

By Senators Klein, Diaz-Balart, Crist, Dudley, Horne, Silver,
Lee, Kirkpatrick, Dyer and Holzendorf

37-694-98

See HB

1 A bill to be entitled
2 An act relating to sexual predators; creating
3 the "Jimmy Ryce Involuntary Civil Commitment
4 for Sexually Violent Predators' Treatment and
5 Care Act"; creating s. 916.30, F.S.; providing
6 findings and intent; creating s. 916.31, F.S.;
7 defining terms; creating s. 916.32, F.S.;
8 requiring notice of release from custody of a
9 person alleged to be a sexually violent
10 predator; providing for the person's
11 evaluation; creating s. 916.33, F.S.; providing
12 for petition to have such person declared a
13 sexually violent predator; creating s. 916.34,
14 F.S.; providing for determination of probable
15 cause, evaluation, and taking such person into
16 custody; creating s. 916.35, F.S.; providing
17 for trial on the issue of whether a person is a
18 sexually violent predator; creating s. 916.36,
19 F.S.; providing for commitment of a person
20 determined to be a sexually violent predator;
21 creating s. 916.37, F.S.; requiring annual
22 examination of persons committed; creating s.
23 916.38, F.S.; requiring detention and
24 commitment to conform to constitutional
25 requirements; creating s. 916.39, F.S.;
26 providing for petitions for release; creating
27 s. 916.40, F.S.; providing that the Department
28 of Children and Family Services is responsible
29 for specified evaluation and treatment costs;
30 creating s. 916.41, F.S.; providing for notice
31 to victims; creating s. 916.42, F.S.; providing

1 severability; creating s. 916.43, F.S.;

2 providing for access to certain records;

3 providing an effective date.

4

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

6

7 Section 1. This act shall be known and may be cited as

8 the "Jimmy Ryce Involuntary Civil Commitment for Sexually

9 Violent Predators' Treatment and Care Act."

10 Section 2. Section 916.30, Florida Statutes, is

11 created to read:

12 916.30 Legislative findings and intent.--The

13 Legislature finds that a small but extremely dangerous number

14 of sexually violent predators exist who do not have a mental

15 disease or defect that renders them appropriate for

16 involuntary treatment under the Baker Act, ss.

17 394.451-394.4789, which is intended to provide short-term

18 treatment to individuals with serious mental disorders and

19 then return them to the community. In contrast to persons

20 appropriate for civil commitment under the Baker Act, sexually

21 violent predators generally have antisocial personality

22 features which are unamenable to existing mental illness

23 treatment modalities and those features render them likely to

24 engage in criminal, sexually violent behavior. The Legislature

25 further finds that the likelihood of sexually violent

26 predators engaging in repeat acts of predatory sexual violence

27 is high. The existing involuntary commitment procedures under

28 the Baker Act for the treatment and care of mentally ill

29 persons is inadequate to address the risk these sexually

30 violent predators pose to society. The Legislature further

31 finds that the prognosis for rehabilitating sexually violent

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

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

10 916.31 Definitions.--As used in ss. 916.30-916.43, the
11 term:

12 (1) "Agency with jurisdiction" means the agency with
13 the authority to direct the release of a person serving a
14 sentence in the custody of the Department of Corrections, a
15 person adjudicated delinquent and committed to the custody of
16 the Department of Juvenile Justice, or a person who was
17 involuntarily committed to the custody of the Department of
18 Children and Family Services upon an adjudication of not
19 guilty by reason of insanity.

20 (2) "Court" means the circuit court which would have
21 adjudicated or sentenced, or did adjudicate or sentence, the
22 person for the most recent sexually violent offense.

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

28 (4) "Overt act" means any act that either causes harm
29 of a sexually violent nature or creates a reasonable
30 apprehension of such harm.

31

1 (5) "Predatory" means acts directed toward another
2 person for the primary purpose of victimization.

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

6 (7) "Sexually violent offense" means:

7 (a) Murder of any person as part of a sexual battery
8 in violation of s. 782.04(1)(a)2.;

9 (b) Sexual battery of any person in violation of s.
10 794.011;

11 (c) Lewd, lascivious, or indecent assault upon or act
12 upon or in the presence of a person in violation of s. 800.04;

13 (d) Procuring a person for prostitution in violation
14 of s. 796.03 or s. 796.04 and s. 787.01(3)(a);

15 (e) Purchasing or obtaining custody or control, or
16 offering to purchase or obtain custody or control, of a person
17 to engage in sexually explicit conduct as defined by s.
18 847.0145;

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

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

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

31

1 (8) "Sexually violent predator" means any person who
2 has been convicted of or charged with a sexually violent
3 offense and who suffers from a mental abnormality or
4 personality disorder that makes the person likely to engage in
5 predatory acts of sexual violence if not confined in a secure
6 facility.

