

CHAPTER 98-64

Committee Substitute for House Bill No. 3327

An act relating to sexual predators; creating the “Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators’ Treatment and Care Act”; creating s. 916.30, F.S.; providing findings and intent; creating s. 916.31, F.S.; providing definitions; creating s. 916.32, F.S.; requiring certain notice to the state attorney of anticipated release of specified persons who may meet the criteria for a sexually violent predator; requiring provision of certain records and information by the agency with jurisdiction to the state attorney; providing certain immunity from liability of the agency with jurisdiction, the state attorney, and their employees and service providers; creating s. 916.33, F.S.; providing for petition to have such person declared a sexually violent predator; creating s. 916.34, F.S.; providing for determination of probable cause and taking respondent into custody; providing for transfer of the respondent to a secure facility for evaluation under specified circumstances when the court finds probable cause to believe that the respondent is a sexually violent predator; creating s. 916.35, F.S.; providing for trial on the issue of whether a person is a sexually violent predator; creating s. 916.36, F.S.; providing for commitment of a person determined to be a sexually violent predator; creating s. 916.37, F.S.; requiring annual examination of persons committed; creating s. 916.38, F.S.; requiring detention and commitment to conform to constitutional requirements; creating s. 916.39, F.S.; providing for petitions for release; creating s. 916.40, F.S.; providing that the Department of Children and Family Services is responsible for specified evaluation and treatment costs; providing for reimbursement; providing for court orders for certain disclosures to the department by the committed person of income and assets; providing for imposition and assessment of certain financial liabilities for payment of daily subsistence and treatment costs based on specified criteria; providing for notice and contest of the assessment; providing for survival of the order directing payment against the person’s estate; creating s. 916.41, F.S.; providing for notice to victims; creating s. 916.42, F.S.; providing severability; creating s. 916.43, F.S.; providing for access to certain records; monitoring contract compliance; providing for appropriation of funds; providing for 50 full-time equivalent positions; providing an effective date.

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

Section 1. This act shall be known and may be cited as the “Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators’ Treatment and Care Act.”

Section 2. Section 916.30, Florida Statutes, is created to read:

916.30 Legislative findings and intent.—The Legislature finds that a small but extremely dangerous number of sexually violent predators exist who do not have a mental disease or defect that renders them appropriate for involuntary treatment under the Baker Act, ss. 394.451-394.4789, which is intended to provide short-term treatment to individuals with serious mental disorders and then return them to the community. In contrast to persons appropriate for civil commitment under the Baker Act, sexually violent predators generally have antisocial personality features which are unamenable to existing mental illness treatment modalities and those features render them likely to engage in criminal, sexually violent behavior. The Legislature further finds that the likelihood of sexually violent predators engaging in repeat acts of predatory sexual violence is high. The existing involuntary commitment procedures under the Baker Act for the treatment and care of mentally ill persons are inadequate to address the risk these sexually violent predators pose to society. The Legislature further finds that the prognosis for rehabilitating sexually violent predators in a prison setting is poor, the treatment needs of this population are very long term, and the treatment modalities for this population are very different than the traditional treatment modalities for people appropriate for commitment under the Baker Act. It is therefore the intent of the Legislature to create a civil commitment procedure for the long-term care and treatment of sexually violent predators.

Section 3. Section 916.31, Florida Statutes, is created to read:

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Section 4. Section 916.32, Florida Statutes, is created to read:

916.32 Definitions.—As used in ss. 916.30-916.49, the term:

(1) “Agency with jurisdiction” means the agency that releases, upon lawful order or authority, a person serving a sentence in the custody of the Department of Corrections, a person adjudicated delinquent and committed to the custody of the Department of Juvenile Justice or a person who was involuntarily committed to the custody of the Department of Children and Family Services upon an adjudication of not guilty by reason of insanity.

(2) “Convicted of a sexually violent offense” means a person who has been:

(a) Adjudicated guilty of a sexually violent offense after a trial, guilty plea, or plea of nolo contendere;

(b) Adjudicated not guilty by reason of insanity of a sexually violent offense; or

(c) Adjudicated delinquent of a sexually violent offense after a trial, guilty plea, or plea of nolo contendere.

