

1 A bill to be entitled
2 An act relating to sexually violent predators;
3 requesting that the Division of Statutory
4 Revision redesignate ch. 916, F.S.; amending s.
5 916.10, F.S.; providing a short title; creating
6 s. 916.30, F.S.; providing a short title;
7 creating s. 916.31, F.S.; providing legislative
8 findings and intent; creating s. 916.32, F.S.;
9 defining terms; creating s. 916.33, F.S.;
10 requiring notice of release from custody of a
11 person alleged to be a sexually violent
12 predator; providing for evaluation of such
13 person; creating s. 916.34, F.S.; providing for
14 petition to have such person declared a
15 sexually violent predator; creating s. 916.35,
16 F.S.; providing for determination of probable
17 cause, for hearings, and for taking such person
18 into custody; creating s. 916.36, F.S.;
19 providing for trial on the issue of whether
20 such person is a sexually violent predator;
21 creating s. 916.37, F.S.; providing for
22 commitment of a person determined to be a
23 sexually violent predator; creating s. 916.38,
24 F.S.; requiring examinations of persons
25 committed; creating s. 916.39, F.S.; providing
26 for petitions for release; creating s. 916.40,
27 F.S.; authorizing petition for release;
28 creating s. 916.41, F.S.; providing for access
29 to certain records; creating s. 916.42, F.S.;
30 requiring detention and commitment to conform
31 to constitutional requirements; creating s.

1 916.43, F.S.; providing immunity from civil
2 liability; creating s. 916.44; providing
3 severability; creating s. 916.45, F.S.;
4 providing for retrospective and prospective
5 application; creating s. 916.46, F.S.;
6 providing for notice to victims; creating s.
7 916.47, F.S.; penalizing escape; creating s.
8 916.48, F.S.; authorizing subsistence fees and
9 costs; creating s. 916.49, F.S.; providing that
10 the Department of Children and Family Services
11 is responsible for costs; providing that other
12 costs for psychological evaluations, expert
13 witnesses, and court-appointed counsel are paid
14 from state funds; authorizing the Department of
15 Children and Family Services to contract for
16 the use of facilities; providing an
17 appropriation; providing an effective date.

18
19 Be It Enacted by the Legislature of the State of Florida:

20
21 Section 1. The Division of Statutory Revision of the
22 Joint Legislative Management Committee shall change the name
23 of chapter 916, Florida Statutes, from "Mentally Deficient and
24 Mentally Ill Defendants" to "Mentally Deficient and Mentally
25 Ill Defendants; Civil Commitment of Sexually Violent
26 Predators."

27 Section 2. Section 916.10, Florida Statutes, is
28 amended to read:

29 916.10 Short title.--Sections 916.10-916.20 ~~This~~
30 ~~chapter~~ may be cited as the "Forensic Client Services Act."
31

1 Section 3. Section 916.30, Florida Statutes, is
2 created to read:

3 916.30 Sections 916.30-916.49 may be cited as the "The
4 Jimmy Ryce Act of 1998."

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

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

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

29 916.32 Definitions.--As used in ss. 916.30-916.49, the
30 term:

31

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

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

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

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

15 (c) Adjudicated delinquent of a sexually violent
16 offense after a trial, guilty plea, or plea of nolo
17 contendere.

18 (3) "Department" means the Department of Children and
19 Family Services.

20 (4) "Likely to engage in acts of sexual violence"
21 means the person's propensity to commit acts of sexual
22 violence is of such a degree as to pose a menace to the health
23 and safety of others.

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

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

30
31

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

4 (8) "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; or

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

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

15 1. Sexual battery; or

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

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

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

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

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

29 (h) Any criminal act that, either at the time of
30 sentencing for the offense or subsequently during civil
31 commitment proceedings under ss. 916.30-916.49, has been

1 determined beyond a reasonable doubt to have been sexually
2 motivated.

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

4 (a) Has been convicted of a sexually violent offense;
5 and

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

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

15 Section 6. Section 916.33, Florida Statutes, is
16 created to read:

17 916.33 Notice to state attorney and multidisciplinary
18 team of release of sexually violent predator; establishing
19 multidisciplinary team.--

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

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

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

4 (2) The agency having jurisdiction shall provide the
5 multidisciplinary team with the following information:

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

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

15
16 The provisions of this section are not jurisdictional, and
17 failure to comply with them in no way prevents the state
18 attorney from proceeding against a person otherwise subject to
19 the provisions of ss. 916.30-916.49. However, the state
20 attorney has no lawful authority to file a petition with the
21 circuit court alleging that a person is a sexually violent
22 predator without a written assessment and recommendation from
23 the multidisciplinary team.

