

By the Committee on Children and Families; and Senator Klein

300-1974-99

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; providing
22 clarification on assessments and
23 recommendations to state attorneys; creating s.
24 394.9135, F.S.; prescribing procedures to be
25 followed for evaluation and filing petitions
26 for offenders being immediately released from
27 confinement; renumbering and amending s.
28 916.34, F.S.; revising requirements for filing
29 a petition; renumbering and amending s. 916.35,
30 F.S.; revising procedures relating to
31 determination of probable cause; creating s.

1 394.9155, F.S.; providing rules of procedure
2 and evidence; renumbering and amending s.
3 916.36, F.S.; prescribing jury size in a trial
4 to determine whether a person is a sexually
5 violent predator; renumbering and amending s.
6 916.37, F.S.; revising commitment procedures;
7 providing for payment for counsel and costs in
8 cases involving indigent defendants;
9 renumbering and amending s. 916.38, F.S.;
10 conforming cross-references; renumbering and
11 amending s. 916.39, F.S.; conforming
12 terminology; renumbering and amending s.
13 916.40, F.S.; revising procedures for
14 petitioning for release; renumbering and
15 amending s. 916.41, F.S.; revising guidelines
16 relating to release of records; renumbering and
17 amending s. 916.42, F.S.; conforming
18 cross-references; renumbering and amending s.
19 916.43, F.S.; conforming cross-references;
20 renumbering and amending s. 916.44, F.S.;
21 conforming cross-references; renumbering and
22 amending s. 916.45, F.S.; revising provision
23 relating to applicability of act; renumbering
24 and amending s. 916.46, F.S.; revising notice
25 requirements upon release of persons committed
26 as sexually violent predators; renumbering and
27 amending s. 916.47, F.S.; providing requirement
28 to notify specified persons upon escape of
29 person committed as sexually violent predators;
30 renumbering and amending s. 916.48, F.S.;
31 conforming cross-references; renumbering and

1 amending s. 916.49, F.S.; conforming
2 cross-references; creating s. 394.930, F.S.;
3 directing the Department of Children and Family
4 Services to adopt certain rules; requiring the
5 Department of Corrections to produce quarterly
6 reports; requiring the Office of Program Policy
7 Analysis and Government Accountability to
8 conduct a study and report to the Legislature;
9 providing an effective date.

10

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

12

13 Section 1. The Division of Statutory Revision is
14 requested to designate sections 394.910-394.930, Florida
15 Statutes, as part V of chapter 394, Florida Statutes, and to
16 entitle such part as "Involuntary Civil Commitment of Sexually
17 Violent Predators."

18

19 Section 2. Section 916.31, Florida Statutes, 1998
20 Supplement, is transferred, renumbered as section 394.910,
21 Florida Statutes, and amended to read:

22

23 394.910 ~~916.31~~ Legislative findings and intent.--The
24 Legislature finds that a small but extremely dangerous number
25 of sexually violent predators exist who do not have a mental
26 disease or defect that renders them appropriate for
27 involuntary treatment under the Baker Act, part I of this
28 chapter ss. 394.451-394.4789, which is intended to provide
29 short-term treatment to individuals with serious mental
30 disorders and then return them to the community. In contrast
31 to persons appropriate for civil commitment under the Baker
Act, sexually violent predators generally have antisocial
personality features which are unamenable to existing mental

1 illness treatment modalities, and those features render them
2 likely to engage in criminal, sexually violent behavior. The
3 Legislature further finds that the likelihood of sexually
4 violent predators engaging in repeat acts of predatory sexual
5 violence is high. The existing involuntary commitment
6 procedures under the Baker Act for the treatment and care of
7 mentally ill persons are inadequate to address the risk these
8 sexually violent predators pose to society. The Legislature
9 further finds that the prognosis for rehabilitating sexually
10 violent predators in a prison setting is poor, the treatment
11 needs of this population are very long term, and the treatment
12 modalities for this population are very different from the
13 traditional treatment modalities for people appropriate for
14 commitment under the Baker Act. It is therefore the intent of
15 the Legislature to create a civil commitment procedure for the
16 long-term care and treatment of sexually violent predators.

