

By the Committees on Judiciary; Children and Families; and
Senator Klein

308-2064-99

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; amending s. 27.51,
8 F.S.; clarifying duty of the public defender to
9 represent sexually violent predators who are
10 indigent; prohibiting a public defender from
11 representing such persons in civil actions and
12 administrative proceedings; renumbering and
13 amending s. 916.31, F.S.; conforming
14 cross-references; creating s. 394.911, F.S.;
15 declaring legislative intent with respect to
16 procedures to be used for commitment of
17 sexually violent predators; renumbering and
18 amending s. 916.32, F.S.; defining the term
19 "secretary"; redefining the term "sexually
20 violent offense" to revise the applicability of
21 the act; renumbering and amending s. 916.33,
22 F.S.; prescribing additional notice
23 requirements; requiring additional information;
24 revising composition of multidisciplinary
25 teams; providing for additional elements of
26 assessment of offenders; providing
27 clarification on assessments and
28 recommendations to state attorneys; creating s.
29 394.9135, F.S.; prescribing procedures to be
30 followed for evaluation and filing petitions
31 for offenders being immediately released from

1 confinement; renumbering and amending s.
2 916.34, F.S.; revising requirements for filing
3 a petition; renumbering and amending s. 916.35,
4 F.S.; revising procedures relating to
5 determination of probable cause; creating s.
6 394.9155, F.S.; providing rules of procedure
7 and evidence; renumbering and amending s.
8 916.36, F.S.; prescribing jury size in a trial
9 to determine whether a person is a sexually
10 violent predator; renumbering and amending s.
11 916.37, F.S.; revising commitment procedures;
12 providing for payment for counsel and costs in
13 cases involving indigent defendants;
14 renumbering and amending s. 916.38, F.S.;
15 conforming cross-references; renumbering and
16 amending s. 916.39, F.S.; conforming
17 terminology; renumbering and amending s.
18 916.40, F.S.; revising procedures for
19 petitioning for release; renumbering and
20 amending s. 916.41, F.S.; revising guidelines
21 relating to release of records; renumbering and
22 amending s. 916.42, F.S.; conforming
23 cross-references; renumbering and amending s.
24 916.43, F.S.; conforming cross-references;
25 renumbering and amending s. 916.44, F.S.;
26 conforming cross-references; renumbering and
27 amending s. 916.45, F.S.; revising provision
28 relating to applicability of act; renumbering
29 and amending s. 916.46, F.S.; revising notice
30 requirements upon release of persons committed
31 as sexually violent predators; renumbering and

1 amending s. 916.47, F.S.; providing requirement
2 to notify specified persons upon escape of
3 person committed as sexually violent predators;
4 renumbering and amending s. 916.48, F.S.;
5 conforming cross-references; renumbering and
6 amending s. 916.49, F.S.; conforming
7 cross-references; creating s. 394.930, F.S.;
8 directing the Department of Children and Family
9 Services to adopt certain rules; requiring the
10 Department of Corrections to produce quarterly
11 reports; requiring the Office of Program Policy
12 Analysis and Government Accountability to
13 conduct a study and report to the Legislature;
14 providing an effective date.

15
16 Be It Enacted by the Legislature of the State of Florida:

17
18 Section 1. The Division of Statutory Revision is
19 requested to designate sections 394.910-394.930, Florida
20 Statutes, as part V of chapter 394, Florida Statutes, and to
21 entitle such part as "Involuntary Civil Commitment of Sexually
22 Violent Predators."

23 Section 2. Subsection (1) of section 27.51, Florida
24 Statutes, is amended to read:

25 27.51 Duties of public defender.--

26 (1) The public defender shall represent, without
27 additional compensation, any person who is determined by the
28 court to be indigent as provided in s. 27.52 and who is:

29 (a) Under arrest for, or is charged with, a felony;

30 (b) Under arrest for, or is charged with, a

31 misdemeanor, a violation of chapter 316 which is punishable by

1 imprisonment, criminal contempt, or a violation of a municipal
2 or county ordinance in the county court, unless the court,
3 prior to trial, files in the cause an order of no imprisonment
4 which states that the defendant will not be imprisoned if he
5 or she is convicted;

6 (c) Alleged to be a delinquent child pursuant to a
7 petition filed before a circuit court; or

8 (d) Sought by petition filed in such court to be
9 involuntarily placed as a mentally ill person or sexually
10 violent predator or involuntarily admitted to residential
11 services as a person with developmental disabilities. However,
12 a public defender does not have the authority to represent any
13 person who is a plaintiff in a civil action brought under the
14 Florida Rules of Civil Procedure, the Federal Rules of Civil
15 Procedure, or the Federal Statutes, or who is a petitioner in
16 an administrative proceeding challenging a rule under chapter
17 120, unless specifically authorized by statute.

