

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

Amendment No.     

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11	Senators Gutman and Klein moved the following substitute for		
12	amendment (362116):		
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14	<b>Senate Amendment (with title amendment)</b>		
15	On page 2, line 2, through page 17, line 9, delete all		
16	of those lines		
17			
18	and insert:		
19	<u>916.31 Legislative findings and intent.--The</u>		
20	<u>Legislature finds that a small but extremely dangerous number</u>		
21	<u>of sexually violent predators exist who do not have a mental</u>		
22	<u>disease or defect that renders them appropriate for</u>		
23	<u>involuntary treatment under the Baker Act, ss.</u>		
24	<u>394.451-394.4789, which is intended to provide short-term</u>		
25	<u>treatment to individuals with serious mental disorders and</u>		
26	<u>then return them to the community. In contrast to persons</u>		
27	<u>appropriate for civil commitment under the Baker Act, sexually</u>		
28	<u>violent predators generally have antisocial personality</u>		
29	<u>features which are unamenable to existing mental illness</u>		
30	<u>treatment modalities and those features render them likely to</u>		
31	<u>engage in criminal, sexually violent behavior. The Legislature</u>		

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1 further finds that the likelihood of sexually violent  
2 predators engaging in repeat acts of predatory sexual violence  
3 is high. The existing involuntary commitment procedures under  
4 the Baker Act for the treatment and care of 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 5. Section 916.32, Florida Statutes, is  
16 created to read:

17 916.32 Definitions.--As used in ss. 916.30-916.49, 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) "Convicted of a sexually violent offense" means a  
28 person who has been:

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

31 (b) Adjudicated not guilty by reason of insanity of a

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1 sexually violent offense; or

2 (c) Adjudicated delinquent of a sexually violent  
3 offense after a trial, guilty plea, or plea of nolo  
4 contendere.

5 (3) "Department" means the Department of Children and  
6 Family Services.

7 (4) "Likely to engage in acts of sexual violence"  
8 means the person's propensity to commit acts of sexual  
9 violence is of such a degree as to pose a menace to the health  
10 and safety of others.

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

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

17 (7) "Sexually motivated" means that one of the  
18 purposes for which the defendant committed the crime was for  
19 sexual gratification.

20 (8) "Sexually violent offense" means:

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

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

25 1. Sexual battery; or

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

28 (c) Committing the offense of false imprisonment upon  
29 a child under the age of 16 and, in the course of that  
30 offense, committing:

31 1. Sexual battery; or

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

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

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

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

8           (g) Any conviction for a felony offense in effect at  
9 any time before October 1, 1998, which is comparable to a  
10 sexually violent offense under paragraphs (a)-(f) or any  
11 federal conviction or conviction in another state for a felony  
12 offense that in this state would be a sexually violent  
13 offense; or

14           (h) Any criminal act that, either at the time of  
15 sentencing for the offense or subsequently during civil  
16 commitment proceedings under ss. 916.30-916.49, has been  
17 determined beyond a reasonable doubt to have been sexually  
18 motivated.

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

20           (a) Has been convicted of a sexually violent offense;  
21 and

22           (b) Suffers from a mental abnormality or personality  
23 disorder that makes the person likely to engage in acts of  
24 sexual violence if not confined in a secure facility for  
25 long-term control, care, and treatment.

26           (10) "Total confinement" means that the person is  
27 currently being held in any physically secure facility being  
28 operated or contractually operated for the Department of  
29 Corrections, the Department of Juvenile Justice, or the  
30 Department of Children and Family Services.

31           Section 6. Section 916.33, Florida Statutes, is

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1 created to read:

2 916.33 Notice to state attorney and multidisciplinary  
3 team of release of sexually violent predator; establishing  
4 multidisciplinary team.--

5 (1) The agency with jurisdiction over a person who has  
6 been convicted of a sexually violent offense shall give  
7 written notice to the multidisciplinary team, and a copy to  
8 the state attorney of the circuit where that person was last  
9 convicted of a sexually violent offense, 180 days or, in the  
10 case of an adjudicated committed delinquent, 90 days before:

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

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

20 (2) The agency with jurisdiction shall provide the  
21 multidisciplinary team with the following information:

22 (a) The person's name; identifying characteristics;  
23 anticipated future residence; the type of supervision the  
24 person will receive in the community, if any; and the person's  
25 offense history; and

26 (b) Documentation of institutional adjustment and any  
27 treatment received and, in the case of an adjudicated  
28 delinquent committed to the Department of Juvenile Justice,  
29 copies of the most recent performance plan and performance  
30 summary.

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1 The provisions of this section are not jurisdictional, and  
2 failure to comply with them in no way prevents the state  
3 attorney from proceeding against a person otherwise subject to  
4 the provisions of ss. 916.30-916.49.