17 Section 3. Section 394.911, Florida Statutes, is
18 created to read:

19 394.911 Legislative intent.--The Legislature intends
20 that persons who are subject to the civil commitment procedure
21 for sexually violent predators under this part be subject to
22 the procedures established in this part and not to the
23 provisions of part I of this chapter. Less restrictive
24 alternatives are not applicable to cases initiated under this
25 part.

26 Section 4. Section 916.32, Florida Statutes, 1998
27 Supplement, is transferred, renumbered as section 394.912,
28 Florida Statutes, and amended to read:

29 394.912 ~~916.32~~ Definitions.--As used in this part ~~ss.~~
30 ~~916.31-916.49~~, the term:

31

1 (1) "Agency with jurisdiction" means the agency that
2 releases, upon lawful order or authority, a person who is
3 serving a sentence in the custody of the Department of
4 Corrections, a person who was adjudicated delinquent and is
5 committed to the custody of the Department of Juvenile
6 Justice, or a person who was involuntarily committed to the
7 custody of the Department of Children and Family Services upon
8 an adjudication of not 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 this part ~~ss. 916.31-916.49~~.

30 (7) "Secretary" means the Secretary of the Department
31 of Children and Family Services.

1 ~~(8)(7)~~ "Sexually motivated" means that one of the
2 purposes for which the defendant committed the crime was for
3 sexual gratification.

4 ~~(9)(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 13 ~~16~~ and,
8 in 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 13 ~~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 October 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 this part ~~ss. 916.31-916.49~~, has

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

3 | (10)~~(9)~~ "Sexually violent predator" means any person
4 | who:

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

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

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

16 | Section 5. Section 916.33, Florida Statutes, 1998
17 | Supplement, is transferred, renumbered as section 394.913,
18 | Florida Statutes, and amended to read:

19 | 394.913 ~~916.33~~ Notice to state attorney and
20 | multidisciplinary team of release of sexually violent
21 | predator; establishing multidisciplinary teams; information to
22 | be provided to multidisciplinary teams ~~team~~.--

23 | (1) The agency with jurisdiction over a person who has
24 | been convicted of a sexually violent offense shall give
25 | written notice to the multidisciplinary team, and a copy to
26 | the state attorney of the circuit where that person was last
27 | convicted of a sexually violent offense. 7 If the person has
28 | never been convicted of a sexually violent offense in this
29 | state but has been convicted of a sexually violent offense in
30 | another state or in federal court, the agency with
31 | jurisdiction shall give written notice to the

1 multidisciplinary team and a copy to the state attorney of the
2 circuit where the person was last convicted of any offense in
3 this state. If the person is being confined in this state
4 pursuant to interstate compact and has a prior or current
5 conviction for a sexually violent offense, the agency with
6 jurisdiction shall give written notice to the
7 multidisciplinary team and a copy to the state attorney of the
8 circuit where the person plans to reside upon release or, if
9 no residence in this state is planned, the state attorney in
10 the circuit where the facility from which the person to be
11 released is located. The written notice must be given to the
12 multidisciplinary team and the state attorney at least 365 ~~180~~
13 days or, in the case of an adjudicated committed delinquent,
14 at least 90 days before:

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

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

24 (2) The agency with jurisdiction shall provide the
25 multidisciplinary team with the following information:

26 (a) The person's name; identifying characteristics;
27 anticipated future residence; the type of supervision the
28 person will receive in the community, if any; and the person's
29 offense history; ~~and~~

30 (b) The person's criminal history, including police
31 reports, victim statements, presentence investigation reports,

1 post-sentence investigation reports, if available, and any
2 other documents containing facts of the person's criminal
3 incidents;

4 (c) Mental health, mental status, and medical records,
5 including all clinical records and notes concerning the
6 person;

7 (d)~~(b)~~ Documentation of institutional adjustment and
8 any treatment received and, in the case of an adjudicated
9 delinquent committed to the Department of Juvenile Justice,
10 copies of the most recent performance plan and performance
11 summary; and-

12 (e) If the person was returned to custody after a
13 period of supervision, documentation of adjustment during
14 supervision and any treatment received.

