

By Representative Villalobos

1                                   A bill to be entitled  
2           An act relating to sexual predators; creating  
3           the "Jimmy Ryce Involuntary Civil Commitment  
4           for Sexually Violent Predators' Treatment and  
5           Care Act"; creating s. 916.30, F.S.; providing  
6           findings and intent; creating s. 916.31, F.S.;  
7           defining terms; creating s. 916.32, F.S.;  
8           requiring notice of release from custody of a  
9           person alleged to be a sexually violent  
10          predator; providing for the person's  
11          evaluation; creating s. 916.33, F.S.; providing  
12          for petition to have such person declared a  
13          sexually violent predator; creating s. 916.34,  
14          F.S.; providing for determination of probable  
15          cause, evaluation, and taking such person into  
16          custody; creating s. 916.35, F.S.; providing  
17          for trial on the issue of whether a person is a  
18          sexually violent predator; creating s. 916.36,  
19          F.S.; providing for commitment of a person  
20          determined to be a sexually violent predator;  
21          creating s. 916.37, F.S.; requiring annual  
22          examination of persons committed; creating s.  
23          916.38, F.S.; requiring detention and  
24          commitment to conform to constitutional  
25          requirements; creating s. 916.39, F.S.;  
26          providing for petitions for release; creating  
27          s. 916.40, F.S.; providing that the Department  
28          of Children and Family Services is responsible  
29          for specified evaluation and treatment costs;  
30          creating s. 916.41, F.S.; providing for notice  
31          to victims; creating s. 916.42, F.S.; providing

1 severability; creating s. 916.43, F.S.;

2 providing for access to certain records;

3 providing an effective date.

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5 Be It Enacted by the Legislature of the State of Florida:

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7 Section 1. This act shall be known and may be cited as

8 the "Jimmy Ryce Involuntary Civil Commitment for Sexually

9 Violent Predators' Treatment and Care Act."

10 Section 2. Section 916.30, Florida Statutes, is

11 created to read:

12 916.30 Legislative findings and intent.--The

13 Legislature finds that a small but extremely dangerous number

14 of sexually violent predators exist who do not have a mental

15 disease or defect that renders them appropriate for

16 involuntary treatment under the Baker Act, ss.

17 394.451-394.4789, which is intended to provide short-term

18 treatment to individuals with serious mental disorders and

19 then return them to the community. In contrast to persons

20 appropriate for civil commitment under the Baker Act, sexually

21 violent predators generally have antisocial personality

22 features which are unamenable to existing mental illness

23 treatment modalities and those features render them likely to

24 engage in criminal, sexually violent behavior. The Legislature

25 further finds that the likelihood of sexually violent

26 predators engaging in repeat acts of predatory sexual violence

27 is high. The existing involuntary commitment procedures under

28 the Baker Act for the treatment and care of mentally ill

29 persons is inadequate to address the risk these sexually

30 violent predators pose to society. The Legislature further

31 finds that the prognosis for rehabilitating sexually violent

1 predators in a prison setting is poor, the treatment needs of  
2 this population are very long term, and the treatment  
3 modalities for this population are very different than the  
4 traditional treatment modalities for people appropriate for  
5 commitment under the Baker Act. It is therefore the intent of  
6 the Legislature to create a civil commitment procedure for the  
7 long-term care and treatment of sexually violent predators.

8 Section 3. Section 916.31, Florida Statutes, is  
9 created to read:

10 916.31 Definitions.--As used in ss. 916.30-916.43, the  
11 term:

12 (1) "Agency with jurisdiction" means the agency with  
13 the authority to direct the release of a person serving a  
14 sentence in the custody of the Department of Corrections, a  
15 person adjudicated delinquent and committed to the custody of  
16 the Department of Juvenile Justice, or a person who was  
17 involuntarily committed to the custody of the Department of  
18 Children and Family Services upon an adjudication of not  
19 guilty by reason of insanity.

20 (2) "Court" means the circuit court which would have  
21 adjudicated or sentenced, or did adjudicate or sentence, the  
22 person for the most recent sexually violent offense.

23 (3) "Mental abnormality" means a congenital or  
24 acquired condition affecting the emotional or volitional  
25 capacity which predisposes the person to commit sexually  
26 violent offenses in a degree such that the person constitutes  
27 a menace to the health and safety of others.

28 (4) "Overt act" means any act that either causes harm  
29 of a sexually violent nature or creates a reasonable  
30 apprehension of such harm.

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1           (5) "Predatory" means acts directed toward another  
2 person for the primary purpose of victimization.

3           (6) "Sexually motivated" means that one of the  
4 purposes for which the defendant committed the crime was for  
5 the purpose of the defendant's sexual gratification.

