

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 Criminal Justice Estimating Conference to
17 continually develop official projections
18 relating to the number of discharges and
19 commitments; providing an effective date.
20

21 Be It Enacted by the Legislature of the State of Florida:
22

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

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

30 27.51 Duties of public defender.--
31

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

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

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

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

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

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

27 394.910 ~~916.31~~ Legislative findings and intent.--The
28 Legislature finds that a small but extremely dangerous number
29 of sexually violent predators exist who do not have a mental
30 disease or defect that renders them appropriate for
31 involuntary treatment under the Baker Act, part I of this

1 chapter ss. ~~394.451-394.4789~~, which is intended to provide
2 short-term treatment to individuals with serious mental
3 disorders and then return them to the community. In contrast
4 to persons appropriate for civil commitment under the Baker
5 Act, sexually violent predators generally have antisocial
6 personality features which are unamenable to existing mental
7 illness treatment modalities, and those features render them
8 likely to engage in criminal, sexually violent behavior. The
9 Legislature further finds that the likelihood of sexually
10 violent predators engaging in repeat acts of predatory sexual
11 violence is high. The existing involuntary commitment
12 procedures under the Baker Act for the treatment and care of
13 mentally ill persons are inadequate to address the risk these
14 sexually violent predators pose to society. The Legislature
15 further finds that the prognosis for rehabilitating sexually
16 violent predators in a prison setting is poor, the treatment
17 needs of this population are very long term, and the treatment
18 modalities for this population are very different from the
19 traditional treatment modalities for people appropriate for
20 commitment under the Baker Act. It is therefore the intent of
21 the Legislature to create a civil commitment procedure for the
22 long-term care and treatment of sexually violent predators.

23 Section 4. Section 394.911, Florida Statutes, is
24 created to read:

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

1 Section 5. Section 916.32, Florida Statutes, 1998
2 Supplement, is transferred, renumbered as section 394.912,
3 Florida Statutes, and amended to read:

4 394.912 ~~916.32~~ Definitions.--As used in this part ~~ss.~~
5 ~~916.31-916.49~~, the term:

6 (1) "Agency with jurisdiction" means the agency that
7 releases, upon lawful order or authority, a person who is
8 serving a sentence in the custody of the Department of
9 Corrections, a person who was adjudicated delinquent and is
10 committed to the custody of the Department of Juvenile
11 Justice, or a person who was involuntarily committed to the
12 custody of the Department of Children and Family Services upon
13 an adjudication of not guilty by reason of insanity.

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

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

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

20 (c) Adjudicated delinquent of a sexually violent
21 offense after a trial, guilty plea, or plea of nolo
22 contendere.

23 (3) "Department" means the Department of Children and
24 Family Services.

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

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

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

4 (7) "Secretary" means the Secretary of the Department
5 of Children and Family Services.

6 (8)~~(7)~~ "Sexually motivated" means that one of the
7 purposes for which the defendant committed the crime was for
8 sexual gratification.

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

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

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

14 1. Sexual battery; or

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

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

20 1. Sexual battery; or

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

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

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

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

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

1 offense that in this state would be a sexually violent
2 offense; or

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

8 (10)~~(9)~~ "Sexually violent predator" means any person
9 who:

10 (a) Has been convicted of a sexually violent offense;
11 and

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

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

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

29 394.913 ~~916.33~~ Notice to state attorney and
30 multidisciplinary team of release of sexually violent
31

1 predator; establishing multidisciplinary teams; information to
2 be provided to multidisciplinary teams ~~team~~--

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

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

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.~~

31

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

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

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

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

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

1 recommendation. The written recommendation shall be provided
2 by the Department of Children and Family Services and shall
3 include the written report of the multidisciplinary team.

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 this part.

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

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

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

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

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 court may conduct an adversarial probable cause
25 hearing if it determines such hearing is necessary ~~state~~
26 ~~attorney may further petition the court for an adversarial~~
27 ~~probable cause hearing.~~ The court shall only consider whether
28 to have an adversarial probable cause hearing in cases where
29 the failure to begin a trial is not the result of any delay
30 caused by the respondent. The person shall be provided with
31

1 notice of, and an opportunity to appear in person at, an
2 adversarial hearing. At this hearing, the judge shall:

3 (a) Receive evidence and hear argument from the person
4 and the state attorney; and

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

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

9 (a) Be represented by counsel;

10 (b) Present evidence;

11 (c) Cross-examine any witnesses who testify against
12 the person; and

13 (d) View and copy all petitions and reports in the
14 court file.

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

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

26 Section 10. Section 394.9155, Florida Statutes, is
27 created to read:

28 394.9155 Rules of procedure and evidence.--In all
29 civil commitment proceedings for sexually violent predators
30 under this part, the following shall apply.

