

By Senator Klein

28-856-99

1 A bill to be entitled
2 An act relating to civil commitment of sexually
3 violent predators; providing a directive to the
4 Division of Statutory Revision; transferring
5 provisions relating to civil commitment of
6 sexually violent predators to ch. 394, F.S.,
7 relating to mental health; renumbering and
8 amending s. 916.31, F.S.; conforming
9 cross-references; creating s. 394.911, F.S.;
10 declaring legislative intent with respect to
11 procedures to be used for commitment of
12 sexually violent predators; renumbering and
13 amending s. 916.32, F.S.; defining the term
14 "secretary"; redefining the term "sexually
15 violent offense" to revise the applicability of
16 the act; renumbering and amending s. 916.33,
17 F.S.; prescribing additional notice
18 requirements; requiring additional information;
19 revising composition of multidisciplinary
20 teams; providing for additional elements of
21 assessment of offenders; creating s. 394.9135,
22 F.S.; prescribing procedures to be followed for
23 evaluation and commitment of offenders upon
24 release from confinement; renumbering and
25 amending s. 916.34, F.S.; revising requirements
26 for filing a petition; renumbering and amending
27 s. 916.35, F.S.; revising procedures relating
28 to determination of probable cause; creating s.
29 394.9155, F.S.; providing rules of procedure
30 and evidence; renumbering and amending s.
31 916.36, F.S.; prescribing jury size in a trial

1 to determine whether a person is a sexually
2 violent predator; renumbering and amending s.
3 916.37, F.S.; revising commitment procedures;
4 renumbering and amending s. 916.38, F.S.;
5 conforming cross-references; renumbering and
6 amending s. 916.39, F.S.; conforming
7 terminology; renumbering and amending s.
8 916.40, F.S.; revising procedures for
9 petitioning for release; renumbering and
10 amending s. 916.41, F.S.; revising guidelines
11 relating to release of records; renumbering and
12 amending s. 916.42, F.S.; conforming
13 cross-references; renumbering and amending s.
14 916.43, F.S.; conforming cross-references;
15 renumbering and amending s. 916.44, F.S.;
16 conforming cross-references; renumbering and
17 amending s. 916.45, F.S.; revising provision
18 relating to applicability; renumbering and
19 amending s. 916.46, F.S.; revising notice
20 requirements upon release of persons committed
21 as sexually violent predators; renumbering and
22 amending s. 916.47, F.S.; providing requirement
23 to notify specified persons upon escape of
24 person committed as sexually violent predators;
25 renumbering and amending s. 916.48, F.S.;
26 conforming cross-references; renumbering and
27 amending s. 916.49, F.S.; conforming
28 cross-references; creating s. 394.930, F.S.;
29 directing the Department of Children and Family
30 Services to adopt certain rules; providing an
31 effective date.

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

2
3 Section 1. The Division of Statutory Revision is
4 requested to designate sections 394.910-394.930, Florida
5 Statutes, as part V of chapter 394, Florida Statutes, and to
6 entitle such part as "Involuntary Civil Commitment of Sexually
7 Violent Predators."

8 Section 2. Section 916.31, Florida Statutes, 1998
9 Supplement, is transferred, renumbered as section 394.910,
10 Florida Statutes, and amended to read:

11 394.910 ~~916.31~~ Legislative findings and intent.--The
12 Legislature finds that a small but extremely dangerous number
13 of sexually violent predators exist who do not have a mental
14 disease or defect that renders them appropriate for
15 involuntary treatment under the Baker Act, part I of this
16 chapter ss. ~~394.451-394.4789~~, which is intended to provide
17 short-term treatment to individuals with serious mental
18 disorders and then return them to the community. In contrast
19 to persons appropriate for civil commitment under the Baker
20 Act, sexually violent predators generally have antisocial
21 personality features which are unamenable to existing mental
22 illness treatment modalities, and those features render them
23 likely to engage in criminal, sexually violent behavior. The
24 Legislature further finds that the likelihood of sexually
25 violent predators engaging in repeat acts of predatory sexual
26 violence is high. The existing involuntary commitment
27 procedures under the Baker Act for the treatment and care of
28 mentally ill persons are inadequate to address the risk these
29 sexually violent predators pose to society. The Legislature
30 further finds that the prognosis for rehabilitating sexually
31 violent predators in a prison setting is poor, the treatment

