

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

309-2137-99

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; clarifying the term "total  
22          confinement" for purposes of the act;  
23          renumbering and amending s. 916.33, F.S.;  
24          prescribing additional notice requirements;  
25          requiring additional information; revising  
26          composition of multidisciplinary teams;  
27          providing for additional elements of assessment  
28          of offenders; providing clarification on  
29          assessments and recommendations to state  
30          attorneys; creating s. 394.9135, F.S.;  
31          prescribing procedures to be followed for

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

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

17

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

19

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

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

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27.51 Duties of public defender.--

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

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

1 (b) Under arrest for, or is charged with, a  
2 misdemeanor, a violation of chapter 316 which is punishable by  
3 imprisonment, criminal contempt, or a violation of a municipal  
4 or county ordinance in the county court, unless the court,  
5 prior to trial, files in the cause an order of no imprisonment  
6 which states that the defendant will not be imprisoned if he  
7 or she is convicted;

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

10 (d) Sought by petition filed in such court to be  
11 involuntarily placed as a mentally ill person or sexually  
12 violent predator or involuntarily admitted to residential  
13 services as a person with developmental disabilities. However,  
14 a public defender does not have the authority to represent any  
15 person who is a plaintiff in a civil action brought under the  
16 Florida Rules of Civil Procedure, the Federal Rules of Civil  
17 Procedure, or the Federal Statutes, or who is a petitioner in  
18 an administrative proceeding challenging a rule under chapter  
19 120, unless specifically authorized by statute.

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

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

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

19 Section 4. Section 394.911, Florida Statutes, is  
20 created to read:

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

28 Section 5. Section 916.32, Florida Statutes, 1998  
29 Supplement, is transferred, renumbered as section 394.912,  
30 Florida Statutes, and amended to read:

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1           394.912 ~~916.32~~ Definitions.--As used in this part ~~ss.~~  
2 ~~916.31-916.49~~, the term:  
3           (1) "Agency with jurisdiction" means the agency that  
4 releases, upon lawful order or authority, a person who is  
5 serving a sentence in the custody of the Department of  
6 Corrections, a person who was adjudicated delinquent and is  
7 committed to the custody of the Department of Juvenile  
8 Justice, or a person who was involuntarily committed to the  
9 custody of the Department of Children and Family Services upon  
10 an adjudication of not guilty by reason of insanity.  
11           (2) "Convicted of a sexually violent offense" means a  
12 person who has been:  
13           (a) Adjudicated guilty of a sexually violent offense  
14 after a trial, guilty plea, or plea of nolo contendere;  
15           (b) Adjudicated not guilty by reason of insanity of a  
16 sexually violent offense; or  
17           (c) Adjudicated delinquent of a sexually violent  
18 offense after a trial, guilty plea, or plea of nolo  
19 contendere.  
20           (3) "Department" means the Department of Children and  
21 Family Services.  
22           (4) "Likely to engage in acts of sexual violence"  
23 means the person's propensity to commit acts of sexual  
24 violence is of such a degree as to pose a menace to the health  
25 and safety of others.  
26           (5) "Mental abnormality" means a mental condition  
27 affecting a person's emotional or volitional capacity which  
28 predisposes the person to commit sexually violent offenses.  
29           (6) "Person" means an individual 18 years of age or  
30 older who is a potential or actual subject of proceedings  
31 under this part ~~ss. 916.31-916.49~~.

1           (7) "Secretary" means the Secretary of the Department  
2 of Children and Family Services.

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

6           ~~(9)(8)~~ "Sexually violent offense" means:

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

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

11           1. Sexual battery; or

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

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

17           1. Sexual battery; or

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

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

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

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

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

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

6 ~~(10)(9)~~ "Sexually violent predator" means any person  
7 who:

8 (a) Has been convicted of a sexually violent offense;  
9 and

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

14 ~~(11)(10)~~ "Total confinement" means that the person is  
15 currently being held in any physically secure facility being  
16 operated or contractually operated for the Department of  
17 Corrections, the Department of Juvenile Justice, or the  
18 Department of Children and Family Services. A person shall  
19 also be deemed to be in total confinement for applicability of  
20 provisions under this part if the person is serving an  
21 incarcerative sentence under the custody of the Department of  
22 Corrections or the Department of Juvenile Justice and is being  
23 held in any other secure facility for any reason.

