

Committee Substitute for Committee Substitute for  
Committee Substitute for Senate Bill No. 2192

An act relating to civil commitment of sexually violent predators; providing a directive to the Division of Statutory Revision; transferring provisions relating to civil commitment of sexually violent predators to ch. 394, F.S., relating to mental health; amending s. 27.51, F.S.; clarifying duty of the public defender to represent sexually violent predators who are indigent; prohibiting a public defender from representing such persons in civil actions and administrative proceedings; renumbering and amending s. 916.31, F.S.; conforming cross-references; creating s. 394.911, F.S.; declaring legislative intent with respect to procedures to be used for commitment of sexually violent predators; renumbering and amending s. 916.32, F.S.; defining the term "secretary"; redefining the term "sexually violent offense" to revise the applicability of the act; clarifying the term "total confinement" for purposes of the act; renumbering and amending s. 916.33, F.S.; prescribing additional notice requirements; requiring additional information; revising composition of multidisciplinary teams; providing for additional elements of assessment of offenders; providing clarification on assessments and recommendations to state attorneys; creating s. 394.9135, F.S.; prescribing procedures to be followed for evaluation and filing petitions for offenders being immediately released from confinement; renumbering and amending s. 916.34, F.S.; revising requirements for filing a petition; renumbering and amending s. 916.35, F.S.; revising procedures relating to determination of probable cause; creating s. 394.9155, F.S.; providing rules of procedure and evidence; renumbering and amending s. 916.36, F.S.; prescribing jury size in a trial to determine whether a person is a sexually violent predator; renumbering and amending s. 916.37, F.S.; revising commitment procedures; providing for payment for counsel and costs in cases involving indigent defendants; renumbering and amending s. 916.38, F.S.; conforming cross-references; renumbering and amending s. 916.39, F.S.; conforming terminology; renumbering and amending s. 916.40, F.S.; revising procedures for petitioning for release; renumbering and amending s. 916.41, F.S.; revising guidelines relating to release of records; renumbering and amending s. 916.42, F.S.; conforming cross-references; renumbering and amending s. 916.43, F.S.; conforming cross-references; renumbering and amending s. 916.44, F.S.; conforming cross-references; renumbering and amending s. 916.45, F.S.; revising provision relating to applicability of act; renumbering and amending s. 916.46, F.S.; revising notice requirements upon release of persons committed as sexually violent predators; renumbering and amending s. 916.47, F.S.; providing requirement to notify specified persons upon escape of person committed as sexually violent predators; renumbering and amending s. 916.48, F.S.; conforming cross-references; renumbering and amending s. 916.49, F.S.; conforming cross-references; creating s. 394.930, F.S.;

directing the Department of Children and Family Services to adopt certain rules; requiring the Department of Corrections to produce quarterly reports; requiring the Office of Program Policy Analysis and Government Accountability to conduct a study and report to the Legislature; requiring the Criminal Justice Estimating Conference to continually develop official projections relating to the number of discharges and commitments; providing an effective date.

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

Section 1. The Division of Statutory Revision is requested to designate sections 394.910-394.930, Florida Statutes, as part V of chapter 394, Florida Statutes, and to entitle such part as “Involuntary Civil Commitment of Sexually Violent Predators.”

Section 2. Subsection (1) of section 27.51, Florida Statutes, is amended to read:

27.51 Duties of public defender.—

(1) The public defender shall represent, without additional compensation, any person who is determined by the court to be indigent as provided in s. 27.52 and who is:

(a) Under arrest for, or is charged with, a felony;

(b) Under arrest for, or is charged with, a misdemeanor, a violation of chapter 316 which is punishable by imprisonment, criminal contempt, or a violation of a municipal or county ordinance in the county court, unless the court, prior to trial, files in the cause an order of no imprisonment which states that the defendant will not be imprisoned if he or she is convicted;

(c) Alleged to be a delinquent child pursuant to a petition filed before a circuit court; or

(d) Sought by petition filed in such court to be involuntarily placed as a mentally ill person or sexually violent predator or involuntarily admitted to residential services as a person with developmental disabilities. However, a public defender does not have the authority to represent any person who is a plaintiff in a civil action brought under the Florida Rules of Civil Procedure, the Federal Rules of Civil Procedure, or the Federal Statutes, or who is a petitioner in an administrative proceeding challenging a rule under chapter 120, unless specifically authorized by statute.

