

By Senator Klein

28-5-98

1 A bill to be entitled
2 An act relating to sexually violent predators;
3 providing a short title; creating s. 916.30,
4 F.S.; providing findings and intent; creating
5 s. 916.31, F.S.; defining terms; creating s.
6 916.32, F.S.; requiring notice of release from
7 custody of a person alleged to be a sexually
8 violent predator; providing for evaluation of
9 such person; creating s. 916.33, F.S.;
10 providing for petition to have such person
11 declared a sexually violent predator; creating
12 s. 916.34, F.S.; providing for determination of
13 probable cause, hearings, taking such person
14 into custody; creating s. 916.35, F.S.;
15 providing for trial on issue of whether such
16 person is a sexually violent predator; creating
17 s. 916.36, F.S.; providing for commitment of a
18 person determined to be a sexually violent
19 predator; creating s. 916.37, F.S.; requiring
20 annual examination of persons committed;
21 creating s. 916.38, F.S.; requiring detention
22 and commitment to conform to constitutional
23 requirements; creating s. 916.39, F.S.;
24 providing for petitions for release; creating
25 s. 916.40, F.S.; requiring certain findings
26 before conditional release to a
27 less-restrictive form of treatment; creating s.
28 916.41, F.S.; authorizing conditional release
29 to a less-restrictive form of treatment;
30 creating s. 916.42, F.S.; requiring certain
31 findings before conditional release; providing

1 for conditions and annual review; authorizing
2 the Department of Children and Family Services
3 to enter into an agreement with the Department
4 of Corrections for supervising certain sexually
5 violent predators; creating s. 916.43, F.S.;
6 providing for revocation or modification of
7 less-restrictive treatment; creating s. 916.44,
8 F.S.; providing that the Department of Children
9 and Family Services is responsible for costs;
10 creating s. 916.45, F.S.; providing for notice
11 to victims; creating s. 916.46, F.S.; providing
12 for access to certain records; amending s.
13 775.084, F.S.; redefining the term "habitual
14 violent felony offender" to include a defendant
15 convicted of certain acts of lewd, lascivious,
16 or indecent conduct; providing severability;
17 providing an effective date.

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

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21 Section 1. Sections 916.30-916.46 may be cited as "The
22 Sexually Violent Predator Act."

23 Section 2. Section 916.30, Florida Statutes, is
24 created to read:

25 916.30 Legislative findings and intent.--The
26 Legislature finds that a small but extremely dangerous number
27 of sexually violent predators exist who do not have a mental
28 disease or defect that renders them appropriate for
29 involuntary treatment under the "Baker Act," ss.
30 394.453-394.4788, which is intended to provide short-term
31 hospital treatment to individuals with serious mental

1 disorders and then return them to the community. In contrast
2 to persons appropriate for commitment under the Baker Act,
3 sexually violent predators generally have antisocial
4 personality features that are unamenable to existing mental
5 illness treatment modalities, and those features render them
6 likely to engage in criminal sexually violent behavior. The
7 Legislature further finds that the likelihood of sexually
8 violent predators engaging in repeat acts of predatory sexual
9 violence is high. The existing procedures under the Baker Act
10 for involuntary commitment and treatment for mentally ill
11 persons are inadequate to address the risk these sexually
12 violent predators pose to society. The Legislature further
13 finds that the prognosis for rehabilitating sexually violent
14 predators in a prison setting is poor, that this population
15 requires long-term treatment, and that the treatment
16 modalities for this population are very different from the
17 traditional treatment modalities for people appropriate for
18 commitment under the Baker Act. It is therefore the intent of
19 the Legislature to create a civil commitment procedure for the
20 long-term care and treatment of sexually violent predators.

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

23 916.31 Definitions.--As used in ss. 916.30-916.46, the
24 term:

25 (1) "Agency with jurisdiction" means the agency that
26 releases upon lawful order or authority a person serving a
27 sentence in the custody of the Department of Corrections, a
28 person adjudicated delinquent and committed to the custody of
29 the Department of Juvenile Justice, or a person who was
30 involuntarily committed to the custody of the Department of

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1 Children and Family Services upon an adjudication of "not
2 guilty by reason of insanity".

