

By the Council for Smarter Government and Representative
Needelman

1 A bill to be entitled
2 An act relating to the involuntary civil
3 commitment of sexually violent predators;
4 creating s. 394.9215, F.S.; authorizing a
5 person held in a secure facility under part V
6 of ch. 394, F.S., to file a petition for habeas
7 corpus; providing for a response and
8 evidentiary proceeding; providing for appeal;
9 prohibiting a person from filing a petition for
10 habeas corpus in commitment proceedings;
11 providing that the petitioner does not have a
12 right to appointed counsel; requiring that the
13 court grant relief in the least intrusive
14 manner possible; prohibiting the court from
15 releasing a petitioner unless it finds no other
16 relief will remedy the violation of the
17 petitioner's rights; amending s. 394.923, F.S.;
18 providing that the Department of Legal Affairs
19 and its officers and employees are immune from
20 civil liability for good faith conduct under
21 part V of ch. 394, F.S.; providing an effective
22 date.

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

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26 Section 1. Section 394.9215, Florida Statutes, is
27 created to read:

28 394.9215 Right to habeas corpus.--

29 (1)(a) At any time after exhausting all administrative
30 remedies, a person held in a secure facility under this part

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1 may file a petition for habeas corpus in the circuit court for
2 the county in which the facility is located alleging that:

3 1. The person's conditions of confinement violate a
4 statutory right under state law or a constitutional right
5 under the State Constitution or the United States
6 Constitution; or

7 2. The facility in which the person is confined is not
8 an appropriate secure facility, as that term is used in s.
9 394.915.

10 (b) Upon filing a legally sufficient petition stating
11 a prima facie case under paragraph (a), the court may direct
12 the Department of Children and Family Services to file a
13 response. If necessary, the court may conduct an evidentiary
14 proceeding and issue an order to correct a violation of state
15 or federal rights found to exist by the court. A final order
16 entered under this section may be appealed to the district
17 court of appeal. A nonfinal order may be appealed to the
18 extent provided by the Florida Rules of Appellate Procedure.
19 An appeal by the department shall stay the trial court's order
20 until disposition of the appeal.

21 (2) Any claim referred to in subsection (1) may be
22 asserted only as provided in this section. No claim referred
23 to in subsection (1) shall be considered in commitment
24 proceedings brought under this part. A person does not have a
25 right to appointed council in any proceeding initiated under
26 this section.

27 (3) Relief granted on a petition filed under this
28 section must be narrowly drawn and may not exceed that which
29 is minimally necessary to correct, in the least intrusive
30 manner possible, the violation of the state or federal rights
31 of a particular petitioner. A court considering a petition

1 under this section must give substantial weight to whether the
2 granting of relief would adversely impact the operation of the
3 detention and treatment facility or would adversely impact
4 public safety.

5 (4) The court may not enter an order releasing a
6 person from secure detention unless the court expressly finds
7 that no relief short of release will remedy the violation of
8 state or federal rights which is found to have occurred.

9 Section 2. Section 394.923, Florida Statutes, is
10 amended to read:

11 394.923 Immunity from civil liability.--The agency
12 with jurisdiction and its officers and employees; the
13 department and its officers and employees; members of the
14 multidisciplinary team; the state attorney and the state
15 attorney's employees; the Department of Legal Affairs and its
16 officers and employees;and those involved in the evaluation,
17 care, and treatment of sexually violent persons committed
18 under this part are immune from any civil liability for good
19 faith conduct under this part.

20 Section 3. This act shall take effect July 1, 2002.

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