

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; requiring  
16 the Department of Children and Family Services  
17 to contract with the Correctional Privatization  
18 Commission to create the Jimmy Ryce Treatment  
19 Facility; directing a request for proposals be  
20 developed and issued by a specified date;  
21 providing for an initial capacity of the  
22 facility, exempting specified provisions;  
23 providing for an interagency agreement for  
24 monitoring and auditing of the facility;  
25 providing for financing options to be used by  
26 the selected contractor; providing an effective  
27 date.

28  
29 Be It Enacted by the Legislature of the State of Florida:  
30  
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1           Section 1. The Division of Statutory Revision is  
2 requested to designate sections 394.910-394.930, Florida  
3 Statutes, as part V of chapter 394, Florida Statutes, and to  
4 entitle such part as "Involuntary Civil Commitment of Sexually  
5 Violent Predators."

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

8           27.51 Duties of public defender.--

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

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

13           (b) Under arrest for, or is charged with, a  
14 misdemeanor, a violation of chapter 316 which is punishable by  
15 imprisonment, criminal contempt, or a violation of a municipal  
16 or county ordinance in the county court, unless the court,  
17 prior to trial, files in the cause an order of no imprisonment  
18 which states that the defendant will not be imprisoned if he  
19 or she is convicted;

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

22           (d) Sought by petition filed in such court to be  
23 involuntarily placed as a mentally ill person or sexually  
24 violent predator or involuntarily admitted to residential  
25 services as a person with developmental disabilities. However,  
26 a public defender does not have the authority to represent any  
27 person who is a plaintiff in a civil action brought under the  
28 Florida Rules of Civil Procedure, the Federal Rules of Civil  
29 Procedure, or the Federal Statutes, or who is a petitioner in  
30 an administrative proceeding challenging a rule under chapter  
31 120, unless specifically authorized by statute.

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

4           394.910 ~~916.31~~ Legislative findings and intent.--The  
5 Legislature finds that a small but extremely dangerous number  
6 of sexually violent predators exist who do not have a mental  
7 disease or defect that renders them appropriate for  
8 involuntary treatment under the Baker Act, part I of this  
9 chapter ~~ss. 394.451-394.4789~~, which is intended to provide  
10 short-term treatment to individuals with serious mental  
11 disorders and then return them to the community. In contrast  
12 to persons appropriate for civil commitment under the Baker  
13 Act, sexually violent predators generally have antisocial  
14 personality features which are unamenable to existing mental  
15 illness treatment modalities, and those features render them  
16 likely to engage in criminal, sexually violent behavior. The  
17 Legislature further finds that the likelihood of sexually  
18 violent predators engaging in repeat acts of predatory sexual  
19 violence is high. The existing involuntary commitment  
20 procedures under the Baker Act for the treatment and care of  
21 mentally ill persons are inadequate to address the risk these  
22 sexually violent predators pose to society. The Legislature  
23 further finds that the prognosis for rehabilitating sexually  
24 violent predators in a prison setting is poor, the treatment  
25 needs of this population are very long term, and the treatment  
26 modalities for this population are very different from the  
27 traditional treatment modalities for people appropriate for  
28 commitment under the Baker Act. It is therefore the intent of  
29 the Legislature to create a civil commitment procedure for the  
30 long-term care and treatment of sexually violent predators.

31

1           Section 4. Section 394.911, Florida Statutes, is  
2 created to read:

3           394.911 Legislative intent.--The Legislature intends  
4 that persons who are subject to the civil commitment procedure  
5 for sexually violent predators under this part be subject to  
6 the procedures established in this part and not to the  
7 provisions of part I of this chapter. Less restrictive  
8 alternatives are not applicable to cases initiated under this  
9 part.

10           Section 5. Section 916.32, Florida Statutes, 1998  
11 Supplement, is transferred, renumbered as section 394.912,  
12 Florida Statutes, and amended to read:

13           394.912 ~~916.32~~ Definitions.--As used in this part ~~ss.~~  
14 ~~916.31-916.49~~, the term:

15           (1) "Agency with jurisdiction" means the agency that  
16 releases, upon lawful order or authority, a person who is  
17 serving a sentence in the custody of the Department of  
18 Corrections, a person who was adjudicated delinquent and is  
19 committed to the custody of the Department of Juvenile  
20 Justice, or a person who was involuntarily committed to the  
21 custody of the Department of Children and Family Services upon  
22 an adjudication of not guilty by reason of insanity.

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

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

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

29           (c) Adjudicated delinquent of a sexually violent  
30 offense after a trial, guilty plea, or plea of nolo  
31 contendere.

