

By Senators Gutman and Horne

34-186A-98

1 A bill to be entitled
2 An act relating to sexually violent predators;
3 creating s. 916.30, F.S.; providing a short
4 title; providing legislative findings and
5 intent with respect to the civil commitment of
6 sexually violent predators; creating s. 916.31,
7 F.S.; defining terms; creating s. 916.32, F.S.;
8 requiring the Department of Children and Family
9 Services or the Department of Corrections to
10 notify the Attorney General and a
11 multidisciplinary team prior to the release
12 from custody of a person alleged to be a
13 sexually violent predator; providing immunity
14 from liability for certain persons; requiring
15 the Secretary of Children and Family Services
16 to establish a multidisciplinary team to review
17 the records of persons alleged to be sexually
18 violent predators; requiring that the team
19 report to the Attorney General; requiring the
20 Governor to appoint a prosecutor's review
21 committee upon the request of the Attorney
22 General; providing for the review committee to
23 assist the Attorney General in determining if a
24 person is a sexually violent predator; creating
25 s. 916.33, F.S.; providing for the Attorney
26 General to file a petition alleging that a
27 person is a sexually violent predator; creating
28 s. 916.34, F.S.; requiring that the court
29 determine if the petition sets forth sufficient
30 grounds for determining probable cause;
31 authorizing the court to order that the

1 respondent be taken into custody upon a
2 preliminary determination of probable cause;
3 providing for a probable-cause hearing;
4 creating s. 916.35, F.S.; providing for a trial
5 on the issue of whether the respondent is a
6 sexually violent predator; providing for the
7 respondent to be assisted by counsel and
8 experts upon request; providing for a jury
9 trial at the request of the respondent or the
10 Attorney General or upon a motion of the court;
11 creating s. 916.36, F.S.; providing the
12 standard of proof for determining whether the
13 respondent is a sexually violent predator;
14 providing for an appeal; providing for a person
15 determined to be a sexually violent predator to
16 be committed to the Department of Children and
17 Family Services; authorizing the Department of
18 Children and Family Services to enter into an
19 agreement with the Department of Corrections
20 for the confinement of sexually violent
21 predators; providing a procedure if the
22 respondent has been found incompetent to stand
23 trial; creating s. 916.37, F.S.; providing that
24 it is a second-degree felony to escape while in
25 lawful custody prior to or following commitment
26 as a sexually violent predator; creating s.
27 916.38, F.S.; providing for certain
28 confidential information and records to be
29 released to the Department of Children and
30 Family Services, the Department of Corrections,
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1 and the Attorney General; providing an
2 effective date.

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

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6 Section 1. Section 916.30, Florida Statutes, is
7 created to read:

8 916.30 Short title; legislative findings and intent.--

9 (1) Sections 916.30-916.38 may be cited as "The Jimmy
10 Ryce Act of 1998."

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

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

7 Section 2. Section 916.31, Florida Statutes, is
8 created to read:

9 916.31 Definitions.--As used in ss. 916.30-916.38, the
10 term:

11 (1) "Agency with jurisdiction" means the agency that
12 releases upon lawful order or authority a person serving a
13 sentence in the custody of the Department of Corrections or a
14 person who was involuntarily committed to the custody of the
15 Department of Children and Family Services upon an
16 adjudication of not guilty by reason of insanity.

17 (2) "Court" means the circuit court that most recently
18 sentenced the sexually violent offender in a criminal case or
19 the circuit court in the location where the sexually violent
20 offender resides or proposes to reside upon release from
21 custody or commitment.

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

27 (4) "Predatory" means that acts were directed towards
28 strangers or individuals with whom relationships have been
29 established or promoted for the primary purpose of
30 victimization.

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

4 (6) "Sexually violent offense" means:

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

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

9 1. Sexual battery;

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

12 3. A violation of s. 796.03 or s. 796.04, relating to
13 prostitution, upon the child in violation of s. 787.01(3)(a).