5 (3) The Secretary of Children and Family Services  
6 shall establish a multidisciplinary team, which shall include  
7 two licensed psychiatrists or psychologists, or one licensed  
8 psychiatrist and one licensed psychologist, designated by the  
9 Secretary of Children and Family Services. The Attorney  
10 General's Office shall serve as legal counsel to the  
11 multidisciplinary team. The team, within 45 days after  
12 receiving notice, shall assess whether the person meets the  
13 definition of a sexually violent predator and provide the  
14 state attorney with its written assessment and recommendation.

15 Section 7. Section 916.34, Florida Statutes, is  
16 created to read:

17 916.34 Petition; time; contents.--Following receipt of  
18 the written assessment and recommendation from the  
19 multidisciplinary team, the state attorney in the judicial  
20 circuit where the person committed the sexually violent  
21 offense may file a petition with the circuit court alleging  
22 that the person is a sexually violent predator and stating  
23 facts sufficient to support such allegation.

24 Section 8. Section 916.35, Florida Statutes, is  
25 created to read:

26 916.35 Determination of probable cause; hearing;  
27 evaluation; respondent taken into custody; bail.--

28 (1) When the state attorney files a petition seeking  
29 to have a person declared a sexually violent predator, the  
30 judge shall determine whether probable cause exists to believe  
31 that the person named in the petition is a sexually violent

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1 predator. If the judge determines that there is probable cause  
2 to believe that the person is a sexually violent predator, the  
3 judge shall direct that the person be taken into custody and  
4 held in an appropriate secure facility.

5 (2) Before the release from custody of a person whom  
6 the multidisciplinary team recommends for civil commitment,  
7 but after the state attorney files a petition under s. 916.33,  
8 the state attorney may further petition the court for an  
9 adversarial probable cause hearing. The person shall be  
10 provided with notice of, and an opportunity to appear in  
11 person at, an adversary hearing. At this hearing, the judge  
12 shall:

13 (a) Receive evidence and hear argument from the person  
14 and the state attorney; and

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

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

19 (a) Be represented by counsel;

20 (b) Present evidence;

21 (c) Cross-examine any witnesses who testify against  
22 the person; and

23 (d) View and copy all petitions and reports in the  
24 court file.

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

31 (5) After a court finds probable cause to believe that

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1 the person is a sexually violent predator, the person must be  
2 held in custody in a secure facility without opportunity for  
3 pretrial release or release during the trial proceedings.

4 Section 9. Section 916.36, Florida Statutes, is  
5 created to read:

6 916.36 Trial; counsel and experts; indigent persons;  
7 jury.--

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

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

15 (3) At all adversarial proceedings under this act, the  
16 person subject to this act is entitled to the assistance of  
17 counsel, and, if the person is indigent, the court shall  
18 appoint the public defender or, if a conflict exists, other  
19 counsel to assist the person.

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



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1 professional's services.

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

6 Section 10. Section 916.37, Florida Statutes, is  
7 created to read:

8 916.37 Determination; commitment procedure; mistrials;  
9 housing.--

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

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

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1           Section 11. Section 916.38, Florida Statutes, is  
2 created to read:

3           916.38 Examinations.--

4           (1) A person committed under ss. 916.30-916.49 shall  
5 have an examination of his or her mental condition once every  
6 year or more frequently at the court's discretion. The person  
7 may retain or, if the person is indigent and so requests, the  
8 court may appoint, a qualified professional to examine the  
9 person. Such a professional shall have access to all records  
10 concerning the person. The results of the examination shall be  
11 provided to the court that committed the person under ss.  
12 916.30-916.49. Upon receipt of the report, the court shall  
13 conduct a review of the person's status.

14           (2) The department shall provide the person with  
15 annual written notice of the person's right to petition the  
16 court for release over the objection of the director of the  
17 facility where the person is housed. The notice must contain a  
18 waiver of rights. The director of the facility shall forward  
19 the notice and waiver form to the court.

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

30           (4) At the trial before the court, the person is  
31 entitled to be present and is entitled to the benefit of all

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1 constitutional protections afforded the person at the initial  
2 trial, except for the right to a jury. The state attorney  
3 shall represent the state and has the right to have the person  
4 examined by professionals chosen by the state. At the hearing  
5 the state bears the burden of proving, by clear and convincing  
6 evidence, that the person's mental condition remains such that  
7 it is not safe for the person to be at large and that, if  
8 released, the person is likely to engage in acts of sexual  
9 violence.

