

1
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; monitoring contract
24 compliance; providing for appropriation of
25 funds; providing for 50 full-time equivalent
26 positions; providing an effective date.

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28 Be It Enacted by the Legislature of the State of Florida:
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1 Section 1. This act shall be known and may be cited as
2 the "Jimmy Ryce Involuntary Civil Commitment for Sexually
3 Violent Predators' Treatment and Care Act."

4 Section 2. Section 916.30, Florida Statutes, is
5 created to read:

6 916.30 Legislative findings and intent.--The
7 Legislature finds that a small but extremely dangerous number
8 of sexually violent predators exist who do not have a mental
9 disease or defect that renders them appropriate for
10 involuntary treatment under the Baker Act, ss.

11 394.451-394.4789, which is intended to provide short-term
12 treatment to individuals with serious mental disorders and
13 then return them to the community. In contrast to persons
14 appropriate for civil commitment under the Baker Act, sexually
15 violent predators generally have antisocial personality
16 features which are unamenable to existing mental illness
17 treatment modalities and those features render them likely to
18 engage in criminal, sexually violent behavior. The Legislature
19 further finds that the likelihood of sexually violent
20 predators engaging in repeat acts of predatory sexual violence
21 is high. The existing involuntary commitment procedures under
22 the Baker Act for the treatment and care of mentally ill
23 persons are inadequate to address the risk these sexually
24 violent predators pose to society. The Legislature further
25 finds that the prognosis for rehabilitating sexually violent
26 predators in a prison setting is poor, the treatment needs of
27 this population are very long term, and the treatment
28 modalities for this population are very different than the
29 traditional treatment modalities for people appropriate for
30 commitment under the Baker Act. It is therefore the intent of
31

1 the Legislature to create a civil commitment procedure for the
2 long-term care and treatment of sexually violent predators.

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

5 916.31 Legislative findings and intent.--The
6 Legislature finds that a small but extremely dangerous number
7 of sexually violent predators exist who do not have a mental
8 disease or defect that renders them appropriate for
9 involuntary treatment under the Baker Act, ss.
10 394.451-394.4789, which is intended to provide short-term
11 treatment to individuals with serious mental disorders and
12 then return them to the community. In contrast to persons
13 appropriate for civil commitment under the Baker Act, sexually
14 violent predators generally have antisocial personality
15 features which are unamenable to existing mental illness
16 treatment modalities and those features render them likely to
17 engage in criminal, sexually violent behavior. The Legislature
18 further finds that the likelihood of sexually violent
19 predators engaging in repeat acts of predatory sexual violence
20 is high. The existing involuntary commitment procedures under
21 the Baker Act for the treatment and care of mentally ill
22 persons are inadequate to address the risk these sexually
23 violent predators pose to society. The Legislature further
24 finds that the prognosis for rehabilitating sexually violent
25 predators in a prison setting is poor, the treatment needs of
26 this population are very long term, and the treatment
27 modalities for this population are very different than the
28 traditional treatment modalities for people appropriate for
29 commitment under the Baker Act. It is therefore the intent of
30 the Legislature to create a civil commitment procedure for the
31 long-term care and treatment of sexually violent predators.

1 Section 4. Section 916.32, Florida Statutes, is
2 created to read:

3 916.32 Definitions.--As used in ss. 916.30-916.49, the
4 term:

5 (1) "Agency with jurisdiction" means the agency that
6 releases, upon lawful order or authority, a person serving a
7 sentence in the custody of the Department of Corrections, a
8 person adjudicated delinquent and committed to the custody of
9 the Department of Juvenile Justice or a person who was
10 involuntarily committed to the custody of the Department of
11 Children and Family Services upon an adjudication of not
12 guilty by reason of insanity.

13 (2) "Convicted of a sexually violent offense" means a
14 person who has been:

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

17 (b) Adjudicated not guilty by reason of insanity of a
18 sexually violent offense; or

19 (c) Adjudicated delinquent of a sexually violent
20 offense after a trial, guilty plea, or plea of nolo
21 contendere.

22 (3) "Department" means the Department of Children and
23 Family Services.

24 (4) "Likely to engage in acts of sexual violence"
25 means the person's propensity to commit acts of sexual
26 violence is of such a degree as to pose a menace to the health
27 and safety of others.

