

1 A bill to be entitled
2 An act relating to sexually violent offenders;
3 providing that certain evidence may be used in
4 a criminal proceeding or for the purpose of
5 identification; providing for the testing of
6 certain persons for HIV/AIDS under certain
7 circumstances; providing for the recording of
8 the results of such a test; creating s.
9 394.9215, F.S.; authorizing a person held in a
10 secure facility under part V of ch. 394, F.S.,
11 to file a petition for habeas corpus; providing
12 for a response and evidentiary proceeding;
13 providing for appeal; prohibiting a person from
14 filing a petition for habeas corpus in
15 commitment proceedings; providing that the
16 petitioner does not have a right to appointed
17 counsel; requiring that the court grant relief
18 in the least intrusive manner possible;
19 prohibiting the court from releasing a
20 petitioner unless it finds no other relief will
21 remedy the violation of the petitioner's
22 rights; amending s. 394.923, F.S.; providing
23 that the Department of Legal Affairs and its
24 officers and employees are immune from civil
25 liability for good faith conduct under part V
26 of ch. 394, F.S.; providing an effective date.
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28 Be It Enacted by the Legislature of the State of Florida:
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30 Section 1. Section 394.9215, Florida Statutes, is
31 created to read:

1 394.9215 Right to habeas corpus.--

2 (1)(a) At any time after exhausting all administrative
3 remedies, a person held in a secure facility under this part
4 may file a petition for habeas corpus in the circuit court for
5 the county in which the facility is located alleging that:

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

10 2. The facility in which the person is confined is not
11 an appropriate secure facility, as that term is used in s.
12 394.915.

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

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

30 (3) Relief granted on a petition filed under this
31 section must be narrowly drawn and may not exceed that which

1 is minimally necessary to correct, in the least intrusive
2 manner possible, the violation of the state or federal rights
3 of a particular petitioner. A court considering a petition
4 under this section must give substantial weight to whether the
5 granting of relief would adversely impact the operation of the
6 detention and treatment facility or would adversely impact
7 public safety.

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

12 Section 2. Section 394.923, Florida Statutes, is
13 amended to read:

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

23 Section 3. The offense of sexual battery under s.
24 794.011, for which the identity of the alleged perpetrator is
25 determined after the expiration of such applicable time
26 period, and the identity is confirmed through DNA
27 (deoxyribonucleic acid) analysis from a specimen or specimens
28 collected during the investigation of a crime or otherwise
29 made available to a law enforcement agency, when such
30 information was not known to or in the possession of a law
31 enforcement agency for comparison prior to the expiration of

1 the applicable time period, may be used as evidence in a
2 criminal proceeding or for the purpose of identification.

3 Section 4. Anyone charged with sexual battery under
4 chapter 794 of the Florida Statutes or any person charged as a
5 sexual predator pursuant to the Florida Statutes shall be
6 required to submit to an HIV/AIDS test upon request by the
7 victim or if the victim is a minor the victim's family. The
8 test must be administered within two weeks of the request and
9 the results of the test shall be immediately provided to the
10 victim or if the victim is a minor to the victim's family.

11 Section 5. This act shall take effect July 1, 2002.