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

12 916.39 Authorized petition for release; procedure.--

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

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

29 Section 13. Section 916.40, Florida Statutes, is  
30 created to read:

31 916.40 Petition for release.--Sections 916.30-916.49

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1 do not prohibit a person from filing a petition for discharge  
2 at any time. However, if the person has previously filed such  
3 a petition without the approval of the Secretary of Children  
4 and Family Services or the secretary's designee and the court  
5 determined that the petition was without merit, a subsequent  
6 petition shall be denied unless the petition contains facts  
7 upon which a court could find that the person's condition has  
8 so changed that a probable-cause hearing is warranted.

9           Section 14. Section 916.41, Florida Statutes, is  
10 created to read:

11           916.41 Release of records to state attorney.--

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

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

24           Section 15. Section 916.42, Florida Statutes, is  
25 created to read:

26           916.42 Constitutional requirements.--The long-term  
27 control, care, and treatment of a person committed under ss.  
28 916.30-916.49 must conform to constitutional requirements.

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

31           916.43 Immunity from civil liability.--The agency with

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1 jurisdiction and its officers and employees; the department  
2 and its officers and employees; members of the  
3 multidisciplinary team; the state attorney and the state  
4 attorney's employees; and those involved in the evaluation,  
5 care, and treatment of sexually violent persons committed  
6 under ss. 916.30-916.49, are immune from any civil liability  
7 for good-faith conduct under ss. 916.30-916.49.

8 Section 17. Section 916.44, Florida Statutes, is  
9 created to read:

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

16 Section 18. Section 916.45, Florida Statutes, is  
17 created to read:

18 916.45 Applicability of act.--Sections 916.30-916.49  
19 apply to all persons currently in custody who have been  
20 convicted of a sexually violent offense, as that term is  
21 defined in s. 916.32(8), as well as to all persons convicted  
22 of a sexually violent offense in the future.

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

25 916.46 Notice to victims of release of persons  
26 committed as sexually violent predators.--As soon as is  
27 practicable, the department shall give written notice of the  
28 release of a person committed as a sexually violent predator  
29 to any victim of the committed person who is alive and whose  
30 address is known to the department or, if the victim is  
31 deceased, to the victim's family, if the family's address is

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1 known to the department. Failure to notify is not a reason for  
2 postponement of release. This section does not create a cause  
3 of action against the state or an employee of the state acting  
4 within the scope of the employee's employment as a result of  
5 the failure to notify pursuant to ss. 916.30-916.49.

6 Section 20. Section 916.47, Florida Statutes, is  
7 created to read:

8 916.47 Escape while in lawful custody.--A person who  
9 is held in lawful custody pursuant to a judicial finding of  
10 probable cause under s. 916.35 or pursuant to a commitment as  
11 a sexually violent predator under s. 916.36 and who escapes or  
12 attempts to escape while in such custody commits a felony of  
13 the second degree, punishable as provided in s. 775.082, s.  
14 775.083, or s. 775.084.

15 Section 21. Section 916.48, Florida Statutes, is  
16 created to read:

17 916.48 Subsistence fees and costs of treatment.--

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

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

28 (b) Pay from such income and assets, except where such  
29 income is exempt by state or federal law, all or a fair  
30 portion of the person's daily subsistence and treatment costs,  
31 based upon the person's ability to pay, the liability or

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1 potential liability of the person to the victim or the  
2 guardian or the estate of the victim, and the needs of his or  
3 her dependents.

4 (2)(a) Any person who is directed to pay all or a fair  
5 portion of daily subsistence and treatment costs is entitled  
6 to reasonable advance notice of the assessment and shall be  
7 afforded an opportunity to present reasons for opposition to  
8 the assessment.

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

12 Section 22. Section 916.49, Florida Statutes, is  
13 created to read:

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

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

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1 these services.

2           Section 24. There is hereby appropriated from the  
3 General Revenue Fund in a lump sum to the Department of  
4 Children and Family Services the sum of \$4,900,000, of which  
5 \$1,500,000 is from nonrecurring funds, and 50 full-time  
6 equivalent positions and from the Grants and Donations Trust  
7 Fund, \$1,500,000 to the Department of Corrections for the  
8 purpose of carrying out the provisions of this act. From the  
9 funds appropriated to the Department of Children and Family  
10 Services, the department shall, at the counties' request,  
11 reimburse counties for the cost of no more than one  
12 examination of each person subject to this act, provided that  
13 the department's reimbursement for each examination shall not  
14 exceed the cost to the department for examinations that it  
15 conducts of such persons.

16  
17

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

19 And the title is amended as follows:

20           On page 19, lines 4 and 5, delete those lines

21

22 and insert:

23           monitoring contract compliance; providing for  
24           appropriation of funds; providing for 50  
25           full-time equivalent positions; providing an  
26           effective date.

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31