(3) “Department” means the Department of Children and Family Services.

(4) “Likely to engage in acts of sexual violence” means the person’s propensity to commit acts of sexual violence is of such a degree as to pose a menace to the health and safety of others.

(5) “Mental abnormality” means a mental condition affecting a person’s emotional or volitional capacity which predisposes the person to commit sexually violent offenses.

(6) “Person” means an individual 18 years of age or older who is a potential or actual subject of proceedings under ss. 916.30-916.49.

(7) “Sexually motivated” means that one of the purposes for which the defendant committed the crime was for sexual gratification.

(8) “Sexually violent offense” means:

(a) Murder of a human being while engaged in sexual battery in violation of s. 782.04(1)(a)2.;

(b) Kidnapping of a child under the age of 16 and, in the course of that offense, committing:

1. Sexual battery; or

2. A lewd, lascivious, or indecent assault or act upon or in the presence of the child;

(c) Committing the offense of false imprisonment upon a child under the age of 16 and, in the course of that offense, committing:

1. Sexual battery; or

2. A lewd, lascivious or indecent assault or act upon or in the presence of the child;

(d) Sexual battery in violation of s. 794.011;

(e) Lewd, lascivious, or indecent assault or act upon or in presence of the child in violation of s. 800.04;

(f) An attempt, criminal solicitation, or conspiracy, in violation of s. 777.04, of a sexually violent offense;

(g) Any conviction for a felony offense in effect at any time before October 1, 1998, which is comparable to a sexually violent offense under paragraphs (a)-(f) or any federal conviction or conviction in another state for a felony offense that in this state would be a sexually violent offense; or

(h) Any criminal act that, either at the time of sentencing for the offense or subsequently during civil commitment proceedings under ss. 916.30-916.49, has been determined beyond a reasonable doubt to have been sexually motivated.

(9) "Sexually violent predator" means any person who:

(a) Has been convicted of a sexually violent offense; and

(b) Suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment.

(10) "Total confinement" means that the person is currently being held in any physically secure facility being operated or contractually operated for the Department of Corrections, the Department of Juvenile Justice, or the Department of Children and Family Services.

Section 5. Section 916.33, Florida Statutes, is created to read:

916.33 Notice to state attorney and multidisciplinary team of release of sexually violent predator; establishing multidisciplinary team.—

(1) The agency with jurisdiction over a person who has been convicted of a sexually violent offense shall give written notice to the multidisciplinary team, and a copy to the state attorney of the circuit where that person was last convicted of a sexually violent offense, 180 days or, in the case of an adjudicated committed delinquent, 90 days before:

(a) The anticipated release from total confinement of a person who has been convicted of a sexually violent offense, except that in the case of persons who have been returned to confinement for no more than 90 days, written notice must be given as soon as practicable following the person's return to confinement; or

(b) The anticipated hearing regarding possible release of a person who has been found not guilty by reason of insanity or mental incapacity of a sexually violent offense.

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

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

(b) Documentation of institutional adjustment and any treatment received and, in the case of an adjudicated delinquent committed to the Department of Juvenile Justice, copies of the most recent performance plan and performance summary.

The provisions of this section are not jurisdictional, and failure to comply with them in no way prevents the state attorney from proceeding against a person otherwise subject to the provisions of ss. 916.30-916.49.

(3) The Secretary of Children and Family Services shall establish a multidisciplinary team, which shall include two licensed psychiatrists or psychologists, or one licensed psychiatrist and one licensed psychologist, designated by the Secretary of Children and Family Services. The Attorney General's Office shall serve as legal counsel to the multidisciplinary team. The team, within 45 days after receiving notice, shall assess whether the person meets the definition of a sexually violent predator and provide the state attorney with its written assessment and recommendation.