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

17 1. Sexual battery;

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

20 3. A violation of s. 796.03 or s. 796.04, relating to
21 prostitution, upon the child in violation of s. 787.02(3)(a).

22 (d) Sexual battery in violation of s. 794.011.

23 (e) Sexual battery by multiple perpetrators in
24 violation of s. 794.023.

25 (f) Procuring a person under the age of 18 for
26 prostitution in violation of s. 796.03.

27 (g) Lewd, lascivious, or indecent assault or act upon
28 or in the presence of the child in violation of s. 800.04.

29 (h) Purchasing or obtaining custody or control of a
30 minor, or offering to purchase or obtain custody or control of
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1 a minor, to engage in sexually explicit conduct as defined by
2 s. 847.0145(2).

3 (i) Any conviction for a felony offense in effect at
4 any time before the effective date of this act which is
5 comparable to a sexually violent offense as defined in
6 paragraphs (a)-(g) or any federal conviction or conviction in
7 another state for a felony offense that would be a sexually
8 violent offense in this state.

9 (j) An attempt, criminal solicitation, or conspiracy,
10 in violation of s. 777.04, of a sexually violent offense.

11 (k) Any act that either at the time of sentencing for
12 the offense or subsequently during civil commitment
13 proceedings under ss. 916.30-916.38 has been determined beyond
14 a reasonable doubt to have been sexually motivated.

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

21 Section 3. Section 916.32, Florida Statutes, is
22 created to read:

23 916.32 Notice to Attorney General and
24 multidisciplinary team of release of sexually violent
25 predator; immunity from liability; establishing
26 multidisciplinary team.--

27 (1) When it appears that a person may meet the
28 criteria of a sexually violent predator, the agency with
29 jurisdiction shall give written notice of that fact to the
30 Attorney General and the multidisciplinary team established
31 under subsection (4) 90 days before:

1 (a) The anticipated release from the custody of the
2 Department of Corrections of a person who has been convicted
3 of a sexually violent offense, except that in the case of a
4 person who is reincarcerated as a result of revocation of
5 probation or parole, written notice shall be given as soon as
6 practicable following the person's reincarceration;

7 (b) The anticipated release of a person who has been
8 charged with a sexually violent offense and who has been
9 determined to be incompetent to stand trial under s. 916.12;
10 or

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

14 (2) The agency with jurisdiction shall provide to the
15 Attorney General and the multidisciplinary team:

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

18 (b) Documentation of the person's institutional
19 adjustment and any treatment received.

20 (3) The agency with jurisdiction and its employees;
21 members of the multidisciplinary team; members of the
22 prosecutor's review committee; and individuals contracting,
23 appointed, or volunteering to perform services are immune from
24 liability for any good-faith conduct under this section.

25 (4) The Secretary of Children and Family Services
26 shall establish a multidisciplinary team, which may include
27 individuals from other state agencies, to review available
28 records of each person referred to such team under subsection
29 (1). The team, within 30 days after receiving notice, shall
30 assess whether or not the person meets the definition of a
31 sexually violent predator. The team shall provide its written

1 assessment to the Attorney General within 60 days after it
2 received notice.

3 (5) Upon the request of the Attorney General, the
4 Governor shall appoint a prosecutor's review committee to
5 review the records of each person referred to the Attorney
6 General under subsection (1). The prosecutor's review
7 committee shall assist the Attorney General in determining
8 whether the person meets the definition of a sexually violent
9 predator. The assessment of the multidisciplinary team shall
10 be made available to the Attorney General and the prosecutor's
11 review committee.

12 Section 4. Section 916.33, Florida Statutes, is
13 created to read:

14 916.33 Petition; time; contents.--If the Attorney
15 General determines that a person presently confined may be a
16 sexually violent predator and the prosecutor's review
17 committee has determined that the person meets the definition
18 of a sexually violent predator, the Attorney General may file
19 a petition, within 75 days after the date the Attorney General
20 received written notice by the agency with jurisdiction as
21 provided in s. 916.32(1), alleging that the person is a
22 sexually violent predator. The petition must state sufficient
23 facts to support the allegation.