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 this part ~~ss. 916.31-916.49~~.

20 (3)(a) ~~The secretary of Children and Family Services~~
21 ~~shall establish a multidisciplinary team or teams, which shall~~
22 ~~include two licensed psychiatrists or psychologists, or one~~
23 ~~licensed psychiatrist and one licensed psychologist,~~
24 ~~designated by the Secretary of Children and Family Services.~~

25 (b) Each team shall include, but is not limited to,
26 two licensed psychiatrists or psychologists or one licensed
27 psychiatrist and one licensed psychologist. The
28 multidisciplinary team shall assess and evaluate each person
29 referred to the team. The assessment and evaluation shall
30 include a review of the person's institutional history and
31 treatment record, if any, the person's criminal background,

1 and any other factor that is relevant to the determination of
2 whether such person is a sexually violent predator.

3 (c) The assessment and evaluation may also include, if
4 warranted, a mental health examination, including a personal
5 interview, of the person by a licensed psychiatrist or
6 licensed clinical psychologist who is a member of the
7 multidisciplinary team or who is otherwise designated by the
8 department.

9 (d) The Attorney General's Office shall serve as legal
10 counsel to the multidisciplinary team.

11 (e) ~~The team,~~ Within 45 days after receiving notice,
12 there shall be a written assessment as to ~~assess~~ whether the
13 person meets the definition of a sexually violent predator and
14 a written recommendation, which shall be provided to ~~provide~~
15 the state attorney with its written assessment and
16 recommendation. The written recommendation shall be provided
17 by the Department of Children and Family Services and shall
18 include the written report of the multidisciplinary team.

19 Section 6. Section 394.9135, Florida Statutes, is
20 created to read:

21 394.9135 Immediate releases from total confinement;
22 transfer of person to department; time limitations on
23 assessment, notification, and filing petition to hold in
24 custody; filing petition after release.--

25 (1) If the anticipated release from total confinement
26 of a person who has been convicted of a sexually violent
27 offense becomes immediate for any reason, the agency with
28 jurisdiction shall upon immediate release from total
29 confinement transfer that person to the custody of the
30 Department of Children and Family Services to be held in an
31 appropriate secure facility.

1 (2) Within 72 hours after transfer, the
2 multidisciplinary team shall assess whether the person meets
3 the definition of a sexually violent predator. If the
4 multidisciplinary team determines that the person does not
5 meet the definition of a sexually violent predator, that
6 person shall be immediately released. If the multidisciplinary
7 team determines that the person meets the definition of a
8 sexually violent predator, the team shall provide the state
9 attorney, as designated by s. 394.913, with its written
10 assessment and recommendation within the 72-hour period or, if
11 the 72-hour period ends on a weekend or holiday, within the
12 next working day thereafter.

13 (3) Within 48 hours after receipt of the written
14 assessment and recommendation from the multidisciplinary team,
15 the state attorney, as designated in s. 394.913, may file a
16 petition with the circuit court alleging that the person is a
17 sexually violent predator and stating facts sufficient to
18 support such allegation. If a petition is not filed within 24
19 hours after receipt of the written assessment and
20 recommendation by the state attorney, the person shall be
21 immediately released. If a petition is filed pursuant to this
22 section and the judge determines that there is probable cause
23 to believe that the person is a sexually violent predator, the
24 judge shall order the person be maintained in custody and held
25 in an appropriate secure facility for further proceedings in
26 accordance with this part.

27 (4) The provisions of this section are not
28 jurisdictional, and failure to comply with the time
29 limitations, which results in the release of a person who has
30 been convicted of a sexually violent offense, is not
31 dispositive of the case and does not prevent the state

1 attorney from proceeding against a person otherwise subject to
2 the provisions of this part.

3 Section 7. Section 916.34, Florida Statutes, 1998
4 Supplement, is transferred, renumbered as section 394.914,
5 Florida Statutes, and amended to read:

6 394.914 ~~916.34~~ Petition; ~~time;~~ contents.--Following
7 receipt of the written assessment and recommendation from the
8 multidisciplinary team, the state attorney, in accordance with
9 s. 394.913, ~~in the judicial circuit where the person committed~~
10 ~~the sexually violent offense~~ may file a petition with the
11 circuit court alleging that the person is a sexually violent
12 predator and stating facts sufficient to support such
13 allegation. No fee shall be charged for the filing of a
14 petition under this section.

