30 (2)(a) Any person who is directed to pay all or a fair
31 portion of daily subsistence and treatment costs is entitled

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1 to reasonable advance notice of the assessment and shall be
2 afforded an opportunity to present reasons for opposition to
3 the assessment.

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

7 Section 22. Section 916.49, Florida Statutes, is
8 created to read:

9 916.49 Department of Children and Family Services
10 responsible for costs.--The Department of Children and Family
11 Services is responsible for all costs relating to the
12 evaluation and treatment of persons committed to the
13 department's custody as sexually violent predators. A county
14 is not obligated to fund costs for psychological examinations,
15 expert witnesses, court-appointed counsel, or other costs
16 required by ss. 916.30-916.49. Other costs for psychological
17 examinations, expert witnesses, and court-appointed counsel
18 required by ss. 916.30-916.49 shall be paid from state funds
19 appropriated by general law.

20 Section 23. The Department of Children and Family
21 Services may contract with a private entity or state agency
22 for use of and operations of facilities to comply with the
23 requirements of this act. The Department of Children and
24 Family Services may also contract with the Correctional
25 Privatization Commission as defined in chapter 957 to issue a
26 request for proposals and monitor contract compliance for
27 these services.

28 Section 24. There is hereby appropriated from the
29 General Revenue Fund in a lump sum to the Department of
30 Children and Family Services the sum of \$3,400,000 and 50
31 full-time equivalent positions, and from the Grants and

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1 Donations Trust Fund, \$1,500,000 to the Department of
 2 Corrections for the purpose of carrying out the provisions of
 3 this act. From the funds appropriated to the Department of
 4 Children and Family Services, the department shall, at the
 5 counties' request, reimburse counties for the cost of no more
 6 than one examination of each person subject to this act,
 7 provided that the department's reimbursement for each
 8 examination shall not exceed the cost to the department for
 9 examinations that it conducts of such persons.

10 Section 25. This act shall take effect January 1,
 11 1999.

12
 13

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

15 And the title is amended as follows:

16 Delete everything before the enacting clause

17

18 and insert:

19 An act relating to sexually violent predators;
 20 requesting that the Division of Statutory
 21 Revision redesignate ch. 916, F.S.; amending s.
 22 916.10, F.S.; providing a short title; creating
 23 s. 916.30, F.S.; providing a short title;
 24 creating s. 916.31, F.S.; providing legislative
 25 findings and intent; creating s. 916.32, F.S.;
 26 defining terms; creating s. 916.33, F.S.;
 27 requiring notice of release from custody of a
 28 person alleged to be a sexually violent
 29 predator; providing for evaluation of such
 30 person; providing for legal counsel to the
 31 evaluation team; creating s. 916.34, F.S.;

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1 providing for petition to have such person
2 declared a sexually violent predator; creating
3 s. 916.35, F.S.; providing for determination of
4 probable cause, for hearings, and for taking
5 such person into custody; creating s. 916.36,
6 F.S.; providing for trial on the issue of
7 whether such person is a sexually violent
8 predator; creating s. 916.37, F.S.; providing
9 for commitment of a person determined to be a
10 sexually violent predator; creating s. 916.38,
11 F.S.; requiring examinations of persons
12 committed; creating s. 916.39, F.S.; providing
13 for petitions for release; creating s. 916.40,
14 F.S.; authorizing petition for release;
15 creating s. 916.41, F.S.; providing for access
16 to certain records; creating s. 916.42, F.S.;
17 requiring detention and commitment to conform
18 to constitutional requirements; creating s.
19 916.43, F.S.; providing immunity from civil
20 liability; creating s. 916.44; providing
21 severability; creating s. 916.45, F.S.;
22 providing for retrospective and prospective
23 application; creating s. 916.46, F.S.;
24 providing for notice to victims; creating s.
25 916.47, F.S.; penalizing escape; creating s.
26 916.48, F.S.; authorizing subsistence fees and
27 costs; creating s. 916.49, F.S.; providing that
28 the Department of Children and Family Services
29 is responsible for costs; providing that other
30 costs for psychological evaluations, expert
31 witnesses, and court-appointed counsel are paid

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from state funds; authorizing the Department of
Children and Family Services to contract for
the use of and operations of facilities and for
monitoring contract compliance; providing an
appropriation; providing an effective date.