31

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

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

5 (3) The psychotherapist-patient privilege under s.
6 90.503 does not exist or apply for communications relevant to
7 an issue in proceedings to involuntarily commit a person under
8 this part.

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

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

20 (6) Rules adopted under s. 394.930 shall not
21 constitute:

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

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

27 (c) Elements of the cause of action that the state
28 needs to allege or prove in judicial proceedings under this
29 part.

30 (7) If the person who is subject to proceedings under
31 this part refuses to be interviewed by or fully cooperate with

1 members of the multidisciplinary team or any state mental
2 health expert, the court may, in its discretion:

3 (a) Order the person to allow members of the
4 multidisciplinary team and any state mental health experts to
5 review all mental health reports, tests, and evaluations by
6 the person's mental health expert or experts; or

7 (b) Prohibit the person's mental health experts from
8 testifying concerning mental health tests, evaluations, or
9 examinations of the person.

10
11 The failure of any party to comply with such rules shall not
12 constitute a defense in any judicial proceedings under this
13 part.

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

17 394.916 ~~916.36~~ Trial; counsel and experts; indigent
18 persons; jury.--

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

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

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

31

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

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

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

22 394.917 916.37 Determination; commitment procedure;
23 mistrials; housing; counsel and costs in indigent appellate
24 cases.--

25 (1) The court or jury shall determine by clear and
26 convincing evidence whether the person is a sexually violent
27 predator. If the determination is made by a jury, the verdict
28 decision must be unanimous. If the jury is unable to reach a
29 unanimous verdict, the court must declare a mistrial and poll
30 the jury. If a majority of the jury would find the person is a
31 sexually violent predator ~~If a majority of the jury finds that~~

1 ~~the person is a sexually violent predator, but the decision is~~
2 ~~not unanimous~~, the state attorney may refile the petition and
3 proceed according to the provisions of this part ss.
4 ~~916.31-916.49~~. Any retrial must occur within 90 days after the
5 previous trial, unless the subsequent proceeding is continued
6 in accordance with s. 394.916(2)~~s. 916.36(2)~~. The
7 determination that a person is a sexually violent predator may
8 be appealed.

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

24 (3) The public defender of the circuit in which a
25 person was determined to be a sexually violent predator shall
26 be appointed to represent the person on appeal. That public
27 defender may request the public defender who handles criminal
28 appeals for the circuit to represent the person on appeal in
29 the manner provided in s. 27.51(4). If the public defender is
30 unable to represent the person on appeal due to a conflict,
31 the court shall appoint other counsel, who shall be

1 compensated at a rate not less than that provided for
2 appointed counsel in criminal cases. Filing fees for indigent
3 appeals under this act are waived. Costs and fees related to
4 such appeals, including the amounts paid for records,
5 transcripts, and compensation of appointed counsel, shall be
6 authorized by the trial court and paid from state funds that
7 are appropriated for such purposes.

8 Section 13. Section 916.38, Florida Statutes, 1998
9 Supplement, is transferred, renumbered as section 394.918,
10 Florida Statutes, and amended to read:

11 394.918 ~~916.38~~ Examinations; notice; court hearings
12 for release of committed persons; burden of proof.--

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

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

30 (3) The court shall hold a limited hearing to
31 determine whether there is probable cause to believe that the

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

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

20 Section 14. Section 916.39, Florida Statutes, 1998
21 Supplement, is transferred, renumbered as section 394.919,
22 Florida Statutes, and amended to read:

23 394.919 ~~916.39~~ Authorized petition for release;
24 procedure.--

25 (1) If the secretary ~~of Children and Family Services~~
26 or the secretary's designee at any time determines that the
27 person is not likely to commit acts of sexual violence if
28 ~~conditionally~~ discharged, the secretary or the secretary's
29 designee shall authorize the person to petition the court for
30 release. The petition shall be served upon the court and the
31 state attorney. The court, upon receipt of such a petition,

1 shall order a trial before the court within 30 days, unless
2 continued for good cause.

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

10 Section 15. Section 916.40, Florida Statutes, 1998
11 Supplement, is transferred, renumbered as section 394.920,
12 Florida Statutes, and amended to read:

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

24 Section 16. Section 916.41, Florida Statutes, 1998
25 Supplement, is transferred, renumbered as section 394.921,
26 Florida Statutes, and amended to read:

27 394.921 ~~916.41~~ Release of records to agencies,
28 multidisciplinary teams, and state attorney.--

29 (1) In order to protect the public, relevant
30 information and records that are otherwise confidential or
31 privileged shall be released to the agency with having

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

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

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

19 394.922 ~~916.42~~ Constitutional requirements.--The
20 long-term control, care, and treatment of a person committed
21 under this part ~~ss. 916.31-916.49~~ must conform to
22 constitutional requirements.