18 Section 3. Section 916.31, Florida Statutes, 1998
19 Supplement, is transferred, renumbered as section 394.910,
20 Florida Statutes, and amended to read:

21 394.910 ~~916.31~~ Legislative findings and intent.--The
22 Legislature finds that a small but extremely dangerous number
23 of sexually violent predators exist who do not have a mental
24 disease or defect that renders them appropriate for
25 involuntary treatment under the Baker Act, part I of this
26 chapter ~~ss. 394.451-394.4789~~, which is intended to provide
27 short-term treatment to individuals with serious mental
28 disorders and then return them to the community. In contrast
29 to persons appropriate for civil commitment under the Baker
30 Act, sexually violent predators generally have antisocial
31 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 4. 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 5. 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 6. 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. 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 7. 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 48
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 8. 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 9. 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 order ~~direct~~ that the person
23 be held in an appropriate secure facility upon the expiration
24 of 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 10. Section 394.9155, Florida Statutes, is
2 created to read:

3 394.9155 Rules of procedure 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. However, hearsay evidence may not be used as the
24 sole basis for committing a person under this part.

25 (6) Rules adopted under s. 394.930 shall not
26 constitute:

27 (a) An evidentiary predicate for the admission of any
28 physical evidence or testimony;

29 (b) A basis for excluding or otherwise limiting the
30 presentation of any physical evidence or testimony in judicial
31 proceedings under this part; or

1 (c) Elements of the cause of action that the state
2 needs to allege or prove in judicial proceedings under this
3 part.

4
5 The failure of any party to comply with such rules shall not
6 constitute a defense in any judicial proceedings under this
7 part.

8 Section 11. Section 916.36, Florida Statutes, 1998
9 Supplement, is transferred, renumbered as section 394.916,
10 Florida Statutes, and amended to read:

11 394.916 ~~916.36~~ Trial; counsel and experts; indigent
12 persons; jury.--

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

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

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

25 (4) If the person is subjected to a mental health
26 examination under this part ~~chapter~~, the person also may
27 retain experts or mental health professionals to perform an
28 examination. If the person wishes to be examined by a
29 professional of the person's own choice, the examiner must be
30 provided reasonable access to the person, as well as to all
31 relevant medical and mental health records and reports. In the

1 case of a person who is indigent, the court, upon the person's
2 request, shall determine whether such an examination is
3 necessary. If the court determines that an examination is
4 necessary, the court shall appoint a mental health
5 professional and determine the reasonable compensation for the
6 professional's services, which shall be paid by the state.

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

12 Section 12. Section 916.37, Florida Statutes, 1998
13 Supplement, is transferred, renumbered as section 394.917,
14 Florida Statutes, and amended to read:

15 394.917 ~~916.37~~ Determination; commitment procedure;
16 mistrials; housing; counsel and costs in indigent appellate
17 cases.--

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

28 ~~916.31-916.49.~~ Any retrial must occur within 90 days after the
29 previous trial, unless the subsequent proceeding is continued
30 in accordance with s. 394.916(2) ~~s. 916.36(2)~~. The
31

1 determination that a person is a sexually violent predator may
2 be appealed.

3 (2) If the court or jury determines that the person is
4 a sexually violent predator, upon the expiration of the
5 incarcerative portion of all criminal sentences and
6 disposition of any detainers other than detainers for
7 deportation by the United States Immigration and
8 Naturalization Service,the person shall be committed to the
9 custody of the Department of Children and Family Services for
10 control, care, and treatment until such time as the person's
11 mental abnormality or personality disorder has so changed that
12 it is safe for the person to be at large. At all times,
13 sexually violent predators who are committed for control,
14 care, and treatment by the Department of Children and Family
15 Services under this section shall be kept in a secure facility
16 segregated from patients who are not committed under this
17 section.

18 (3) The public defender of the circuit in which a
19 person was determined to be a sexually violent predator shall
20 be appointed to represent the person on appeal. That public
21 defender may request the public defender who handles criminal
22 appeals for the circuit to represent the person on appeal in
23 the manner provided in s. 27.51(4). If the public defender is
24 unable to represent the person on appeal due to a conflict,
25 the court shall appoint other counsel, who shall be
26 compensated at a rate not less than that provided for
27 appointed counsel in criminal cases. Filing fees for indigent
28 appeals under this act are waived. Costs and fees related to
29 such appeals, including the amounts paid for records,
30 transcripts, and compensation of appointed counsel, shall be
31

1 authorized by the trial court and paid from state funds that
2 are appropriated for such purposes.

