

By the Committee on Family Law & Children and
Representatives Villalobos, Murman, Fasano, Flanagan, Cosgrove
and Heyman

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 providing definitions; creating s. 916.32,
8 F.S.; requiring certain notice to the state
9 attorney and multidisciplinary team of
10 anticipated release of specified persons who
11 may meet the criteria for a sexually violent
12 predator; requiring the Secretary of Children
13 and Family Services to establish a
14 multidisciplinary team to assess the person
15 whose release is anticipated; requiring
16 provision of certain records and information by
17 the agency with jurisdiction to the state
18 attorney and multidisciplinary team; providing
19 certain immunity from liability of the agency
20 with jurisdiction, the state attorney, and
21 their employees and service providers;
22 prescribing duties of the multidisciplinary
23 team and guidelines and time limits relating to
24 assessment of the person and notice of the
25 assessment to the state attorney; creating s.
26 916.33, F.S.; providing for petition to have
27 such person declared a sexually violent
28 predator; creating s. 916.34, F.S.; providing
29 for determination of probable cause hearing,
30 taking respondent into custody, and transfer of
31 the respondent to a secure facility for

1 evaluation; providing guidelines and time
2 limits for notice to the respondent and holding
3 of the adversarial probable cause hearing;
4 providing for transfer of the respondent to a
5 secure facility for evaluation under specified
6 circumstances when the court finds probable
7 cause to believe that the respondent is a
8 sexually violent predator; creating s. 916.35,
9 F.S.; providing for trial on the issue of
10 whether a person is a sexually violent
11 predator; creating s. 916.36, F.S.; providing
12 for commitment of a person determined to be a
13 sexually violent predator; creating s. 916.37,
14 F.S.; requiring annual examination of persons
15 committed; creating s. 916.38, F.S.; requiring
16 detention and commitment to conform to
17 constitutional requirements; creating s.
18 916.39, F.S.; providing for petitions for
19 release; creating s. 916.40, F.S.; providing
20 that the Department of Children and Family
21 Services is responsible for specified
22 evaluation and treatment costs; providing for
23 reimbursement; providing for court orders for
24 certain disclosures to the department by the
25 committed person of income and assets;
26 providing for imposition and assessment of
27 certain financial liabilities for payment of
28 daily subsistence and treatment costs based on
29 specified criteria; providing for notice and
30 contest of the assessment; providing for
31 survival of the order directing payment against

1 the person's estate; creating s. 916.41, F.S.;
2 providing for notice to victims; creating s.
3 916.42, F.S.; providing severability; creating
4 s. 916.43, F.S.; providing for access to
5 certain records; providing an effective date.
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7 Be It Enacted by the Legislature of the State of Florida:
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9 Section 1. This act shall be known and may be cited as
10 the "Jimmy Ryce Involuntary Civil Commitment for Sexually
11 Violent Predators' Treatment and Care Act."

12 Section 2. Section 916.30, Florida Statutes, is
13 created to read:

14 916.30 Legislative findings and intent.--The
15 Legislature finds that a small but extremely dangerous number
16 of sexually violent predators exist who do not have a mental
17 disease or defect that renders them appropriate for
18 involuntary treatment under the Baker Act, ss.
19 394.451-394.4789, which is intended to provide short-term
20 treatment to individuals with serious mental disorders and
21 then return them to the community. In contrast to persons
22 appropriate for civil commitment under the Baker Act, sexually
23 violent predators generally have antisocial personality
24 features which are unamenable to existing mental illness
25 treatment modalities and those features render them likely to
26 engage in criminal, sexually violent behavior. The Legislature
27 further finds that the likelihood of sexually violent
28 predators engaging in repeat acts of predatory sexual violence
29 is high. The existing involuntary commitment procedures under
30 the Baker Act for the treatment and care of mentally ill
31 persons are inadequate to address the risk these sexually

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

10 Section 3. Section 916.31, Florida Statutes, is
11 created to read:

12 916.31 Definitions.--As used in ss. 916.30-916.43, the
13 term:

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

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

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

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1 (4) "Overt act" means any act that either causes harm
2 of a sexually violent nature or creates a reasonable
3 apprehension that such harm will occur.

