

By the Committee on Children, Families, and Elder Affairs; and
Senators Grimsley and Detert

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1 A bill to be entitled
2 An act relating to involuntary civil commitment of
3 sexually violent predators; amending s. 394.913, F.S.;
4 requiring the agency with jurisdiction over a person
5 who has been convicted of a sexually violent offense
6 to give written notice to the multidisciplinary team
7 as soon as practicable after receipt into custody of
8 such person in a local detention facility; designating
9 certain licensed professionals as "primary members" of
10 the multidisciplinary team; expanding the membership
11 of the multidisciplinary team to include three
12 advisory members; requiring that advisory members
13 demonstrate certain qualifications; requiring the
14 primary members of the multidisciplinary team to
15 prepare a written assessment as to whether a person
16 who has been convicted of a sexually violent offense
17 meets the definition of a sexually violent predator
18 and to submit a written recommendation to the state
19 attorney; requiring the victim advocate to prepare a
20 victim impact statement; requiring the
21 multidisciplinary team to give equal consideration to
22 an attempt, criminal solicitation, or conspiracy to
23 commit certain offenses as it does to the commission
24 of such offenses; authorizing the victim advocate to
25 veto the finding by the multidisciplinary team that
26 the person does not meet the definition of a sexually
27 violent predator; amending s. 394.9135, F.S.;
28 providing for certain released persons to be taken
29 into custody by the Department of Children and

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30 Families; authorizing the state attorney to file,
31 within a specific timeframe, a petition alleging that
32 a person released from a local detention facility was
33 not referred as required before release because of a
34 mistake, oversight, or intentional act or was referred
35 for commitment consideration but released rather than
36 transferred to custody, as required, due to a mistake,
37 oversight, or intentional act; requiring a judge to
38 order that a person so released be taken into custody
39 and delivered to an appropriate secure facility under
40 certain circumstances; amending s. 394.926, F.S.;

41 requiring the department to provide written notice of
42 placement of a person in the department's custody for
43 a commitment hearing to a victim of such person;
44 requiring the department to notify the Department of
45 Corrections of the release of a sexually violent
46 predator or a person who is in custody pending
47 sexually violent predator commitment proceedings;

48 requiring the Department of Children and Families to
49 send notification of the release of a sexually violent
50 predator, or a person who is in custody pending
51 sexually violent predator commitment proceedings, to
52 the sheriff of the county in which such person intends
53 to reside; amending s. 394.931, F.S.; requiring the
54 Department of Corrections to collect recidivism
55 information and prepare an annual report by a
56 specified date; specifying minimum requirements for
57 the report; requiring the department to provide
58 necessary information; amending s. 394.912, F.S.;

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59 redefining the term "agency with jurisdiction" to
60 include an agency that releases certain persons from
61 the custody of a local detention facility; redefining
62 the term "total confinement" to include persons being
63 held in a local detention facility and certain persons
64 held in custody beyond their lawful release date;
65 providing severability; providing an effective date.
66

67 Be It Enacted by the Legislature of the State of Florida:
68

69 Section 1. Section 394.913, Florida Statutes, is amended to
70 read:

71 394.913 Notice to state attorney and multidisciplinary team
72 of release of sexually violent predator; establishing
73 multidisciplinary teams; information to be provided to
74 multidisciplinary teams; requirement for recommendation and
75 victim impact statement.-

76 (1) The agency with jurisdiction over a person who has been
77 convicted of a sexually violent offense shall give written
78 notice to the multidisciplinary team, ~~and~~ shall provide a copy
79 of the notice to the state attorney of the circuit in which
80 ~~where~~ that person was last convicted of a sexually violent
81 offense. If the person has never been convicted of a sexually
82 violent offense in this state but has been convicted of a
83 sexually violent offense in another state or in federal court,
84 the agency with jurisdiction shall give written notice to the
85 multidisciplinary team and a copy to the state attorney of the
86 circuit in which ~~where~~ the person was last convicted of any
87 offense in this state. If the person is being confined in this