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

7 Section 3. Section 394.911, Florida Statutes, is
8 created to read:

9 394.911 Legislative intent.--The Legislature intends
10 that persons who are subject to the civil commitment procedure
11 for sexually violent predators under this part be subject to
12 the procedures established in this part and not to the
13 provisions of part I of this chapter. Judicial decisions
14 relating to the Baker Act, or part I of this chapter, are not
15 applicable to cases relating to the civil commitment of
16 sexually violent predators under this part.

17 Section 4. Section 916.32, Florida Statutes, 1998
18 Supplement, is transferred, renumbered as section 394.912,
19 Florida Statutes, and amended to read:

20 394.912 916.32 Definitions.--As used in this part ss.
21 916.31-916.49, the term:

22 (1) "Agency with jurisdiction" means the agency that
23 releases, upon lawful order or authority, a person serving a
24 sentence in the custody of the Department of Corrections, a
25 person adjudicated delinquent and committed to the custody of
26 the Department of Juvenile Justice, or a person who was
27 involuntarily committed to the custody of the Department of
28 Children and Family Services upon an adjudication of not
29 guilty by reason of insanity.

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

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

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

5 (c) Adjudicated delinquent of a sexually violent
6 offense after a trial, guilty plea, or plea of nolo
7 contendere.

8 (3) "Department" means the Department of Children and
9 Family Services.

10 (4) "Likely to engage in acts of sexual violence"
11 means the person's propensity to commit acts of sexual
12 violence is of such a degree as to pose a menace to the health
13 and safety of others.

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

17 (6) "Person" means an individual 18 years of age or
18 older who is a potential or actual subject of proceedings
19 under this part ~~ss. 916.31-916.49~~.

20 (7) "Secretary" means the Secretary of the Department
21 of Children and Family Services.

22 ~~(8)(7)~~ "Sexually motivated" means that one of the
23 purposes for which the defendant committed the crime was for
24 sexual gratification.

25 ~~(9)(8)~~ "Sexually violent offense" means:

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

28 (b) Kidnapping of a child under the age of 13 ~~16~~ and,
29 in the course of that offense, committing:

30 1. Sexual battery; or

31

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

3 (c) Committing the offense of false imprisonment upon
4 a child under the age of 13 ~~16~~ and, in the course of that
5 offense, committing:

6 1. Sexual battery; or

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

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

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

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

14 (g) Any conviction for a felony offense in effect at
15 any time before October 1, 1998, which is comparable to a
16 sexually violent offense under paragraphs (a)-(f) or any
17 federal conviction or conviction in another state for a felony
18 offense that in this state would be a sexually violent
19 offense; or

20 (h) Any criminal act that, either at the time of
21 sentencing for the offense or subsequently during civil
22 commitment proceedings under this part ~~ss. 916.31-916.49~~, has
23 been determined beyond a reasonable doubt to have been
24 sexually motivated.

25 ~~(10)(9)~~ "Sexually violent predator" means any person
26 who:

27 (a) Has been convicted of a sexually violent offense;

28 and

29 (b) Suffers from a mental abnormality or personality
30 disorder that makes the person likely to engage in acts of
31

1 sexual violence if not confined in a secure facility for
2 long-term control, care, and treatment.

3 (11)~~(10)~~ "Total confinement" means that the person is
4 currently being held in any physically secure facility being
5 operated or contractually operated for the Department of
6 Corrections, the Department of Juvenile Justice, or the
7 Department of Children and Family Services.