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

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

9 (7) "Sexually violent offense" means:

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

12 (b) Sexual battery of any person in violation of s.
13 794.011;

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

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

18 (e) Purchasing or obtaining custody or control, or
19 offering to purchase or obtain custody or control, of a person
20 to engage in sexually explicit conduct as defined by s.
21 847.0145;

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

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

30 (h) Any act that either at the time of sentencing or
31 adjudication for the offense or subsequently during civil

1 commitment proceedings under this act has been determined
2 beyond a reasonable doubt to have been sexually motivated.

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

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

13 Section 4. Section 916.32, Florida Statutes, is
14 created to read:

15 916.32 Notice to state attorney and multidisciplinary
16 team of release of sexually violent predator; immunity from
17 liability; establishing multidisciplinary team.--

18 (1) When it appears that the person may meet the
19 criteria of a sexually violent predator, as defined in s.
20 916.31, the agency with jurisdiction shall give written notice
21 of that fact to the state attorney of the county and the
22 multidisciplinary team 180 days before:

23 (a) The anticipated release from total confinement
24 from the Department of Corrections or the Department of
25 Juvenile Justice of a person who has been convicted of a
26 sexually violent offense;

27 (b) The anticipated release of a person who has been
28 charged with a sexually violent offense and who has been
29 determined to be incompetent to stand trial under s. 916.12;

30 (c) The anticipated release of a person who has been
31 adjudicated not guilty by reason of insanity of a sexually

1 violent offense and involuntarily committed under s. 916.15;
2 or
3 (d) The anticipated release from a juvenile
4 delinquency commitment program of a person found to have
5 committed a sexually violent offense as a juvenile.
6 (2) The agency with jurisdiction shall provide to the
7 state attorney and the multidisciplinary team all relevant
8 information, including, but not limited to:
9 (a) The person's name, identifying factors,
10 anticipated future residence, and offense history.
11 (b) A complete copy of the institutional records
12 compiled by the agency with jurisdiction relating to the
13 person and any out-of-state correctional records, if
14 available.
15 (c) All records relating to the psychological or
16 psychiatric evaluation and treatment of the person.
17 (3) The agency with jurisdiction and the state
18 attorney, and their employees and individuals contracting,
19 appointed, or volunteering to perform services, are immune
20 from liability for any good-faith conduct under this section.
21 (4) The Secretary of Children and Family Services
22 shall establish a multidisciplinary team, which may include
23 individuals from other state agencies, to review available
24 records of each person about whom notice is to be referred to
25 a multidisciplinary team under subsection (1). The team,
26 within 30 days after receiving notice, shall assess whether or
27 not the person meets the definition of a "sexually violent
28 predator." The team shall provide the state attorney with its
29 written assessment within 60 days after receiving the notice.
30 Section 5. Section 916.33, Florida Statutes, is
31 created to read:

1 916.33 Petition; contents.--When it appears that a
2 person presently confined may be a sexually violent predator
3 or it appears that a person who is not presently confined but
4 who has previously been convicted of a sexually violent
5 offense has committed a recent overt act and the state
6 attorney has determined that the person meets the definition
7 of a "sexually violent predator," the state attorney may file
8 a petition alleging that the person is a sexually violent
9 predator and stating sufficient facts to support the
10 allegation.

11 Section 6. Section 916.34, Florida Statutes, is
12 created to read:

13 916.34 Determination of probable cause; hearing;
14 respondent taken into custody; evaluation.--

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

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

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

6 (4) If at the conclusion of the hearing the court
7 finds probable cause to believe that the respondent is a
8 sexually violent predator, the court shall direct that the
9 respondent be transferred to an appropriate secure facility,
10 including, but not limited to, a county jail, for an
11 evaluation as to whether the respondent is a sexually violent
12 predator. The evaluation shall be conducted by a person who
13 is professionally qualified to conduct 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 60 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 adversarial 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. Nothing contained in this act shall prohibit
21 the person from otherwise petitioning the court for discharge
22 at this hearing.