Section 6. Section 916.34, Florida Statutes, is created to read:

916.34 Petition; time; contents.—Following receipt of the written assessment and recommendation from the multidisciplinary team, the state attorney in the judicial circuit where the person committed the sexually violent offense may file a petition with the circuit court alleging that the person is a sexually violent predator and stating facts sufficient to support such allegation.

Section 7. Section 916.35, Florida Statutes, is created to read:

916.35 Determination of probable cause; hearing; evaluation; respondent taken into custody; bail.—

(1) When the state attorney files a petition seeking to have a person declared a sexually violent predator, the judge shall determine whether probable cause exists to believe that the person named in the petition is a sexually violent predator. If the judge determines that there is probable cause to believe that the person is a sexually violent predator, the judge shall direct that the person be taken into custody and held in an appropriate secure facility.

(2) Before the release from custody of a person whom the multidisciplinary team recommends for civil commitment, but after the state attorney files a petition under s. 916.33, the state attorney may further petition the court for an adversarial probable cause hearing. The person shall be provided with notice of, and an opportunity to appear in person at, an adversary hearing. At this hearing, the judge shall:

(a) Receive evidence and hear argument from the person and the state attorney; and

(b) Determine whether probable cause exists to believe that the person is a sexually violent predator.

(3) At the probable cause hearing, the person has the right to:

(a) Be represented by counsel;

(b) Present evidence;

(c) Cross-examine any witnesses who testify against the person; and

(d) View and copy all petitions and reports in the court file.

(4) If the court again concludes that there is probable cause to believe that the person is a sexually violent predator, the court shall direct that the person be held in an appropriate secure facility in the county where the petition was filed for an evaluation by a mental health professional.

(5) After a court finds probable cause to believe that the person is a sexually violent predator, the person must be held in custody in a secure facility without opportunity for pretrial release or release during the trial proceedings.

Section 8. Section 916.36, Florida Statutes, is created to read:

916.36 Trial; counsel and experts; indigent persons; jury.—

(1) Within 30 days after the determination of probable cause, the court shall conduct a trial to determine whether the person is a sexually violent predator.

(2) The trial may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the interests of justice, when the person will not be substantially prejudiced.

(3) At all adversarial proceedings under this act, the person subject to this act is entitled to the assistance of counsel, and, if the person is indigent, the court shall appoint the public defender or, if a conflict exists, other counsel to assist the person.

(4) If the person is subjected to a mental health examination under this chapter, the person also may retain experts or mental health professionals to perform an examination. If the person wishes to be examined by a professional of the person's own choice, the examiner must be provided reasonable access to the person, as well as to all relevant medical and mental health records and reports. In the case of a person who is indigent, the court, upon the person's request, shall determine whether such an examination is necessary. If the court determines that an examination is necessary, the court shall appoint a mental health professional and determine the reasonable compensation for the professional's services.

(5) The person or the state attorney has the right to demand that the trial be before a jury. A demand for a jury trial must be filed, in writing, at least 5 days before the trial. If no demand is made, the trial shall be to the court.

Section 9. Section 916.37, Florida Statutes, is created to read:

916.37 Determination; commitment procedure; mistrials; housing.—

(1) The court or jury shall determine by clear and convincing evidence whether the person is a sexually violent predator. If the determination is made by a jury, the decision must be unanimous. If a majority of the jury finds that the person is a sexually violent predator, but the decision is not unanimous, the state attorney may refile the petition and proceed according to the provisions of ss. 916.30-916.49. Any retrial must occur within 90 days after the previous trial, unless the subsequent proceeding is continued in accordance with s. 916.36(2). The determination that a person is a sexually violent predator may be appealed.

(2) If the court or jury determines that the person is a sexually violent predator, the person shall be committed to the custody of the Department of Children and Family Services for control, care, and treatment until such time as the person's mental abnormality or personality disorder has so changed that it is safe for the person to be at large. At all times, sexually violent predators who are committed for control, care, and treatment by the Department of Children and Family Services under this section shall be kept in a secure facility segregated from patients who are not committed under this section.