3 (2) "Court" means the circuit court that most recently
4 sentenced the sexually violent offender in a criminal case or
5 the circuit court in the location where the sexually violent
6 offender resides or proposes to reside upon release from
7 custody or commitment.

8 (3) "Less-restrictive alternative" means court-ordered
9 treatment in a setting less restrictive than total
10 confinement.

11 (4) "Likely to engage in predatory acts of sexual
12 violence" means that the person more probably than not will
13 engage in such acts. Such likelihood must be evidenced by a
14 recent overt act if the person is not totally confined at the
15 time the petition is filed under s. 916.33.

16 (5) "Mental abnormality" means a congenital or
17 acquired condition affecting the emotional or volitional
18 capacity which predisposes the person to commit sexually
19 violent offenses constituting a menace to the health and
20 safety of others.

21 (6) "Predatory" means that acts were directed towards
22 strangers or individuals with whom relationships have been
23 established or promoted for the primary purpose of
24 victimization.

25 (7) "Recent overt act" means any act that has either
26 caused harm of a sexually violent nature or creates a
27 reasonable apprehension of such harm.

28 (8) "Respondent" means the person alleged to be a
29 sexually violent offender in a petition filed by the state
30 attorney.

31 (9) "Sexually violent offense" means:

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

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

5 1. Sexual battery; or

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

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

11 1. Sexual battery; or

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

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

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

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

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

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

30 (10) "Sexually violent predator" means any person who
31 has been convicted of a sexually violent offense and who

1 suffers from a mental abnormality or personality disorder that
2 makes the person likely to engage in predatory acts of sexual
3 violence if not confined in a secure facility.

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

6 916.32 Notice to state attorney and multidisciplinary
7 team of release of sexually violent predator; immunity from
8 liability; establishing multidisciplinary team.--

9 (1) When it appears that the person may meet the
10 criteria of a sexually violent predator, the agency with
11 jurisdiction shall give written notice of that fact to the
12 state attorney of the circuit where that person was last
13 convicted of a sexually violent offense and to the
14 multidisciplinary team established under subsection (4) 90
15 days before:

16 (a) The anticipated discharge from the custody of the
17 Department of Corrections of a person who has been convicted
18 of a sexually violent offense;

19 (b) 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; or

22 (c) The anticipated release of a person who has been
23 adjudicated not guilty by reason of insanity of a sexually
24 violent offense and involuntarily committed under s. 916.15.

25 (2) The agency with jurisdiction shall provide the
26 state attorney and multidisciplinary team all relevant
27 information, including, but not limited to:

28 (a) The person's name, identifying factors,
29 anticipated future residence, and offense history;

30 (b) A complete copy of the institutional records
31 compiled by the agency with jurisdiction relating to the

1 person and any out-of-state correctional records, if
2 available;

3 (c) All records relating to the psychological or
4 psychiatric evaluation and treatment of the person; and

5 (d) A current mental health evaluation or mental
6 health records review.

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

11 (4) The Secretary of Children and Family Services
12 shall establish a multidisciplinary team, which may include
13 individuals from other state agencies, to review available
14 records of each person referred to such team under subsection
15 (1). The team, within 30 days after receiving notice, shall
16 assess whether or not the person meets the definition of a
17 sexually violent predator. The team shall provide the state
18 attorney with its written assessment within 60 days after it
19 receives notice.

20 Section 5. Section 916.33, Florida Statutes, is
21 created to read:

22 916.33 Petition; time; contents.--When the
23 multidisciplinary team determines that a person presently
24 confined meets the definition of a sexually violent predator,
25 or when it appears that a person who is not presently confined
26 but who has previously been convicted of a sexually violent
27 offense has committed a recent overt act and the state
28 attorney has determined that the person meets the definition
29 of a sexually violent predator, the state attorney may file a
30 petition alleging that the person is a sexually violent

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1 predator. The petition must state sufficient facts to support
2 such allegation.