8 Section 5. Section 916.33, Florida Statutes, 1998
9 Supplement, is transferred, renumbered as section 394.913,
10 Florida Statutes, and amended to read:

11 394.913 ~~916.33~~ Notice to state attorney and
12 multidisciplinary team of release of sexually violent
13 predator; establishing multidisciplinary teams; information to
14 be provided to multidisciplinary teams ~~team~~.--

15 (1) The agency with jurisdiction over a person who has
16 been convicted of a sexually violent offense shall give
17 written notice to the multidisciplinary team, and a copy to
18 the state attorney of the circuit where that person was last
19 convicted of a sexually violent offense. 7If the person has
20 never been convicted of a sexually violent offense in this
21 state but has been convicted of a sexually violent offense in
22 another state or in federal court, the agency with
23 jurisdiction shall give written notice to the
24 multidisciplinary team and a copy to the state attorney of the
25 circuit where the person was last convicted of any offense in
26 this state. If the person is being confined in this state
27 pursuant to interstate compact and has a prior or current
28 conviction for a sexually violent offense, the agency with
29 jurisdiction shall give written notice to the
30 multidisciplinary team and a copy to the state attorney of the
31 circuit where the person plans to reside upon release or, if

1 no residence in this state is planned, the state attorney in
2 the circuit where the facility from which the person to be
3 released is located. The written notice must be given to the
4 multidisciplinary team and the state attorney at least 365 ~~180~~
5 days or, in the case of an adjudicated committed delinquent,
6 at least 90 days before:

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

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

16 (2) The agency with jurisdiction shall provide the
17 multidisciplinary team with the following information:

18 (a) The person's name; identifying characteristics;
19 anticipated future residence; the type of supervision the
20 person will receive in the community, if any; and the person's
21 offense history; ~~and~~

22 (b) The person's criminal history, including police
23 reports, victim statements, presentence investigation reports,
24 post sentence investigation reports, and any other documents
25 containing facts of the person's criminal incidents;

26 (c) Mental health, mental status, and medical records,
27 including all clinical records and notes concerning the
28 person; and

29 (d)~~(b)~~ Documentation of institutional adjustment and
30 any treatment received and, in the case of an adjudicated
31 delinquent committed to the Department of Juvenile Justice,

1 | copies of the most recent performance plan and performance
2 | summary.

3 |

4 | The provisions of this section are not jurisdictional, and
5 | failure to comply with them in no way prevents the state
6 | attorney from proceeding against a person otherwise subject to
7 | the provisions of this part ~~ss. 916.31-916.49~~.

8 | (3)(a) ~~The secretary of Children and Family Services~~
9 | ~~shall establish a multidisciplinary team or teams, which shall~~
10 | ~~include two licensed psychiatrists or psychologists, or one~~
11 | ~~licensed psychiatrist and one licensed psychologist,~~
12 | ~~designated by the Secretary of Children and Family Services.~~

13 | (b) Each team shall include, but is not limited to,
14 | two licensed psychiatrists or psychologists or one licensed
15 | psychiatrist and one licensed psychologist. The
16 | multidisciplinary team shall assess and evaluate each person
17 | referred to the team. The assessment and evaluation shall
18 | include a review of the person's institutional history and
19 | treatment record, if any, the person's criminal background,
20 | and any other factor that is relevant to the determination of
21 | whether such person is a sexually violent predator.

22 | (c) The assessment and evaluation may also include, if
23 | warranted, a mental health examination, including a personal
24 | interview, of the person by a licensed psychiatrist or
25 | licensed clinical psychologist designated by the department.

26 | (d) The Attorney General's Office shall serve as legal
27 | counsel to the multidisciplinary team.

28 | (e) The team, within 45 days after receiving notice,
29 | shall assess whether the person meets the definition of a
30 | sexually violent predator and provide the state attorney with
31 | its written assessment and recommendation.

1 Section 6. Section 394.9135, Florida Statutes, is
2 created to read:

3 394.9135 Immediate releases from total confinement;
4 transfer of person to department; time limitations on
5 assessment, notification, and filing petition to hold in
6 custody; filing petition after release.--

7 (1) If the anticipated release from total confinement
8 of a person who has been convicted of a sexually violent
9 offense becomes immediate for any reason, the agency with
10 jurisdiction shall upon immediate release from total
11 confinement transfer that person to the custody of the
12 Department of Children and Family Services to be held in an
13 appropriate secure facility.

