

1 A bill to be entitled
2 An act relating to sexually violent offenders;
3 amending s. 775.15, F.S.; providing that
4 certain evidence may be used in a criminal
5 proceeding or for the purpose of
6 identification; creating s. 394.9215, F.S.;
7 authorizing a person held in a secure facility
8 under part V of ch. 394, F.S., to file a
9 petition for habeas corpus; providing for a
10 response and evidentiary proceeding; providing
11 for appeal; prohibiting a person from filing a
12 petition for habeas corpus in commitment
13 proceedings; providing that the petitioner does
14 not have a right to appointed counsel;
15 requiring that the court grant relief in the
16 least intrusive manner possible; prohibiting
17 the court from releasing a petitioner unless it
18 finds no other relief will remedy the violation
19 of the petitioner's rights; amending s.
20 394.923, F.S.; providing that the Department of
21 Legal Affairs and its officers and employees
22 are immune from civil liability for good-faith
23 conduct under part V of ch. 394, F.S.; amending
24 s. 960.003, F.S.; providing for the testing of
25 certain persons for HIV under certain
26 circumstances; requiring the disclosure of the
27 results of such a test within a proscribed time
28 period; providing an effective date.

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30 Be It Enacted by the Legislature of the State of Florida:
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1 Section 1. Section 394.9215, Florida Statutes, is
2 created to read:

3 394.9215 Right to habeas corpus.--

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

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

12 2. The facility in which the person is confined is not
13 an appropriate secure facility, as that term is used in s.
14 394.915.

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

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

1 (3) Relief granted on a petition filed under this
2 section must be narrowly drawn and may not exceed that which
3 is minimally necessary to correct, in the least intrusive
4 manner possible, the violation of the state or federal rights
5 of a particular petitioner. A court considering a petition
6 under this section must give substantial weight to whether the
7 granting of relief would adversely impact the operation of the
8 detention and treatment facility or would adversely impact
9 public safety.

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

14 Section 2. Section 394.923, Florida Statutes, is
15 amended to read:

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

25 Section 3. Paragraph (c) is added to subsection (3) of
26 section 775.15, Florida Statutes, to read:

27 775.15 Time limitations.--

28 (3) If the period prescribed in subsection (2) has
29 expired, a prosecution may nevertheless be commenced for:

30 (c) The offense of sexual battery under s. 794.011,
31 for which the identity of the alleged perpetrator is

1 determined after the expiration of such applicable time
2 period, and the identity is confirmed through DNA
3 (deoxyribonucleic acid) analysis from a specimen or specimens
4 collected during the investigation of a crime or otherwise
5 made available to a law enforcement agency, when such
6 information was not known to or in the possession of a law
7 enforcement agency for comparison prior to the expiration of
8 the applicable time period. Such information may be used as
9 evidence in a criminal proceeding or for the purpose of
10 identification.

11 Section 4. Section 960.033, Florida Statutes, is
12 amended to read:

13 960.003 Human immunodeficiency virus testing for
14 persons charged with or alleged by petition for delinquency to
15 have committed certain offenses; disclosure of results to
16 victims.--

17 (1) LEGISLATIVE INTENT.--The Legislature finds that a
18 victim of a criminal offense that ~~which~~ involves the
19 transmission of body fluids, or that involves certain sexual
20 offenses in which the victim is a minor, disabled adult, or
21 elderly person, is entitled to know at the earliest possible
22 opportunity whether the person charged with or alleged by
23 petition for delinquency to have committed the offense has
24 tested positive for human immunodeficiency virus (HIV)
25 infection. The Legislature finds that to deny victims access
26 to HIV test results causes unnecessary mental anguish in
27 persons who have already suffered trauma. The Legislature
28 further finds that since medical science now recognizes that
29 early diagnosis is a critical factor in the treatment of HIV
30 infection, both the victim and the person charged with or
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1 alleged by petition for delinquency to have committed the
2 offense benefit from prompt disclosure of HIV test results.

3 (2) TESTING OF PERSON CHARGED WITH OR ALLEGED BY
4 PETITION FOR DELINQUENCY TO HAVE COMMITTED CERTAIN OFFENSES.--

5 (a) In any case in which a person has been charged by
6 information or indictment with or alleged by petition for
7 delinquency to have committed any offense enumerated in s.
8 775.0877(1)(a)-(n), which involves the transmission of body
9 fluids from one person to another, upon request of the victim
10 or the victim's legal guardian, or of the parent or legal
11 guardian of the victim if the victim is a minor, the court
12 shall order such person to undergo HIV testing.

13 (b) However, when a victim of any sexual offense
14 enumerated in s. 775.0877(1)(a)-(n) is under the age of 18 at
15 the time the offense was committed or when a victim of any
16 sexual offense enumerated in s. 775.0877(1)(a)-(n) or s.
17 825.1025 is a disabled adult or elderly person as defined in
18 s. 825.1025 regardless of whether the offense involves the
19 transmission of bodily fluids from one person to another, upon
20 the request of the victim or the victim's parent or legal
21 guardian, the court shall order the defendant to undergo HIV
22 testing.The testing shall be performed under the direction of
23 the Department of Health in accordance with s. 381.004. The
24 results of an HIV test performed on a defendant or juvenile
25 offender pursuant to this subsection shall not be admissible
26 in any criminal or juvenile proceeding arising out of the
27 alleged offense.