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

5 916.34 Determination of probable cause; hearing;
6 evaluation; respondent taken into custody.--

7 (1) Upon the filing of a petition under s. 916.33, the
8 court shall make a nonadversary determination whether the
9 petition sets forth sufficient grounds to believe that
10 probable cause exists that the respondent is a sexually
11 violent predator. If a preliminary determination of probable
12 cause is made, the court shall direct that the respondent be
13 taken into custody and held in the county jail or detention
14 facility in the county where the petition was filed.

15 (2) Within 72 hours after a respondent is taken into
16 custody under subsection (1), the respondent shall be provided
17 with notice of, and an opportunity to appear in person at, an
18 adversary probable-cause hearing. At this hearing, the court
19 shall verify the respondent's identity and find whether
20 probable cause exists to believe that the respondent is a
21 sexually violent predator. The state may rely upon the
22 petition and supplement the petition with additional evidence
23 or live testimony.

24 (3) At the adversary probable-cause hearing, the
25 respondent shall have the right to be represented by counsel,
26 to present evidence on the respondent's behalf, to
27 cross-examine witnesses, and to view and copy all petitions
28 and reports in the court file.

29 (4) If at the conclusion of the hearing the court
30 finds probable cause to believe that the respondent is a
31 sexually violent predator, the court shall direct that the

1 respondent continue to be held in custody at the county jail
2 or detention facility pending an evaluation as to whether the
3 respondent is a sexually violent predator. The evaluation
4 shall be conducted by a person who is professionally qualified
5 to conduct such an examination.

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

8 916.35 Trial; counsel and experts; indigent persons;
9 jury.--

10 (1) Within 60 days after the completion of an
11 adversary probable-cause hearing, the court shall conduct a
12 trial to determine whether the respondent is a sexually
13 violent predator. The trial may be continued upon a showing of
14 good cause by either party, or by the court on its own motion
15 in the due administration of justice and when the respondent
16 will not be substantially prejudiced.

17 (2) Beginning with the adversary probable-cause
18 hearing, a respondent is entitled to the assistance of counsel
19 at all stages of the proceedings, and, if the respondent is
20 indigent, the court shall appoint the public defender or, if a
21 conflict exists, other counsel to represent the respondent.
22 Whenever a respondent is subjected to an examination under
23 this section, the respondent may retain experts or
24 professional persons to perform an examination on his or her
25 own behalf. When the respondent wishes to be examined by a
26 qualified expert or professional person of the respondent's
27 choice, such examiner shall have reasonable access to the
28 respondent for the purpose of performing the examination, as
29 well as to all relevant medical and psychological records and
30 reports. In the case of a respondent who is indigent, the
31 court, upon the respondent's request and upon a finding that

1 expert services are necessary, shall order reasonable
2 compensation for such services as provided in s. 914.06.

3 (3) The respondent or the state attorney may demand,
4 or the court on its own motion may order, that the trial be
5 before a jury of six persons. Such demand for a jury trial
6 shall be filed, in writing, or such order entered, at least 4
7 days before the trial. If no demand or order is made, the
8 trial shall be before the court.

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

11 916.36 Determination; commitment procedure;
12 interagency agreements; mistrials.

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

17 (2) When the court or jury determines that the
18 respondent is a sexually violent predator, the respondent
19 shall be committed to the custody of the Department of
20 Children and Family Services for control, care, and treatment
21 until such time as the respondent's mental abnormality or
22 personality disorder has so improved that it is safe for the
23 respondent is safe to be at large or to be placed in a
24 less-restrictive alternative under s. 916.40. Such control,
25 care, and treatment shall be provided at a facility operated
26 by the Department of Children and Family Services. At all
27 times, sexually violent predators who are committed for
28 control, care, and treatment by the Department of Children and
29 Family Services under this section shall be kept in a secure
30 facility segregated from persons who are serving criminal
31 sentences.

1 (3) If the court or jury is not satisfied beyond a
2 reasonable doubt that the person is a sexually violent
3 predator, the court shall direct the person's release. If a
4 mistrial is declared, the court shall direct that the person
5 be held at the county jail or detention facility until another
6 trial is conducted. Any subsequent trial following a mistrial
7 must be held within 90 days after the previous trial unless
8 such subsequent trial is continued as provided in the Florida
9 Rules of Criminal Procedure.