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88 state pursuant to interstate compact and has a prior or current
89 conviction for a sexually violent offense, the agency with
90 jurisdiction shall give written notice to the multidisciplinary
91 team and shall provide a copy to the state attorney of the
92 circuit in which ~~where~~ the person plans to reside upon release
93 or, if no residence in this state is planned, the state attorney
94 in the circuit in which ~~where~~ the facility from which the person
95 to be released is located. Except as provided in s. 394.9135,
96 the written notice shall ~~must~~ be given:

97 (a) At least 545 days before ~~prior to~~ the anticipated
98 release from total confinement of a person serving a sentence in
99 the custody of the Department of Corrections, except that in the
100 case of a person ~~persons~~ who is ~~are~~ totally confined for a
101 period of less than 545 days, written notice must be given as
102 soon as practicable;

103 (b) As soon as practicable after receipt into custody of a
104 person who is sentenced to confinement in a local detention
105 facility;

106 (c) ~~(b)~~ At least 180 days before ~~prior to~~ the anticipated
107 release from residential commitment of a person committed to the
108 custody of the Department of Juvenile Justice, except that in
109 the case of a person ~~persons~~ who is ~~are~~ committed to a low or
110 moderate risk facility, written notice must be given as soon as
111 practicable; or

112 (d) ~~(e)~~ At least 180 days before ~~prior to~~ the anticipated
113 hearing regarding possible release of a person committed to the
114 custody of the department who has been found not guilty by
115 reason of insanity or mental incapacity of a sexually violent
116 offense.

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

119 (a) The person's name; identifying characteristics;
120 anticipated future residence; the type of supervision the person
121 will receive in the community, if any; and the person's offense
122 history;

123 (b) The person's criminal history, including police
124 reports, victim statements, presentence investigation reports,
125 postsentence investigation reports, if available, and any other
126 documents containing facts of the person's criminal incidents or
127 indicating whether the criminal incidents included sexual acts
128 or were sexually motivated;

129 (c) Mental health, mental status, and medical records,
130 including all clinical records and notes concerning the person;

131 (d) Documentation of institutional adjustment and any
132 treatment received and, in the case of an adjudicated delinquent
133 committed to the Department of Juvenile Justice, copies of the
134 most recent performance plan and performance summary; and

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

138 (3) (a) The secretary or his or her designee shall establish
139 a multidisciplinary team or teams.

140 (b) Each team shall include, but need is not be limited to,
141 two licensed psychiatrists or psychologists or one licensed
142 psychiatrist and one licensed psychologist as primary members.
143 The team shall include as advisory members an assistant state
144 attorney with at least 5 years' experience prosecuting sexual
145 offenses; a certified law enforcement officer with at least 10

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146 years' experience investigating sexual offenses; and a victim
147 advocate who has a master's or doctoral degree in social work,
148 psychology, sociology, or a related field and at least 5 years'
149 experience representing victims of sexual violence. The
150 multidisciplinary team shall assess and evaluate each person
151 referred to the team. The assessment and evaluation must ~~shall~~
152 include a review of the person's institutional history and
153 treatment record, if any, the person's criminal background, and
154 any other factor that is relevant to the determination of
155 whether the ~~such~~ person is a sexually violent predator.

156 (c) Before recommending that a person meets the definition
157 of a sexually violent predator, the person must be offered a
158 personal interview. If the person agrees to participate in a
159 personal interview, at least one member of the team who is a
160 licensed psychiatrist or psychologist must conduct a personal
161 interview of the person. If the person refuses to fully
162 participate in a personal interview, the multidisciplinary team
163 may proceed with its recommendation without the ~~a personal~~
164 ~~interview of the person.~~

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

167 (e)1. Within 180 days after receiving notice, the primary
168 members shall prepare ~~there shall be~~ a written assessment as to
169 whether the person meets the definition of a sexually violent
170 predator and make a written recommendation, which shall be
171 provided by the department to the state attorney. The written
172 recommendation ~~shall be provided by the Department of Children~~
173 ~~and Family Services and~~ shall include the written report of the
174 primary members of the multidisciplinary team, as well as a

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175 victim impact statement prepared by the victim's advocate.