14 (2) Within 72 hours after transfer, the
15 multidisciplinary team shall assess whether the person meets
16 the definition of a sexually violent predator. If the
17 multidisciplinary team determines that the person does not
18 meet the definition of a sexually violent predator, that
19 person shall be immediately released. If the multidisciplinary
20 team determines that the person meets the definition of a
21 sexually violent predator, the team shall provide the state
22 attorney, as designated by s. 394.913, with its written
23 assessment and recommendation within the 72-hour period or, if
24 the 72-hour period ends on a weekend or holiday, within the
25 next working day thereafter.

26 (3) Within 24 hours after receipt of the written
27 assessment and recommendation from the multidisciplinary team,
28 the state attorney, as designated in s. 394.913, may file a
29 petition with the circuit court alleging that the person is a
30 sexually violent predator and stating facts sufficient to
31 support such allegation. If a petition is not filed within 24

1 hours after receipt of the written assessment and
2 recommendation by the state attorney, the person shall be
3 immediately released. If a petition is filed pursuant to this
4 section and the judge determines that there is probable cause
5 to believe that the person is a sexually violent predator, the
6 judge shall order the person be maintained in custody and held
7 in an appropriate secure facility for further proceedings in
8 accordance with this part.

9 (4) The provisions of this section are not
10 jurisdictional, and failure to comply with the time
11 limitations, which results in the release of a person who has
12 been convicted of a sexually violent offense, is not
13 dispositive of the case and does not prevent the state
14 attorney from proceeding against a person otherwise subject to
15 the provisions of this part.

16 Section 7. Section 916.34, Florida Statutes, 1998
17 Supplement, is transferred, renumbered as section 394.914,
18 Florida Statutes, and amended to read:

19 394.914 ~~916.34~~ ~~Petition; time~~; contents.--Following
20 receipt of the written assessment and recommendation from the
21 multidisciplinary team, the state attorney, in accordance with
22 s. 394.913, ~~in the judicial circuit where the person committed~~
23 ~~the sexually violent offense~~ may file a petition with the
24 circuit court alleging that the person is a sexually violent
25 predator and stating facts sufficient to support such
26 allegation. No fee shall be charged for the filing of a
27 petition under this section.

28 Section 8. Section 916.35, Florida Statutes, 1998
29 Supplement, is transferred, renumbered as section 394.915,
30 Florida Statutes, and amended to read:

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1 394.915 ~~916.35~~ Determination of probable cause;
2 hearing; evaluation; respondent taken into custody; bail.--

3 (1) When the state attorney files a petition seeking
4 to have a person declared a sexually violent predator, the
5 judge shall determine whether probable cause exists to believe
6 that the person named in the petition is a sexually violent
7 predator. If the judge determines that there is probable cause
8 to believe that the person is a sexually violent predator, the
9 judge shall direct that the person be taken into custody and
10 held in an appropriate secure facility if the person's
11 incarcerative sentence has expired.

12 (2) Upon expiration of sentence and before the release
13 from custody of a person whom the multidisciplinary team
14 recommends for civil commitment, but after the state attorney
15 files a petition under s. 394.914 ~~s. 916.33~~, the state
16 attorney may further petition the court for an adversarial
17 probable cause hearing. The person shall be provided with
18 notice of, and an opportunity to appear in person at, an
19 adversarial hearing. At this hearing, the judge shall:

20 (a) Receive evidence and hear argument from the person
21 and the state attorney; and

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

24 (3) At the adversarial probable cause hearing, the
25 person has the right to:

26 (a) Be represented by counsel;

27 (b) Present evidence;

28 (c) Cross-examine any witnesses who testify against
29 the person; and

30 (d) View and copy all petitions and reports in the
31 court file.

1 (4) If the court again concludes that there is
2 probable cause to believe that the person is a sexually
3 violent predator, the court shall direct that the person be
4 held in an appropriate secure facility upon the expiration of
5 his or her incarcerative sentence in the county where the
6 petition was filed for an evaluation by a mental health
7 professional.