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

12 916.37 Annual examinations.--Each sexually violent
13 predator committed under s. 916.36 shall have an examination
14 of his or her mental condition made annually. The report shall
15 include consideration of whether conditional release to a
16 less-restrictive alternative is in the best interest of the
17 person and will adequately protect the community. The
18 committed person may retain a qualified professional person to
19 examine such person, and the expert or professional person
20 shall have access to all records concerning the person. If the
21 committed person is indigent and so requests, the court may
22 appoint a qualified professional person to examine the person.
23 The yearly report shall be provided to the court that
24 committed the person and to the state attorney. The court
25 shall conduct an annual review of the status of the committed
26 person.

27 Section 10. Section 916.38, Florida Statutes, is
28 created to read:

29 916.38 Detention and commitment to conform to
30 constitutional requirements.--The involuntary detention or
31 commitment of sexually violent predators must conform to

1 constitutional requirements for care and treatment of persons
2 who are involuntarily committed under civil commitment laws.

3 Section 11. Section 916.39, Florida Statutes, is
4 created to read:

5 916.39 Petition for release; procedure.--

6 (1) If the Department of Children and Family Services
7 determines that the mental abnormality or personality disorder
8 of a person committed as a sexually violent predator has so
9 improved that the person is not likely to commit predatory
10 acts of sexual violence if conditionally released to a
11 less-restrictive alternative or unconditionally discharged,
12 the department shall so notify the committing court and the
13 state attorney. The court, upon receipt of the department's
14 notification that the person is not likely to commit predatory
15 acts of sexual violence if conditionally released to a
16 less-restrictive alternative or unconditionally discharged,
17 shall order a hearing within 45 days. The state attorney shall
18 represent the state and shall have the right to have the
19 committed person examined by an expert of the state attorney's
20 choice. The hearing shall be before a jury if demanded by
21 either the committed person or the state attorney. The burden
22 of proof shall be upon the state attorney to show beyond a
23 reasonable doubt that the committed person's mental
24 abnormality or personality disorder remains such that the
25 person is not safe to be at large and that if discharged is
26 likely to commit predatory acts of sexual violence.

27 (2) At any time, a person committed as a sexually
28 violent predator may petition the court for conditional
29 release to a less-restrictive alternative or unconditional
30 discharge without the approval of the Department of Children
31 and Family Services. The department shall provide the

1 committed person with an annual written notice of the person's
2 right to petition the court for conditional release to a
3 less-restrictive alternative or unconditional discharge over
4 the department's objection. The notice must contain a waiver
5 of rights. The department shall forward the notice and waiver
6 form to the court with the annual report. If the person files
7 a petition for conditional release to a less-restrictive
8 alternative or unconditional discharge over the department's
9 objection, the court shall review the petition to determine
10 whether there are reasonable grounds to support the petition.
11 If the court finds that the petition is based upon frivolous
12 grounds, it shall deny the petition without a hearing. If the
13 court finds that the petition is based upon reasonable
14 grounds, the court shall set a show-cause hearing to determine
15 whether facts exist that warrant an adversary hearing on
16 whether the committed person's condition has so improved that
17 it is safe for that person to be conditionally released to a
18 less-restrictive alternative or to be unconditionally
19 discharged. The committed person has the right to have an
20 attorney represent him or her at the show-cause hearing, but
21 the person is not entitled to be present at the show-cause
22 hearing. If the court at the show-cause hearing determines
23 that probable cause exists to believe that the committed
24 person's mental abnormality or personality disorder has so
25 improved that the person is not likely to engage in predatory
26 acts of sexual violence if conditionally released to a
27 less-restrictive alternative or unconditionally discharged,
28 the court shall set an adversary hearing on the issue. At the
29 adversary hearing, the committed person shall be entitled to
30 be present and to the benefit of all constitutional
31 protections that were afforded to the person at the initial

1 commitment proceeding. The state attorney shall represent the
2 state and shall have a right to a jury trial and to have the
3 committed person evaluated by experts chosen by the state. The
4 committed person shall also have the right to have experts
5 evaluate him or her on his or her behalf, and the court shall
6 appoint an expert if the person is indigent and requests an
7 appointment. The burden of proof at the hearing shall be upon
8 the state attorney to prove beyond a reasonable doubt that the
9 committed person's mental abnormality or personality disorder
10 remains such that the person is likely to engage in predatory
11 acts of sexual violence if conditionally released to a
12 less-restrictive alternative or unconditionally discharged.