176 2. Notwithstanding subparagraph 1., in the case of a person
177 for whom the written assessment and recommendation has not been
178 completed at least 365 days before his or her release from total
179 confinement, the department shall prioritize the assessment of
180 that person based upon the person's release date.

181 (4) The multidisciplinary team shall give equal
182 consideration in the evaluation and assessment of an offender
183 whose sexually violent offense was an attempt, criminal
184 solicitation, or conspiracy, in violation of s. 777.04, to
185 commit a sexually violent offense enumerated in s. 394.912(9) as
186 it does in the evaluation and assessment of an offender who
187 completed such an enumerated sexually violent offense. A rule or
188 policy may not be established which reduces the level of
189 consideration because the sexually violent offense was an
190 attempt, criminal solicitation, or conspiracy.

191 (5) The victim advocate on the multidisciplinary team may
192 veto the decision of the team if the team determines that the
193 person does not meet the definition of a sexually violent
194 predator. In such cases, the department shall provide the
195 recommendation of the multidisciplinary team and the
196 determination of the victim advocate to the state attorney.

197 (6) ~~(4)~~ The provisions of This section is are not
198 jurisdictional, and failure to comply with it them in no way
199 prevents the state attorney from proceeding against a person
200 otherwise subject to the provisions of this part.

201 Section 2. Section 394.9135, Florida Statutes, is amended
202 to read:

203 394.9135 Immediate releases from total confinement;

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204 transfer of person to department; time limitations on
205 assessment, notification, and filing petition to hold in
206 custody; filing petition after release; order into custody of
207 department after release.—

208 (1) (a) If the anticipated release from total confinement of
209 a person who has been convicted of a sexually violent offense
210 becomes immediate for any reason, the agency with jurisdiction
211 shall upon immediate release from total confinement transfer
212 that person to the custody of the department ~~of Children and~~
213 ~~Family Services~~ to be held in an appropriate secure facility.

214 (b) If a person who committed a sexually violent offense
215 and who is serving an incarcerative sentence under the custody
216 of the Department of Corrections or the Department of Juvenile
217 Justice is released from a local detention facility, the state
218 attorney, as designated in s. 394.913, may file a petition with
219 the circuit court within 120 hours after the person's release
220 alleging that:

221 1. Section 394.913 or this section requires that the person
222 be referred for consideration for civil commitment before
223 release and the person was not referred because of mistake,
224 oversight, or intentional act; or

225 2. The person was referred for commitment consideration
226 and, through mistake, oversight, or intentional act, was
227 released rather than transferred to the custody of the
228 Department of Children and Families as required by this part.

229
230 If the judge determines that there is probable cause to believe
231 the person was released in contravention of s. 394.913 or this
232 section, the judge shall order the person to be taken into

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233 custody and delivered to an appropriate secure facility
234 designated by the Department of Children and Families.

235 (2) Within 72 hours after transfer pursuant to paragraph
236 (1) (a) or receipt into the department's custody pursuant to
237 paragraph (1) (b), the multidisciplinary team shall assess
238 whether the person meets the definition of a sexually violent
239 predator as defined in s. 394.912. If the multidisciplinary team
240 determines that the person does not meet the definition of a
241 sexually violent predator, that person shall be immediately
242 released. If the multidisciplinary team determines that the
243 person meets the definition of a sexually violent predator, the
244 team shall provide the state attorney, as designated by s.
245 394.913, with its written assessment and recommendation within
246 the 72-hour period or, if the 72-hour period ends after 5 p.m.
247 on a working day or on a weekend or holiday, within the next
248 working day ~~thereafter~~.