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

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

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

7 (8) "Sexually violent offense" means:

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

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

12 1. Sexual battery; or

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

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

18 1. Sexual battery; or

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

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

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

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

26 (g) Any conviction for a felony offense in effect at
27 any time before October 1, 1998, which is comparable to a
28 sexually violent offense under paragraphs (a)-(f) or any
29 federal conviction or conviction in another state for a felony
30 offense that in this state would be a sexually violent
31 offense; or

1 (h) Any criminal act that, either at the time of
2 sentencing for the offense or subsequently during civil
3 commitment proceedings under ss. 916.30-916.49, has been
4 determined beyond a reasonable doubt to have been sexually
5 motivated.

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

7 (a) Has been convicted of a sexually violent offense;
8 and

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

13 (10) "Total confinement" means that the person is
14 currently being held in any physically secure facility being
15 operated or contractually operated for the Department of
16 Corrections, the Department of Juvenile Justice, or the
17 Department of Children and Family Services.

18 Section 5. Section 916.33, Florida Statutes, is
19 created to read:

20 916.33 Notice to state attorney and multidisciplinary
21 team of release of sexually violent predator; establishing
22 multidisciplinary team.--

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

29 (a) The anticipated release from total confinement of
30 a person who has been convicted of a sexually violent offense,
31 except that in the case of persons who have been returned to

1 confinement for no more than 90 days, written notice must be
2 given as soon as practicable following the person's return to
3 confinement; or

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

7 (2) The agency with jurisdiction shall provide the
8 multidisciplinary team with the following information:

9 (a) The person's name; identifying characteristics;
10 anticipated future residence; the type of supervision the
11 person will receive in the community, if any; and the person's
12 offense history; and

13 (b) Documentation of institutional adjustment and any
14 treatment received and, in the case of an adjudicated
15 delinquent committed to the Department of Juvenile Justice,
16 copies of the most recent performance plan and performance
17 summary.

18
19 The provisions of this section are not jurisdictional, and
20 failure to comply with them in no way prevents the state
21 attorney from proceeding against a person otherwise subject to
22 the provisions of ss. 916.30-916.49.

23 (3) The Secretary of Children and Family Services
24 shall establish a multidisciplinary team, which shall include
25 two licensed psychiatrists or psychologists, or one licensed
26 psychiatrist and one licensed psychologist, designated by the
27 Secretary of Children and Family Services. The Attorney
28 General's Office shall serve as legal counsel to the
29 multidisciplinary team. The team, within 45 days after
30 receiving notice, shall assess whether the person meets the

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1 definition of a sexually violent predator and provide the
2 state attorney with its written assessment and recommendation.

3 Section 6. Section 916.34, Florida Statutes, is
4 created to read:

5 916.34 Petition; time; contents.--Following receipt of
6 the written assessment and recommendation from the
7 multidisciplinary team, the state attorney in the judicial
8 circuit where the person committed the sexually violent
9 offense may file a petition with the circuit court alleging
10 that the person is a sexually violent predator and stating
11 facts sufficient to support such allegation.

12 Section 7. Section 916.35, Florida Statutes, is
13 created to read:

14 916.35 Determination of probable cause; hearing;
15 evaluation; respondent taken into custody; bail.--

16 (1) When the state attorney files a petition seeking
17 to have a person declared a sexually violent predator, the
18 judge shall determine whether probable cause exists to believe
19 that the person named in the petition is a sexually violent
20 predator. If the judge determines that there is probable cause
21 to believe that the person is a sexually violent predator, the
22 judge shall direct that the person be taken into custody and
23 held in an appropriate secure facility.

24 (2) Before the release from custody of a person whom
25 the multidisciplinary team recommends for civil commitment,
26 but after the state attorney files a petition under s. 916.33,
27 the state attorney may further petition the court for an
28 adversarial probable cause hearing. The person shall be
29 provided with notice of, and an opportunity to appear in
30 person at, an adversary hearing. At this hearing, the judge
31 shall:

1 (a) Receive evidence and hear argument from the person
2 and the state attorney; and

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

5 (3) At the probable cause hearing, the person has the
6 right to:

7 (a) Be represented by counsel;

8 (b) Present evidence;

9 (c) Cross-examine any witnesses who testify against
10 the person; and

11 (d) View and copy all petitions and reports in the
12 court file.