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

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

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

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

13 (7) "Secretary" means the Secretary of the Department  
14 of Children and Family Services.

15 (8)~~(7)~~ "Sexually motivated" means that one of the  
16 purposes for which the defendant committed the crime was for  
17 sexual gratification.

18 (9)~~(8)~~ "Sexually violent offense" means:

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

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

23 1. Sexual battery; or

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

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

29 1. Sexual battery; or

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

- 1 (d) Sexual battery in violation of s. 794.011;  
2 (e) Lewd, lascivious, or indecent assault or act upon  
3 or in presence of the child in violation of s. 800.04;  
4 (f) An attempt, criminal solicitation, or conspiracy,  
5 in violation of s. 777.04, of a sexually violent offense;  
6 (g) Any conviction for a felony offense in effect at  
7 any time before October 1, 1998, which is comparable to a  
8 sexually violent offense under paragraphs (a)-(f) or any  
9 federal conviction or conviction in another state for a felony  
10 offense that in this state would be a sexually violent  
11 offense; or  
12 (h) Any criminal act that, either at the time of  
13 sentencing for the offense or subsequently during civil  
14 commitment proceedings under this part ss. 916.31-916.49, has  
15 been determined beyond a reasonable doubt to have been  
16 sexually motivated.

17 (10)~~(9)~~ "Sexually violent predator" means any person  
18 who:

19 (a) Has been convicted of a sexually violent offense;  
20 and

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

25 (11)~~(10)~~ "Total confinement" means that the person is  
26 currently being held in any physically secure facility being  
27 operated or contractually operated for the Department of  
28 Corrections, the Department of Juvenile Justice, or the  
29 Department of Children and Family Services. A person shall  
30 also be deemed to be in total confinement for applicability of  
31 provisions under this part if the person is serving an



1 incarcerative sentence under the custody of the Department of  
2 Corrections or the Department of Juvenile Justice and is being  
3 held in any other secure facility for any reason.

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

7 394.913 ~~916.33~~ Notice to state attorney and  
8 multidisciplinary team of release of sexually violent  
9 predator; establishing multidisciplinary teams; information to  
10 be provided to multidisciplinary teams ~~team.--~~

11 (1) The agency with jurisdiction over a person who has  
12 been convicted of a sexually violent offense shall give  
13 written notice to the multidisciplinary team, and a copy to  
14 the state attorney of the circuit where that person was last  
15 convicted of a sexually violent offense. If the person has  
16 never been convicted of a sexually violent offense in this  
17 state but has been convicted of a sexually violent offense in  
18 another state or in federal court, the agency with  
19 jurisdiction shall give written notice to the  
20 multidisciplinary team and a copy to the state attorney of the  
21 circuit where the person was last convicted of any offense in  
22 this state. If the person is being confined in this state  
23 pursuant to interstate compact and has a prior or current  
24 conviction for a sexually violent offense, the agency with  
25 jurisdiction shall give written notice to the  
26 multidisciplinary team and a copy to the state attorney of the  
27 circuit where the person plans to reside upon release or, if  
28 no residence in this state is planned, the state attorney in  
29 the circuit where the facility from which the person to be  
30 released is located. The written notice must be given to the  
31 multidisciplinary team and the state attorney at least 365 ~~180~~

1 days or, in the case of an adjudicated committed delinquent,  
2 at least 90 days before:

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

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

12 (2) The agency with jurisdiction shall provide the  
13 multidisciplinary team with the following information:

14 (a) The person's name; identifying characteristics;  
15 anticipated future residence; the type of supervision the  
16 person will receive in the community, if any; and the person's  
17 offense history; ~~and~~

18 (b) The person's criminal history, including police  
19 reports, victim statements, presentence investigation reports,  
20 post-sentence investigation reports, if available, and any  
21 other documents containing facts of the person's criminal  
22 incidents;

23 (c) Mental health, mental status, and medical records,  
24 including all clinical records and notes concerning the  
25 person;

26 (d)~~(b)~~ Documentation of institutional adjustment and  
27 any treatment received and, in the case of an adjudicated  
28 delinquent committed to the Department of Juvenile Justice,  
29 copies of the most recent performance plan and performance  
30 summary; and—

31

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

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

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

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

24           (c) Before recommending that a person meets the  
25 definition of a sexually violent predator, the person must be  
26 offered a personal interview. If the person agrees to  
27 participate in a personal interview, at least one member of  
28 the team who is a licensed psychiatrist or psychologist must  
29 conduct a personal interview of the person. If the person  
30 refuses to fully participate in a personal interview, the

31

1 multidisciplinary team may proceed with its recommendation  
2 without a personal interview of the person.

