

By the Committees on Criminal Justice; and Children, Families, and Elder Affairs

591-2357-07

1 A bill to be entitled
2 An act relating to sexually violent predators;
3 amending s. 394.913, F.S.; providing for
4 information concerning sexual acts and sexual
5 motivation in a person's criminal history to be
6 provided to multidisciplinary teams treating
7 sexually violent predators; creating s.
8 394.9223, F.S.; providing for the use of
9 physical force against a person confined in a
10 secure facility as a sexually violent predator
11 under certain circumstances; providing for
12 examinations, reports, and investigations
13 following the use of force; providing for
14 criminal penalties when force is used with
15 malicious intent; creating s. 394.9221, F.S.;
16 authorizing the employment of certified
17 correctional officers at a secure facility;
18 amending s. 916.1091, F.S.; authorizing the
19 employment of certified correctional officers
20 at forensic facilities; providing for such
21 authority to operate retroactively; providing
22 an effective date.

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

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26 Section 1. Subsection (2) of section 394.913, Florida
27 Statutes, is amended to read:

28 394.913 Notice to state attorney and multidisciplinary
29 team of release of sexually violent predator; establishing
30 multidisciplinary teams; information to be provided to
31 multidisciplinary teams.--

1 (2) The agency ~~having with~~ jurisdiction shall provide
2 the multidisciplinary team with the following information:

3 (a) The person's name; identifying characteristics;
4 anticipated future residence; the type of supervision the
5 person will receive in the community, if any; and the person's
6 offense history;

7 (b) The person's criminal history, including police
8 reports, victim statements, presentence investigation reports,
9 postsentence investigation reports, if available, and any
10 other documents containing facts of the person's criminal
11 incidents or indicating whether the criminal incidents
12 included sexual acts or were sexually motivated;

13 (c) Mental health, mental status, and medical records,
14 including all clinical records and notes concerning the
15 person;

16 (d) Documentation of institutional adjustment and any
17 treatment received and, in the case of an adjudicated
18 delinquent committed to the Department of Juvenile Justice,
19 copies of the most recent performance plan and performance
20 summary; and

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

24 Section 2. Section 394.9223, Florida Statutes, is
25 created to read:

26 394.9223 Use of force.--

27 (1) When necessary to provide protection and security
28 to any client, to the personnel, equipment, buildings, or
29 grounds of a secure facility, or to citizens in the
30 surrounding community, an employee or agent of a secure
31 facility, or an employee of a state or local law enforcement

1 agency, may apply physical force upon a person confined in a
2 secure facility under this part only when and to the extent
3 that it reasonably appears necessary. This includes the use of
4 nonlethal devices, such as chemical agents and hand-held
5 electronic immobilization devices, when authorized by the
6 administrator of the facility or her or his designee when the
7 administrator is not present, and only after an employee has
8 been trained in the appropriate use of such chemical agents
9 and electronic devices. Chemical agents and hand-held
10 electronic devices shall be used only to the extent necessary
11 to provide protection and security. A staff person may not
12 carry a chemical agent or hand-held electronic immobilization
13 device on her or his person under any circumstances, except
14 during escort of a facility resident outside of the secure
15 perimeter of the facility, or as an authorized response to an
16 incident within the facility which threatens the safety or
17 security of staff or residents. Hand-held electronic
18 immobilization devices are only used during escort of a
19 confined person outside of the secure perimeter of the
20 facility. Circumstances under which reasonable force may be
21 employed include:

22 (a) Defending oneself against imminent use of unlawful
23 force;

24 (b) Preventing the escape of a person confined at the
25 secure facility.

26 (c) Preventing damage to property;

27 (d) Quelling a disturbance; or

28 (e) Overcoming physical resistance to a lawful
29 command.