249 (3) Within 48 hours after receipt of the written assessment
250 and recommendation from the multidisciplinary team, the state
251 attorney, as designated in s. 394.913, may file a petition with
252 the circuit court alleging that the person is a sexually violent
253 predator and stating facts sufficient to support the ~~such~~
254 allegation. If a petition is not filed within 48 hours after
255 receipt of the written assessment and recommendation by the
256 state attorney, the person shall be immediately released, except
257 that, if the 48-hour period ends after 5 p.m. on a working day
258 or on a weekend or holiday, the petition may be filed on the
259 next working day without resulting in the person's release. If a
260 petition is filed pursuant to this section and the judge
261 determines that there is probable cause to believe that the

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262 person is a sexually violent predator, the judge shall order
263 that the person be maintained in custody and held in an
264 appropriate secure facility for further proceedings in
265 accordance with this part.

266 (4) ~~The provisions of~~ This section is ~~are~~ not
267 jurisdictional, and failure to comply with the time limitations,
268 which results in the release of a person who has been convicted
269 of a sexually violent offense, ~~is not~~ dispositive of the case
270 and does not prevent the state attorney from proceeding against
271 a person otherwise subject to ~~the provisions of~~ this part.

272 Section 3. Section 394.926, Florida Statutes, is amended to
273 read:

274 394.926 Notice to victims of release of persons committed
275 as sexually violent predators or in custody for commitment
276 proceedings; notice to Department of Corrections and Parole
277 Commission; notice to sheriff.-

278 (1) As soon as is practicable, the department shall give
279 written notice of the release of a person who is committed as a
280 sexually violent predator, or who is in the department's custody
281 based upon a court finding of probable cause to believe that the
282 person is a sexually violent predator, to any victim of the
283 committed person who is alive and whose address is known to the
284 department or, if the victim is deceased, to the victim's
285 family, if the family's address is known to the department.
286 Failure to notify is not a reason for postponement of release.
287 This section does not create a cause of action against the state
288 or an employee of the state acting within the scope of the
289 employee's employment as a result of the failure to notify
290 pursuant to this part.

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291 (2) The department shall immediately give written notice to
292 the Department of Corrections' Office of Community Corrections
293 of the release of a person who is committed as ~~If~~ a sexually
294 violent predator, or who is in the department's custody based
295 upon a court finding of probable cause to believe that the
296 person is a sexually violent predator, who has an active or
297 pending term of probation, community control, parole,
298 conditional release, or other court-ordered or postprison
299 release supervision ~~is released from custody, the department~~
300 ~~must immediately notify the Department of Corrections' Office of~~
301 ~~Community Corrections in Tallahassee.~~ The Parole Commission must
302 also be immediately notified of the release ~~any releases~~ of any
303 such a sexually violent predator who has an active or pending
304 term of parole, conditional release, or other postprison release
305 supervision that is administered by the Parole Commission.

306 (3) The department shall give written notice of the release
307 of a person who is committed as a sexually violent predator, or
308 who is in the department's custody based upon a court finding of
309 probable cause to believe that the person is a sexually violent
310 predator, to the sheriff of the county in which the person
311 intends to reside or, if unknown, the sheriff of the county in
312 which the person was last convicted.

313 Section 4. Section 394.931, Florida Statutes, is amended to
314 read:

315 394.931 Quarterly and annual reports.-

316 (1) ~~Beginning July 1, 1999,~~ The Department of Corrections
317 shall collect information and compile quarterly reports with
318 statistics profiling inmates released the previous quarter who
319 fit the criteria and were referred to the Department of Children

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320 and Families ~~Family Services~~ pursuant to this act. ~~The quarterly~~
321 ~~reports must be produced beginning October 1, 1999.~~ At a
322 minimum, the information that must be collected and compiled for
323 inclusion in the reports includes: whether the qualifying
324 offense was the current offense or the prior offense; the
325 offender's most serious sexual offense; the total number of
326 distinct victims of the sexual offense; whether the victim was
327 known to the offender; whether the sexual act was consensual;
328 whether the sexual act involved multiple victims; whether direct
329 violence was involved in the sexual offense; the age of each
330 victim at the time of the offense; the age of the offender at
331 the time of the first sexual offense; whether a weapon was used;
332 length of time since the most recent sexual offense; and the
333 total number of prior and current sexual offense ~~sexual offense~~
334 convictions. In addition, the department ~~of Children and Family~~
335 ~~Services~~ shall implement a long-term study to determine the
336 overall efficacy of ~~the provisions of~~ this part.