15 Section 8. Section 916.35, Florida Statutes, 1998
16 Supplement, is transferred, renumbered as section 394.915,
17 Florida Statutes, and amended to read:

18 394.915 ~~916.35~~ Determination of probable cause;
19 hearing; 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 order ~~direct~~ that the person remain in custody and
27 be immediately transferred to ~~be taken into custody and held~~
28 ~~in~~ an appropriate secure facility if the person's
29 incarcerative sentence expires.

30 (2) Upon the expiration of the incarcerative sentence
31 and before the release from custody of a person whom the

1 multidisciplinary team recommends for civil commitment, but
2 after the state attorney files a petition under s. 394.914 ~~s.~~
3 ~~916.33~~, the state attorney may further petition the court for
4 an adversarial probable cause hearing. The person shall be
5 provided with notice of, and an opportunity to appear in
6 person at, an adversarial hearing. At this hearing, the judge
7 shall:

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

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

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

14 (a) Be represented by counsel;

15 (b) Present evidence;

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

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

20 (4) If the court again concludes that there is
21 probable cause to believe that the person is a sexually
22 violent predator, the court shall direct that the person be
23 held in an appropriate secure facility upon the expiration of
24 his or her incarcerative sentence in the county where the
25 ~~petition was filed for an evaluation by a mental health~~
26 ~~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 394.9155, Florida Statutes, is
2 created to read:

3 394.9155 Rules of procedures and evidence.--In all
4 civil commitment proceedings for sexually violent predators
5 under this part, the following shall apply:

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

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

10 (3) The psychotherapist-patient privilege under s.
11 90.503 does not exist or apply for communications relevant to
12 an issue in proceedings to involuntarily commit a person under
13 this part;

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

19 (5) Hearsay evidence, including reports of a member of
20 the multidisciplinary team or reports produced on behalf of
21 the multidisciplinary team, is admissible in proceedings under
22 this part unless the court finds that such evidence is not
23 reliable.

24 Section 10. Section 916.36, Florida Statutes, 1998
25 Supplement, is transferred, renumbered as section 394.916,
26 Florida Statutes, and amended to read:

27 394.916 ~~916.36~~ Trial; counsel and experts; indigent
28 persons; jury.--

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

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

5 (3) At all adversarial proceedings under this act, the
6 person subject to this act is entitled to the assistance of
7 counsel, and, if the person is indigent, the court shall
8 appoint the public defender or, if a conflict exists, other
9 counsel to assist the person.

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

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

28 Section 11. Section 916.37, Florida Statutes, 1998
29 Supplement, is transferred, renumbered as section 394.917,
30 Florida Statutes, and amended to read:

31

1 394.917 ~~916.37~~ Determination; commitment procedure;
2 mistrials; housing; counsel and costs in indigent appellate
3 cases.--

4 (1) The court or jury shall determine by clear and
5 convincing evidence whether the person is a sexually violent
6 predator. If the determination is made by a jury, the verdict
7 ~~decision~~ must be unanimous. If the jury is unable to reach a
8 unanimous verdict, the court must declare a mistrial and poll
9 the jury. If a majority of the jury would find the person is a
10 sexually violent predator ~~If a majority of the jury finds that~~
11 ~~the person is a sexually violent predator, but the decision is~~
12 ~~not unanimous~~, the state attorney may refile the petition and
13 proceed according to the provisions of this part ~~ss.~~

14 ~~916.31-916.49~~. Any retrial must occur within 90 days after the
15 previous trial, unless the subsequent proceeding is continued
16 in accordance with s. 394.916(2) ~~s. 916.36(2)~~. The
17 determination that a person is a sexually violent predator may
18 be appealed.

