

By the Committee on Criminal Justice and Senators Gutman,
Horne, Klein and Diaz-Balart

307-1151-98

1 A bill to be entitled
2 An act relating to sexually violent predators;
3 amending s. 916.10, F.S.; providing a short
4 title; creating s. 916.30, F.S.; providing a
5 short title; creating s. 916.31, F.S.;
6 providing legislative findings and intent;
7 creating s. 916.32, F.S.; defining terms;
8 creating s. 916.33, F.S.; requiring notice of
9 release from custody of a person alleged to be
10 a sexually violent predator; providing for
11 evaluation of such person; creating s. 916.34,
12 F.S.; providing for petition to have such
13 person declared a sexually violent predator;
14 creating s. 916.35, F.S.; providing for
15 determination of probable cause, for hearings,
16 and for taking such person into custody;
17 creating s. 916.36, F.S.; providing for trial
18 on the issue of whether such person is a
19 sexually violent predator; creating s. 916.37,
20 F.S.; providing for commitment of a person
21 determined to be a sexually violent predator;
22 creating s. 916.38, F.S.; requiring
23 examinations of persons committed; creating s.
24 916.39, F.S.; providing for petitions for
25 release; creating s. 916.40, F.S.; authorizing
26 petition for release; creating s. 916.41, F.S.;
27 providing for access to certain records;
28 creating s. 916.42, F.S.; requiring detention
29 and commitment to conform to constitutional
30 requirements; creating s. 916.43, F.S.;
31 providing immunity from civil liability;

1 creating s. 916.44; providing severability;
2 creating s. 916.45, F.S.; providing for
3 retrospective and prospective application;
4 creating s. 916.46, F.S.; providing for notice
5 to victims; creating s. 916.47, F.S.;
6 penalizing escape; creating s. 916.48, F.S.;
7 authorizing subsistence fees and costs;
8 creating s. 916.49, F.S.; providing that the
9 Department of Children and Family Services is
10 responsible for costs; providing an effective
11 date.

12
13 Be It Enacted by the Legislature of the State of Florida:

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15 Section 1. The Division of Statutory Revision of the
16 Joint Legislative Management Committee shall change the name
17 of chapter 916, Florida Statutes, from "Mentally Deficient and
18 Mentally Ill Defendants" to "Mentally Deficient and Mentally
19 Ill Defendants; Civil Commitment of Sexually Violent
20 Predators."

21 Section 2. Section 916.10, Florida Statutes, is
22 amended to read:

23 916.10 Short title.--Sections 916.10-916.20 ~~This~~
24 ~~chapter~~ may be cited as the "Forensic Client Services Act."

25 Section 3. Section 916.30, Florida Statutes, is
26 created to read:

27 916.30 Sections 916.30-916.49 may be cited as the "The
28 Jimmy Ryce Act of 1998."

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

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1 916.31 Legislative findings and intent.--The
2 Legislature finds that a mentally abnormal and extremely
3 dangerous group of sexually violent predators exists and
4 requires involuntary civil commitment for long-term control,
5 care, and treatment. The Legislature further finds that the
6 likelihood that sexually violent predators will engage in
7 repeat acts of sexual violence, if not treated for their
8 mental conditions, is significant. Because the existing civil
9 commitment process under the Baker Act is inadequate to
10 address the special needs of sexually violent predators and
11 the risks that they present to society, the Legislature
12 determines that a separate involuntary civil commitment
13 process for the long-term control, care, and treatment of
14 sexually violent predators is necessary. The Legislature also
15 determines that, because of the nature of the mental
16 conditions from which sexually violent predators suffer and
17 the dangers they present, it is necessary to house
18 involuntarily committed sexually violent predators in an
19 environment separate from persons involuntarily committed
20 under traditional civil commitment statutes.

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

23 916.32 Definitions.--As used in ss. 916.30-916.47, 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) "Convicted of a sexually violent offense" means a
4 person who has been:

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

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

9 (c) Adjudicated delinquent of a sexually violent
10 offense after a trial, guilty plea, or plea of nolo
11 contendere.

12 (3) "Department" means the Department of Children and
13 Family Services.

14 (4) "Likely to engage in acts of sexual violence"
15 means the person's propensity to commit acts of sexual
16 violence is of such a degree as to pose a menace to the health
17 and safety of others.

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

21 (6) "Person" means an individual 18 years of age or
22 older who is a potential or actual subject of proceedings
23 under this act.