30 (2) Following any use of force, each person who was
31 physically involved shall receive a medical examination by a

1 qualified health care provider, unless the person refuses such
2 examination, to determine the extent of injury, if any. The
3 examining health care provider shall prepare a report that
4 includes, but need not be limited to, a statement of whether
5 further examination by a physician is necessary. Any
6 noticeable physical injury shall be examined by a physician
7 who shall prepare a report documenting the extent and cause of
8 the injury and the treatment prescribed. Such report shall be
9 completed within 5 working days after the incident and shall
10 be submitted to the facility superintendent for investigation
11 as appropriate.

12 (3) Each person who applied physical force or was
13 responsible for making the decision to apply physical force
14 upon a confined person shall prepare, date, and sign an
15 independent report within 3 working days after the incident.
16 The report shall be delivered to the facility superintendent
17 who shall conduct an investigation and shall determine whether
18 force was appropriately used. Copies of the report and the
19 facility superintendent's evaluation shall be kept in the
20 resident's file. A record of each incident involving an
21 employee's use of force and the facility superintendent's
22 evaluation shall be kept in the employee's file.

23 (4) An employee of a secure facility under this part
24 who, with malicious intent:

25 (a) Commits a battery upon a person confined in the
26 facility commits a misdemeanor of the first degree, punishable
27 as provided in s. 775.082 or s. 775.083; or

28 (b) Commits a battery or inflicts cruel or inhuman
29 treatment by neglect or otherwise, and in so doing causes
30 great bodily harm, permanent disability, or permanent
31 disfigurement to a person confined in the facility, commits a

1 felony of the third degree, punishable as provided in s.
2 775.082, s. 775.083, or s. 775.084.

3 Section 3. Section 394.9221, Florida Statutes, is
4 created to read:

5 394.9221 Certified security personnel.--The department
6 or an entity contracting with the department to operate a
7 secure facility under this part is considered an employing
8 agency as that term is defined in s. 943.10 and is authorized
9 to employ certified correctional officers as facility security
10 personnel.

11 Section 4. Section 916.1091, Florida Statutes, is
12 amended to read:

13 916.1091 Duties, functions, and powers of
14 institutional security personnel.--

15 (1) In case of emergency, and when necessary to
16 provide protection and security to any client, to the
17 personnel, equipment, buildings, or grounds of a department or
18 agency facility, or to citizens in the surrounding community,
19 institutional security personnel may, when authorized by the
20 administrator of the facility or her or his designee when the
21 administrator is not present, use a chemical weapon against a
22 patient housed in a forensic facility. However, such weapon
23 shall be used only to the extent necessary to provide
24 protection and security. Under no circumstances shall any
25 officer carry a chemical weapon on her or his person except
26 during the period of the emergency for which its use was
27 authorized. All chemical weapons shall be placed in secure
28 storage when their use is not authorized as provided in this
29 section.

30 (2) The department, the agency, or an entity
31 contracting with the department or agency to operate a

1 forensic facility under this chapter is considered an
2 employing agency as that term is defined in s. 943.10 and is
3 authorized to employ certified correctional officers as
4 institutional security personnel. This authority applies
5 retroactively to all certified officers employed in such
6 capacity beginning January 1, 1974.

7 Section 5. This act shall take effect upon becoming a
8 law.

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10 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
11 COMMITTEE SUBSTITUTE FOR
12 Senate Bill 2866

- 13 - Deletes the amendment to s. 921.245, F.S., that would
14 have imposed a new requirement for courts to specifically
15 find whether or not a non-sexual criminal act was
16 sexually motivated.
- 17 - Revises the bill's use of force requirements, including
18 removing references to forced administration of medical
19 treatment and to deadly force.
- 20 - Creates a separate criminal offense when an employee acts
21 with malicious intent in battering or cruelly or
22 inhumanly treating a person who is confined in a secure
23 facility.
- 24 - Clarifies that DCF, the Agency for Persons with
25 Disabilities, and entities that contract to operate a
26 forensic facility or secure facility are employing
27 agencies for certified correctional officers within the
28 meaning of ch. 943, F.S.
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