3 Section 13. Section 916.38, Florida Statutes, 1998
4 Supplement, is transferred, renumbered as section 394.918,
5 Florida Statutes, and amended to read:

6 394.918 ~~916.38~~ Examinations; notice; court hearings
7 for release of committed persons; burden of proof.--

8 (1) A person committed under this part ~~ss.~~
9 ~~916.31-916.49~~ shall have an examination of his or her mental
10 condition once every year or more frequently at the court's
11 discretion. The person may retain or, if the person is
12 indigent and so requests, the court may appoint, a qualified
13 professional to examine the person. Such a professional shall
14 have access to all records concerning the person. The results
15 of the examination shall be provided to the court that
16 committed the person under this part ~~ss. 916.31-916.49~~. Upon
17 receipt of the report, the court shall conduct a review of the
18 person's status.

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

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

1 court determines that there is probable cause to believe it is
2 safe to release the person, the court shall set a trial before
3 the court on the issue.

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

15 Section 14. Section 916.39, Florida Statutes, 1998
16 Supplement, is transferred, renumbered as section 394.919,
17 Florida Statutes, and amended to read:

18 394.919 ~~916.39~~ Authorized petition for release;
19 procedure.--

20 (1) If the secretary of ~~Children and Family Services~~
21 or the secretary's designee at any time determines that the
22 person is not likely to commit acts of sexual violence if
23 ~~conditionally~~ discharged, the secretary or the secretary's
24 designee shall authorize the person to petition the court for
25 release. The petition shall be served upon the court and the
26 state attorney. The court, upon receipt of such a petition,
27 shall order a trial before the court within 30 days, unless
28 continued for good cause.

29 (2) The state attorney shall represent the state, and
30 has the right to have the person examined by professionals of
31 the state attorney's choice. The state bears the burden of

1 proving, by clear and convincing evidence, that the person's
2 mental condition remains such that it is not safe for the
3 person to be at large and that, if released, the person is
4 likely to engage in acts of sexual violence.

5 Section 15. Section 916.40, Florida Statutes, 1998
6 Supplement, is transferred, renumbered as section 394.920,
7 Florida Statutes, and amended to read:

8 394.920 ~~916.40~~ Petition for release.--~~Sections~~
9 ~~916.31-916.49 do not prohibit~~ A person is not prohibited from
10 filing a petition for discharge at any time after commitment
11 under this part. However, if the person has previously filed
12 such a petition without the approval of the secretary ~~of~~
13 ~~Children and Family Services~~ or the secretary's designee and
14 the court determined that the petition was without merit, a
15 subsequent petition shall be denied unless the petition
16 contains facts upon which a court could find that the person's
17 condition has so changed that a probable cause hearing is
18 warranted.

19 Section 16. Section 916.41, Florida Statutes, 1998
20 Supplement, is transferred, renumbered as section 394.921,
21 Florida Statutes, and amended to read:

22 394.921 ~~916.41~~ Release of records to agencies,
23 multidisciplinary teams, and state attorney.--

24 (1) In order to protect the public, relevant
25 information and records that are otherwise confidential or
26 privileged shall be released to the agency with ~~having~~
27 jurisdiction, to a multidisciplinary team, or to the state
28 attorney for the purpose of meeting the notice requirements of
29 this part ~~ss. 916.31-916.49~~ and determining whether a person
30 is or continues to be a sexually violent predator. A person,
31 agency, or entity receiving information under this section

1 which is confidential and exempt from the provisions of s.
2 119.07(1) must maintain the confidentiality of that
3 information. Such information does not lose its confidential
4 status due to its release under this section.

5 (2) Psychological or psychiatric reports, drug and
6 alcohol reports, treatment records, medical records, or victim
7 impact statements that have been submitted to the court or
8 admitted into evidence under this part ~~ss. 916.31-916.49~~ shall
9 be part of the record but shall be sealed and may be opened
10 only pursuant to a court order.

11 Section 17. Section 916.42, Florida Statutes, 1998
12 Supplement, is transferred, renumbered as section 394.922,
13 Florida Statutes, and amended to read:

14 394.922 ~~916.42~~ Constitutional requirements.--The
15 long-term control, care, and treatment of a person committed
16 under this part ~~ss. 916.31-916.49~~ must conform to
17 constitutional requirements.