24 (7) "Sexually motivated" means that one of the
25 purposes for which the defendant committed the crime was for
26 sexual gratification.

27 (8) "Sexually violent offense" means:

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

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

1 1. Sexual battery; or
2 2. A lewd, lascivious, or indecent assault or act upon
3 or in the presence of the child;
4 (c) Committing the offense of false imprisonment upon
5 a child under the age of 16 and, in the course of that
6 offense, committing:
7 1. Sexual battery; or
8 2. A lewd, lascivious or indecent assault or act upon
9 or in the presence of the child;
10 (d) Sexual battery in violation of s. 794.011;
11 (e) Lewd, lascivious, or indecent assault or act upon
12 or in presence of the child in violation of s. 800.04;
13 (f) An attempt, criminal solicitation, or conspiracy,
14 in violation of s. 777.04, of a sexually violent offense;
15 (g) Any conviction for a felony offense in effect at
16 any time before the effective date of this act that is
17 comparable to a sexually violent offense under paragraphs
18 (a)-(f) or any federal conviction or conviction in another
19 state for a felony offense that in this state would be a
20 sexually violent offense; or
21 (h) Any criminal act that, either at the time of
22 sentencing for the offense or subsequently during civil
23 commitment proceedings under this act, has been determined
24 beyond a reasonable doubt to have been sexually motivated.
25 (9) "Sexually violent predator" means any person who:
26 (a) Has been convicted of a sexually violent offense;
27 and
28 (b) Suffers from a mental abnormality or personality
29 disorder that makes the person likely to engage in acts of
30 sexual violence if not confined in a secure facility for
31 long-term control, care, and treatment.

1 Section 6. Section 916.33, Florida Statutes, is
2 created to read:

3 916.33 Notice to state attorney and multidisciplinary
4 team of release of sexually violent predator; establishing
5 multidisciplinary team.--

6 (1) The agency having jurisdiction over a person who
7 has been convicted of a sexually violent offense shall give
8 written notice, to the state attorney of the circuit where
9 that person was last convicted of a sexually violent offense,
10 180 days before:

11 (a) The anticipated release from total confinement of
12 a person who has been convicted of a sexually violent offense,
13 except that in the case of persons who have been returned to
14 confinement for no more than 90 days, written notice must be
15 given as soon as practicable following the person's return to
16 confinement; or

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

20 (2) The agency having jurisdiction shall provide the
21 state attorney with the following information:

22 (a) The person's name, identifying characteristics,
23 anticipated future residence, and offense history; and

24 (b) Documentation of institutional adjustment and any
25 treatment received.

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27 The provisions of this section are not jurisdictional, and
28 failure to comply with them in no way prevents the state
29 attorney from proceeding against a person otherwise subject to
30 the provisions of this act.

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1 (3) The secretary of the department shall establish a
2 multidisciplinary team, which may include individuals from
3 other state agencies, to review available records of each
4 person referred to such team under subsection (1). The team,
5 within 30 days after receiving notice, shall assess whether
6 the person meets the definition of a sexually violent
7 predator. The team shall provide the state attorney with its
8 written assessment within 60 days after it has received
9 notice.

10 Section 7. Section 916.34, Florida Statutes, is
11 created to read:

12 916.34 Petition; time; contents.--When a
13 multidisciplinary team determines that a person meets this
14 act's definition of a sexually violent predator, the state
15 attorney in the judicial circuit where the person committed
16 the sexually violent offense may file a petition with the
17 circuit court alleging that the person is a sexually violent
18 predator and stating facts sufficient to support such
19 allegation.

20 Section 8. Section 916.35, Florida Statutes, is
21 created to read:

22 916.35 Determination of probable cause; hearing;
23 evaluation; respondent taken into custody; bail.--

24 (1) When the state attorney files a petition seeking
25 to have a person declared a sexually violent predator, the
26 judge shall determine whether probable cause exists to believe
27 that the person named in the petition is a sexually violent
28 predator. If the judge determines that there is probable cause
29 to believe that the person is a sexually violent predator, the
30 judge shall direct that the person be taken into custody and
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1 held in a county jail or a detention facility in the county
2 where the petition was filed.