13 (4) If the court again concludes that there is
14 probable cause to believe that the person is a sexually
15 violent predator, the court shall direct that the person be
16 held in an appropriate secure facility in the county where the
17 petition was filed for an evaluation by a mental health
18 professional.

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

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

25 916.36 Trial; counsel and experts; indigent persons;
26 jury.--

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

30 (2) The trial may be continued upon the request of
31 either party and a showing of good cause, or by the court on

1 its own motion in the interests of justice, when the person
2 will not be substantially prejudiced.

3 (3) At all adversarial proceedings under this act, the
4 person subject to this act is entitled to the assistance of
5 counsel, and, if the person is indigent, the court shall
6 appoint the public defender or, if a conflict exists, other
7 counsel to assist the person.

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

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

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

27 916.37 Determination; commitment procedure; mistrials;
28 housing.--

29 (1) The court or jury shall determine by clear and
30 convincing evidence whether the person is a sexually violent
31 predator. If the determination is made by a jury, the decision

1 must be unanimous. If a majority of the jury finds that the
2 person is a sexually violent predator, but the decision is not
3 unanimous, the state attorney may refile the petition and
4 proceed according to the provisions of ss. 916.30-916.49. Any
5 retrial must occur within 90 days after the previous trial,
6 unless the subsequent proceeding is continued in accordance
7 with s. 916.36(2). The determination that a person is a
8 sexually violent predator may be appealed.

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

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

22 916.38 Examinations.--

23 (1) A person committed under ss. 916.30-916.49 shall
24 have an examination of his or her mental condition once every
25 year or more frequently at the court's discretion. The person
26 may retain or, if the person is indigent and so requests, the
27 court may appoint, a qualified professional to examine the
28 person. Such a professional shall have access to all records
29 concerning the person. The results of the examination shall be
30 provided to the court that committed the person under ss.

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1 916.30-916.49. Upon receipt of the report, the court shall
2 conduct a review of the person's status.

3 (2) The department shall provide the person with
4 annual written notice of the person's right to petition the
5 court for release over the objection of the director of the
6 facility where the person is housed. The notice must contain a
7 waiver of rights. The director of the facility shall forward
8 the notice and waiver form to the court.

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

19 (4) At the trial before the court, the person is
20 entitled to be present and is entitled to the benefit of all
21 constitutional protections afforded the person at the initial
22 trial, except for the right to a jury. The state attorney
23 shall represent the state and has the right to have the person
24 examined by professionals chosen by the state. At the hearing
25 the state bears the burden of proving, by clear and convincing
26 evidence, that the person's mental condition remains such that
27 it is not safe for the person to be at large and that, if
28 released, the person is likely to engage in acts of sexual
29 violence.

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

1 916.39 Authorized petition for release; procedure.--
2 (1) If the Secretary of Children and Family Services
3 or the secretary's designee at any time determines that the
4 person is not likely to commit acts of sexual violence if
5 conditionally discharged, the secretary or the secretary's
6 designee shall authorize the person to petition the court for
7 release. The petition shall be served upon the court and the
8 state attorney. The court, upon receipt of such a petition,
9 shall order a trial before the court within 30 days, unless
10 continued for good cause.

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

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

20 916.40 Petition for release.--Sections 916.30-916.49
21 do not prohibit a person from filing a petition for discharge
22 at any time. However, if the person has previously filed such
23 a petition without the approval of the Secretary of Children
24 and Family Services or the secretary's designee and the court
25 determined that the petition was without merit, a subsequent
26 petition shall be denied unless the petition contains facts
27 upon which a court could find that the person's condition has
28 so changed that a probable-cause hearing is warranted.

29 Section 13. Section 916.41, Florida Statutes, is
30 created to read:

31 916.41 Release of records to state attorney.--

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

7 (2) Psychological or psychiatric reports, drug and
8 alcohol reports, treatment records, medical records, or victim
9 impact statements that have been submitted to the court or
10 admitted into evidence under ss. 916.30-916.49 shall be part
11 of the record, but shall be sealed and may be opened only
12 pursuant to a court order.