13 (3) If a committed person has previously filed a
14 petition for release to a less-restrictive alternative or for
15 unconditional discharge without the approval of the Department
16 of Children and Family Services and the court determined upon
17 review of the petition, or following a hearing, that the
18 petition was frivolous or that the committed person's
19 condition had not so improved that it was safe for the person
20 to be at large, the court shall deny any subsequent petition
21 unless the petition contains facts upon which a court could
22 find that the condition of the petitioner had so improved that
23 a hearing was warranted.

24 (4) The jurisdiction of the court over a person
25 committed as a sexually violent predator continues until such
26 time as the person is unconditionally discharged.

27 Section 12. Section 916.40, Florida Statutes, is
28 created to read:

29 916.40 Conditional release to less-restrictive
30 alternative; findings.--Before the court may enter an order
31 directing conditional release to a less-restrictive

1 alternative for a person committed as a sexually violent
2 predator, it must find the following:

3 (1) The person will be treated by a treatment provider
4 who is qualified in this state to provide such treatment;

5 (2) The treatment provider has presented a specific
6 course of treatment, has agreed to assume responsibility for
7 such treatment, has agreed to report progress to the court
8 regularly, and will report violations immediately to the
9 court, the state attorney, and the sheriff of the county where
10 the less-restrictive alternative is located;

11 (3) Housing exists that is sufficiently secure to
12 protect the community and the person, and the treatment
13 provider has agreed in writing to accept the person and to
14 provide the level of security required by the court and
15 immediately to report to the court, the state attorney, and
16 the sheriff if the person leaves the housing to which he or
17 she has been assigned without authorization;

18 (4) The person is willing to comply with the course of
19 treatment presented by the treatment provider and all
20 requirements imposed by the treatment provider and by the
21 court; and

22 (5) The person is willing to comply with all
23 supervision requirements imposed by the court.

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

26 916.41 Conditional release to less restrictive
27 alternative.--

28 (1) Upon the conclusion of the evidence in an
29 adversary hearing held under s. 916.39, if the court finds
30 that there is no legally sufficient evidentiary basis for a
31 reasonable jury to find that the conditions set forth in s.

1 916.40 have been met, the court shall grant a motion by the
2 state for a judgment as a matter of law on the issue of
3 conditional release to a less-restrictive alternative.

4 (2) Whenever the issue of conditional release to a
5 less-restrictive alternative is submitted to the jury, the
6 court shall instruct the jury to return a verdict in
7 substantially the following form: Has the state proved beyond
8 a reasonable doubt that the proposed less-restrictive
9 alternative is not in the best interests of (name of the
10 committed person) or will not adequately protect the
11 community? Answer: Yes or No.

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

14 916.42 Conditional release to less-restrictive
15 environment; judgment; conditions; annual review.--

16 (1) If the court or jury determines that conditional
17 release to a less-restrictive alternative is in the best
18 interest of the committed person and will adequately protect
19 the community and the court determines that the minimum
20 conditions set forth in s. 916.40 are met, the court shall
21 enter judgment and direct a conditional release.

22 (2) The court shall impose any additional conditions
23 necessary to ensure compliance with treatment and to protect
24 the community. If the court finds that conditions do not exist
25 that will both ensure compliance by the committed person with
26 treatment and protect the community, the person shall be
27 remanded to the custody of the Department of Children and
28 Family Services for control, care, and treatment in a secure
29 facility.

30 (3) If the service provider designated to provide
31 inpatient or outpatient treatment or to monitor or supervise

1 any other terms and conditions of a committed person's
2 placement in a less-restrictive alternative is other than the
3 Department of Children and Family Services or the Department
4 of Corrections, the service provider so designated must agree
5 in writing to provide such treatment.