24 Section 5. Section 916.34, Florida Statutes, is
25 created to read:

26 916.34 Determination of probable cause; hearing;
27 evaluation; respondent taken into custody.--

28 (1) Upon the filing of a petition under s. 916.33, the
29 court shall make a nonadversary determination whether the
30 petition sets forth sufficient grounds to believe that
31 probable cause exists that the respondent is a sexually

1 violent predator. If a preliminary determination of probable
2 cause is made, the court shall direct that the respondent be
3 taken into custody.

4 (2) Within 72 hours after a respondent is taken into
5 custody under subsection (1), the respondent shall be provided
6 with notice of, and an opportunity to appear in person at, an
7 adversary probable-cause hearing. At this hearing, the court
8 shall verify the respondent's identity and find whether
9 probable cause exists to believe that the respondent is a
10 sexually violent predator. The state may rely upon the
11 petition and supplement the petition with additional
12 documentary evidence or live testimony.

13 (3) At the adversary probable-cause hearing, the
14 respondent shall have the right to be represented by counsel,
15 to present evidence on his or her own behalf, to cross-examine
16 witnesses, and to view and copy all petitions and reports in
17 the court file.

18 (4) If, at the conclusion of the hearing, the court
19 finds probable cause to believe that the respondent is a
20 sexually violent predator, the court shall direct that the
21 respondent be transferred to an appropriate secure facility,
22 including, but not limited to, a county jail, for an
23 evaluation as to whether the respondent is a sexually violent
24 predator. The evaluation shall be conducted by a person who is
25 professionally qualified to conduct such an examination.

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

28 916.35 Trial; counsel and experts; indigent persons;
29 jury.--

30 (1) Within 60 days after the completion of an
31 adversary probable-cause hearing, the court shall conduct a

1 trial to determine whether the respondent is a sexually
2 violent predator. The trial may be continued upon a showing of
3 good cause by either party, or by the court on its own motion
4 in the due administration of justice and when the respondent
5 will not be substantially prejudiced.

6 (2) Beginning with the adversary probable-cause
7 hearing, a respondent is entitled to the assistance of counsel
8 at all stages of the proceedings, and, if the respondent is
9 indigent, the court shall appoint the public defender or, if a
10 conflict exists, other counsel to represent the respondent.
11 Whenever a respondent is subjected to an examination under
12 this section, the respondent may retain experts or
13 professional persons to perform an examination on his or her
14 own behalf. When the respondent wishes to be examined by a
15 qualified expert or professional person of the respondent's
16 choice, such examiner shall have reasonable access to the
17 respondent for the purpose of performing the examination, as
18 well as to all relevant medical and psychological records and
19 reports. In the case of a respondent who is indigent, the
20 court, upon the respondent's request and upon a finding that
21 expert services are necessary, shall order reasonable
22 compensation for such services as provided in s. 914.06.

23 (3) The respondent or the Attorney General may demand,
24 or the court on its own motion may order, that the trial be
25 before a jury of six persons. Such demand for a jury trial
26 must be filed in writing, or such order entered, at least 4
27 days before the trial. If no demand or order is made, the
28 trial shall be before the court.

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

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1 916.36 Determination; commitment procedure;
2 interagency agreements; mistrial.

3 (1) The court or jury shall determine beyond a
4 reasonable doubt whether the respondent is a sexually violent
5 predator. If the determination is made by a jury, the verdict
6 must be unanimous. Such determination may be appealed.

7 (2) If the court or jury determines that the
8 respondent is a sexually violent predator, the respondent
9 shall be committed to the custody of the Department of
10 Children and Family Services for control, care, and treatment
11 until such time as the respondent's mental abnormality or
12 personality disorder has so changed that the respondent is
13 safe to be at large. Such control, care, and treatment shall
14 be provided at a facility operated by the Department of
15 Children and Family Services or as provided in subsection (3).
16 At all times, sexually violent predators who are committed for
17 control, care, and treatment to the Department of Children and
18 Family Services under this section shall be kept in a secure
19 facility segregated from patients who are not committed under
20 this section.