28 (3) DISCLOSURE OF RESULTS.--

29 (a) The results of the test shall be disclosed no
30 later than 2 weeks after the court receives such results,
31 under the direction of the Department of Health, to the person

1 charged with or alleged by petition for delinquency to have
2 committed or to the person convicted of or adjudicated
3 delinquent for any offense enumerated in s.
4 775.0877(1)(a)-(n), which involves the transmission of body
5 fluids from one person to another, and, upon request, to the
6 victim or the victim's legal guardian, or the parent or legal
7 guardian of the victim if the victim is a minor, and to public
8 health agencies pursuant to s. 775.0877. If the alleged
9 offender is a juvenile, the test results shall also be
10 disclosed to the parent or guardian. If the victim is a victim
11 described in (2)(b), the test results must also be disclosed
12 no later than 2 weeks after the court receives such results,
13 to the person charged with or alleged by petition for
14 delinquency to have committed or to the person convicted of or
15 adjudicated delinquent for any offense enumerated in s.
16 775.0877(1)(a)-(n) or s. 825.1025, regardless of whether the
17 offense involves the transmission of bodily fluids from one
18 person to another, and, upon request, to the victim, or the
19 victim's parent or legal guardian, and to public health
20 agencies pursuant to s. 775.0877. Otherwise, HIV test results
21 obtained pursuant to this section are confidential and exempt
22 from the provisions of s. 119.07(1) and s. 24(a), Art. I of
23 the State Constitution and shall not be disclosed to any other
24 person except as expressly authorized by law or court order.

25 (b) At the time that the results are disclosed to the
26 victim or the victim's legal guardian, or to the parent or
27 legal guardian of a victim if the victim is a minor, the same
28 immediate opportunity for face-to-face counseling which must
29 be made available under s. 381.004(3)(e) to those who undergo
30 HIV testing shall also be afforded to the victim or the
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1 victim's legal guardian, or to the parent or legal guardian of
2 the victim if the victim is a minor.

3 (4) POSTCONVICTION TESTING.--If, for any reason, the
4 testing requested under subsection (2) has not been
5 undertaken, then upon request of the victim or the victim's
6 legal guardian, or the parent or legal guardian of the victim
7 if the victim is a minor, the court shall order the offender
8 to undergo HIV testing following conviction or delinquency
9 adjudication. The testing shall be performed under the
10 direction of the Department of Health, and the results shall
11 be disclosed in accordance with the provisions of subsection
12 (3).

13 (5) EXCEPTIONS.--The provisions of subsections (2) and
14 (4) do not apply if:

15 (a) The person charged with or convicted of or alleged
16 by petition for delinquency to have committed or been
17 adjudicated delinquent for an offense described in subsection
18 (2) has undergone HIV testing voluntarily or pursuant to
19 procedures established in s. 381.004(3)(h)6. or s. 951.27, or
20 any other applicable law or rule providing for HIV testing of
21 criminal defendants, inmates, or juvenile offenders,
22 subsequent to his or her arrest, conviction, or delinquency
23 adjudication for the offense for which he or she was charged
24 or alleged by petition for delinquency to have committed; and

25 (b) The results of such HIV testing have been
26 furnished to the victim or the victim's legal guardian, or the
27 parent or legal guardian of the victim if the victim is a
28 minor.

29 (6) TESTING DURING INCARCERATION, DETENTION, OR
30 PLACEMENT; DISCLOSURE.--In any case in which a person
31 convicted of or adjudicated delinquent for an offense

1 described in subsection (2) has not been tested under
2 subsection (2), but undergoes HIV testing during his or her
3 incarceration, detention, or placement, the results of the
4 initial HIV testing shall be disclosed in accordance with the
5 provisions of subsection (3). Except as otherwise requested by
6 the victim or the victim's legal guardian, or the parent or
7 guardian of the victim if the victim is a minor, if the
8 initial test is conducted within the first year of the
9 imprisonment, detention, or placement, the request for
10 disclosure shall be considered a standing request for any
11 subsequent HIV test results obtained within 1 year after the
12 initial HIV test performed, and need not be repeated for each
13 test administration. Where the inmate or juvenile offender has
14 previously been tested pursuant to subsection (2) the request
15 for disclosure under this subsection shall be considered a
16 standing request for subsequent HIV results conducted within 1
17 year of the test performed pursuant to subsection (2). If the
18 HIV testing is performed by an agency other than the
19 Department of Health, that agency shall be responsible for
20 forwarding the test results to the Department of Health for
21 disclosure in accordance with the provisions of subsection
22 (3). This subsection shall not be limited to results of HIV
23 tests administered subsequent to June 27, 1990, but shall also
24 apply to the results of all HIV tests performed on inmates
25 convicted of or juvenile offenders adjudicated delinquent for
26 sex offenses as described in subsection (2) during their
27 incarceration, detention, or placement prior to June 27, 1990.

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