3 (2) Within 72 hours after a person is taken into
4 custody pursuant to subsection (1), the person shall be
5 provided with notice of, and an opportunity to appear in
6 person at, an adversary hearing to contest the judge's
7 probable cause determination. At this hearing, the judge
8 shall:

9 (a) Receive evidence and hear argument from the person
10 and the state attorney; and

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

13 (3) At the probable cause hearing, the person has the
14 right to:

15 (a) Be represented by counsel;

16 (b) Present evidence;

17 (c) Cross-examine any witnesses who testify against
18 the person; and

19 (d) View and copy all petitions and reports in the
20 court file.

21 (4) If the court again concludes that there is
22 probable cause to believe that the person is a sexually
23 violent predator, the court shall direct that the person be
24 held in a county jail or a detention facility in the county
25 where the petition was filed for an evaluation by a mental
26 health professional.

27 (5) After a court finds probable cause to believe that
28 the person is a sexually violent predator, the person must be
29 held in custody in a secure facility without opportunity for
30 pretrial release.

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1 Section 9. Section 916.36, Florida Statutes, is
2 created to read:

3 916.36 Trial; counsel and experts; indigent persons;
4 jury.--

5 (1) Within 60 days after the completion of the
6 probable cause hearing, the court shall conduct a trial to
7 determine whether the person is a sexually violent predator.

8 (2) The trial may be continued upon the request of
9 either party and a showing of good cause, or by the court on
10 its own motion in the interests of justice, when the person
11 will not be substantially prejudiced.

12 (3) The person is entitled to the assistance of
13 counsel and, if the person is indigent, the court shall
14 appoint counsel to assist the person.

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

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

1 Section 10. Section 916.37, Florida Statutes, is
2 created to read:

3 916.37 Determination; commitment procedure; mistrials;
4 housing.--

5 (1) The court or jury shall determine by clear and
6 convincing evidence whether the person is a sexually violent
7 predator. If the determination is made by a jury, the decision
8 must be unanimous. If a majority of the jury finds that the
9 person is a sexually violent predator, but the decision is not
10 unanimous, the state attorney may refile the petition and
11 proceed according to the provisions of this act. Any retrial
12 must occur within 90 days after the previous trial, unless the
13 subsequent proceeding is continued in accordance with s.
14 916.36(2). The determination that a person is a sexually
15 violent predator may be appealed.

16 (2) If the judge, in a trial to the court, or at least
17 half of the jury finds that the person is not a sexually
18 violent predator, the court shall direct that the person be
19 released.

20 (3) If the court or jury determines that the person is
21 a sexually violent predator, the person shall be committed to
22 the custody of the department for control, care, and treatment
23 until such time as it is safe for the person to be at large
24 and the person has been ordered released pursuant to this act.

25 (4) Persons committed for control, care, and treatment
26 under this act shall be kept in a secure facility and shall be
27 segregated from all other patients under the supervision of
28 the department.

29 (5) Persons committed for control, care, and treatment
30 under this act may be housed in a correctional mental health
31 facility operated by the Department of Corrections or a

1 private correctional contractor, so long as they are kept
2 separate from persons in correctional custody, to the greatest
3 extent practicable.

4 Section 11. Section 916.38, Florida Statutes, is
5 created to read:

6 916.38 Examinations.--

7 (1) A person committed under this act shall have an
8 examination of the person's mental condition once every 3
9 years or more frequently at the court's discretion. The person
10 may retain or, if the person is indigent and so requests, the
11 court may appoint, a qualified professional to examine the
12 person. Such a professional shall have access to all records
13 concerning the person. The results of the examination shall be
14 provided to the court that committed the person under this
15 act. Upon receipt of the report, the court shall conduct a
16 review of the person's status.

17 (2) The department shall provide the person with
18 annual written notice of the person's right to petition the
19 court for release over the objection of the director of the
20 facility where the person is housed. The notice must contain a
21 waiver of rights. The director of the facility shall forward
22 the notice and waiver form to the court.

23 (3) The court shall hold a limited hearing to
24 determine whether there is probable cause to believe that the
25 person's condition has so changed that it is safe for the
26 person to be at large and that the person will not engage in
27 acts of sexual violence if discharged. The person has the
28 right to be represented by counsel at the probable cause
29 hearing, but the person is not entitled to be present. If the
30 court determines that there is probable cause to believe it is
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1 safe to release the person, the court shall set a trial before
2 the court on the issue.