7 (9) "State attorney" means the state attorney for the
8 county where the person was charged for a sexually violent
9 offense most recently, or, upon request of this state
10 attorney, the Attorney General.

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

13 916.32 Notice to state attorney of release of sexually
14 violent predator; immunity from liability.--

15 (1) When it appears that the person may meet the
16 criteria of a sexually violent predator, as defined in s.
17 916.31, the agency with jurisdiction shall give written notice
18 of that fact to the state attorney of the county and the
19 Attorney General 60 days before:

20 (a) The anticipated release from the custody of the
21 Department of Corrections of a person who has been convicted
22 of a sexually violent offense;

23 (b) The anticipated release of a person who has been
24 charged with a sexually violent offense and who has been
25 determined to be incompetent to stand trial under s. 916.12;
26 or

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

30
31

1 (2) The agency with jurisdiction shall provide to the
2 state attorney all relevant information, including, but not
3 limited to:

4 (a) The person's name, identifying factors,
5 anticipated future residence, and offense history.

6 (b) A complete copy of the institutional records
7 compiled by the agency with jurisdiction relating to the
8 person and any out-of-state correctional records, if
9 available.

10 (c) All records relating to the psychological or
11 psychiatric evaluation and treatment of the person.

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

16 Section 5. Section 916.33, Florida Statutes, is
17 created to read:

18 916.33 Petition; time; contents.--When it appears that
19 a person presently confined may be a sexually violent predator
20 or it appears that a person who is not presently confined but
21 who has previously been convicted of a sexually violent
22 offense has committed a recent overt act and the state
23 attorney has determined that the person meets the definition
24 of a sexually violent predator, the state attorney may file a
25 petition alleging that the person is a sexually violent
26 predator and stating sufficient facts to support the
27 allegation.

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

30 916.34 Determination of probable cause; evaluation;
31 person taken into custody.--Upon the filing of a petition

1 under s. 916.33, the court shall make a nonadversary
2 determination regarding whether the petition sets forth
3 sufficient grounds to believe probable cause exists that the
4 respondent is a sexually violent predator. If the court
5 determines such probable cause exists, the court shall direct
6 that the person be taken into custody if the person is not
7 already in custody, or shall direct the agency with
8 jurisdiction to transfer, if necessary, the person to an
9 appropriate secure facility, including, but not limited to, a
10 county jail, for an evaluation as to whether the person is a
11 sexually violent predator. The evaluation shall be conducted
12 by a person deemed to be professionally qualified to conduct
13 such an examination.

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

16 916.35 Trial; counsel and experts; indigent persons;
17 jury.--

18 (1) Within 45 days after the filing of a petition
19 pursuant to s. 916.33, the court shall conduct a trial to
20 determine whether the person is a sexually violent predator.
21 The trial may be continued upon a showing of good cause by
22 either party or by the court on its own motion in the due
23 administration of justice and when the person will not be
24 substantially prejudiced.

25 (2) At all adversary proceedings under this act, the
26 person subject to this act shall be entitled to the assistance
27 of counsel and, if the person is indigent, the court shall
28 appoint the public defender or, if a conflict exists, other
29 counsel to assist the person. Whenever any person is subjected
30 to an examination under this act, the person may retain
31 qualified professionals to perform an examination of the

1 person on his or her own behalf. When the person wishes to be
2 examined by a qualified professional of his or her own choice,
3 the examiner shall be permitted to have reasonable access to
4 the person, for the purpose of the examination, and to all
5 relevant medical and psychological records and reports. In the
6 case of a person who is indigent, the court, upon the person's
7 request, shall assist the person in obtaining a qualified
8 professional to perform an examination or participate in the
9 trial on the person's behalf and shall order reasonable
10 compensation for such services as provided in s. 914.06.

11 (3) The person or the state attorney may demand, or
12 the court on its own motion may order, that the trial be held
13 before a jury of six persons. This demand for a trial by jury
14 shall be filed, in writing, or the order entered, at least 4
15 days before the trial. If no demand or order is made, the
16 trial shall be held before the court.