24 Section 6. Section 916.33, Florida Statutes, 1998  
25 Supplement, is transferred, renumbered as section 394.913,  
26 Florida Statutes, and amended to read:

27 394.913 ~~916.33~~ Notice to state attorney and  
28 multidisciplinary team of release of sexually violent  
29 predator; establishing multidisciplinary teams; information to  
30 be provided to multidisciplinary teams ~~team~~.--

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1           (1) The agency with jurisdiction over a person who has  
2 been convicted of a sexually violent offense shall give  
3 written notice to the multidisciplinary team, and a copy to  
4 the state attorney of the circuit where that person was last  
5 convicted of a sexually violent offense. If the person has  
6 never been convicted of a sexually violent offense in this  
7 state but has been convicted of a sexually violent offense in  
8 another state or in federal court, the agency with  
9 jurisdiction shall give written notice to the  
10 multidisciplinary team and a copy to the state attorney of the  
11 circuit where the person was last convicted of any offense in  
12 this state. If the person is being confined in this state  
13 pursuant to interstate compact and has a prior or current  
14 conviction for a sexually violent offense, the agency with  
15 jurisdiction shall give written notice to the  
16 multidisciplinary team and a copy to the state attorney of the  
17 circuit where the person plans to reside upon release or, if  
18 no residence in this state is planned, the state attorney in  
19 the circuit where the facility from which the person to be  
20 released is located. The written notice must be given to the  
21 multidisciplinary team and the state attorney at least 365 ~~180~~  
22 days or, in the case of an adjudicated committed delinquent,  
23 at least 90 days before:

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

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

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

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

10           (b) The person's criminal history, including police  
11 reports, victim statements, presentence investigation reports,  
12 post-sentence investigation reports, if available, and any  
13 other documents containing facts of the person's criminal  
14 incidents;

15           (c) Mental health, mental status, and medical records,  
16 including all clinical records and notes concerning the  
17 person;

18           (d)(b) Documentation of institutional adjustment and  
19 any treatment received and, in the case of an adjudicated  
20 delinquent committed to the Department of Juvenile Justice,  
21 copies of the most recent performance plan and performance  
22 summary; and-

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

26  
27 ~~The provisions of this section are not jurisdictional, and~~  
28 ~~failure to comply with them in no way prevents the state~~  
29 ~~attorney from proceeding against a person otherwise subject to~~  
30 ~~the provisions of ss. 916.31-916.49.~~

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1           (3)(a) ~~The secretary of Children and Family Services~~  
2 shall establish a multidisciplinary team or teams, ~~which shall~~  
3 ~~include two licensed psychiatrists or psychologists, or one~~  
4 ~~licensed psychiatrist and one licensed psychologist,~~  
5 ~~designated by the Secretary of Children and Family Services.~~

6           (b) Each team shall include, but is not limited to,  
7 two licensed psychiatrists or psychologists or one licensed  
8 psychiatrist and one licensed psychologist. The  
9 multidisciplinary team shall assess and evaluate each person  
10 referred to the team. The assessment and evaluation shall  
11 include a review of the person's institutional history and  
12 treatment record, if any, the person's criminal background,  
13 and any other factor that is relevant to the determination of  
14 whether such person is a sexually violent predator.

15           (c) Before recommending that a person meets the  
16 definition of a sexually violent predator, the person must be  
17 offered a personal interview. If the person agrees to  
18 participate in a personal interview, at least one member of  
19 the team who is a licensed psychiatrist or psychologist must  
20 conduct a personal interview of the person. If the person  
21 refuses to fully participate in a personal interview, the  
22 multidisciplinary team may proceed with its recommendation  
23 without a personal interview of the person.

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

26           (e) ~~The team,~~ Within 45 days after receiving notice,  
27 there shall be a written assessment as to ~~assess~~ whether the  
28 person meets the definition of a sexually violent predator and  
29 a written recommendation, which shall be provided to ~~provide~~  
30 the state attorney ~~with its written assessment and~~  
31 recommendation. The written recommendation shall be provided

1 by the Department of Children and Family Services and shall  
2 include the written report of the multidisciplinary team.

3  
4 The provisions of this section are not jurisdictional, and  
5 failure to comply with them in no way prevents the state  
6 attorney from proceeding against a person otherwise subject to  
7 the provisions of this part.

8 Section 7. Section 394.9135, Florida Statutes, is  
9 created to read:

10 394.9135 Immediate releases from total confinement;  
11 transfer of person to department; time limitations on  
12 assessment, notification, and filing petition to hold in  
13 custody; filing petition after release.--

14 (1) If the anticipated release from total confinement  
15 of a person who has been convicted of a sexually violent  
16 offense becomes immediate for any reason, the agency with  
17 jurisdiction shall upon immediate release from total  
18 confinement transfer that person to the custody of the  
19 Department of Children and Family Services to be held in an  
20 appropriate secure facility.

21 (2) Within 72 hours after transfer, the  
22 multidisciplinary team shall assess whether the person meets  
23 the definition of a sexually violent predator. If the  
24 multidisciplinary team determines that the person does not  
25 meet the definition of a sexually violent predator, that  
26 person shall be immediately released. If the multidisciplinary  
27 team determines that the person meets the definition of a  
28 sexually violent predator, the team shall provide the state  
29 attorney, as designated by s. 394.913, with its written  
30 assessment and recommendation within the 72-hour period or, if

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1 the 72-hour period ends on a weekend or holiday, within the  
2 next working day thereafter.