19 (2) If the court or jury determines that the person is
20 a sexually violent predator, upon the expiration of the
21 incarcerative portion of all criminal sentences and
22 disposition of any detainers other than detainers for
23 deportation by the United States Immigration and
24 Naturalization Service, the person shall be committed to the
25 custody of the Department of Children and Family Services for
26 control, care, and treatment until such time as the person's
27 mental abnormality or personality disorder has so changed that
28 it is safe for the person to be at large. At all times,
29 sexually violent predators who are committed for control,
30 care, and treatment by the Department of Children and Family
31 Services under this section shall be kept in a secure facility

1 segregated from patients who are not committed under this
2 section.

3 (3) The public defender of the circuit in which a
4 person was determined to be a sexually violent predator shall
5 be appointed to represent the person on appeal. That public
6 defender may request the public defender who handles criminal
7 appeals for the circuit to represent the person on appeal in
8 the manner provided in s. 27.51(4). If the public defender is
9 unable to represent the person on appeal due to a conflict,
10 the court shall appoint other counsel, who shall be
11 compensated at a rate not less than that provided for
12 appointed counsel in criminal cases. Filing fees for indigent
13 appeals under this act are waived. Costs and fees related to
14 such appeals, including the amounts paid for records,
15 transcripts, and compensation of appointed counsel, shall be
16 authorized by the trial court and paid from state funds that
17 are appropriated for such purposes.

18 Section 12. Section 916.38, Florida Statutes, 1998
19 Supplement, is transferred, renumbered as section 394.918,
20 Florida Statutes, and amended to read:

21 394.918 ~~916.38~~ Examinations; notice; court hearings
22 for release of committed persons; burden of proof.--

23 (1) A person committed under this part ~~ss.~~
24 ~~916.31-916.49~~ shall have an examination of his or her mental
25 condition once every year or more frequently at the court's
26 discretion. The person may retain or, if the person is
27 indigent and so requests, the court may appoint, a qualified
28 professional to examine the person. Such a professional shall
29 have access to all records concerning the person. The results
30 of the examination shall be provided to the court that
31 committed the person under this part ~~ss. 916.31-916.49~~. Upon

1 receipt of the report, the court shall conduct a review of the
2 person's status.

3 (2) The department shall provide the person with
4 annual written notice of the person's right to petition the
5 court for release over the objection of the director of the
6 facility where the person is housed. The notice must contain a
7 waiver of rights. The director of the facility shall forward
8 the notice and waiver form to the court.

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

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

30
31

1 Section 13. Section 916.39, Florida Statutes, 1998
2 Supplement, is transferred, renumbered as section 394.919,
3 Florida Statutes, and amended to read:

4 394.919 ~~916.39~~ Authorized petition for release;
5 procedure.--

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

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

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

25 394.920 ~~916.40~~ Petition for release.--~~Sections~~
26 ~~916.31-916.49 do not prohibit~~ A person is not prohibited from
27 filing a petition for discharge at any time after commitment
28 under this part. However, if the person has previously filed
29 such a petition without the approval of the secretary of
30 ~~Children and Family Services~~ or the secretary's designee and
31 the court determined that the petition was without merit, a

1 subsequent petition shall be denied unless the petition
2 contains facts upon which a court could find that the person's
3 condition has so changed that a probable cause hearing is
4 warranted.

5 Section 15. Section 916.41, Florida Statutes, 1998
6 Supplement, is transferred, renumbered as section 394.921,
7 Florida Statutes, and amended to read:

8 394.921 ~~916.41~~ Release of records to agencies,
9 multidisciplinary teams, and state attorney.--

10 (1) In order to protect the public, relevant
11 information and records that are otherwise confidential or
12 privileged shall be released to the agency with ~~having~~
13 jurisdiction, to a multidisciplinary team, or to the state
14 attorney for the purpose of meeting the notice requirements of
15 this part ss. 916.31-916.49 and determining whether a person
16 is or continues to be a sexually violent predator. A person,
17 agency, or entity receiving information under this section
18 which is confidential and exempt from the provisions of s.
19 119.07(1) must maintain the confidentiality of that
20 information. Such information does not lose its confidential
21 status due to its release under this section.