6           (7) "Sexually violent offense" means:

7           (a) Murder of any person as part of a sexual battery  
8 in violation of s. 782.04(1)(a)2.;

9           (b) Sexual battery of any person in violation of s.  
10 794.011;

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

13           (d) Procuring a person for prostitution in violation  
14 of s. 796.03 or s. 796.04 and s. 787.01(3)(a);

15           (e) Purchasing or obtaining custody or control, or  
16 offering to purchase or obtain custody or control, of a person  
17 to engage in sexually explicit conduct as defined by s.  
18 847.0145;

19           (f) Any conviction for a felony offense in effect at  
20 any time before the effective date of this act that is  
21 comparable to a sexually violent offense as defined in  
22 paragraphs (a)-(e) or any federal conviction or conviction in  
23 another state for a felony offense that in this state would be  
24 a sexually violent offense;

25           (g) An attempt, criminal solicitation, or conspiracy,  
26 in violation of s. 777.04, of a sexually violent offense; or

27           (h) Any act that either at the time of sentencing or  
28 adjudication for the offense or subsequently during civil  
29 commitment proceedings under this act has been determined  
30 beyond a reasonable doubt to have been sexually motivated.

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1       (8) "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       (9) "State attorney" means the state attorney for the  
8 county where the person was charged for a sexually violent  
9 offense most recently, or, upon request of this state  
10 attorney, the Attorney General.

11       Section 4. Section 916.32, Florida Statutes, is  
12 created to read:

13       916.32 Notice to state attorney of release of sexually  
14 violent predator; immunity from liability.--

15       (1) When it appears that the person may meet the  
16 criteria of a sexually violent predator, as defined in s.  
17 916.31, the agency with jurisdiction shall give written notice  
18 of that fact to the state attorney of the county and the  
19 Attorney General 60 days before:

20       (a) The anticipated release from the custody of the  
21 Department of Corrections of a person who has been convicted  
22 of a sexually violent offense;

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

27       (c) The anticipated release of a person who has been  
28 adjudicated not guilty by reason of insanity of a sexually  
29 violent offense and involuntarily committed under s. 916.15.  
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1           (2) The agency with jurisdiction shall provide to the  
2 state attorney all relevant information, including, but not  
3 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.

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

16           Section 5. Section 916.33, Florida Statutes, is  
17 created to read:

18           916.33 Petition; time; contents.--When it appears that  
19 a person presently confined may be a sexually violent predator  
20 or it appears that a person who is not presently confined but  
21 who has previously been convicted of a sexually violent  
22 offense has committed a recent overt act and the state  
23 attorney has determined that the person meets the definition  
24 of a sexually violent predator, the state attorney may file a  
25 petition alleging that the person is a sexually violent  
26 predator and stating sufficient facts to support the  
27 allegation.

28           Section 6. Section 916.34, Florida Statutes, is  
29 created to read:

30           916.34 Determination of probable cause; evaluation;  
31 person taken into custody.--Upon the filing of a petition

1 under s. 916.33, the court shall make a nonadversary  
2 determination regarding whether the petition sets forth  
3 sufficient grounds to believe probable cause exists that the  
4 respondent is a sexually violent predator. If the court  
5 determines such probable cause exists, the court shall direct  
6 that the person be taken into custody if the person is not  
7 already in custody, or shall direct the agency with  
8 jurisdiction to transfer, if necessary, the person to an  
9 appropriate secure facility, including, but not limited to, a  
10 county jail, for an evaluation as to whether the person is a  
11 sexually violent predator. The evaluation shall be conducted  
12 by a person deemed to be professionally qualified to conduct  
13 such an examination.

14 Section 7. Section 916.35, Florida Statutes, is  
15 created to read:

16 916.35 Trial; counsel and experts; indigent persons;  
17 jury.--

18 (1) Within 45 days after the filing of a petition  
19 pursuant to s. 916.33, the court shall conduct a trial to  
20 determine whether the person is a sexually violent predator.  
21 The trial may be continued upon a showing of good cause by  
22 either party or by the court on its own motion in the due  
23 administration of justice and when the person will not be  
24 substantially prejudiced.

25 (2) At all adversary proceedings under this act, the  
26 person subject to this act shall be entitled to the assistance  
27 of counsel and, if the person is indigent, the court shall  
28 appoint the public defender or, if a conflict exists, other  
29 counsel to assist the person. Whenever any person is subjected  
30 to an examination under this act, the person may retain  
31 qualified professionals to perform an examination of the

1 person on his or her own behalf. When the person wishes to be  
2 examined by a qualified professional of his or her own choice,  
3 the examiner shall be permitted to have reasonable access to  
4 the person, for the purpose of the examination, and to all  
5 relevant medical and psychological records and reports. In the  
6 case of a person who is indigent, the court, upon the person's  
7 request, shall assist the person in obtaining a qualified  
8 professional to perform an examination or participate in the  
9 trial on the person's behalf and shall order reasonable  
10 compensation for such services as provided in s. 914.06.