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

17 (4) The provisions of this section are not  
18 jurisdictional, and failure to comply with the time  
19 limitations, which results in the release of a person who has  
20 been convicted of a sexually violent offense, is not  
21 dispositive of the case and does not prevent the state  
22 attorney from proceeding against a person otherwise subject to  
23 the provisions of this part.

24 Section 8. Section 916.34, Florida Statutes, 1998  
25 Supplement, is transferred, renumbered as section 394.914,  
26 Florida Statutes, and amended to read:

27 394.914 ~~916.34~~ Petition; time~~contents.~~--Following  
28 receipt of the written assessment and recommendation from the  
29 multidisciplinary team, the state attorney, in accordance with  
30 s. 394.913,~~in the judicial circuit where the person committed~~  
31 ~~the sexually violent offense~~ may file a petition with the

1 circuit court alleging that the person is a sexually violent  
2 predator and stating facts sufficient to support such  
3 allegation. No fee shall be charged for the filing of a  
4 petition under this section.

5 Section 9. Section 916.35, Florida Statutes, 1998  
6 Supplement, is transferred, renumbered as section 394.915,  
7 Florida Statutes, and amended to read:

8 394.915 ~~916.35~~ Determination of probable cause;  
9 hearing; evaluation; respondent taken into custody; bail.--

10 (1) When the state attorney files a petition seeking  
11 to have a person declared a sexually violent predator, the  
12 judge shall determine whether probable cause exists to believe  
13 that the person named in the petition is a sexually violent  
14 predator. If the judge determines that there is probable cause  
15 to believe that the person is a sexually violent predator, the  
16 judge shall order direct that the person remain in custody and  
17 be immediately transferred to ~~be taken into custody and held~~  
18 ~~in~~ an appropriate secure facility if the person's  
19 incarcerative sentence expires.

20 (2) Upon the expiration of the incarcerative sentence  
21 and before the release from custody of a person whom the  
22 multidisciplinary team recommends for civil commitment, but  
23 after the state attorney files a petition under s. 394.914 ~~s.~~  
24 ~~916.33~~, the state attorney may further petition the court for  
25 an adversarial probable cause hearing. The person shall be  
26 provided with notice of, and an opportunity to appear in  
27 person at, an adversarial hearing. At this hearing, the judge  
28 shall:

29 (a) Receive evidence and hear argument from the person  
30 and the state attorney; and

31

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

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

5 (a) Be represented by counsel;

6 (b) Present evidence;

7 (c) Cross-examine any witnesses who testify against  
8 the person; and

9 (d) View and copy all petitions and reports in the  
10 court file.

11 (4) If the court again concludes that there is  
12 probable cause to believe that the person is a sexually  
13 violent predator, the court shall order ~~direct~~ that the person  
14 be held in an appropriate secure facility upon the expiration  
15 of his or her incarcerative sentence in the county where the  
16 ~~petition was filed for an evaluation by a mental health~~  
17 ~~professional.~~

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

22 Section 10. Section 394.9155, Florida Statutes, is  
23 created to read:

24 394.9155 Rules of procedure and evidence.--In all  
25 civil commitment proceedings for sexually violent predators  
26 under this part, the following shall apply.

27 (1) The Florida Rules of Civil Procedure apply unless  
28 otherwise specified in this part.

29 (2) The Florida Rules of Evidence apply unless  
30 otherwise specified in this part.

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1           (3) The psychotherapist-patient privilege under s.  
2 90.503 does not exist or apply for communications relevant to  
3 an issue in proceedings to involuntarily commit a person under  
4 this part.

5           (4) The court may consider evidence of prior behavior  
6 by a person who is subject to proceedings under this part if  
7 such evidence is relevant to proving that the person is a  
8 sexually violent predator.

9           (5) Hearsay evidence, including reports of a member of  
10 the multidisciplinary team or reports produced on behalf of  
11 the multidisciplinary team, is admissible in proceedings under  
12 this part unless the court finds that such evidence is not  
13 reliable. In a trial, however, hearsay evidence may not be  
14 used as the sole basis for committing a person under this  
15 part.

16           (6) Rules adopted under s. 394.930 shall not  
17 constitute:

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

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

23           (c) Elements of the cause of action that the state  
24 needs to allege or prove in judicial proceedings under this  
25 part.

26           (7) If the person who is subject to proceedings under  
27 this part refuses to be interviewed by or fully cooperate with  
28 members of the multidisciplinary team or any state mental  
29 health expert, the court may, in its discretion:

30           (a) Order the person to allow members of the  
31 multidisciplinary team and any state mental health experts to



1 review all mental health reports, tests, and evaluations by  
2 the person's mental health expert or experts; or

3 (b) Prohibit the person's mental health experts from  
4 testifying concerning mental health tests, evaluations, or  
5 examinations of the person.