22 (2) Psychological or psychiatric reports, drug and
23 alcohol reports, treatment records, medical records, or victim
24 impact statements that have been submitted to the court or
25 admitted into evidence under this part ss. 916.31-916.49 shall
26 be part of the record but shall be sealed and may be opened
27 only pursuant to a court order.

28 Section 16. Section 916.42, Florida Statutes, 1998
29 Supplement, is transferred, renumbered as section 394.922,
30 Florida Statutes, and amended to read:

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1 394.922 ~~916.42~~ Constitutional requirements.--The
2 long-term control, care, and treatment of a person committed
3 under this part ~~ss. 916.31-916.49~~ must conform to
4 constitutional requirements.

5 Section 17. Section 916.43, Florida Statutes, 1998
6 Supplement, is transferred, renumbered as section 394.923,
7 Florida Statutes, and amended to read:

8 394.923 ~~916.43~~ Immunity from civil liability.--The
9 agency with jurisdiction and its officers and employees; the
10 department and its officers and employees; members of the
11 multidisciplinary team; the state attorney and the state
12 attorney's employees; and those involved in the evaluation,
13 care, and treatment of sexually violent persons committed
14 under this part ~~ss. 916.31-916.49~~ are immune from any civil
15 liability for good faith conduct under this part ~~ss.~~
16 ~~916.31-916.49~~.

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

20 394.924 ~~916.44~~ Severability.--If any section,
21 subsection, or provision of this part ~~ss. 916.31-916.49~~ is
22 held to be unconstitutional or invalid by a court of competent
23 jurisdiction, the remaining portions of this part ~~ss.~~
24 ~~916.31-916.49~~ shall be unaffected because the Legislature
25 declares that the provisions of this part ~~ss. 916.31-916.49~~
26 are severable from each other.

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

30 394.925 ~~916.45~~ Applicability of act.--This part
31 applies ~~Sections 916.31-916.49~~ apply to all persons currently

1 in custody who have been convicted of a sexually violent
2 offense, as that term is defined in s. 394.912(9)~~s.~~
3 ~~916.32(8)~~, as well as to all persons convicted of a sexually
4 violent offense and sentenced to total confinement in the
5 future.

6 Section 20. Section 916.46, Florida Statutes, 1998
7 Supplement, is transferred, renumbered as section 394.926,
8 Florida Statutes, and amended to read:

9 394.926 ~~916.46~~ Notice to victims of release of persons
10 committed as sexually violent predators; notice to Department
11 of Corrections and Parole Commission.--

12 (1) As soon as is practicable, the department shall
13 give written notice of the release of a person committed as a
14 sexually violent predator to any victim of the committed
15 person who is alive and whose address is known to the
16 department or, if the victim is deceased, to the victim's
17 family, if the family's address is known to the department.
18 Failure to notify is not a reason for postponement of release.
19 This section does not create a cause of action against the
20 state or an employee of the state acting within the scope of
21 the employee's employment as a result of the failure to notify
22 pursuant to this part ~~ss. 916.31-916.49~~.

23 (2) If a sexually violent predator who has an active
24 or pending term of probation, community control, parole,
25 conditional release, or other court-ordered or post-prison
26 release supervision is released from custody, the department
27 must immediately notify the Department of Corrections' Office
28 of Community Corrections in Tallahassee. The Parole Commission
29 must also be immediately notified of any releases of a
30 sexually violent predator who has an active or pending term of
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1 parole, conditional release, or other post-prison release
2 supervision that is administered by the Parole Commission.

3 Section 21. Section 916.47, Florida Statutes, 1998
4 Supplement, is transferred, renumbered as section 394.927,
5 Florida Statutes, and amended to read:

6 394.927 ~~916.47~~ Escape while in lawful custody; notice
7 to victim; notice to the Department of Corrections and Parole
8 Commission.--

9 (1) A person who is held in lawful custody pursuant to
10 a judicial finding of probable cause under s. 394.915 ~~s.~~
11 ~~916.35~~ or pursuant to a commitment as a sexually violent
12 predator under s. 394.916 ~~s. 916.36~~ and who escapes or
13 attempts to escape while in such custody commits a felony of
14 the second degree, punishable as provided in s. 775.082, s.
15 775.083, or s. 775.084.