8 (5) After a court finds probable cause to believe that
9 the person is a sexually violent predator, the person must be
10 held in custody in a secure facility without opportunity for
11 pretrial release or release during the trial proceedings.

12 Section 9. Section 394.9155, Florida Statutes, is
13 created to read:

14 394.9155 Rules of procedures and evidence.--In all
15 civil commitment proceedings for sexually violent predators
16 under this part, the following shall apply:

17 (1) The Florida Rules of Civil Procedure apply unless
18 otherwise specified in this part;

19 (2) The Florida Rules of Evidence apply unless
20 otherwise specified in this part;

21 (3) The psychotherapist-patient privilege under s.
22 90.503 does not exist or apply for communications relevant to
23 an issue in proceedings to involuntarily commit a person under
24 this part;

25 (4) The court may consider evidence of prior behavior
26 by a person who is subject to proceedings under this part if
27 such evidence is relevant to proving the person has a mental
28 abnormality, personality disorder, or propensity to commit
29 sexual offenses; and

1 (5) Hearsay evidence is admissible in proceedings
2 under this part if the court finds that such evidence is
3 reliable.

4 Section 10. Section 916.36, Florida Statutes, 1998
5 Supplement, is transferred, renumbered as section 394.916,
6 Florida Statutes, and amended to read:

7 394.916 ~~916.36~~ Trial; counsel and experts; indigent
8 persons; jury.--

9 (1) Within 30 days after the determination of probable
10 cause, the court shall conduct a trial to determine whether
11 the person is a sexually violent predator.

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

16 (3) At all adversarial proceedings under this act, the
17 person subject to this act is entitled to the assistance of
18 counsel, and, if the person is indigent, the court shall
19 appoint the public defender or, if a conflict exists, other
20 counsel to assist the person.

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

1 professional and determine the reasonable compensation for the
2 professional's services, which shall be paid by the state.

3 (5) The person or the state attorney has the right to
4 demand that the trial be before a jury of six members. A
5 demand for a jury trial must be filed, in writing, at least 5
6 days before the trial. If no demand is made, the trial shall
7 be to the court.

8 Section 11. Section 916.37, Florida Statutes, 1998
9 Supplement, is transferred, renumbered as section 394.917,
10 Florida Statutes, and amended to read:

11 394.917 ~~916.37~~ Determination; commitment procedure;
12 mistrials; housing.--

13 (1) The court or jury shall determine by clear and
14 convincing evidence whether the person is a sexually violent
15 predator. If the determination is made by a jury, the verdict
16 ~~decision~~ must be unanimous. If the jury is unable to reach a
17 unanimous verdict, the court must declare a mistrial and poll
18 the jury. If a majority of the jury would find the person is a
19 sexually violent predator ~~If a majority of the jury finds that~~
20 ~~the person is a sexually violent predator, but the decision is~~
21 ~~not unanimous~~, the state attorney may refile the petition and
22 proceed according to the provisions of this part ~~ss.~~

23 ~~916.31-916.49~~. Any retrial must occur within 90 days after the
24 previous trial, unless the subsequent proceeding is continued
25 in accordance with s. 394.916(2)~~s. 916.36(2)~~. The
26 determination that a person is a sexually violent predator may
27 be appealed.

28 (2) If the court or jury determines that the person is
29 a sexually violent predator, upon the expiration of all
30 criminal sentences and discharge of any detainers, the person
31 shall be committed to the custody of the Department of

1 Children and Family Services for control, care, and treatment
2 until such time as the person's mental abnormality or
3 personality disorder has so changed that it is safe for the
4 person to be at large. At all times, sexually violent
5 predators who are committed for control, care, and treatment
6 by the Department of Children and Family Services under this
7 section shall be kept in a secure facility segregated from
8 patients who are not committed under this section.