Section 10. Section 916.38, Florida Statutes, is created to read:

916.38 Examinations.—

(1) A person committed under ss. 916.30-916.49 shall have an examination of his or her mental condition once every year or more frequently at the court's discretion. The person may retain or, if the person is indigent and so requests, the court may appoint, a qualified professional to examine the person. Such a professional shall have access to all records concerning the person. The results of the examination shall be provided to the court that committed the person under ss. 916.30-916.49. Upon receipt of the report, the court shall conduct a review of the person's status.

(2) The department shall provide the person with annual written notice of the person's right to petition the court for release over the objection of the director of the facility where the person is housed. The notice must contain a waiver of rights. The director of the facility shall forward the notice and waiver form to the court.

(3) The court shall hold a limited hearing to determine whether there is probable cause to believe that the person's condition has so changed that it is safe for the person to be at large and that the person will not engage in acts of sexual violence if discharged. The person has the right to be represented by counsel at the probable cause hearing, but the person is not entitled to be present. If the court determines that there is probable cause

to believe it is safe to release the person, the court shall set a trial before the court on the issue.

(4) At the trial before the court, the person is entitled to be present and is entitled to the benefit of all constitutional protections afforded the person at the initial trial, except for the right to a jury. The state attorney shall represent the state and has the right to have the person examined by professionals chosen by the state. At the hearing the state bears the burden of proving, by clear and convincing evidence, that the person's mental condition remains such that it is not safe for the person to be at large and that, if released, the person is likely to engage in acts of sexual violence.

Section 11. Section 916.39, Florida Statutes, is created to read:

916.39 Authorized petition for release; procedure.—

(1) If the Secretary of Children and Family Services or the secretary's designee at any time determines that the person is not likely to commit acts of sexual violence if conditionally discharged, the secretary or the secretary's designee shall authorize the person to petition the court for release. The petition shall be served upon the court and the state attorney. The court, upon receipt of such a petition, shall order a trial before the court within 30 days, unless continued for good cause.

(2) The state attorney shall represent the state, and has the right to have the person examined by professionals of the state attorney's choice. The state bears the burden of proving, by clear and convincing evidence, that the person's mental condition remains such that it is not safe for the person to be at large and that, if released, the person is likely to engage in acts of sexual violence.

Section 12. Section 916.40, Florida Statutes, is created to read:

916.40 Petition for release.—Sections 916.30-916.49 do not prohibit a person from filing a petition for discharge at any time. However, if the person has previously filed such a petition without the approval of the Secretary of Children and Family Services or the secretary's designee and the court determined that the petition was without merit, a subsequent petition shall be denied unless the petition contains facts upon which a court could find that the person's condition has so changed that a probable-cause hearing is warranted.

Section 13. Section 916.41, Florida Statutes, is created to read:

916.41 Release of records to state attorney.—

(1) In order to protect the public, relevant information and records that are otherwise confidential or privileged shall be released to the agency having jurisdiction or to the state attorney for the purpose of meeting the notice requirements of ss. 916.30-916.49 and determining whether a person is or continues to be a sexually violent predator.

(2) Psychological or psychiatric reports, drug and alcohol reports, treatment records, medical records, or victim impact statements that have been

submitted to the court or admitted into evidence under ss. 916.30-916.49 shall be part of the record, but shall be sealed and may be opened only pursuant to a court order.

Section 14. Section 916.42, Florida Statutes, is created to read:

916.42 Constitutional requirements.—The long-term control, care, and treatment of a person committed under ss. 916.30-916.49 must conform to constitutional requirements.

Section 15. Section 916.43, Florida Statutes, is created to read:

916.43 Immunity from civil liability.—The agency with jurisdiction and its officers and employees; the department and its officers and employees; members of the multidisciplinary team; the state attorney and the state attorney's employees; and those involved in the evaluation, care, and treatment of sexually violent persons committed under ss. 916.30-916.49, are immune from any civil liability for good-faith conduct under ss. 916.30-916.49.

Section 16. Section 916.44, Florida Statutes, is created to read:

916.44 Severability.—If any section, subsection, or provision of ss. 916.30-916.49 is held to be unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of ss. 916.30-916.49 shall be unaffected because the Legislature declares that the provisions of ss. 916.30-916.49 are severable from each other.