6 (4) Before authorizing any release to a
7 less-restrictive alternative, the court shall impose such
8 conditions upon the committed person as are necessary to
9 ensure the safety of the community. The court shall order the
10 Department of Children and Family Services to investigate the
11 less-restrictive alternative and recommend any additional
12 conditions to the court. Conditions shall include, but are not
13 limited to, the following: specification of residence,
14 prohibition of contact with potential or past victims,
15 prohibition of alcohol and other drug use, participation in a
16 specific course of inpatient or outpatient treatment that may
17 include monitoring by the use of polygraph and plethysmograph,
18 community supervision, a requirement that the person remain
19 within the state unless he or she receives prior authorization
20 by the court, and any additional conditions that the court
21 determines are in the best interest of the person or of
22 others. A copy of the conditions of release shall be given to
23 the conditionally released person and to any designated
24 service providers.

25 (5) Any service provider designated to provide
26 inpatient or outpatient treatment shall monthly, or as
27 otherwise directed by the court, submit to the court, to the
28 Department of Children and Family Services facility from which
29 the committed person was released, and to the state attorney
30 of the county in which the person was found to be a sexually
31 violent predator a report stating whether the person is

1 complying with the terms and conditions of the conditional
2 release to a less-restrictive alternative.

3 (6) Each committed person released to a
4 less-restrictive alternative shall have his or her case
5 reviewed by the court that released him or her no later than 1
6 year after such release and annually thereafter until the
7 person is unconditionally discharged. Review may occur more
8 frequently if the court, in its discretion on its own motion
9 or on motion of the conditionally released person, the
10 Department of Children and Family Services, or the state
11 attorney, so determines. The sole question to be determined by
12 the court is whether the person shall continue to be
13 conditionally released to a less-restrictive alternative. The
14 court in making its determination shall be aided by the
15 periodic reports filed pursuant to subsection (5) and the
16 opinions of experts from the Department of Children and Family
17 Services and of other experts.

18 (7) The Department of Children and Family Services may
19 enter into an interagency agreement with the Department of
20 Corrections for the supervision of sexually violent predators
21 who have been released to a less-restrictive alternative.

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

24 916.43 Conditional release to less-restrictive
25 alternative; hearing on revocation or modification; authority
26 to apprehend conditionally released person.--

27 (1) Any service provider or the state attorney may
28 petition the court, or the court on its own motion may
29 schedule an immediate hearing, for the purpose of revoking or
30 modifying the terms of a person's conditional release to a
31 less-restrictive alternative if the petitioner or the court

1 believes the conditionally released person is not complying
2 with the terms and conditions of his or her release or is in
3 need of additional care and treatment.

4 (2) If the state attorney or the court, based upon
5 information received by them, reasonably believes that a
6 conditionally released person is not complying with the terms
7 and conditions of his or her conditional release to a
8 less-restrictive alternative, the court may order that the
9 conditionally released person be apprehended and taken into
10 custody until a hearing is held to determine the facts and
11 whether or not the person's conditional release should be
12 revoked or modified. The court shall be notified of the
13 person's apprehension before the close of the next judicial
14 day following the apprehension. Both the state attorney and
15 the conditionally released person have the right to request an
16 immediate mental examination of the conditionally released
17 person. If the conditionally released person is indigent, the
18 court shall, upon request, assist him or her in obtaining a
19 qualified expert or professional person to conduct the
20 examination.

21 (3) The court, upon receiving notification of the
22 conditionally released person's apprehension, shall promptly
23 schedule a hearing. The issue to be determined is whether the
24 state has proven by a preponderance of the evidence that the
25 conditionally released person did not comply with the terms
26 and conditions of his or her release. Hearsay evidence is
27 admissible if the court finds it to be otherwise reliable. At
28 the hearing, the court shall determine whether the person
29 shall continue to be conditionally released on the same or
30 modified conditions or whether his or her conditional release

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1 shall be revoked and he or she shall be committed to total
2 confinement.