9 Section 12. Section 916.38, Florida Statutes, 1998
10 Supplement, is transferred, renumbered as section 394.918,
11 Florida Statutes, and amended to read:

12 394.918 ~~916.38~~ Examinations; notice; court hearings
13 for release of committed persons; burden of proof.--

14 (1) A person committed under this part ~~ss.~~
15 ~~916.31-916.49~~ shall have an examination of his or her mental
16 condition once every year or more frequently at the court's
17 discretion. The person may retain or, if the person is
18 indigent and so requests, the court may appoint, a qualified
19 professional to examine the person. Such a professional shall
20 have access to all records concerning the person. The results
21 of the examination shall be provided to the court that
22 committed the person under this part ~~ss. 916.31-916.49~~. Upon
23 receipt of the report, the court shall conduct a review of the
24 person's status.

25 (2) The department shall provide the person with
26 annual written notice of the person's right to petition the
27 court for release over the objection of the director of the
28 facility where the person is housed. The notice must contain a
29 waiver of rights. The director of the facility shall forward
30 the notice and waiver form to the court.

31

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

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

22 Section 13. Section 916.39, Florida Statutes, 1998
23 Supplement, is transferred, renumbered as section 394.919,
24 Florida Statutes, and amended to read:

25 394.919 ~~916.39~~ Authorized petition for release;
26 procedure.--

27 (1) If the secretary ~~of Children and Family Services~~
28 or the secretary's designee at any time determines that the
29 person is not likely to commit acts of sexual violence if
30 conditionally discharged, the secretary or the secretary's
31 designee shall authorize the person to petition the court for

1 release. The petition shall be served upon the court and the
2 state attorney. The court, upon receipt of such a petition,
3 shall order a trial before the court within 30 days, unless
4 continued for good cause.

5 (2) The state attorney shall represent the state, and
6 has the right to have the person examined by professionals of
7 the state attorney's choice. The state bears the burden of
8 proving, by clear and convincing evidence, that the person's
9 mental condition remains such that it is not safe for the
10 person to be at large and that, if released, the person is
11 likely to engage in acts of sexual violence.

12 Section 14. Section 916.40, Florida Statutes, 1998
13 Supplement, is transferred, renumbered as section 394.920,
14 Florida Statutes, and amended to read:

15 394.920 ~~916.40~~ Petition for release.--~~Sections~~
16 ~~916.31-916.49 do not prohibit~~ A person is not prohibited from
17 filing a petition for discharge at any time after commitment
18 under this part. However, if the person has previously filed
19 such a petition without the approval of the secretary of
20 ~~Children and Family Services~~ or the secretary's designee and
21 the court determined that the petition was without merit, a
22 subsequent petition shall be denied unless the petition
23 contains facts upon which a court could find that the person's
24 condition has so changed that a probable cause hearing is
25 warranted.

26 Section 15. Section 916.41, Florida Statutes, 1998
27 Supplement, is transferred, renumbered as section 394.921,
28 Florida Statutes, and amended to read:

29 394.921 ~~916.41~~ Release of records to agencies,
30 multidisciplinary teams, and state attorney.--

31

1 (1) In order to protect the public, relevant
2 information and records that are otherwise confidential or
3 privileged shall be released to the agency having
4 jurisdiction, to a multidisciplinary team, or to the state
5 attorney for the purpose of meeting the notice requirements of
6 this part ss. 916.31-916.49 and determining whether a person
7 is or continues to be a sexually violent predator. A person,
8 agency, or entity receiving information under this section
9 which is confidential and exempt from the provisions of s.
10 119.07(1) must maintain the confidentiality of that
11 information. Such information does not lose its confidential
12 status due to its release under this section.

13 (2) Psychological or psychiatric reports, drug and
14 alcohol reports, treatment records, medical records, or victim
15 impact statements that have been submitted to the court or
16 admitted into evidence under this part ss. 916.31-916.49 shall
17 be part of the record but shall be sealed and may be opened
18 only pursuant to a court order.

19 Section 16. Section 916.42, Florida Statutes, 1998
20 Supplement, is transferred, renumbered as section 394.922,
21 Florida Statutes, and amended to read:

22 394.922 ~~916.42~~ Constitutional requirements.--The
23 long-term control, care, and treatment of a person committed
24 under this part ss. 916.31-916.49 must conform to
25 constitutional requirements.