3 (4) At the trial before the court, the person is
4 entitled to be present and is entitled to the benefit of all
5 constitutional protections afforded the person at the initial
6 trial, except for the right to a jury. The state attorney
7 shall represent the state and has the right to have the person
8 examined by professionals chosen by the state. At the hearing
9 the state bears the burden of proving, by clear and convincing
10 evidence, that the person's mental condition remains such that
11 it is not safe for the person to be at large and that, if
12 released, the person is likely to engage in acts of sexual
13 violence.

14 Section 12. Section 916.39, Florida Statutes, is
15 created to read:

16 916.39 Authorized petition for release; procedure.--

17 (1) If the secretary of the department or the
18 secretary's designee at any time determines that the person's
19 mental condition has so changed that the person is not likely
20 to commit acts of sexual violence if conditionally discharged,
21 the secretary or the secretary's designee shall authorize the
22 person to petition the court for release. The petition shall
23 be served upon the court and the state attorney. The court,
24 upon receipt of such a petition, shall order a trial before
25 the court within 30 days, unless continued for good cause.

26 (2) The state attorney shall represent the state, and
27 has the right to have the person examined by professionals of
28 the state attorney's choice. The state bears the burden of
29 proving, by clear and convincing evidence, that the person's
30 mental condition remains such that it is not safe for the

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1 person to be at large and that, if released, the person is
2 likely to engage in acts of sexual violence.

3 Section 13. Section 916.40, Florida Statutes, is
4 created to read:

5 916.40 Petition for release.--Nothing in this act
6 shall prohibit a person from filing a petition for discharge
7 at any time. However, if the person has previously filed such
8 a petition without the approval of the secretary of the
9 department or the secretary's designee and the court
10 determined that the petition was without merit, a subsequent
11 petition shall be denied unless the petition contains facts
12 upon which a court could find that the person's condition has
13 so changed that a probable cause hearing is warranted.

14 Section 14. Section 916.41, Florida Statutes, is
15 created to read:

16 916.41 Release of records to state attorney.--

17 (1) In order to protect the public, relevant
18 information and records that are otherwise confidential or
19 privileged shall be released to the agency having jurisdiction
20 or the state attorney for the purpose of meeting the notice
21 requirements of this act and determining whether a person is
22 or continues to be a sexually violent predator.

23 (2) Psychological or psychiatric reports, drug and
24 alcohol reports, treatment records, medical records, or victim
25 impact statements that have been submitted to the court or
26 admitted into evidence under this act shall be part of the
27 record, but shall be sealed and may be opened only pursuant to
28 a court order.

29 Section 15. Section 916.42, Florida Statutes, is
30 created to read:

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1 916.42 Constitutional requirements.--The long-term
2 control, care, and treatment of a person committed under this
3 act must conform to constitutional requirements.

4 Section 16. Section 916.43, Florida Statutes, is
5 created to read:

6 916.43 Immunity from civil liability.--The agency with
7 jurisdiction and its officers and employees; the department
8 and its officers and employees; the state attorney and the
9 state attorney's employees; and those involved in the
10 evaluation, care, and treatment of sexually violent persons
11 committed under this act, are immune from any civil liability
12 for good-faith conduct under the act.

13 Section 17. Section 916.44, Florida Statutes, is
14 created to read:

15 916.44 Severability.--If any section, subsection, or
16 provision of this act is held to be unconstitutional or
17 invalid by a court of competent jurisdiction, the remaining
18 portions of the act shall be unaffected because the
19 Legislature declares that the provisions of this act are
20 severable from each other.

21 Section 18. Section 916.45, Florida Statutes, is
22 created to read:

23 916.45 Applicability of act.--This act applies to all
24 persons currently in custody who have been convicted of a
25 sexually violent offense, as that term is defined in s.
26 916.32(8), as well as to all persons convicted of a sexually
27 violent offense in the future.

28 Section 19. Section 916.46, Florida Statutes, is
29 created to read:

30 916.46 Notice to victims of release of persons
31 committed as sexually violent predators.--As soon as is

1 practicable, the department shall give written notice of the
2 release of a person committed as a sexually violent predator
3 to any victim of the committed person who is alive and whose
4 address is known to the department or, if the victim is
5 deceased, to the victim's family, if the family's address is
6 known to the department. Failure to notify is not a reason for
7 postponement of release. Nothing in this section creates a
8 cause of action against the state or an employee of the state
9 acting within the scope of the employee's employment as a
10 result of the failure to notify pursuant to this act.