17 Section 8. Section 916.36, Florida Statutes, is
18 created to read:

19 916.36 Determination; commitment procedure;
20 mistrials.--

21 (1) The court or jury shall determine whether, beyond
22 a reasonable doubt, the person is a sexually violent predator.
23 When the determination is made by a jury, the verdict must be
24 unanimous. Such determination may be appealed.

25 (2) If the court or jury determines that the person is
26 a sexually violent predator, the person shall be committed to
27 the custody of the Department of Children and Family Services
28 for control, care, and treatment until such time as the
29 person's mental abnormality or personality disorder has so
30 changed that the person is safe to be at large. Such control,
31 care, and treatment shall be provided at a facility operated

1 by the Department of Children and Family Services. At all
2 times, sexually violent predators who are committed for
3 control, care, and treatment by the Department of Children and
4 Family Services under this section shall be kept in a secure
5 facility segregated from patients who are not committed under
6 this section.

7 (3) If the court or jury is not satisfied beyond a
8 reasonable doubt that the person is a sexually violent
9 predator, the court shall direct the person's release. If a
10 mistrial is declared, the court shall direct that the person
11 be held at an appropriate secure facility until another trial
12 is conducted. Any subsequent trial following a mistrial must
13 be held within 60 days after the previous trial.

14 (4) If a person charged with a sexually violent
15 offense has been found incompetent to stand trial and is about
16 to be released pursuant to s. 916.13 or s. 916.17 and such
17 person's commitment is sought under subsection (2), the court
18 shall first hear evidence and determine whether the person did
19 commit the act or acts charged. The hearing on this issue must
20 comply with all the procedures specified in this section. In
21 addition, the rules of evidence applicable in criminal cases
22 shall apply, and all constitutional rights available to
23 defendants at a criminal trial, other than the right not to be
24 tried while incompetent, shall apply. After hearing evidence
25 on this issue, the court shall make specific findings on
26 whether the person did commit the act or acts charged, the
27 extent to which the person's incompetence or developmental
28 disability affected the outcome of the hearing, including its
29 effect on the person's ability to consult with and assist
30 counsel and to testify on his or her own behalf, the extent to
31 which the evidence could be reconstructed without the

1 assistance of the person, and the strength of the
2 prosecution's case. If, after the conclusion of the hearing on
3 this issue, the court finds beyond a reasonable doubt that the
4 person did commit the act or acts charged, the court shall
5 enter a final order, appealable by the person, on that issue
6 and may proceed to consider whether the person should be
7 committed pursuant to this section.

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

10 916.37 Annual examination.--Each person committed
11 under s. 916.36 shall have an examination of his or her mental
12 condition made once every year. The committed person may
13 retain a qualified professional to examine such person, and
14 the qualified professional shall have access to all records
15 concerning the person. If the committed person is indigent and
16 so requests, the court may appoint a qualified professional to
17 examine the person. This yearly report shall be provided to
18 the court that committed the person and to the state attorney.
19 The court shall conduct an annual review of the status of the
20 committed person.

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

23 916.38 Detention and commitment to conform to
24 constitutional requirements.--The involuntary detention or
25 commitment of persons under this act shall conform to
26 constitutional requirements for care and treatment.

27 Section 11. Section 916.39, Florida Statutes, is
28 created to read:

29 916.39 Petition for release; procedure.--

30 (1) If the Department of Children and Family Services
31 determines that the mental abnormality or personality disorder

1 of a person committed as a sexually violent predator has so
2 changed that the person is not likely to commit predatory acts
3 of sexual violence if released, the department shall authorize
4 the person to petition the court for release. The petition
5 shall be served upon the court and the state attorney. The
6 court, upon receipt of the petition for release, shall order a
7 hearing within 30 days. The state attorney shall represent the
8 state and shall have the right to have the committed person
9 examined by a qualified professional of the state attorney's
10 choice. The hearing shall be before a jury if demanded by
11 either the committed person or the state attorney. The burden
12 of proof shall be upon the state attorney to show beyond a
13 reasonable doubt that the committed person's mental
14 abnormality or personality disorder remains such that the
15 person is not safe to be at large, and that, if discharged,
16 the person is likely to commit predatory acts of sexual
17 violence.