26 Section 17. Section 916.43, Florida Statutes, 1998
27 Supplement, is transferred, renumbered as section 394.923,
28 Florida Statutes, and amended to read:

29 394.923 ~~916.43~~ Immunity from civil liability.--The
30 agency with jurisdiction and its officers and employees; the
31 department and its officers and employees; members of the

1 multidisciplinary team; the state attorney and the state
2 attorney's employees; and those involved in the evaluation,
3 care, and treatment of sexually violent persons committed
4 under this part ~~ss. 916.31-916.49~~ are immune from any civil
5 liability for good faith conduct under this part ~~ss.~~
6 ~~916.31-916.49~~.

7 Section 18. Section 916.44, Florida Statutes, 1998
8 Supplement, is transferred, renumbered as section 394.924,
9 Florida Statutes, and amended to read:

10 394.924 ~~916.44~~ Severability.--If any section,
11 subsection, or provision of this part ~~ss. 916.31-916.49~~ is
12 held to be unconstitutional or invalid by a court of competent
13 jurisdiction, the remaining portions of this part ~~ss.~~
14 ~~916.31-916.49~~ shall be unaffected because the Legislature
15 declares that the provisions of this part ~~ss. 916.31-916.49~~
16 are severable from each other.

17 Section 19. Section 916.45, Florida Statutes, 1998
18 Supplement, is transferred, renumbered as section 394.925,
19 Florida Statutes, and amended to read:

20 394.925 ~~916.45~~ Applicability of act.--This part
21 applies ~~Sections 916.31-916.49 apply~~ to all persons currently
22 in custody who have been convicted of a sexually violent
23 offense, as that term is defined in s. 394.912(9) ~~s.~~
24 ~~916.32(8)~~, as well as to all persons convicted of a sexually
25 violent offense and sentenced to confinement in the future.

26 Section 20. Section 916.46, Florida Statutes, 1998
27 Supplement, is transferred, renumbered as section 394.926,
28 Florida Statutes, and amended to read:

29 394.926 ~~916.46~~ Notice to victims of release of persons
30 committed as sexually violent predators; notice to Department
31 of Corrections and Parole Commission.--

1 (1) As soon as is practicable, the department shall
2 give written notice of the release of a person committed as a
3 sexually violent predator to any victim of the committed
4 person who is alive and whose address is known to the
5 department or, if the victim is deceased, to the victim's
6 family, if the family's address is known to the department.
7 Failure to notify is not a reason for postponement of release.
8 This section does not create a cause of action against the
9 state or an employee of the state acting within the scope of
10 the employee's employment as a result of the failure to notify
11 pursuant to this part ss. 916.31-916.49.

12 (2) If a sexually violent predator who has an active
13 or pending term of probation, community control, parole,
14 conditional release, or other court-ordered or post-prison
15 release supervision is released from custody, the department
16 must immediately notify the Department of Corrections' Office
17 of Community Corrections in Tallahassee. The Parole Commission
18 must also be immediately notified of any releases of a
19 sexually violent predator who has an active or pending term of
20 parole, conditional release, or other post-prison release
21 supervision that is administered by the Parole Commission.

22 Section 21. Section 916.47, Florida Statutes, 1998
23 Supplement, is transferred, renumbered as section 394.927,
24 Florida Statutes, and amended to read:

25 394.927 916.47 Escape while in lawful custody; notice
26 to victim; notice to the Department of Corrections and Parole
27 Commission.--

28 (1) A person who is held in lawful custody pursuant to
29 a judicial finding of probable cause under s. 394.915 s.
30 916.35 or pursuant to a commitment as a sexually violent
31 predator under s. 394.916 s. 916.36 and who escapes or

1 attempts to escape while in such custody commits a felony of
2 the second degree, punishable as provided in s. 775.082, s.
3 775.083, or s. 775.084.