Section 3. Section 916.31, Florida Statutes, 1998 Supplement, is transferred, renumbered as section 394.910, Florida Statutes, and amended to read:

394.910 916.31 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, part I of this chapter 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 from 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 4. Section 394.911, Florida Statutes, is created to read:

394.911 Legislative intent.—The Legislature intends that persons who are subject to the civil commitment procedure for sexually violent predators under this part be subject to the procedures established in this part and not to the provisions of part I of this chapter. Less restrictive alternatives are not applicable to cases initiated under this part.

Section 5. Section 916.32, Florida Statutes, 1998 Supplement, is transferred, renumbered as section 394.912, Florida Statutes, and amended to read:

394.912 ~~916.32~~ Definitions.—As used in this part ~~ss. 916.31-916.49~~, the term:

(1) “Agency with jurisdiction” means the agency that releases, upon lawful order or authority, a person who is serving a sentence in the custody of the Department of Corrections, a person who was adjudicated delinquent and is 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 this part ss. 916.31-916.49.

(7) "Secretary" means the Secretary of the Department of Children and Family Services.

~~(8)~~(7) "Sexually motivated" means that one of the purposes for which the defendant committed the crime was for sexual gratification.

(9)~~(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 13 ~~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 13 ~~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 this part ss. 916.31-916.49, has been determined beyond a reasonable doubt to have been sexually motivated.

~~(10)~~(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.

~~(11)~~(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. A person shall also be deemed to be in total confinement for applicability of provisions under this part if the person is serving an incarcerative sentence under the custody of the Department of Corrections or the Department of Juvenile Justice and is being held in any other secure facility for any reason.

Section 6. Section 916.33, Florida Statutes, 1998 Supplement, is transferred, renumbered as section 394.913, Florida Statutes, and amended to read:

~~394.913 916.33~~ Notice to state attorney and multidisciplinary team of release of sexually violent predator; establishing multidisciplinary teams; information to be provided to multidisciplinary teams ~~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. If the person has never been convicted of a sexually violent offense in this state but has been convicted of a sexually violent offense in another state or in federal court, the agency with jurisdiction shall give written notice to the multidisciplinary team and a copy to the state attorney of the circuit where the person was last convicted of any offense in this state. If the person is being confined in this state pursuant to interstate compact and has a prior or current conviction for a sexually violent offense, the agency with jurisdiction shall give written notice to the multidisciplinary team and a copy to the state attorney of the circuit where the person plans to reside upon release or, if no residence in this state is planned, the state attorney in the circuit where the facility from which the person to be released is located. The written notice must be given to the multidisciplinary team and the state attorney at least 365 180 days or, in the case of an adjudicated committed delinquent, at least 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 total 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) The person's criminal history, including police reports, victim statements, presentence investigation reports, post-sentence investigation reports, if available, and any other documents containing facts of the person's criminal incidents;

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

(d)(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; and-

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

~~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. 916.31-916.49.~~

~~(3)(a) The secretary or his or her designee of Children and Family Services shall establish a multidisciplinary team or teams, 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.~~

(b) Each team shall include, but is not limited to, two licensed psychiatrists or psychologists or one licensed psychiatrist and one licensed psychologist. The multidisciplinary team shall assess and evaluate each person referred to the team. The assessment and evaluation shall include a review of the person's institutional history and treatment record, if any, the person's criminal background, and any other factor that is relevant to the determination of whether such person is a sexually violent predator.

(c) Before recommending that a person meets the definition of a sexually violent predator, the person must be offered a personal interview. If the person agrees to participate in a personal interview, at least one member of the team who is a licensed psychiatrist or psychologist must conduct a

personal interview of the person. If the person refuses to fully participate in a personal interview, the multidisciplinary team may proceed with its recommendation without a personal interview of the person.

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

~~(e) The team, Within 45 days after receiving notice, there shall be a written assessment as to assess whether the person meets the definition of a sexually violent predator and a written recommendation, which shall be provided to provide the state attorney with its written assessment and recommendation. The written recommendation shall be provided by the Department of Children and Family Services and shall include the written report of the multidisciplinary team.~~

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 this part.