Section 17. Section 916.45, Florida Statutes, is created to read:

916.45 Applicability of act.—Sections 916.30-916.49 apply to all persons currently in custody who have been convicted of a sexually violent offense, as that term is defined in s. 916.32(8), as well as to all persons convicted of a sexually violent offense in the future.

Section 18. Section 916.46, Florida Statutes, is created to read:

916.46 Notice to victims of release of persons committed as sexually violent predators.—As soon as is practicable, the department shall give written notice of the release of a person committed as a sexually violent predator to any victim of the committed person who is alive and whose address is known to the department or, if the victim is deceased, to the victim's family, if the family's address is known to the department. Failure to notify is not a reason for postponement of release. This section does not create a cause of action against the state or an employee of the state acting within the scope of the employee's employment as a result of the failure to notify pursuant to ss. 916.30-916.49.

Section 19. Section 916.47, Florida Statutes, is created to read:

916.47 Escape while in lawful custody.—A person who is held in lawful custody pursuant to a judicial finding of probable cause under s. 916.35 or pursuant to a commitment as a sexually violent predator under s. 916.36 and who escapes or attempts to escape while in such custody commits a

felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 20. Section 916.48, Florida Statutes, is created to read:

916.48 Subsistence fees and costs of treatment.—

(1) In recognition of the fact that persons committed under ss. 916.30-916.49 may have sources of income and assets, which may include bank accounts, inheritances, real estate, social security payments, veteran's payments, and other types of financial resources, and in recognition of the fact that the daily subsistence cost and costs of treatment of persons committed under ss. 916.30-916.49 are a burden on the taxpayers of the state, each person so committed shall:

(a) Upon order of the court committing the person, disclose all revenue or assets to the department.

(b) Pay from such income and assets, except where such income is exempt by state or federal law, all or a fair portion of the person's daily subsistence and treatment costs, based upon the person's ability to pay, the liability or potential liability of the person to the victim or the guardian or the estate of the victim, and the needs of his or her dependents.

(2)(a) Any person who is directed to pay all or a fair portion of daily subsistence and treatment costs is entitled to reasonable advance notice of the assessment and shall be afforded an opportunity to present reasons for opposition to the assessment.

(b) An order directing payment of all or a fair portion of a person's daily subsistence costs may survive against the estate of the person.

Section 21. Section 916.49, Florida Statutes, is created to read:

916.49 Department of Children and Family Services responsible for costs.—The Department of Children and Family Services is responsible for all costs relating to the evaluation and treatment of persons committed to the department's custody as sexually violent predators. A county is not obligated to fund costs for psychological examinations, expert witnesses, court-appointed counsel, or other costs required by ss. 916.30-916.49. Other costs for psychological examinations, expert witnesses, and court-appointed counsel required by ss. 916.30-916.49 shall be paid from state funds appropriated by general law.

Section 22. The Department of Children and Family Services may contract with a private entity or state agency for use of and operations of facilities to comply with the requirements of this act. The Department of Children and Family Services may also contract with the Correctional Privatization Commission as defined in chapter 957 to issue a request for proposals and monitor contract compliance for these services.

Section 23. There is hereby appropriated from the General Revenue Fund in a lump sum to the Department of Children and Family Services the

sum of \$4,900,000, of which \$1,500,000 is from nonrecurring funds, and 50 full-time equivalent positions and from the Grants and Donations Trust Fund, \$1,500,000 to the Department of Corrections for the purpose of carrying out the provisions of this act. From the funds appropriated to the Department of Children and Family Services, the department shall, at the counties' request, reimburse counties for the cost of no more than one examination of each person subject to this act, provided that the department's reimbursement for each examination shall not exceed the cost to the department for examinations that it conducts of such persons.

Section 24. This act shall take effect January 1 after the year in which enacted.

Approved by the Governor May 19, 1998.

Filed in Office Secretary of State May 19, 1998.