16 (2) If a person who is held in custody pursuant to a
17 finding of probable cause or commitment as a sexually violent
18 predator escapes while in custody, the department shall
19 immediately notify the victim in accordance with s. 394.926.
20 The state attorney that filed the petition for civil
21 commitment of the escapee must also be immediately notified by
22 the department. If the escapee has an active or pending term
23 of probation, community control, parole, conditional release,
24 or other court-ordered or post-prison release supervision, the
25 department shall also immediately notify the Department of
26 Corrections' Office of Community Corrections in Tallahassee.
27 The Parole Commission shall also be immediately notified of an
28 escape if the escapee has an active or pending term of parole,
29 conditional release, or other post-prison release supervision
30 that is administered by the Parole Commission.

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1 Section 22. Section 916.48, Florida Statutes, 1998
2 Supplement, is transferred, renumbered as section 394.928,
3 Florida Statutes, and amended to read:

4 394.928 ~~916.48~~ Subsistence fees and costs of
5 treatment.--

6 (1) In recognition of the fact that persons committed
7 under this part ~~ss. 916.31-916.49~~ may have sources of income
8 and assets, which may include bank accounts, inheritances,
9 real estate, social security payments, veteran's payments, and
10 other types of financial resources, and in recognition of the
11 fact that the daily subsistence cost and costs of treatment of
12 persons committed under this part ~~ss. 916.31-916.49~~ are a
13 burden on the taxpayers of the state, each person so committed
14 shall:

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

17 (b) Pay from such income and assets, except where such
18 income is exempt by state or federal law, all or a fair
19 portion of the person's daily subsistence and treatment costs,
20 based upon the person's ability to pay, the liability or
21 potential liability of the person to the victim or the
22 guardian or the estate of the victim, and the needs of his or
23 her dependents.

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

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

1 Section 23. Section 916.49, Florida Statutes, 1998
2 Supplement, is transferred, renumbered as section 394.929,
3 Florida Statutes, and amended to read:

4 394.929 ~~916.49~~ Department of Children and Family
5 Services responsible for costs.--The Department of Children
6 and Family Services is responsible for all costs relating to
7 the evaluation and treatment of persons committed to the
8 department's custody as sexually violent predators. A county
9 is not obligated to fund costs for psychological examinations,
10 expert witnesses, court-appointed counsel, or other costs
11 required by this part ~~ss. 916.31-916.49~~. Other costs for
12 psychological examinations, expert witnesses, and
13 court-appointed counsel required by this part ~~ss.~~
14 ~~916.31-916.49~~ shall be paid from state funds appropriated by
15 general law.

16 Section 24. Section 394.930, Florida Statutes, is
17 created to read:

18 394.930 Authority to adopt rules.--The Department of
19 Children and Family Services shall adopt rules for:

20 (1) The qualifications necessary to designate and
21 contract with a psychiatrist or psychologist to serve on a
22 multidisciplinary team;

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

26 (3) The criteria that must exist in order for a
27 multidisciplinary team to recommend to a state attorney that a
28 petition should be filed to involuntarily commit a person
29 under this part;

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1 (4) The designation of secure facilities for sexually
2 violent predators who are subject to involuntary commitment
3 under this part;

4 (5) The general treatment plan for all committed
5 persons under this part and all other authorized treatment, or
6 procedure for obtaining approval from the department for
7 treatment that is not delineated or described in the rules of
8 the department for sexually violent predators who are
9 committed under this part; and

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

13 Section 25. Beginning July 1, 1999, the Department of
14 Corrections shall collect information and compile quarterly
15 reports with statistics profiling inmates released the
16 previous quarter who fit the criteria and were referred to the
17 Department of Children and Family Services pursuant to this
18 act. The quarterly reports must be produced beginning October
19 1, 1999. At a minimum, the information that must be collected
20 and compiled for inclusion in the reports includes: whether
21 the qualifying offense was the current offense or the prior
22 offense; the most serious sexual offense; the total number of
23 distinct victims of the sexual offense; whether the victim was
24 known to the offender; whether the sexual act was consensual;
25 whether the sexual act involved multiple victims; whether
26 direct violence was involved in the sexual offense; the age of
27 each victim at the time of the offense; the age of the
28 offender at the time of the first sexual offense; whether a
29 weapon was used; length of time since the most recent sexual
30 offense; and the total number of prior and current
31 sexual-offense convictions.

