

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 of anticipated release of specified
10 persons who may meet the criteria for a
11 sexually violent predator; requiring provision
12 of certain records and information by the
13 agency with jurisdiction to the state attorney;
14 providing certain immunity from liability of
15 the agency with jurisdiction, the state
16 attorney, and their employees and service
17 providers; creating s. 916.33, F.S.; providing
18 for petition to have such person declared a
19 sexually violent predator; creating s. 916.34,
20 F.S.; providing for determination of probable
21 cause and taking respondent into custody;
22 providing for transfer of the respondent to a
23 secure facility for evaluation under specified
24 circumstances when the court finds probable
25 cause to believe that the respondent is a
26 sexually violent predator; creating s. 916.35,
27 F.S.; providing for trial on the issue of
28 whether a person is a sexually violent
29 predator; creating s. 916.36, F.S.; providing
30 for commitment of a person determined to be a
31 sexually violent predator; creating s. 916.37,

1 F.S.; requiring annual examination of persons
2 committed; creating s. 916.38, F.S.; requiring
3 detention and commitment to conform to
4 constitutional requirements; creating s.
5 916.39, F.S.; providing for petitions for
6 release; creating s. 916.40, F.S.; providing
7 that the Department of Children and Family
8 Services is responsible for specified
9 evaluation and treatment costs; providing for
10 reimbursement; providing for court orders for
11 certain disclosures to the department by the
12 committed person of income and assets;
13 providing for imposition and assessment of
14 certain financial liabilities for payment of
15 daily subsistence and treatment costs based on
16 specified criteria; providing for notice and
17 contest of the assessment; providing for
18 survival of the order directing payment against
19 the person's estate; creating s. 916.41, F.S.;
20 providing for notice to victims; creating s.
21 916.42, F.S.; providing severability; creating
22 s. 916.43, F.S.; providing for access to
23 certain records; providing an effective date.
24

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

26
27 Section 1. This act shall be known and may be cited as
28 the "Jimmy Ryce Involuntary Civil Commitment for Sexually
29 Violent Predators' Treatment and Care Act."

30 Section 2. Section 916.30, Florida Statutes, is
31 created to read:

1 916.30 Legislative findings and intent.--The
2 Legislature finds that a small but extremely dangerous number
3 of sexually violent predators exist who do not have a mental
4 disease or defect that renders them appropriate for
5 involuntary treatment under the Baker Act, ss.
6 394.451-394.4789, which is intended to provide short-term
7 treatment to individuals with serious mental disorders and
8 then return them to the community. In contrast to persons
9 appropriate for civil commitment under the Baker Act, sexually
10 violent predators generally have antisocial personality
11 features which are unamenable to existing mental illness
12 treatment modalities and those features render them likely to
13 engage in criminal, sexually violent behavior. The Legislature
14 further finds that the likelihood of sexually violent
15 predators engaging in repeat acts of predatory sexual violence
16 is high. The existing involuntary commitment procedures under
17 the Baker Act for the treatment and care of mentally ill
18 persons are inadequate to address the risk these sexually
19 violent predators pose to society. The Legislature further
20 finds that the prognosis for rehabilitating sexually violent
21 predators in a prison setting is poor, the treatment needs of
22 this population are very long term, and the treatment
23 modalities for this population are very different than the
24 traditional treatment modalities for people appropriate for
25 commitment under the Baker Act. It is therefore the intent of
26 the Legislature to create a civil commitment procedure for the
27 long-term care and treatment of sexually violent predators.

28 Section 3. Section 916.31, Florida Statutes, is
29 created to read:

30 916.31 Definitions.--As used in ss. 916.30-916.43, the
31 term:

1 (1) "Agency with jurisdiction" means the agency with
2 the authority to direct the release of a person serving a
3 sentence in the custody of the Department of Corrections, a
4 person adjudicated delinquent and committed to the custody of
5 the Department of Juvenile Justice, or a person who was
6 involuntarily committed to the custody of the Department of
7 Children and Family Services upon an adjudication of not
8 guilty by reason of insanity.

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

12 (3) "Mental abnormality" means a congenital or
13 acquired condition affecting the emotional or volitional
14 capacity which predisposes the person to commit sexually
15 violent offenses in a degree such that the person constitutes
16 a menace to the health and safety of others.