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

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

13 394.916 ~~916.36~~ Trial; counsel and experts; indigent  
14 persons; jury.--

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

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

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

27 (4) If the person is subjected to a mental health  
28 examination under this part ~~chapter~~, the person also may  
29 retain experts or mental health professionals to perform an  
30 examination. If the person wishes to be examined by a  
31 professional of the person's own choice, the examiner must be

1 provided reasonable access to the person, as well as to all  
2 relevant medical and mental health records and reports. In the  
3 case of a person who is indigent, the court, upon the person's  
4 request, shall determine whether such an examination is  
5 necessary. If the court determines that an examination is  
6 necessary, the court shall appoint a mental health  
7 professional and determine the reasonable compensation for the  
8 professional's services, which shall be paid by the state.

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

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

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

20 (1) The court or jury shall determine by clear and  
21 convincing evidence whether the person is a sexually violent  
22 predator. If the determination is made by a jury, the verdict  
23 ~~decision~~ must be unanimous. If the jury is unable to reach a  
24 unanimous verdict, the court must declare a mistrial and poll  
25 the jury. If a majority of the jury would find the person is a  
26 sexually violent predator ~~If a majority of the jury finds that~~  
27 ~~the person is a sexually violent predator, but the decision is~~  
28 ~~not unanimous~~, the state attorney may refile the petition and  
29 proceed according to the provisions of this part ~~ss.~~  
30 ~~916.31-916.49.~~ Any retrial must occur within 90 days after the  
31 previous trial, unless the subsequent proceeding is continued

1 in accordance with s. 394.916(2)~~s. 916.36(2)~~. The  
2 determination that a person is a sexually violent predator may  
3 be appealed.

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

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

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) Procedures that must be followed by members of the  
4 multidisciplinary teams when assessing and evaluating persons  
5 subject to this part;

6           (2) The criteria that must exist in order for a  
7 multidisciplinary team to recommend to a state attorney that a  
8 petition should be filed to involuntarily commit a person  
9 under this part. The criteria shall include, but are not  
10 limited to, whether:

11           (a) The person has a propensity to engage in future  
12 acts of sexual violence;

13           (b) The person should be placed in a secure,  
14 residential facility; and

15           (c) The person needs long-term treatment and care.

16           (3) The designation of secure facilities for sexually  
17 violent predators who are subject to involuntary commitment  
18 under this part;

19           (4) The components of the basic treatment plan for all  
20 committed persons under this part;

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

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

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

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

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

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

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

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

30       (d) The number of cases referred to the Department of  
31 Children and Family Services, the number of cases it

1 recommends to the state attorney for filing, and the number of  
2 cases that did not result in a recommendation to the state  
3 attorney to file a petition.

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

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

13 Section 28. This act shall take effect upon becoming a  
14 law.

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1                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2                   COMMITTEE SUBSTITUTE FOR  
3                   CS/CS/SB 2192

4 Clarifies that public defenders are specifically designated as  
5 legal counsel for indigent persons who are subject to  
proceedings under the Jimmy Ryce Act.

6 The definition of "total confinement" would be clarified.  
7 Persons who qualify for a referral to the Department of  
8 Children and Families because of a conviction for a sexually  
9 violent offense, may be temporarily housed in a local  
detention facility or other secure facility while technically  
serving an incarcerative sentence under the custody of the  
Department of Corrections (DOC) or Department of Juvenile  
Justice (DJJ).

10 Explicitly states that a personal interview with the person  
11 subject to the sexually violent predator civil commitment law  
12 is required. A personal interview would be offered to any  
13 person who meets the definition of a sexually violent predator  
and is recommended by a multidisciplinary team to the state  
attorney to be the subject of a petition for civil commitment.

14 Requires that the multidisciplinary team must evaluate and  
15 prepare a written assessment as to whether the person meets  
16 the definition of a sexually violent predator and that the  
written recommendation must be provided by the Department of  
Children and Family Services and State Attorney.

17 The court would expressly be allowed to consider evidence of  
18 prior behavior by a person who is subject to proceedings for  
19 involuntary civil commitment if the evidence is relevant to  
20 proving the person is a sexually violent predator.

21 States that hearsay evidence would be admissible unless the  
22 court finds that such evidence is not reliable.

23 The evidence section created in this bill would clarify that  
24 the administrative rules promulgated pursuant to this bill are  
25 not to be construed as creating an evidentiary predicate for  
26 the admission of any physical evidence or testimony in any  
27 judicial proceedings under the Jimmy Ryce Act.

28 Places the state and the respondent (a person who is subject  
29 to possible civil commitment) on the same level with regard to  
30 offering expert testimony.  
31