1 Section 26. (1) The Office of Program Policy Analysis
2 and Government Accountability shall conduct a study on the
3 implementation of this act by the Department of Children and
4 Family Services and shall report its findings and make
5 recommendations to the Legislature by March 1, 2000.

6 (2) The study must include, but need not be limited
7 to, the following issues:

8 (a) The procedures used in assigning persons to a
9 multidisciplinary team and in assigning a team to a case for
10 evaluation and assessment.

11 (b) The activities performed by multidisciplinary
12 teams in conducting evaluations and assessments.

13 (c) The average length of time between the referral of
14 a case by an agency with jurisdiction to the Department of
15 Children and Family Services and the department's
16 recommendation to the state attorney to file a petition or its
17 decision not to make a recommendation to the state attorney to
18 file a petition.

19 (d) The number of cases referred to the Department of
20 Children and Family Services, the number of cases it
21 recommends to the state attorney for filing, and the number of
22 cases that did not result in a recommendation to the state
23 attorney to file a petition.

24 (e) A profile of the number of cases and the location
25 of cases that are assigned to the persons who are serving as
26 members of the multidisciplinary teams.

27 (f) From each of a sample of persons who are serving
28 as members of a multidisciplinary team, the education,
29 professional qualifications, prior work experience, prior and
30 current testimonies as an expert in criminal cases by type of
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1 case, and number of cases for which he or she is currently
2 serving as a member of a multidisciplinary team.

3 Section 27. This act shall take effect upon becoming a
4 law.

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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 2192

4 Clarifies that less restrictive alternatives specified in
5 chapter 394, Part I, F.S., do not apply to cases initiated
6 under chapter 394, Part V, F.S.

7 Specifies that if the person was returned to custody after a
8 period of supervision, the agency with jurisdiction must
9 provide to the multidisciplinary team documentation about the
10 person's adjustment during supervision and any treatment
11 received.

12 Specifies that the written recommendation to the State
13 Attorney about the person meeting the definition of a sexually
14 violent predator shall be provided by the Department of
15 Children and Family Services and shall include the written
16 report of the multidisciplinary team.

17 Changes the time frame from 24 hours to 48 hours after
18 receiving the written assessment and recommendation from the
19 multidisciplinary team for the state attorney to file a
20 petition with the circuit court alleging that a person is a
21 sexually violent predator in immediate release cases.

22 Clarifies that when there is probable cause to believe that a
23 person is a sexually violent predator, a judge's order must
24 provide for a person to be held and be immediately transferred
25 to an appropriate secure facility in the event the person's
26 incarcerative sentence expires.

27 Specifies that hearsay evidence includes reports of a member
28 of the multidisciplinary team or reports produced on behalf of
29 the multidisciplinary team and that all hearsay evidence is
30 admissible unless it is determined to be unreliable.

31 Specifies that a detainer for deportation by the United State
Immigration and Naturalization Services does not need to be
disposed of to commit a person to the custody of the
Department of Children and Family Services upon a verdict.

Specifies that the public defender of the circuit in which a
person was determined to be a sexually violent predator would
be appointed to represent the person on appeal and includes
provisions concerning conflict cases.

Waives the filing fees for an indigent person who files an
appeal under this act.

Requires the state to fund costs and fees associated with
appeals under this act by indigent persons.

Requires the Department of Corrections beginning on October 1,
1999, to collect information and compile quarterly reports of
inmates released the previous quarter who meet the criteria of
a sexually violent predator under chapter 394, part V, F.S.,
and were referred to the Department of Children and Family
Services.

1 Directs the Office of Program Policy Analysis and Government
2 Accountability to conduct a study and to submit a report to
3 the Legislature by March 1, 2000, on the implementation of the
4 act by the Department of Children and Family Services with a
5 specification as to issues that must be studied verdict.
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