18 Section 18. Section 916.43, Florida Statutes, 1998
19 Supplement, is transferred, renumbered as section 394.923,
20 Florida Statutes, and amended to read:

21 394.923 ~~916.43~~ Immunity from civil liability.--The
22 agency with jurisdiction and its officers and employees; the
23 department and its officers and employees; members of the
24 multidisciplinary team; the state attorney and the state
25 attorney's employees; and those involved in the evaluation,
26 care, and treatment of sexually violent persons committed
27 under this part ~~ss. 916.31-916.49~~ are immune from any civil
28 liability for good faith conduct under this part ~~ss.~~
29 ~~916.31-916.49~~.

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

4 394.924 ~~916.44~~ Severability.--If any section,
5 subsection, or provision of this part ~~ss. 916.31-916.49~~ is
6 held to be unconstitutional or invalid by a court of competent
7 jurisdiction, the remaining portions of this part ~~ss.~~
8 ~~916.31-916.49~~ shall be unaffected because the Legislature
9 declares that the provisions of this part ~~ss. 916.31-916.49~~
10 are severable from each other.

11 Section 20. Section 916.45, Florida Statutes, 1998
12 Supplement, is transferred, renumbered as section 394.925,
13 Florida Statutes, and amended to read:

14 394.925 ~~916.45~~ Applicability of act.--This part
15 applies ~~Sections 916.31-916.49~~ apply to all persons currently
16 in custody who have been convicted of a sexually violent
17 offense, as that term is defined in s. 394.912(9) ~~s.~~
18 ~~916.32(8)~~, as well as to all persons convicted of a sexually
19 violent offense and sentenced to total confinement in the
20 future.

21 Section 21. Section 916.46, Florida Statutes, 1998
22 Supplement, is transferred, renumbered as section 394.926,
23 Florida Statutes, and amended to read:

24 394.926 ~~916.46~~ Notice to victims of release of persons
25 committed as sexually violent predators; notice to Department
26 of Corrections and Parole Commission.--

27 (1) As soon as is practicable, the department shall
28 give written notice of the release of a person committed as a
29 sexually violent predator to any victim of the committed
30 person who is alive and whose address is known to the
31 department or, if the victim is deceased, to the victim's

1 family, if the family's address is known to the department.
2 Failure to notify is not a reason for postponement of release.
3 This section does not create a cause of action against the
4 state or an employee of the state acting within the scope of
5 the employee's employment as a result of the failure to notify
6 pursuant to this part ~~ss. 916.31-916.49~~.

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

17 Section 22. Section 916.47, Florida Statutes, 1998
18 Supplement, is transferred, renumbered as section 394.927,
19 Florida Statutes, and amended to read:

20 394.927 ~~916.47~~ Escape while in lawful custody; notice
21 to victim; notice to the Department of Corrections and Parole
22 Commission.--

23 (1) A person who is held in lawful custody pursuant to
24 a judicial finding of probable cause under s. 394.915 ~~s.~~
25 ~~916.35~~ or pursuant to a commitment as a sexually violent
26 predator under s. 394.916 ~~s. 916.36~~ and who escapes or
27 attempts to escape while in such custody commits a felony of
28 the second degree, punishable as provided in s. 775.082, s.
29 775.083, or s. 775.084.

30 (2) If a person who is held in custody pursuant to a
31 finding of probable cause or commitment as a sexually violent

1 predator escapes while in custody, the department shall
2 immediately notify the victim in accordance with s. 394.926.
3 The state attorney that filed the petition for civil
4 commitment of the escapee must also be immediately notified by
5 the department. If the escapee has an active or pending term
6 of probation, community control, parole, conditional release,
7 or other court-ordered or post-prison release supervision, the
8 department shall also immediately notify the Department of
9 Corrections' Office of Community Corrections in Tallahassee.
10 The Parole Commission shall also be immediately notified of an
11 escape if the escapee has an active or pending term of parole,
12 conditional release, or other post-prison release supervision
13 that is administered by the Parole Commission.

14 Section 23. Section 916.48, Florida Statutes, 1998
15 Supplement, is transferred, renumbered as section 394.928,
16 Florida Statutes, and amended to read:

17 394.928 ~~916.48~~ Subsistence fees and costs of
18 treatment.--

19 (1) In recognition of the fact that persons committed
20 under this part ~~ss. 916.31-916.49~~ may have sources of income
21 and assets, which may include bank accounts, inheritances,
22 real estate, social security payments, veteran's payments, and
23 other types of financial resources, and in recognition of the
24 fact that the daily subsistence cost and costs of treatment of
25 persons committed under this part ~~ss. 916.31-916.49~~ are a
26 burden on the taxpayers of the state, each person so committed
27 shall:

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

30 (b) Pay from such income and assets, except where such
31 income is exempt by state or federal law, all or a fair

1 portion of the person's daily subsistence and treatment costs,
2 based upon the person's ability to pay, the liability or
3 potential liability of the person to the victim or the
4 guardian or the estate of the victim, and the needs of his or
5 her dependents.