23 Section 10. Section 916.38, Florida Statutes, is
24 created to read:

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

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

31 916.39 Petition for release; procedure.--

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

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

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

3 (3) Nothing in this act shall prohibit a person from
4 filing a petition for discharge at any time. However, if a
5 committed person has previously filed a petition for discharge
6 without the approval of the Department of Children and Family
7 Services and the court determined upon review of the petition,
8 or following a hearing, that the petition was frivolous or
9 that the committed person's condition had not so changed that
10 the person was safe to be at large, the court shall deny any
11 subsequent petition unless the petition contains facts upon
12 which a court could find the condition of the committed person
13 had so changed that a hearing was warranted. Upon receipt of a
14 first or subsequent petition from the committed person without
15 the department's approval, the court shall review the petition
16 and determine if the petition is based upon frivolous grounds
17 and, if so, shall deny the petition without a hearing.

18 Section 12. Section 916.40, Florida Statutes, is
19 created to read:

20 916.40 Costs.--

21 (1) The Department of Children and Family Services is
22 responsible for all costs relating to the evaluation and
23 treatment of a person committed to the department's custody as
24 a sexually violent predator under any provision of this act.
25 Reimbursement may be obtained by the department for the cost
26 of care and treatment of persons committed to the department's
27 custody as provided by law.

28 (2) In recognition of the fact that persons committed
29 under this act may have sources of income and assets, which
30 may include bank accounts, inheritances, real estate, social
31 security payments, veteran's payments, and other types of

1 financial resources, and in recognition of the fact that the
2 daily subsistence costs and costs of treatment of persons
3 committed under this act are a burden on the taxpayers of the
4 state, each person so committed shall:

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

7 (b) Pay from such income and assets, except when the
8 income or asset is exempt by state or federal law, all or a
9 fair portion of the person's daily subsistence and treatment
10 costs, based upon the person's ability to pay, the liability
11 or potential liability of the person to the victim or the
12 guardian or the estate of the victim, and the needs of his or
13 her dependents.

14 (3)(a) Any person who is directed to pay all or a fair
15 portion of daily subsistence and treatment costs is entitled
16 to reasonable advance notice of the assessment and shall be
17 afforded an opportunity to present reasons for opposition to
18 the assessment.

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

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

24 916.41 Notice to victims of release of person
25 committed as a sexually violent predator.--Prior to release of
26 a committed person under this act, the Department of Children
27 and Family Services shall give written notice of the release
28 of a person committed as a sexually violent predator to any
29 victim of the person's activities or crime who is alive and
30 whose address is known to the department or, if the victim is
31 deceased, to the victim's next of kin, if the address of the

1 next of kin is known to the department. Failure to notify is
2 not a reason for postponement of the release. Nothing in this
3 section creates a cause of action against the state or any
4 employee of the state or any agent or volunteer who helps make
5 this notification.

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

8 916.42 Severability.--If any provision of this act or
9 the application thereof to any person or circumstance is held
10 invalid, the invalidity shall not affect other provisions or
11 applications of the act which can be given effect without the
12 invalid provision or application, and to this end the
13 provisions of this act are declared severable.

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

16 916.43 Confidential or privileged information and
17 records.--In order to protect the public, relevant information
18 and records that are held by a governmental entity or are
19 otherwise confidential or privileged shall be released to the
20 agency with jurisdiction or the state attorney for the purpose
21 of meeting the notice requirement provided in s. 916.32 and
22 determining whether a person is or continues to be a sexually
23 violent predator. This section shall be part of and
24 supplemental to the provisions of ss. 916.30-916.42.

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

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