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

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

13  
14 The provisions of this section are not jurisdictional, and  
15 failure to comply with them in no way prevents the state  
16 attorney from proceeding against a person otherwise subject to  
17 the provisions of this part.

18 Section 7. Section 394.9135, Florida Statutes, is  
19 created to read:

20 394.9135 Immediate releases from total confinement;  
21 transfer of person to department; time limitations on  
22 assessment, notification, and filing petition to hold in  
23 custody; filing petition after release.--

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

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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 court may conduct an adversarial probable cause  
4 hearing if it determines such hearing is necessary ~~state~~  
5 ~~attorney may further petition the court for an adversarial~~  
6 ~~probable cause hearing.~~ The court shall only consider whether  
7 to have an adversarial probable cause hearing in cases where  
8 the failure to begin a trial is not the result of any delay  
9 caused by the respondent. The person shall be provided with  
10 notice of, and an opportunity to appear in person at, an  
11 adversarial hearing. At this hearing, the judge shall:  
12       (a) Receive evidence and hear argument from the person  
13 and the state attorney; and  
14       (b) Determine whether probable cause exists to believe  
15 that the person is a sexually violent predator.  
16       (3) At the adversarial probable cause hearing, the  
17 person has the right to:  
18       (a) Be represented by counsel;  
19       (b) Present evidence;  
20       (c) Cross-examine any witnesses who testify against  
21 the person; and  
22       (d) View and copy all petitions and reports in the  
23 court file.  
24       (4) If the court again concludes that there is  
25 probable cause to believe that the person is a sexually  
26 violent predator, the court shall order ~~direct~~ that the person  
27 be held in an appropriate secure facility upon the expiration  
28 of his or her incarcerative sentence ~~in the county where the~~  
29 ~~petition was filed for an evaluation by a mental health~~  
30 ~~professional.~~  
31

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

5 Section 10. Section 394.9155, Florida Statutes, is  
6 created to read:

7 394.9155 Rules of procedure and evidence.--In all  
8 civil commitment proceedings for sexually violent predators  
9 under this part, the following shall apply.

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

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

14 (3) The psychotherapist-patient privilege under s.  
15 90.503 does not exist or apply for communications relevant to  
16 an issue in proceedings to involuntarily commit a person under  
17 this part.

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

22 (5) Hearsay evidence, including reports of a member of  
23 the multidisciplinary team or reports produced on behalf of  
24 the multidisciplinary team, is admissible in proceedings under  
25 this part unless the court finds that such evidence is not  
26 reliable. In a trial, however, hearsay evidence may not be  
27 used as the sole basis for committing a person under this  
28 part.

29 (6) Rules adopted under s. 394.930 shall not  
30 constitute:

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

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

6           (c) Elements of the cause of action that the state  
7 needs to allege or prove in judicial proceedings under this  
8 part.

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

13           (a) Order the person to allow members of the  
14 multidisciplinary team and any state mental health experts to  
15 review all mental health reports, tests, and evaluations by  
16 the person's mental health expert or experts; or

17           (b) Prohibit the person's mental health experts from  
18 testifying concerning mental health tests, evaluations, or  
19 examinations of the person.

20  
21 The failure of any party to comply with such rules shall not  
22 constitute a defense in any judicial proceedings under this  
23 part.

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

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

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

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

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

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

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

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

31

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

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

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

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

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

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

18       Section 13. Section 916.38, Florida Statutes, 1998  
19 Supplement, is transferred, renumbered as section 394.918,  
20 Florida Statutes, and amended to read:

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

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

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

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

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

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

30  
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1 Section 14. Section 916.39, Florida Statutes, 1998  
2 Supplement, is transferred, renumbered as section 394.919,  
3 Florida Statutes, and amended to read:

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

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

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

22 Section 15. Section 916.40, Florida Statutes, 1998  
23 Supplement, is transferred, renumbered as section 394.920,  
24 Florida Statutes, and amended to read:

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

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

5 Section 16. Section 916.41, Florida Statutes, 1998  
6 Supplement, is transferred, renumbered as section 394.921,  
7 Florida Statutes, and amended to read:

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

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

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

28 Section 17. Section 916.42, Florida Statutes, 1998  
29 Supplement, is transferred, renumbered as section 394.922,  
30 Florida Statutes, and amended to read:

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

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

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

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

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

27           Section 20. Section 916.45, Florida Statutes, 1998  
28 Supplement, is transferred, renumbered as section 394.925,  
29 Florida Statutes, and amended to read:

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



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

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

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

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

23 (2) If a sexually violent predator who has an active  
24 or pending term of probation, community control, parole,  
25 conditional release, or other court-ordered or post-prison  
26 release supervision is released from custody, the department  
27 must immediately notify the Department of Corrections' Office  
28 of Community Corrections in Tallahassee. The Parole Commission  
29 must also be immediately notified of any releases of a  
30 sexually violent predator who has an active or pending term of  
31

1 parole, conditional release, or other post-prison release  
2 supervision that is administered by the Parole Commission.