24 (3) The Secretary of Children and Family Services
25 shall establish a multidisciplinary team, which shall include
26 a person knowledgeable in the field of law enforcement
27 designated by the Attorney General, a licensed psychologist, a
28 licensed psychiatrist, a person designated by the Department
29 of Corrections who is knowledgeable in the treatment of sexual
30 offenders, and a mental health counselor licensed under
31 chapter 491, to review available records of each person

1 referred to such team under subsection (1). The team, within
2 45 days after receiving notice, shall assess whether the
3 person meets the definition of a sexually violent predator and
4 provide the state attorney with its written assessment and
5 recommendation.

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

8 916.34 Petition; time; contents.--When a
9 multidisciplinary team determines that a person meets the
10 definition of a sexually violent predator as provided in s.
11 916.32, the state attorney in the judicial circuit where the
12 person committed the sexually violent offense may file a
13 petition with the circuit court alleging that the person is a
14 sexually violent predator and stating facts sufficient to
15 support such allegation.

16 Section 8. Section 916.35, Florida Statutes, is
17 created to read:

18 916.35 Determination of probable cause; hearing;
19 evaluation; respondent taken into custody; bail.--

20 (1) When the state attorney files a petition seeking
21 to have a person declared a sexually violent predator, the
22 judge shall determine whether probable cause exists to believe
23 that the person named in the petition is a sexually violent
24 predator. If the judge determines that there is probable cause
25 to believe that the person is a sexually violent predator, the
26 judge shall direct that the person be taken into custody and
27 held in an appropriate secure facility or, in the case of an
28 adjudicated committed delinquent, the closest regional
29 juvenile secure detention facility to the county where the
30 petition was filed.

31

1 (2) Before the release from custody of a person whom
2 the multidisciplinary team recommends for civil confinement,
3 but after the state attorney files a petition under s. 916.33,
4 the state attorney may further petition the court for an
5 adversarial probable cause hearing. The person shall be
6 provided with notice of, and an opportunity to appear in
7 person at, an adversary hearing. 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 or release during the trial proceedings.

31

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 30 days after the determination of probable
6 cause, the court shall conduct a trial to determine whether
7 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 ss. 916.30-916.49. Any
12 retrial must occur within 90 days after the previous trial,
13 unless the subsequent proceeding is continued in accordance
14 with s. 916.36(2). The determination that a person is a
15 sexually violent predator may be appealed.

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

29 Section 11. Section 916.38, Florida Statutes, is
30 created to read:

31 916.38 Examinations.--

1 (1) A person committed under ss. 916.30-916.49 shall
2 have an examination of his or her mental condition once every
3 3 years or more frequently at the court's discretion. The
4 person may retain or, if the person is indigent and so
5 requests, the court may appoint, a qualified professional to
6 examine the person. Such a professional shall have access to
7 all records concerning the person. The results of the
8 examination shall be provided to the court that committed the
9 person under ss. 916.30-916.49. Upon receipt of the report,
10 the court shall conduct a review of the person's status.

11 (2) The department shall provide the person with
12 annual written notice of the person's right to petition the
13 court for release over the objection of the director of the
14 facility where the person is housed. The notice must contain a
15 waiver of rights. The director of the facility shall forward
16 the notice and waiver form to the court.

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

27 (4) At the trial before the court, the person is
28 entitled to be present and is entitled to the benefit of all
29 constitutional protections afforded the person at the initial
30 trial, except for the right to a jury. The state attorney
31 shall represent the state and has the right to have the person

1 examined by professionals chosen by the state. At the hearing
2 the state bears the burden of proving, by clear and convincing
3 evidence, that the person's mental condition remains such that
4 it is not safe for the person to be at large and that, if
5 released, the person is likely to engage in acts of sexual
6 violence.

7 Section 12. Section 916.39, Florida Statutes, is
8 created to read:

9 916.39 Authorized petition for release; procedure.--

10 (1) If the Secretary of Children and Family Services
11 or the secretary's designee at any time determines that the
12 person is not likely to commit acts of sexual violence if
13 conditionally discharged, the secretary or the secretary's
14 designee shall authorize the person to petition the court for
15 release. The petition shall be served upon the court and the
16 state attorney. The court, upon receipt of such a petition,
17 shall order a trial before the court within 30 days, unless
18 continued for good cause.

19 (2) The state attorney shall represent the state, and
20 has the right to have the person examined by professionals of
21 the state attorney's choice. The state bears the burden of
22 proving, by clear and convincing evidence, that the person's
23 mental condition remains such that it is not safe for the
24 person to be at large and that, if released, the person is
25 likely to engage in acts of sexual violence.

26 Section 13. Section 916.40, Florida Statutes, is
27 created to read:

28 916.40 Petition for release.--Sections 916.30-916.49
29 do not prohibit a person from filing a petition for discharge
30 at any time. However, if the person has previously filed such
31 a petition without the approval of the Secretary of Children

1 and Family Services or the secretary's designee and the court
2 determined that the petition was without merit, a subsequent
3 petition shall be denied unless the petition contains facts
4 upon which a court could find that the person's condition has
5 so changed that a probable-cause hearing is warranted.