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

15 916.42 Constitutional requirements.--The long-term
16 control, care, and treatment of a person committed under ss.
17 916.30-916.49 must conform to constitutional requirements.

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

20 916.43 Immunity from civil liability.--The agency with
21 jurisdiction and its officers and employees; the department
22 and its officers and employees; members of the
23 multidisciplinary team; the state attorney and the state
24 attorney's employees; and those involved in the evaluation,
25 care, and treatment of sexually violent persons committed
26 under ss. 916.30-916.49, are immune from any civil liability
27 for good-faith conduct under ss. 916.30-916.49.

28 Section 16. Section 916.44, Florida Statutes, is
29 created to read:

30 916.44 Severability.--If any section, subsection, or
31 provision of ss. 916.30-916.49 is held to be unconstitutional

1 or invalid by a court of competent jurisdiction, the remaining
2 portions of ss. 916.30-916.49 shall be unaffected because the
3 Legislature declares that the provisions of ss. 916.30-916.49
4 are severable from each other.

5 Section 17. Section 916.45, Florida Statutes, is
6 created to read:

7 916.45 Applicability of act.--Sections 916.30-916.49
8 apply to all persons currently in custody who have been
9 convicted of a sexually violent offense, as that term is
10 defined in s. 916.32(8), as well as to all persons convicted
11 of a sexually violent offense in the future.

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

14 916.46 Notice to victims of release of persons
15 committed as sexually violent predators.--As soon as is
16 practicable, the department shall give written notice of the
17 release of a person committed as a sexually violent predator
18 to any victim of the committed person who is alive and whose
19 address is known to the department or, if the victim is
20 deceased, to the victim's family, if the family's address is
21 known to the department. Failure to notify is not a reason for
22 postponement of release. This section does not create a cause
23 of action against the state or an employee of the state acting
24 within the scope of the employee's employment as a result of
25 the failure to notify pursuant to ss. 916.30-916.49.

26 Section 19. Section 916.47, Florida Statutes, is
27 created to read:

28 916.47 Escape while in lawful custody.--A person who
29 is held in lawful custody pursuant to a judicial finding of
30 probable cause under s. 916.35 or pursuant to a commitment as
31 a sexually violent predator under s. 916.36 and who escapes or

1 attempts to escape while in such custody commits a felony of
2 the second degree, punishable as provided in s. 775.082, s.
3 775.083, or s. 775.084.

4 Section 20. Section 916.48, Florida Statutes, is
5 created to read:

6 916.48 Subsistence fees and costs of treatment.--

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

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

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

24 (2)(a) Any person who is directed to pay all or a fair
25 portion of daily subsistence and treatment costs is entitled
26 to reasonable advance notice of the assessment and shall be
27 afforded an opportunity to present reasons for opposition to
28 the assessment.

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

1 Section 21. Section 916.49, Florida Statutes, is
2 created to read:

3 916.49 Department of Children and Family Services
4 responsible for costs.--The Department of Children and Family
5 Services is responsible for all costs relating to the
6 evaluation and treatment of persons committed to the
7 department's custody as sexually violent predators. A county
8 is not obligated to fund costs for psychological examinations,
9 expert witnesses, court-appointed counsel, or other costs
10 required by ss. 916.30-916.49. Other costs for psychological
11 examinations, expert witnesses, and court-appointed counsel
12 required by ss. 916.30-916.49 shall be paid from state funds
13 appropriated by general law.

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

22 Section 23. There is hereby appropriated from the
23 General Revenue Fund in a lump sum to the Department of
24 Children and Family Services the sum of \$4,900,000, of which
25 \$1,500,000 is from nonrecurring funds, and 50 full-time
26 equivalent positions and from the Grants and Donations Trust
27 Fund, \$1,500,000 to the Department of Corrections for the
28 purpose of carrying out the provisions of this act. From the
29 funds appropriated to the Department of Children and Family
30 Services, the department shall, at the counties' request,
31 reimburse counties for the cost of no more than one

1 examination of each person subject to this act, provided that
2 the department's reimbursement for each examination shall not
3 exceed the cost to the department for examinations that it
4 conducts of such persons.

5 Section 24. This act shall take effect January 1 after
6 the year in which enacted.

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