Section 7. Section 394.9135, Florida Statutes, is created to read:

394.9135 Immediate releases from total confinement; transfer of person to department; time limitations on assessment, notification, and filing petition to hold in custody; filing petition after release.—

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

(2) Within 72 hours after transfer, the multidisciplinary team shall assess whether the person meets the definition of a sexually violent predator. If the multidisciplinary team determines that the person does not meet the definition of a sexually violent predator, that person shall be immediately released. If the multidisciplinary team determines that the person meets the definition of a sexually violent predator, the team shall provide the state attorney, as designated by s. 394.913, with its written assessment and recommendation within the 72-hour period or, if the 72-hour period ends on a weekend or holiday, within the next working day thereafter.

(3) Within 48 hours after receipt of the written assessment and recommendation from the multidisciplinary team, the state attorney, as designated in s. 394.913, 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. If a petition is not filed within 48 hours after receipt of the written assessment and recommendation by the state attorney, the person shall be immediately released. If a petition is filed pursuant to this section and the judge determines that there is probable cause to believe that the person is a sexually violent predator, the judge shall order the person be maintained in custody and held in an appropriate secure facility for further proceedings in accordance with this part.

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

Section 8. Section 916.34, Florida Statutes, 1998 Supplement, is transferred, renumbered as section 394.914, Florida Statutes, and amended to read:

394.914 916.34 Petition; time; contents.—Following receipt of the written assessment and recommendation from the multidisciplinary team, the state attorney, in accordance with s. 394.913, 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. No fee shall be charged for the filing of a petition under this section.

Section 9. Section 916.35, Florida Statutes, 1998 Supplement, is transferred, renumbered as section 394.915, Florida Statutes, and amended to read:

394.915 916.35 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 order direct that the person remain in custody and be immediately transferred to be taken into custody and held in an appropriate secure facility if the person's incarcerative sentence expires.

(2) Upon the expiration of the incarcerative sentence and 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. 394.914 s. 916.33, the court may conduct an adversarial probable cause hearing if it determines such hearing is necessary state attorney may further petition the court for an adversarial probable cause hearing. The court shall only consider whether to have an adversarial probable cause hearing in cases where the failure to begin a trial is not the result of any delay caused by the respondent. The person shall be provided with notice of, and an opportunity to appear in person at, an adversarial 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 adversarial 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 order direct that the person be held in an appropriate secure facility upon the expiration of his or her incarcerative sentence 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 10. Section 394.9155, Florida Statutes, is created to read:

394.9155 Rules of procedure and evidence.—In all civil commitment proceedings for sexually violent predators under this part, the following shall apply.

(1) The Florida Rules of Civil Procedure apply unless otherwise specified in this part.

(2) The Florida Rules of Evidence apply unless otherwise specified in this part.

(3) The psychotherapist-patient privilege under s. 90.503 does not exist or apply for communications relevant to an issue in proceedings to involuntarily commit a person under this part.

(4) The court may consider evidence of prior behavior by a person who is subject to proceedings under this part if such evidence is relevant to proving that the person is a sexually violent predator.

(5) Hearsay evidence, including reports of a member of the multidisciplinary team or reports produced on behalf of the multidisciplinary team, is admissible in proceedings under this part unless the court finds that such evidence is not reliable. In a trial, however, hearsay evidence may not be used as the sole basis for committing a person under this part.

(6) Rules adopted under s. 394.930 shall not constitute:

(a) An evidentiary predicate for the admission of any physical evidence or testimony;

(b) A basis for excluding or otherwise limiting the presentation of any physical evidence or testimony in judicial proceedings under this part; or

(c) Elements of the cause of action that the state needs to allege or prove in judicial proceedings under this part.

(7) If the person who is subject to proceedings under this part refuses to be interviewed by or fully cooperate with members of the multidisciplinary team or any state mental health expert, the court may, in its discretion:

(a) Order the person to allow members of the multidisciplinary team and any state mental health experts to review all mental health reports, tests, and evaluations by the person's mental health expert or experts; or

(b) Prohibit the person's mental health experts from testifying concerning mental health tests, evaluations, or examinations of the person.

The failure of any party to comply with such rules shall not constitute a defense in any judicial proceedings under this part.