3 Section 16. Section 916.44, Florida Statutes, is
4 created to read:

5 916.44 Department of Children and Family Services
6 responsible for costs.--The Department of Children and Family
7 Services is responsible for all costs relating to the
8 evaluation and treatment of persons committed to the
9 department's custody as sexually violent predators.

10 Section 17. Section 916.45, Florida Statutes, is
11 created to read:

12 916.45 Notice to victims of release of persons
13 committed as sexually violent predators.--As soon as is
14 practicable, the Department of Children and Family Services
15 shall give written notice of the release of a person committed
16 as a sexually violent predator to any victim of the committed
17 person who is alive and whose address is known to the
18 department or, if the victim is deceased, to the victim's
19 family, if the family's address is known to the department.
20 Failure to notify is not a reason for postponement of release.
21 Nothing in this section creates a cause of action against the
22 state or an employee of the state acting within the scope of
23 the employee's employment as a result of the failure to notify
24 pursuant to this action.

25 Section 18. Section 916.46, Florida Statutes, is
26 created to read:

27 916.46 Confidential or privileged information and
28 records.--In order to protect the public, relevant information
29 and records that are held by a governmental entity and are
30 otherwise confidential or privileged shall be released to the
31 agency with jurisdiction or the state attorney for the purpose

1 of meeting the notice requirement provided in s. 916.32 and
2 determining whether a person is or continues to be a sexually
3 violent predator. This section shall be part of and
4 supplemental to the provisions of ss. 916.30-916.45.

5 Section 19. Paragraph (b) of subsection (1) of section
6 775.084, Florida Statutes, is amended to read:

7 775.084 Violent career criminals; habitual felony
8 offenders and habitual violent felony offenders; definitions;
9 procedure; enhanced penalties.--

10 (1) As used in this act:

11 (b) "Habitual violent felony offender" means a
12 defendant for whom the court may impose an extended term of
13 imprisonment, as provided in paragraph (4)(b), if it finds
14 that:

15 1. The defendant has previously been convicted of a
16 felony or an attempt or conspiracy to commit a felony and one
17 or more of such convictions was for:

- 18 a. Arson;
19 b. Sexual battery;
20 c. Robbery;
21 d. Kidnapping;
22 e. Aggravated child abuse;
23 f. Aggravated abuse of an elderly person or disabled
24 adult;
25 g. Aggravated assault;
26 h. Murder;
27 i. Manslaughter;
28 j. Aggravated manslaughter of an elderly person or
29 disabled adult;
30 k. Aggravated manslaughter of a child;

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1 1. Unlawful throwing, placing, or discharging of a
2 destructive device or bomb;
3 m. Armed burglary;
4 n. Aggravated battery; ~~or~~
5 o. Aggravated stalking; ~~or~~
6 p. Lewd, lascivious, or indecent conduct, as described
7 in s. 800.04.

8 2. The felony for which the defendant is to be
9 sentenced was committed:

10 a. While the defendant was serving a prison sentence
11 or other commitment imposed as a result of a prior conviction
12 for an enumerated felony; or

13 b. Within 5 years of the date of the conviction of the
14 last prior enumerated felony, or within 5 years of the
15 defendant's release from a prison sentence or other commitment
16 imposed as a result of a prior conviction for an enumerated
17 felony, whichever is later.

18 3. The defendant has not received a pardon on the
19 ground of innocence for any crime that is necessary for the
20 operation of this paragraph.

21 4. A conviction of a crime necessary to the operation
22 of this paragraph has not been set aside in any postconviction
23 proceeding.

24 Section 20. If any provision of this act or the
25 application thereof to any person or circumstance is held
26 invalid, the invalidity does not affect other provisions or
27 applications of the act which can be given effect without the
28 invalid provision or application, and to this end the
29 provisions of this act are declared severable.

30 Section 21. This act shall take effect July 1, 1998.
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SENATE 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. Provides for conditional release to less-restrictive forms of treatment and for final, unconditional release. Provides for a defendant convicted of certain acts of lewd, lascivious, or indecent conduct to be sentenced as a habitual violent felony offender.