3 Section 22. Section 916.47, Florida Statutes, 1998  
4 Supplement, is transferred, renumbered as section 394.927,  
5 Florida Statutes, and amended to read:

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

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

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

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1 Section 23. Section 916.48, Florida Statutes, 1998  
2 Supplement, is transferred, renumbered as section 394.928,  
3 Florida Statutes, and amended to read:

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

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

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

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

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

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

1           Section 24. Section 916.49, Florida Statutes, 1998  
2 Supplement, is transferred, renumbered as section 394.929,  
3 Florida Statutes, and amended to read:

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

16           Section 25. Section 394.930, Florida Statutes, is  
17 created to read:

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

20           (1) Procedures that must be followed by members of the  
21 multidisciplinary teams when assessing and evaluating persons  
22 subject to this part;

23           (2) The criteria that must exist in order for a  
24 multidisciplinary team to recommend to a state attorney that a  
25 petition should be filed to involuntarily commit a person  
26 under this part. The criteria shall include, but are not  
27 limited to, whether:

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

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

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

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

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

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

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

29           Section 27. (1) The Office of Program Policy Analysis  
30 and Government Accountability shall conduct a study on the  
31 implementation of this act by the Department of Children and

1 Family Services and shall report its findings and make  
2 recommendations to the Legislature by March 1, 2000.

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

5 (a) The procedures used in assigning persons to a  
6 multidisciplinary team and in assigning a team to a case for  
7 evaluation and assessment.

8 (b) The activities performed by multidisciplinary  
9 teams in conducting evaluations and assessments.

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

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

21 (e) A profile of the number of cases and the location  
22 of cases that are assigned to the persons who are serving as  
23 members of the multidisciplinary teams.

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

30 Section 28. The Department of Children and Family  
31 Services shall contract with the Correctional Privatization

1 Commission created under chapter 957, Florida Statutes, from  
2 funds contained in the 1999-2000 General Appropriations Act  
3 for the purpose of creating The Jimmy Ryce Treatment Facility.  
4 The commission is directed to develop and issue by September  
5 1, 1999, a request for proposals for the financing, designing,  
6 constructing, acquiring, owning, leasing, and operating of a  
7 treatment facility, to house and rehabilitate individuals  
8 committed under the Jimmy Ryce Act of 1998. The commission  
9 shall determine the feasibility of using an existing privately  
10 owned or state-owned facility prior to the issuance of the  
11 request for proposals. If the commission determines that a new  
12 facility is necessary, the facility shall be designed with an  
13 initial capacity for 450 individuals. The facility shall also  
14 be designed with expansion capabilities to serve additional  
15 individuals committed under the Jimmy Ryce Act of 1998. The  
16 provisions of section 957.07, Florida Statutes, and section  
17 957.11, Florida Statutes, shall not apply to this procurement.  
18 The commission shall enter into contracts as soon as possible  
19 with a provider for the financing, designing, constructing,  
20 acquiring, owning, leasing, and operating of the Jimmy Ryce  
21 Treatment Facility. The operations contract shall be for an  
22 initial period of three years with options to renew. The  
23 commission and the Department of Children and Family Services  
24 shall enter into an interagency agreement for the commission  
25 to provide contract monitoring and auditing of the operation  
26 of the facility by the contractor in accordance with standards  
27 established by the Department of Children and Family Services.  
28 The commission shall invite proposers to present various  
29 financing options in their proposals and shall determine which  
30 financing mechanism is in the best interests of the state. The  
31 selected contractor is authorized to enter into a lease

1 arrangement or other private financing, or to sponsor the  
2 issuance of tax exempt bonds, certificates of participation,  
3 or other public or private means to finance the project. The  
4 state is authorized to enter into all such agreements as are  
5 necessary including lease alternatives to bring this project  
6 to operational and lease commencement.

7           Section 29. This act shall take effect upon becoming a  
8 law.

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