21 (3) The Department of Children and Family Services may
22 enter into an interagency agreement with the Department of
23 Corrections for the confinement of sexually violent predators.
24 Such persons who are in the custody of the Department of
25 Corrections under an interagency agreement shall be housed and
26 managed separately from criminal offenders sentenced to the
27 custody of the Department of Corrections and, except for
28 occasional instances of supervised incidental contact, shall
29 be segregated from such offenders.

30 (4) If the court or jury is not satisfied beyond a
31 reasonable doubt that the respondent is a sexually violent

1 predator, the court shall direct that the respondent be
2 released. If a mistrial is declared, the court shall direct
3 that the respondent be held at an appropriate secure facility,
4 including, but not limited to, a county jail, until another
5 trial is conducted. Any subsequent trial following a mistrial
6 must be held within 90 days after the previous trial unless
7 such subsequent trial is continued as provided in the Florida
8 Rules of Criminal Procedure.

9 (5) If the respondent has been found incompetent to
10 stand trial under s. 916.12 and commitment of the respondent
11 is sought under s. 916.32(1), the court shall first hear
12 evidence and determine whether the respondent did commit the
13 act or acts charged. The hearing on this issue must comply
14 with all the procedures specified in s. 916.35. In addition,
15 the rules of evidence applicable in criminal cases shall
16 apply, and all constitutional rights available to defendants
17 at criminal trials, other than the right not to be tried while
18 incompetent, shall apply. After hearing evidence on this
19 issue, the court shall make specific findings on whether the
20 respondent did commit the act or acts charged, the extent to
21 which the respondent's incompetence or developmental
22 disability affected the outcome of the hearing, including its
23 effect on the respondent's ability to consult with and assist
24 counsel and to testify on his or her own behalf, the extent to
25 which the evidence could be reconstructed without the
26 assistance of the respondent, and the strength of the
27 prosecution's case. If, after the conclusion of the hearing on
28 this issue, the court finds beyond a reasonable doubt that the
29 respondent did commit the act or acts charged, the court shall
30 enter a final order, appealable by the respondent, on that

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1 issue and may proceed to consider whether the respondent
2 should be committed as a sexually violent predator.

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

5 916.37 Escape while in lawful custody.--A person who
6 escapes while held in lawful custody prior to or upon a
7 finding of probable cause for evaluation as a sexually violent
8 predator under s. 916.34, or who escapes following commitment
9 to a facility as a sexually violent predator under s. 916.36,
10 commits a felony of the second degree, punishable as provided
11 in s. 775.082, s. 775.083, or s. 775.084.

12 Section 9. Section 916.38, Florida Statutes, is
13 created to read:

14 916.38 Confidential or privileged information and
15 records.--In order to protect the public, relevant information
16 and records that are held by a governmental entity and are
17 otherwise confidential or privileged shall be released to the
18 agency with jurisdiction or the Attorney General for the
19 purpose of meeting the notice requirement provided in s.
20 916.32 and determining whether a person is a sexually violent
21 predator.

22 Section 10. This act shall take effect July 1, 1998.
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SENATE SUMMARY

Establishes a procedure under which a person who meets the criteria for classification as a sexually violent predator, but who does not qualify for hospitalization under the Baker Act, may be committed to the custody of the Department of Children and Family Services. Provides for the Attorney General to file a petition upon a preliminary determination that a person is a sexually violent predator. Provides for a probable-cause hearing and trial. Requires that the court or jury determine beyond a reasonable doubt whether the person is a sexually violent predator. Provides procedures for the court if the person is found incompetent to stand trial. Provides for certain confidential records to be released to specified state agencies and the Attorney General for the purpose of determining whether a person is a sexually violent predator. (See bill for details.)