18 (2) A person committed as a sexually violent predator
19 may petition the court for discharge without the approval of
20 the Department of Children and Family Services. The department
21 shall provide the committed person with an annual written
22 notice of the person's right to petition the court for
23 discharge over the department's objection. The notice shall
24 contain a waiver of this right if the committed person does
25 not choose to petition the court. The department shall forward
26 the notice and signed waiver form or the committed person's
27 petition to the court with the annual report. If the committed
28 person files a petition for discharge over the department's
29 objection, the court shall review the petition to determine
30 whether there are reasonable grounds to support the petition.
31 If the court finds that the petition is based upon frivolous

1 grounds, it shall deny the petition without a hearing. If the
2 court finds that the petition is based on reasonable grounds,
3 the court shall set a show-cause hearing to determine whether
4 facts exist that warrant an adversary hearing on whether the
5 committed person's condition has so changed that he or she is
6 safe to be discharged. The committed person has the right to
7 have an attorney present to represent the person at the
8 show-cause hearing, but the committed person is not entitled
9 to be present at the show-cause hearing. If the court at the
10 show-cause hearing determines that probable cause exists to
11 believe that the committed person's mental abnormality or
12 personality disorder has so changed that the person is safe to
13 be at large and will not likely engage in acts of sexual
14 violence if discharged, then the court shall set an adversary
15 hearing. At the adversary hearing, the committed person shall
16 be entitled to be present and entitled to the benefit of all
17 constitutional protections that the person was entitled to at
18 the initial commitment proceeding. The state attorney shall
19 represent the state and shall have a right to a trial by jury
20 and to have the committed person evaluated by experts chosen
21 by the state. The committed person shall also have the right
22 to have experts evaluate the person on his or her own behalf,
23 and the court shall appoint a qualified professional if the
24 person is indigent and requests that an expert be appointed.
25 The burden of proof at the hearing shall be upon the state
26 attorney to prove beyond a reasonable doubt that the committed
27 person's mental abnormality or personality disorder remains
28 such that the person is not safe to be at large and if
29 released is likely to engage in acts of sexual violence.
30 (3) If a committed person has previously filed a
31 petition for discharge without the approval of the Department

1 of Children and Family Services and the court determined upon
2 review of the petition, or following a hearing, that the
3 petition was frivolous or that the committed person's
4 condition had not so changed that the person was safe to be at
5 large, the court shall deny any subsequent petition unless the
6 petition contains facts upon which a court could find the
7 condition of the committed person had so changed that a
8 hearing was warranted. Upon receipt of a first or subsequent
9 petition from the committed person without the department's
10 approval, the court shall review the petition and determine if
11 the petition is based upon frivolous grounds and, if so, shall
12 deny the petition without a hearing.

13 Section 12. Section 916.40, Florida Statutes, is
14 created to read:

15 916.40 Department of Children and Family Services
16 responsible for costs.--The Department of Children and Family
17 Services is responsible for all costs relating to the
18 evaluation and treatment of a person committed to the
19 department's custody as a sexually violent predator under any
20 provision of this act. Reimbursement may be obtained by the
21 department for the cost of care and treatment of persons
22 committed to the department's custody as provided by law.

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

25 916.41 Notice to victims of release of person
26 committed as a sexually violent predator.--Prior to release of
27 a committed person under this act, the Department of Children
28 and Family Services shall give written notice of the release
29 of a person committed as a sexually violent predator to any
30 victim of the person's activities or crime who is alive and
31 whose address is known to the department or, if the victim is

1 deceased, to the victim's next of kin, if the address of the
2 next of kin is known to the department. Failure to notify is
3 not a reason for postponement of the release. Nothing in this
4 section creates a cause of action against the state or any
5 employee of the state or agents or volunteers who help make
6 this notification.

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

9 916.42 Severability.--If any provision of this act or
10 the application thereof to any person or circumstance is held
11 invalid, the invalidity shall not affect other provisions or
12 applications of the act which can be given effect without the
13 invalid provision or application, and to this end the
14 provisions of this act are declared severable.

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

17 916.43 Confidential or privileged information and
18 records.--In order to protect the public, relevant information
19 and records that are held by a governmental entity or are
20 otherwise confidential or privileged shall be released to the
21 agency with jurisdiction or the state attorney for the purpose
22 of meeting the notice requirement provided in s. 916.32 and
23 determining whether a person is or continues to be a sexually
24 violent predator. This section shall be part of and
25 supplemental to the provisions of ss. 916.30-916.42.

26 Section 16. This act shall take effect January 1 after
27 the year in which enacted.

28
29
30
31

1
2
3
4
5
6
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

HOUSE 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 and care.
See bill for details.