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

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

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

25 (7) "Sexually violent offense" means:

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

28 (b) Sexual battery of any person in violation of s.
29 794.011;

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

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

3 (e) Purchasing or obtaining custody or control, or
4 offering to purchase or obtain custody or control, of a person
5 to engage in sexually explicit conduct as defined by s.
6 847.0145;

7 (f) Any conviction for a felony offense in effect at
8 any time before the effective date of this act that is
9 comparable to a sexually violent offense as defined in
10 paragraphs (a)-(e) or any federal conviction or conviction in
11 another state for a felony offense that in this state would be
12 a sexually violent offense;

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

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

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

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

29 Section 4. Section 916.32, Florida Statutes, is
30 created to read:

31

1 916.32 Notice to state attorney of release of sexually
2 violent predator; immunity from liability.--

3 (1) When it appears that the person may meet the
4 criteria of a sexually violent predator, as defined in s.
5 916.31, the agency with jurisdiction shall give written notice
6 of that fact to the state attorney of the county 180 days
7 before:

8 (a) The anticipated release from total confinement
9 from the Department of Corrections or the Department of
10 Juvenile Justice of a person who has been convicted of a
11 sexually violent offense;

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

15 (c) The anticipated release of a person who has been
16 adjudicated not guilty by reason of insanity of a sexually
17 violent offense and involuntarily committed under s. 916.15;
18 or

19 (d) The anticipated release from a juvenile
20 delinquency commitment program of a person found to have
21 committed a sexually violent offense as a juvenile.

22 (2) The agency with jurisdiction shall provide to the
23 state attorney all relevant information, including, but not
24 limited to:

25 (a) The person's name, identifying factors,
26 anticipated future residence, and offense history.

27 (b) A complete copy of the institutional records
28 compiled by the agency with jurisdiction relating to the
29 person and any out-of-state correctional records, if
30 available.

31

1 (c) All records relating to the psychological or
2 psychiatric evaluation and treatment of the person.

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

7 Section 5. Section 916.33, Florida Statutes, is
8 created to read:

9 916.33 Petition; contents.--When it appears that a
10 person presently confined may be a sexually violent predator
11 or it appears that a person who is not presently confined but
12 who has previously been convicted of a sexually violent
13 offense has committed a recent overt act and the state
14 attorney has determined that the person meets the definition
15 of a "sexually violent predator," the state attorney may file
16 a petition alleging that the person is a sexually violent
17 predator and stating sufficient facts to support the
18 allegation.

19 Section 6. Section 916.34, Florida Statutes, is
20 created to read:

21 916.34 Determination of probable cause; respondent
22 taken into custody; evaluation.--Upon the filing of a petition
23 under s. 916.33, the court shall make a nonadversarial
24 determination whether the petition sets forth sufficient
25 grounds to believe probable cause exists that the respondent
26 is a sexually violent predator. If the court finds probable
27 cause to believe that the respondent is a sexually violent
28 predator, the court shall direct that the respondent be taken
29 into custody and transferred to an appropriate secure
30 facility, for an evaluation as to whether the respondent is a
31 sexually violent predator. The evaluation shall be conducted

1 by a person who is professionally qualified to conduct such an
2 examination.

3 Section 7. Section 916.35, Florida Statutes, is
4 created to read:

5 916.35 Trial; counsel and experts; indigent persons;
6 jury.--

7 (1) Within 60 days after the filing of a petition
8 pursuant to s. 916.33, the court shall conduct a trial to
9 determine whether the person is a sexually violent predator.
10 The trial may be continued upon a showing of good cause by
11 either party or by the court on its own motion in the due
12 administration of justice and when the person will not be
13 substantially prejudiced.

14 (2) At all adversarial proceedings under this act, the
15 person subject to this act shall be entitled to the assistance
16 of counsel and, if the person is indigent, the court shall
17 appoint the public defender or, if a conflict exists, other
18 counsel to assist the person. Whenever any person is subjected
19 to an examination under this act, the person may retain
20 qualified professionals to perform an examination of the
21 person on his or her own behalf. When the person wishes to be
22 examined by a qualified professional of his or her own choice,
23 the examiner shall be permitted to have reasonable access to
24 the person, for the purpose of the examination, and to all
25 relevant medical and psychological records and reports. In the
26 case of a person who is indigent, the court, upon the person's
27 request, shall assist the person in obtaining a qualified
28 professional to perform an examination or participate in the
29 trial on the person's behalf and shall order reasonable
30 compensation for such services as provided in s. 914.06.