337 (2) (a) Beginning July 1, 2014, the Department of
338 Corrections shall collect information necessary to produce an
339 annual report to the Legislature documenting recidivism rates
340 for offenders referred to and released from the civil
341 confinement facility. The Department of Children and Families
342 shall provide the necessary offender information to the
343 Department of Corrections to facilitate the recidivism report.

344 (b) The first report shall be submitted to the Legislature
345 by July 1, 2015, and annually thereafter. At a minimum, the
346 report must:

347 1. Separately report recidivism rates for persons released
348 from detention and for persons released from commitment;

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349 2. Define recidivism as return to prison or community
350 supervision for a new sexual offense; and

351 3. Include an analysis of technical violations.

352 Section 5. Subsections (1) and (11) of section 394.912,
353 Florida Statutes, are amended to read:

354 394.912 Definitions.—As used in this part, the term:

355 (1) "Agency with jurisdiction" means:

356 (a) The agency that releases, upon lawful order or
357 authority, a person who is serving a sentence in the custody of
358 the Department of Corrections, a person who was adjudicated
359 delinquent and is committed to the custody of the Department of
360 Juvenile Justice, or a person who was involuntarily committed to
361 the custody of the Department of Children and ~~Families~~ Family
362 ~~Services~~ upon an adjudication of not guilty by reason of
363 insanity.

364 (b) The agency that releases, upon lawful order or
365 authority, a person who is serving a sentence in the custody of
366 a local detention facility for any offense other than a
367 violation of s. 316.193 or s. 832.05 and who is:

368 1. Designated as a sexual predator pursuant to s. 775.21 or
369 a sexual offender pursuant to s. 943.0435 as the result of being
370 convicted of a sexually violent offense; or

371 2. A person for whom the state attorney has provided the
372 agency with written notification that the person has been
373 convicted of committing a sexually violent offense;

374
375 unless the person is to be transferred or returned to total
376 confinement in the custody of the Department of Corrections, the
377 Department of Juvenile Justice, or the Department of Children

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378 and Families.

379 (c) The agency that releases, upon lawful order or
380 authority, a person who is serving a sentence in the custody of
381 a local detention facility and for whom the state attorney has
382 provided the agency with written notification that, in the
383 opinion of the state attorney, the offense for which the person
384 is in custody was a sexually motivated offense.

385 (11) "Total confinement" means that the person is currently
386 being held in any physically secure facility being operated or
387 contractually operated for the Department of Corrections, the
388 Department of Juvenile Justice, or the Department of Children
389 and Families or in a local detention facility ~~Family Services~~. A
390 person is ~~shall also be~~ deemed to be in total confinement and
391 subject to ~~for applicability of provisions under~~ this part if:

392 (a) The person is serving an incarcerative sentence under
393 the custody of the Department of Corrections or the Department
394 of Juvenile Justice and is being held in any other secure
395 facility for any reason; or

396 (b) A court or the agency with jurisdiction determines that
397 the person who is being held should have been lawfully released
398 at an earlier date and that the provisions of this part would
399 have been applicable to the person on the date that he or she
400 should have been lawfully released.

401 Section 6. If any provision of this act or its application
402 to any person or circumstance is held invalid, the invalidity
403 does not affect other provisions or applications of this act
404 which can be given effect without the invalid provision or
405 application, and to this end the provisions of this act are
406 severable.

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Section 7. This act shall take effect July 1, 2014.