11 Section 20. Section 916.47, Florida Statutes, is
12 created to read:

13 916.47 Escape while in lawful custody.--A person who
14 is held in lawful custody pursuant to a judicial finding of
15 probably cause under s. 916.35 or pursuant to a commitment as
16 a sexually violent predator under s. 916.36 and who escapes or
17 attempts to escape while in such custody commits a felony of
18 the second degree, punishable as provided in s. 775.082, s.
19 775.083, or s. 775.084.

20 Section 21. Section 916.48, Florida Statutes, is
21 created to read:

22 916.48 Subsistence fees and costs of treatment.--

23 (1) In recognition of the fact that persons committed
24 under this act may have sources of income and assets, which
25 may include bank accounts, inheritances, real estate, social
26 security payments, veteran's payments, and other types of
27 financial resources, and in recognition of the fact that the
28 daily subsistence cost and costs of treatment of persons
29 committed under this act is a burden on the taxpayers of the
30 state, each person so committed shall:

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

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

10 (2)(a) Any person who is directed to pay all or a fair
11 portion of daily subsistence and treatment costs is entitled
12 to reasonable advance notice of the assessment and shall be
13 afforded an opportunity to present reasons for opposition to
14 the assessment.

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

18 Section 22. Section 916.49, Florida Statutes, is
19 created to read:

20 916.49 Department of Children and Family Services
21 responsible for costs.--The Department of Children and Family
22 Services is responsible for all costs relating to the
23 evaluation and treatment of persons committed to the
24 department's custody as sexually violent predators.

25 Section 23. This act shall take effect July 1, 1998.

- 1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 646
- 4 - Renames Chapter 916.
- 5 - Provides for the citing of s. 916.10-916.20, F.S., by the
6 short title, "Forensic Client Services Act."
- 7 - Deletes references to the Attorney General as the state's
8 counsel in proceedings for the civil commitment of
sexually violent predators, and substitutes references to
the state attorney.
- 9 - Adds further definitions.
- 10 - Deletes from the definition of "sexually violent offense"
11 sexual battery against multiple perpetrators and
12 prostitution offenses, and requires a conviction or
adjudication of delinquency.
- 13 - Requires that the person subject to civil commitment
proceedings be 18 years of age or older.
- 14 - Requires that the state prove, by clear and convincing
15 evidence, that the person is a sexually violent predator.
- 16 - Provides for retrial where the majority of the jury finds
17 a person to be a sexually violent predator, and
prescribes that the retrial shall occur within 90 days of
the previous trial, unless the trial is continued.
- 18 - Authorizes sexually violent predators to be confined in a
19 mental health facility operated by the Department of
Corrections or a private contractor.
- 20 - Requires that, every three years there must be a mental
21 health examination of a person confined as a sexually
22 violent predator, as well as a court hearing of the
person's status.
- 23 - Requires that, the Department of Children and Family
24 Services provide written notice to a sexually violent
predator of the person's right to petition for release
over the objection of the director of the facility.
- 25 - Authorizes the Secretary of the Department of Children
26 and Family Services to petition the court for release of
a sexually violent predator when it is determined the
27 person is not likely to commit acts of sexual violence if
discharged. A trial shall be ordered with 30 days of the
28 court's receipt of the petition. The state must prove, by
clear and convincing evidence, that the person, if
29 discharged, is a threat to the public and likely to
engage in acts of sexual violence.
- 30 - Provides that a sexually violent predator may petition
31 for discharge at any time, but restricts subsequent
petitions to new facts.

- 1 - Provides that custody, care, and treatment of sexually
2 violent predators shall meet constitutional requirements.
- 3 - Provides immunity from civil liability for good faith
4 conduct of the state attorney and the state attorney's
5 employees.
- 6 - Provides for severability of provisions declared
7 unconstitutional.
- 8 - Provides that the act applies to any person who meets the
9 definition of a sexually violent predator, regardless of
10 the date the sexually violent offense was committed.
- 11 - Provides that victims shall be notified of the release of
12 a sexually violent predator from civil commitment, and
13 that failure to meet the notification requirements does
14 not create a cause of action against the state or
15 employees acting within the scope of their employment.
- 16 - Authorizes the court committing a person to civil
17 confinement as a sexually violent predator to require
18 that the person pay some or all of the daily subsistence
19 costs and treatment costs, subject to certain exceptions.
- 20 - Provides that the Department of Children and Family
21 Services is responsible for all costs relating to the
22 evaluation and treatment of persons committed to the
23 department's custody as sexually violent predators.
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