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

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

14 Section 24. Section 916.49, Florida Statutes, 1998
15 Supplement, is transferred, renumbered as section 394.929,
16 Florida Statutes, and amended to read:

17 394.929 ~~916.49~~ Department of Children and Family
18 Services responsible for costs.--The Department of Children
19 and Family Services is responsible for all costs relating to
20 the evaluation and treatment of persons committed to the
21 department's custody as sexually violent predators. A county
22 is not obligated to fund costs for psychological examinations,
23 expert witnesses, court-appointed counsel, or other costs
24 required by this part ~~ss. 916.31-916.49~~. Other costs for
25 psychological examinations, expert witnesses, and
26 court-appointed counsel required by this part ~~ss.~~
27 ~~916.31-916.49~~ shall be paid from state funds appropriated by
28 general law.

29 Section 25. Section 394.930, Florida Statutes, is
30 created to read:

31

1 394.930 Authority to adopt rules.--The Department of
2 Children and Family Services shall adopt rules for:

3 (1) The qualifications necessary to designate and
4 contract with a psychiatrist or psychologist to serve on a
5 multidisciplinary team;

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

9 (3) The criteria that must exist in order for a
10 multidisciplinary team to recommend to a state attorney that a
11 petition should be filed to involuntarily commit a person
12 under this part;

13 (4) The designation of secure facilities for sexually
14 violent predators who are subject to involuntary commitment
15 under this part;

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

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

25 Section 26. Beginning July 1, 1999, the Department of
26 Corrections shall collect information and compile quarterly
27 reports with statistics profiling inmates released the
28 previous quarter who fit the criteria and were referred to the
29 Department of Children and Family Services pursuant to this
30 act. The quarterly reports must be produced beginning October
31 1, 1999. At a minimum, the information that must be collected

1 and compiled for inclusion in the reports includes: whether
2 the qualifying offense was the current offense or the prior
3 offense; the most serious sexual offense; the total number of
4 distinct victims of the sexual offense; whether the victim was
5 known to the offender; whether the sexual act was consensual;
6 whether the sexual act involved multiple victims; whether
7 direct violence was involved in the sexual offense; the age of
8 each victim at the time of the offense; the age of the
9 offender at the time of the first sexual offense; whether a
10 weapon was used; length of time since the most recent sexual
11 offense; and the total number of prior and current
12 sexual-offense convictions.

13 Section 27. (1) The Office of Program Policy Analysis
14 and Government Accountability shall conduct a study on the
15 implementation of this act by the Department of Children and
16 Family Services and shall report its findings and make
17 recommendations to the Legislature by March 1, 2000.

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

20 (a) The procedures used in assigning persons to a
21 multidisciplinary team and in assigning a team to a case for
22 evaluation and assessment.

23 (b) The activities performed by multidisciplinary
24 teams in conducting evaluations and assessments.

25 (c) The average length of time between the referral of
26 a case by an agency with jurisdiction to the Department of
27 Children and Family Services and the department's
28 recommendation to the state attorney to file a petition or its
29 decision not to make a recommendation to the state attorney to
30 file a petition.

31

1 (d) The number of cases referred to the Department of
2 Children and Family Services, the number of cases it
3 recommends to the state attorney for filing, and the number of
4 cases that did not result in a recommendation to the state
5 attorney to file a petition.

6 (e) A profile of the number of cases and the location
7 of cases that are assigned to the persons who are serving as
8 members of the multidisciplinary teams.

9 (f) From each of a sample of persons who are serving
10 as members of a multidisciplinary team, the education,
11 professional qualifications, prior work experience, prior and
12 current testimonies as an expert in criminal cases by type of
13 case, and number of cases for which he or she is currently
14 serving as a member of a multidisciplinary team.

15 Section 28. This act shall take effect upon becoming a
16 law.

17
18 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
19 COMMITTEE SUBSTITUTE FOR
20 CS/SB 2192

21 Makes technical changes to clarify that the state attorney has
22 48 hours to file an expedited involuntary commitment petition
23 before a person subject to the Act must be released from
24 custody.

25 Revises the duty of the public defender to include
26 representation of sexually violent predators who are indigent
27 in involuntary commitment proceedings but prohibits
28 representation of such persons in other civil and
29 administrative actions.

30 Clarifies that the admission of hearsay evidence will not be
31 used as the sole basis for involuntary commitment.

States that department rules may not be used as a predicate
for admission of evidence or testimony, the basis for
excluding or limiting evidence or testimony or the basis for
the state's burden of proof.