11 (3) The person or the state attorney may demand, or  
12 the court on its own motion may order, that the trial be held  
13 before a jury of six persons. This demand for a trial by jury  
14 shall be filed, in writing, or the order entered, at least 4  
15 days before the trial. If no demand or order is made, the  
16 trial shall be held before the court.

17 Section 8. Section 916.36, Florida Statutes, is  
18 created to read:

19 916.36 Determination; commitment procedure;  
20 mistrials.--

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

25 (2) If the court or jury determines that the person is  
26 a sexually violent predator, the person shall be committed to  
27 the custody of the Department of Children and Family Services  
28 for control, care, and treatment until such time as the  
29 person's mental abnormality or personality disorder has so  
30 changed that the person is safe to be at large. Such control,  
31 care, and treatment shall be provided at a facility operated



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

7 (3) If the court or jury is not satisfied beyond a  
8 reasonable doubt that the person is a sexually violent  
9 predator, the court shall direct the person's release. If a  
10 mistrial is declared, the court shall direct that the person  
11 be held at an appropriate secure facility until another trial  
12 is conducted. Any subsequent trial following a mistrial must  
13 be held within 60 days after the previous trial.

14 (4) If a person charged with a sexually violent  
15 offense has been found incompetent to stand trial and is about  
16 to be released pursuant to s. 916.13 or s. 916.17 and such  
17 person's commitment is sought under subsection (2), the court  
18 shall first hear evidence and determine whether the person did  
19 commit the act or acts charged. The hearing on this issue must  
20 comply with all the procedures specified in this section. In  
21 addition, the rules of evidence applicable in criminal cases  
22 shall apply, and all constitutional rights available to  
23 defendants at a criminal trial, other than the right not to be  
24 tried while incompetent, shall apply. After hearing evidence  
25 on this issue, the court shall make specific findings on  
26 whether the person did commit the act or acts charged, the  
27 extent to which the person's incompetence or developmental  
28 disability affected the outcome of the hearing, including its  
29 effect on the person's ability to consult with and assist  
30 counsel and to testify on his or her own behalf, the extent to  
31 which the evidence could be reconstructed without the

1 assistance of the person, and the strength of the  
2 prosecution's case. If, after the conclusion of the hearing on  
3 this issue, the court finds beyond a reasonable doubt that the  
4 person did commit the act or acts charged, the court shall  
5 enter a final order, appealable by the person, on that issue  
6 and may proceed to consider whether the person should be  
7 committed pursuant to this section.

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

10 916.37 Annual examination.--Each person committed  
11 under s. 916.36 shall have an examination of his or her mental  
12 condition made once every year. The committed person may  
13 retain a qualified professional to examine such person, and  
14 the qualified professional shall have access to all records  
15 concerning the person. If the committed person is indigent and  
16 so requests, the court may appoint a qualified professional to  
17 examine the person. This yearly report shall be provided to  
18 the court that committed the person and to the state attorney.  
19 The court shall conduct an annual review of the status of the  
20 committed person.

21 Section 10. Section 916.38, Florida Statutes, is  
22 created to read:

23 916.38 Detention and commitment to conform to  
24 constitutional requirements.--The involuntary detention or  
25 commitment of persons under this act shall conform to  
26 constitutional requirements for care and treatment.

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

29 916.39 Petition for release; procedure.--

30 (1) If the Department of Children and Family Services  
31 determines that the mental abnormality or personality disorder

1 of a person committed as a sexually violent predator has so  
2 changed that the person is not likely to commit predatory acts  
3 of sexual violence if released, the department shall authorize  
4 the person to petition the court for release. The petition  
5 shall be served upon the court and the state attorney. The  
6 court, upon receipt of the petition for release, shall order a  
7 hearing within 30 days. The state attorney shall represent the  
8 state and shall have the right to have the committed person  
9 examined by a qualified professional of the state attorney's  
10 choice. The hearing shall be before a jury if demanded by  
11 either the committed person or the state attorney. The burden  
12 of proof shall be upon the state attorney to show beyond a  
13 reasonable doubt that the committed person's mental  
14 abnormality or personality disorder remains such that the  
15 person is not safe to be at large, and that, if discharged,  
16 the person is likely to commit predatory acts of sexual  
17 violence.