31

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

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

9 916.36 Determination; commitment procedure;
10 mistrials.--

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

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

28 (3) If the court or jury is not satisfied beyond a
29 reasonable doubt that the person is a sexually violent
30 predator, the court shall direct the person's release. If a
31 mistrial is declared, the court shall direct that the person

1 be held at an appropriate secure facility until another trial
2 is conducted. Any subsequent trial following a mistrial must
3 be held within 60 days after the previous trial.

4 (4) If a person charged with a sexually violent
5 offense has been found incompetent to stand trial and is about
6 to be released pursuant to s. 916.13 or s. 916.17 and such
7 person's commitment is sought under subsection (2), the court
8 shall first hear evidence and determine whether the person did
9 commit the act or acts charged. The hearing on this issue must
10 comply with all the procedures specified in this section. In
11 addition, the rules of evidence applicable in criminal cases
12 shall apply, and all constitutional rights available to
13 defendants at a criminal trial, other than the right not to be
14 tried while incompetent, shall apply. After hearing evidence
15 on this issue, the court shall make specific findings on
16 whether the person did commit the act or acts charged, the
17 extent to which the person's incompetence or developmental
18 disability affected the outcome of the hearing, including its
19 effect on the person's ability to consult with and assist
20 counsel and to testify on his or her own behalf, the extent to
21 which the evidence could be reconstructed without the
22 assistance of the person, and the strength of the
23 prosecution's case. If, after the conclusion of the hearing on
24 this issue, the court finds beyond a reasonable doubt that the
25 person did commit the act or acts charged, the court shall
26 enter a final order, appealable by the person, on that issue
27 and may proceed to consider whether the person should be
28 committed pursuant to this section.

29 Section 9. Section 916.37, Florida Statutes, is
30 created to read:
31

1 916.37 Annual examination.--Each person committed
2 under s. 916.36 shall have an examination of his or her mental
3 condition made once every year. The committed person may
4 retain a qualified professional to examine such person, and
5 the qualified professional shall have access to all records
6 concerning the person. If the committed person is indigent and
7 so requests, the court may appoint a qualified professional to
8 examine the person. This yearly report shall be provided to
9 the court that committed the person and to the state attorney.
10 The court shall conduct an annual review of the status of the
11 committed person. Nothing contained in this act shall prohibit
12 the person from otherwise petitioning the court for discharge
13 at this hearing.

14 Section 10. Section 916.38, Florida Statutes, is
15 created to read:

16 916.38 Detention and commitment to conform to
17 constitutional requirements.--The involuntary detention or
18 commitment of persons under this act shall conform to
19 constitutional requirements for care and treatment.

20 Section 11. Section 916.39, Florida Statutes, is
21 created to read:

22 916.39 Petition for release; procedure.--

23 (1) If the Department of Children and Family Services
24 determines that the mental abnormality or personality disorder
25 of a person committed as a sexually violent predator has so
26 changed that the person is not likely to commit predatory acts
27 of sexual violence if released, the department shall authorize
28 the person to petition the court for release. The petition
29 shall be served upon the court and the state attorney. The
30 court, upon receipt of the petition for release, shall order a
31 hearing within 30 days. The state attorney shall represent the

1 state and shall have the right to have the committed person
2 examined by a qualified professional of the state attorney's
3 choice. The hearing shall be before a jury if demanded by
4 either the committed person or the state attorney. The burden
5 of proof shall be upon the state attorney to show beyond a
6 reasonable doubt that the committed person's mental
7 abnormality or personality disorder remains such that the
8 person is not safe to be at large, and that, if discharged,
9 the person is likely to commit predatory acts of sexual
10 violence.

11 (2) A person committed as a sexually violent predator
12 may petition the court for discharge without the approval of
13 the Department of Children and Family Services. The department
14 shall provide the committed person with an annual written
15 notice of the person's right to petition the court for
16 discharge over the department's objection. The notice shall
17 contain a waiver of this right if the committed person does
18 not choose to petition the court. The department shall forward
19 the notice and signed waiver form or the committed person's
20 petition to the court with the annual report. If the committed
21 person files a petition for discharge over the department's
22 objection, the court shall review the petition to determine
23 whether there are reasonable grounds to support the petition.
24 If the court finds that the petition is based upon frivolous
25 grounds, it shall deny the petition without a hearing. If the
26 court finds that the petition is based upon reasonable
27 grounds, the court shall set a show cause hearing to determine
28 whether facts exist that warrant an adversarial hearing on
29 whether the committed person's condition has so changed that
30 he or she is safe to be discharged. The committed person has
31 the right to have an attorney present to represent the person