4 (2) If a person who is held in custody pursuant to a
5 finding of probable cause or commitment as a sexually violent
6 predator escapes while in custody, the department shall
7 immediately notify the victim in accordance with s. 394.926.
8 The state attorney that filed the petition for civil
9 commitment of the escapee must also be immediately notified by
10 the department. If the escapee has an active or pending term
11 of probation, community control, parole, conditional release,
12 or other court-ordered or post-prison release supervision, the
13 department shall also immediately notify the Department of
14 Corrections' Office of Community Corrections in Tallahassee.
15 The Parole Commission shall also be immediately notified of an
16 escape if the escapee has an active or pending term of parole,
17 conditional release, or other post-prison release supervision
18 that is administered by the Parole Commission.

19 Section 22. Section 916.48, Florida Statutes, 1998
20 Supplement, is transferred, renumbered as section 394.928,
21 Florida Statutes, and amended to read:

22 394.928 ~~916.48~~ Subsistence fees and costs of
23 treatment.--

24 (1) In recognition of the fact that persons committed
25 under this part ~~ss. 916.31-916.49~~ may have sources of income
26 and assets, which may include bank accounts, inheritances,
27 real estate, social security payments, veteran's payments, and
28 other types of financial resources, and in recognition of the
29 fact that the daily subsistence cost and costs of treatment of
30 persons committed under this part ~~ss. 916.31-916.49~~ are a
31

1 | burden on the taxpayers of the state, each person so committed
2 | shall:

3 | (a) Upon order of the court committing the person,
4 | disclose all revenue or assets to the department.

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

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

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

20 | Section 23. Section 916.49, Florida Statutes, 1998
21 | Supplement, is transferred, renumbered as section 394.929,
22 | Florida Statutes, and amended to read:

23 | 394.929 ~~916.49~~ Department of Children and Family
24 | Services responsible for costs.--The Department of Children
25 | and Family Services is responsible for all costs relating to
26 | the evaluation and treatment of persons committed to the
27 | department's custody as sexually violent predators. A county
28 | is not obligated to fund costs for psychological examinations,
29 | expert witnesses, court-appointed counsel, or other costs
30 | required by this part ~~ss. 916.31-916.49~~. Other costs for
31 | psychological examinations, expert witnesses, and

1 court-appointed counsel required by this part ~~ss.~~
2 ~~916.31-916.49~~ shall be paid from state funds appropriated by
3 general law.

4 Section 24. Section 394.930, Florida Statutes, is
5 created to read:

6 394.930 Authority to adopt rules.--The Department of
7 Children and Family Services shall adopt rules for:

8 (1) The qualifications necessary to designate and
9 contract with a psychiatrist or psychologist to serve on a
10 multidisciplinary team;

11 (2) Procedures that must be followed by members of the
12 multidisciplinary teams when assessing and evaluating persons
13 subject to this part;

14 (3) The criteria that must exist in order for a
15 multidisciplinary team to recommend to a state attorney that a
16 petition should be filed to involuntarily commit a person
17 under this part;

18 (4) The designation of secure facilities for sexually
19 violent predators who are subject to involuntary commitment
20 under this part;

21 (5) The general treatment plan for all committed
22 persons under this part and all other authorized treatment, or
23 procedure for obtaining approval from the department for
24 treatment that is not delineated or described in the rules of
25 the department for sexually violent predators who are
26 committed under this part; and

27 (6) The protocol to inform a person that he or she is
28 being examined to determine whether he or she is a sexually
29 violent predator under this part.

30 Section 25. This act shall take effect upon becoming a
31 law.

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SENATE SUMMARY

Transfers provisions governing the involuntary commitment of sexually violent predators to chapter 394, Florida Statutes, relating to mental health. Redefines the term "sexually violent offense" to narrow the applicability of the act. Revises provisions for examination of persons alleged to be sexually violent predators. Provides that rules of evidence and civil procedure apply in proceedings under this act, that the psychotherapist-patient privilege does not apply, that prior behavior may be considered, and that hearsay may be admissible. Provides additional requirements for notice when a person committed as a sexually violent predator is to be released or escapes.