18 (2) A person committed as a sexually violent predator  
19 may petition the court for discharge without the approval of  
20 the Department of Children and Family Services. The department  
21 shall provide the committed person with an annual written  
22 notice of the person's right to petition the court for  
23 discharge over the department's objection. The notice shall  
24 contain a waiver of this right if the committed person does  
25 not choose to petition the court. The department shall forward  
26 the notice and signed waiver form or the committed person's  
27 petition to the court with the annual report. If the committed  
28 person files a petition for discharge over the department's  
29 objection, the court shall review the petition to determine  
30 whether there are reasonable grounds to support the petition.  
31 If the court finds that the petition is based upon frivolous

1 grounds, it shall deny the petition without a hearing. If the  
2 court finds that the petition is based on reasonable grounds,  
3 the court shall set a show-cause hearing to determine whether  
4 facts exist that warrant an adversary hearing on whether the  
5 committed person's condition has so changed that he or she is  
6 safe to be discharged. The committed person has the right to  
7 have an attorney present to represent the person at the  
8 show-cause hearing, but the committed person is not entitled  
9 to be present at the show-cause hearing. If the court at the  
10 show-cause hearing determines that probable cause exists to  
11 believe that the committed person's mental abnormality or  
12 personality disorder has so changed that the person is safe to  
13 be at large and will not likely engage in acts of sexual  
14 violence if discharged, then the court shall set an adversary  
15 hearing. At the adversary hearing, the committed person shall  
16 be entitled to be present and entitled to the benefit of all  
17 constitutional protections that the person was entitled to at  
18 the initial commitment proceeding. The state attorney shall  
19 represent the state and shall have a right to a trial by jury  
20 and to have the committed person evaluated by experts chosen  
21 by the state. The committed person shall also have the right  
22 to have experts evaluate the person on his or her own behalf,  
23 and the court shall appoint a qualified professional if the  
24 person is indigent and requests that an expert be appointed.  
25 The burden of proof at the hearing shall be upon the state  
26 attorney to prove beyond a reasonable doubt that the committed  
27 person's mental abnormality or personality disorder remains  
28 such that the person is not safe to be at large and if  
29 released is likely to engage in acts of sexual violence.  
30 (3) If a committed person has previously filed a  
31 petition for discharge without the approval of the Department

1 of Children and Family Services and the court determined upon  
2 review of the petition, or following a hearing, that the  
3 petition was frivolous or that the committed person's  
4 condition had not so changed that the person was safe to be at  
5 large, the court shall deny any subsequent petition unless the  
6 petition contains facts upon which a court could find the  
7 condition of the committed person had so changed that a  
8 hearing was warranted. Upon receipt of a first or subsequent  
9 petition from the committed person without the department's  
10 approval, the court shall review the petition and determine if  
11 the petition is based upon frivolous grounds and, if so, shall  
12 deny the petition without a hearing.

13           Section 12. Section 916.40, Florida Statutes, is  
14 created to read:

15           916.40 Department of Children and Family Services  
16 responsible for costs.--The Department of Children and Family  
17 Services is responsible for all costs relating to the  
18 evaluation and treatment of a person committed to the  
19 department's custody as a sexually violent predator under any  
20 provision of this act. Reimbursement may be obtained by the  
21 department for the cost of care and treatment of persons  
22 committed to the department's custody as provided by law.

23           Section 13. Section 916.41, Florida Statutes, is  
24 created to read:

25           916.41 Notice to victims of release of person  
26 committed as a sexually violent predator.--Prior to release of  
27 a committed person under this act, the Department of Children  
28 and Family Services shall give written notice of the release  
29 of a person committed as a sexually violent predator to any  
30 victim of the person's activities or crime who is alive and  
31 whose address is known to the department or, if the victim is

1 deceased, to the victim's next of kin, if the address of the  
2 next of kin is known to the department. Failure to notify is  
3 not a reason for postponement of the release. Nothing in this  
4 section creates a cause of action against the state or any  
5 employee of the state or agents or volunteers who help make  
6 this notification.

7           Section 14. Section 916.42, Florida Statutes, is  
8 created to read:

9           916.42 Severability.--If any provision of this act or  
10 the application thereof to any person or circumstance is held  
11 invalid, the invalidity shall not affect other provisions or  
12 applications of the act which can be given effect without the  
13 invalid provision or application, and to this end the  
14 provisions of this act are declared severable.

15           Section 15. Section 916.43, Florida Statutes, is  
16 created to read:

17           916.43 Confidential or privileged information and  
18 records.--In order to protect the public, relevant information  
19 and records that are held by a governmental entity or are  
20 otherwise confidential or privileged shall be released to the  
21 agency with jurisdiction or the state attorney for the purpose  
22 of meeting the notice requirement provided in s. 916.32 and  
23 determining whether a person is or continues to be a sexually  
24 violent predator. This section shall be part of and  
25 supplemental to the provisions of ss. 916.30-916.42.

26           Section 16. This act shall take effect January 1 after  
27 the year in which enacted.

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HOUSE SUMMARY

Establishes a procedure under which persons who meet the  
criteria for classification as sexually violent  
predators, but who do not qualify for hospitalization  
under the Baker Act, may be committed to the Department  
of Children and Family Services for treatment and care.  
See bill for details.