1 at the show cause hearing, but the committed person is not
2 entitled to be present at the show cause hearing. If the court
3 at the show cause hearing determines that probable cause
4 exists to believe that the committed person's mental
5 abnormality or personality disorder has so changed that the
6 person is safe to be at large and will not likely engage in
7 acts of sexual violence if discharged, then the court shall
8 set an adversarial hearing. At the adversarial hearing, the
9 committed person shall be entitled to be present and entitled
10 to the benefit of all constitutional protections that the
11 person was entitled to at the initial commitment proceeding.
12 The state attorney shall represent the state and shall have
13 the right to a trial by jury and to have the committed person
14 evaluated by experts chosen by the state. The committed person
15 shall also have the right to have experts evaluate the person
16 on his or her own behalf, and the court shall appoint a
17 qualified professional if the person is indigent and requests
18 that an expert be appointed. The burden of proof at the
19 hearing shall be upon the state attorney to prove beyond a
20 reasonable doubt that the committed person's mental
21 abnormality or personality disorder remains such that the
22 person is not safe to be at large and, if released, is likely
23 to engage in acts of sexual violence.

24 (3) Nothing in this act shall prohibit a person from
25 filing a petition for discharge at any time. However, if a
26 committed person has previously filed a petition for discharge
27 without the approval of the Department of Children and Family
28 Services and the court determined upon review of the petition,
29 or following a hearing, that the petition was frivolous or
30 that the committed person's condition had not so changed that
31 the person was safe to be at large, the court shall deny any

1 subsequent petition unless the petition contains facts upon
2 which a court could find the condition of the committed person
3 had so changed that a hearing was warranted. Upon receipt of a
4 first or subsequent petition from the committed person without
5 the department's approval, the court shall review the petition
6 and determine if the petition is based upon frivolous grounds
7 and, if so, shall deny the petition without a hearing.

8 Section 12. Section 916.40, Florida Statutes, is
9 created to read:

10 916.40 Costs.--

11 (1) The Department of Children and Family Services is
12 responsible for all costs relating to the evaluation and
13 treatment of a person committed to the department's custody as
14 a sexually violent predator under any provision of this act.
15 Reimbursement may be obtained by the department for the cost
16 of care and treatment of persons committed to the department's
17 custody as provided by law.

18 (2) In recognition of the fact that persons committed
19 under this act may have sources of income and assets, which
20 may include bank accounts, inheritances, real estate, social
21 security payments, veteran's payments, and other types of
22 financial resources, and in recognition of the fact that the
23 daily subsistence costs and costs of treatment of persons
24 committed under this act are a burden on the taxpayers of the
25 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 when the
29 income or asset is exempt by state or federal law, all or a
30 fair portion of the person's daily subsistence and treatment
31 costs, based upon the person's ability to pay, the liability

1 or 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 (3)(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 13. Section 916.41, Florida Statutes, is
13 created to read:

14 916.41 Notice to victims of release of person
15 committed as a sexually violent predator.--Prior to release of
16 a committed person under this act, the Department of Children
17 and Family Services shall give written notice of the release
18 of a person committed as a sexually violent predator to any
19 victim of the person's activities or crime who is alive and
20 whose address is known to the department or, if the victim is
21 deceased, to the victim's next of kin, if the address of the
22 next of kin is known to the department. Failure to notify is
23 not a reason for postponement of the release. Nothing in this
24 section creates a cause of action against the state or any
25 employee of the state or any agent or volunteer who helps make
26 this notification.

27 Section 14. Section 916.42, Florida Statutes, is
28 created to read:

29 916.42 Severability.--If any provision of this act or
30 the application thereof to any person or circumstance is held
31 invalid, the invalidity shall not affect other provisions or

1 applications of the act which can be given effect without the
2 invalid provision or application, and to this end the
3 provisions of this act are declared severable.

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

6 916.43 Confidential or privileged information and
7 records.--In order to protect the public, relevant information
8 and records that are held by a governmental entity or are
9 otherwise confidential or privileged shall be released to the
10 agency with jurisdiction or the state attorney for the purpose
11 of meeting the notice requirement provided in s. 916.32 and
12 determining whether a person is or continues to be a sexually
13 violent predator. This section shall be part of and
14 supplemental to the provisions of ss. 916.30-916.42.

15 Section 16. The Department of Children and Families
16 shall utilize existing facilities for this program, or may
17 contract with the Department of Corrections for facility and
18 security costs.

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

1 Section 18. This act shall take effect January 1 after
2 the year in which enacted.
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31