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

26 394.923 ~~916.43~~ Immunity from civil liability.--The
27 agency with jurisdiction and its officers and employees; the
28 department and its officers and employees; members of the
29 multidisciplinary team; the state attorney and the state
30 attorney's employees; and those involved in the evaluation,
31 care, and treatment of sexually violent persons committed

1 under this part ~~ss. 916.31-916.49~~ are immune from any civil
2 liability for good faith conduct under this part ~~ss.~~
3 ~~916.31-916.49~~.

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

7 394.924 ~~916.44~~ Severability.--If any section,
8 subsection, or provision of this part ~~ss. 916.31-916.49~~ is
9 held to be unconstitutional or invalid by a court of competent
10 jurisdiction, the remaining portions of this part ~~ss.~~
11 ~~916.31-916.49~~ shall be unaffected because the Legislature
12 declares that the provisions of this part ~~ss. 916.31-916.49~~
13 are severable from each other.

14 Section 20. Section 916.45, Florida Statutes, 1998
15 Supplement, is transferred, renumbered as section 394.925,
16 Florida Statutes, and amended to read:

17 394.925 ~~916.45~~ Applicability of act.--This part
18 applies ~~Sections 916.31-916.49 apply~~ to all persons currently
19 in custody who have been convicted of a sexually violent
20 offense, as that term is defined in s. 394.912(9)~~s.~~
21 ~~916.32(8)~~, as well as to all persons convicted of a sexually
22 violent offense and sentenced to total confinement in the
23 future.

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

27 394.926 ~~916.46~~ Notice to victims of release of persons
28 committed as sexually violent predators; notice to Department
29 of Corrections and Parole Commission.--

30 (1) As soon as is practicable, the department shall
31 give written notice of the release of a person committed as a

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

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

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

23 394.927 ~~916.47~~ Escape while in lawful custody; notice
24 to victim; notice to the Department of Corrections and Parole
25 Commission.--

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

1 the second degree, punishable as provided in s. 775.082, s.
2 775.083, or s. 775.084.

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

18 Section 23. Section 916.48, Florida Statutes, 1998
19 Supplement, is transferred, renumbered as section 394.928,
20 Florida Statutes, and amended to read:

21 394.928 ~~916.48~~ Subsistence fees and costs of
22 treatment.--

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

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

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

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

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

18 Section 24. Section 916.49, Florida Statutes, 1998
19 Supplement, is transferred, renumbered as section 394.929,
20 Florida Statutes, and amended to read:

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

31

1 ~~916.31-916.49~~ shall be paid from state funds appropriated by
2 general law.

3 Section 25. Section 394.930, Florida Statutes, is
4 created to read:

5 394.930 Authority to adopt rules.--The Department of
6 Children and Family Services shall adopt rules for:

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

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

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

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

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

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

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

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

28 Section 26. Beginning July 1, 1999, the Department of
29 Corrections shall collect information and compile quarterly
30 reports with statistics profiling inmates released the
31 previous quarter who fit the criteria and were referred to the

1 Department of Children and Family Services pursuant to this
2 act. The quarterly reports must be produced beginning October
3 1, 1999. At a minimum, the information that must be collected
4 and compiled for inclusion in the reports includes: whether
5 the qualifying offense was the current offense or the prior
6 offense; the most serious sexual offense; the total number of
7 distinct victims of the sexual offense; whether the victim was
8 known to the offender; whether the sexual act was consensual;
9 whether the sexual act involved multiple victims; whether
10 direct violence was involved in the sexual offense; the age of
11 each victim at the time of the offense; the age of the
12 offender at the time of the first sexual offense; whether a
13 weapon was used; length of time since the most recent sexual
14 offense; and the total number of prior and current
15 sexual-offense convictions.

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

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

23 (a) The procedures used in assigning persons to a
24 multidisciplinary team and in assigning a team to a case for
25 evaluation and assessment.

26 (b) The activities performed by multidisciplinary
27 teams in conducting evaluations and assessments.

28 (c) The average length of time between the referral of
29 a case by an agency with jurisdiction to the Department of
30 Children and Family Services and the department's
31 recommendation to the state attorney to file a petition or its

1 decision not to make a recommendation to the state attorney to
2 file a petition.

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

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

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

17 Section 28. The Criminal Justice Estimating
18 Conference, created under chapter 216, Florida Statutes, shall
19 continually develop official information relating to the
20 number of eligible discharges and the projected number of
21 civil commitments pursuant to the civil proceedings provided
22 in the Jimmy Ryce Act of 1998 under part V of chapter 394,
23 Florida Statutes.

24 Section 29. This act shall take effect upon becoming a
25 law.