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

8 916.41 Release of records to state attorney.--

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

15 (2) Psychological or psychiatric reports, drug and
16 alcohol reports, treatment records, medical records, or victim
17 impact statements that have been submitted to the court or
18 admitted into evidence under ss. 916.30-916.49 shall be part
19 of the record, but shall be sealed and may be opened only
20 pursuant to a court order.

21 Section 15. Section 916.42, Florida Statutes, is
22 created to read:

23 916.42 Constitutional requirements.--The long-term
24 control, care, and treatment of a person committed under ss.
25 916.30-916.49 must conform to constitutional requirements.

26 Section 16. Section 916.43, Florida Statutes, is
27 created to read:

28 916.43 Immunity from civil liability.--The agency with
29 jurisdiction and its officers and employees; the department
30 and its officers and employees; the state attorney and the
31 state attorney's employees; and those involved in the

1 evaluation, care, and treatment of sexually violent persons
2 committed under ss. 916.30-916.49, are immune from any civil
3 liability for good-faith conduct under ss. 916.30-916.49.

4 Section 17. Section 916.44, Florida Statutes, is
5 created to read:

6 916.44 Severability.--If any section, subsection, or
7 provision of ss. 916.30-916.49 is held to be unconstitutional
8 or invalid by a court of competent jurisdiction, the remaining
9 portions of ss. 916.30-916.49 shall be unaffected because the
10 Legislature declares that the provisions of ss. 916.30-916.49
11 are severable from each other.

12 Section 18. Section 916.45, Florida Statutes, is
13 created to read:

14 916.45 Applicability of act.--Sections 916.30-916.49
15 apply to all persons currently in custody who have been
16 convicted of a sexually violent offense, as that term is
17 defined in s. 916.32(8), as well as to all persons convicted
18 of a sexually violent offense in the future.

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

21 916.46 Notice to victims of release of persons
22 committed as sexually violent predators.--As soon as is
23 practicable, the department shall give written notice of the
24 release of a person committed as a sexually violent predator
25 to any victim of the committed person who is alive and whose
26 address is known to the department or, if the victim is
27 deceased, to the victim's family, if the family's address is
28 known to the department. Failure to notify is not a reason for
29 postponement of release. This section does not create a cause
30 of action against the state or an employee of the state acting
31

1 within the scope of the employee's employment as a result of
2 the failure to notify pursuant to ss. 916.30-916.49.

3 Section 20. Section 916.47, Florida Statutes, is
4 created to read:

5 916.47 Escape while in lawful custody.--A person who
6 is held in lawful custody pursuant to a judicial finding of
7 probably cause under s. 916.35 or pursuant to a commitment as
8 a sexually violent predator under s. 916.36 and who escapes or
9 attempts to escape while in such custody commits a felony of
10 the second degree, punishable as provided in s. 775.082, s.
11 775.083, or s. 775.084.

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

14 916.48 Subsistence fees and costs of treatment.--

15 (1) In recognition of the fact that persons committed
16 under ss. 916.30-916.49 may have sources of income and assets,
17 which may include bank accounts, inheritances, real estate,
18 social security payments, veteran's payments, and other types
19 of financial resources, and in recognition of the fact that
20 the daily subsistence cost and costs of treatment of persons
21 committed under ss. 916.30-916.49 are a burden on the
22 taxpayers of the state, each person so committed shall:

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

25 (b) Pay from such income and assets, except where such
26 income is exempt by state or federal law, all or a fair
27 portion of the person's daily subsistence and treatment costs,
28 based upon the person's ability to pay, the liability or
29 potential liability of the person to the victim or the
30 guardian or the estate of the victim, and the needs of his or
31 her dependents.

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

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

9 Section 22. Section 916.49, Florida Statutes, is
10 created to read:

11 916.49 Department of Children and Family Services
12 responsible for costs.--The Department of Children and Family
13 Services is responsible for all costs relating to the
14 evaluation and treatment of persons committed to the
15 department's custody as sexually violent predators. Other
16 costs for psychological evaluations, expert witnesses, and
17 court-appointed counsel required by ss. 916.30-916.49 shall be
18 paid from state funds appropriated by general law.

19 Section 23. The Department of Children and Family
20 Services may contract with a private entity or state agency
21 for use of facilities to comply with the requirements of this
22 act.

23 Section 24. There is hereby appropriated from the
24 General Revenue Fund in a lump sum to the Department of
25 Children and Family Services the sum of \$3,400,000 and 50
26 full-time equivalent positions, and from the Grants and
27 Donations Trust Fund, \$1,500,000 to the Department of
28 Corrections for the purpose of carrying out the provisions of
29 this act. From the funds appropriated to the Department of
30 Children and Family Services, the department may, at the
31 counties' request, reimburse counties for the cost of no more

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

5 Section 25. This act shall take effect January 1,
6 1999.

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31