Section 11. Section 916.36, Florida Statutes, 1998 Supplement, is transferred, renumbered as section 394.916, Florida Statutes, and amended to read:

394.916 ~~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 ~~part~~ ~~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, which shall be paid by the state.

(5) The person or the state attorney has the right to demand that the trial be before a jury of six members. 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 12. Section 916.37, Florida Statutes, 1998 Supplement, is transferred, renumbered as section 394.917, Florida Statutes, and amended to read:

394.917 916.37 Determination; commitment procedure; mistrials; housing; counsel and costs in indigent appellate cases.—

(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 verdict decision must be unanimous. If the jury is unable to reach a unanimous verdict, the court must declare a mistrial and poll the jury. If a majority of the jury would find the person is a sexually violent predator ~~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 this part ss. 916.31-916.49. Any retrial must occur within 90 days after the previous trial, unless the subsequent proceeding is continued in accordance with s. 394.916(2) 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, upon the expiration of the incarcerative portion of all criminal sentences and disposition of any detainees other than detainees for deportation by the United States Immigration and Naturalization Service, 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.

(3) The public defender of the circuit in which a person was determined to be a sexually violent predator shall be appointed to represent the person on appeal. That public defender may request the public defender who handles criminal appeals for the circuit to represent the person on appeal in the manner provided in s. 27.51(4). If the public defender is unable to represent the person on appeal due to a conflict, the court shall appoint other counsel, who shall be compensated at a rate not less than that provided for appointed counsel in criminal cases. Filing fees for indigent appeals under this act are waived. Costs and fees related to such appeals, including the amounts paid for records, transcripts, and compensation of appointed counsel, shall be authorized by the trial court and paid from state funds that are appropriated for such purposes.

Section 13. Section 916.38, Florida Statutes, 1998 Supplement, is transferred, renumbered as section 394.918, Florida Statutes, and amended to read:

394.918 916.38 Examinations; notice; court hearings for release of committed persons; burden of proof.—

(1) A person committed under this part ss. 916.31-916.49 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 ~~this part ss. 916.31-916.49~~. 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 14. Section 916.39, Florida Statutes, 1998 Supplement, is transferred, renumbered as section 394.919, Florida Statutes, and amended to read:

394.919 ~~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 15. Section 916.40, Florida Statutes, 1998 Supplement, is transferred, renumbered as section 394.920, Florida Statutes, and amended to read:

~~394.920 916.40~~ Petition for release.—~~Sections 916.31-916.49 do not prohibit~~ A person is not prohibited from filing a petition for discharge at any time after commitment under this part. 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 16. Section 916.41, Florida Statutes, 1998 Supplement, is transferred, renumbered as section 394.921, Florida Statutes, and amended to read:

394.921 916.41 Release of records to agencies, multidisciplinary teams, and 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 with having jurisdiction, to a multidisciplinary team, or to the state attorney for the purpose of meeting the notice requirements of this part ss. 916.31-916.49 and determining whether a person is or continues to be a sexually violent predator. A person, agency, or entity receiving information under this section which is confidential and exempt from the provisions of s. 119.07(1) must maintain the confidentiality of that information. Such information does not lose its confidential status due to its release under this section.

(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 this part ss. 916.31-916.49 shall be part of the record but shall be sealed and may be opened only pursuant to a court order.

Section 17. Section 916.42, Florida Statutes, 1998 Supplement, is transferred, renumbered as section 394.922, Florida Statutes, and amended to read:

394.922 916.42 Constitutional requirements.—The long-term control, care, and treatment of a person committed under this part ss. 916.31-916.49 must conform to constitutional requirements.

Section 18. Section 916.43, Florida Statutes, 1998 Supplement, is transferred, renumbered as section 394.923, Florida Statutes, and amended to read:

394.923 916.43 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 this part ss. 916.31-916.49 are immune from any civil liability for good faith conduct under this part ss. 916.31-916.49.

Section 19. Section 916.44, Florida Statutes, 1998 Supplement, is transferred, renumbered as section 394.924, Florida Statutes, and amended to read:

394.924 916.44 Severability.—If any section, subsection, or provision of this part ss. 916.31-916.49 is held to be unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of this part ss. 916.31-916.49 shall be unaffected because the Legislature declares that the provisions of this part ss. 916.31-916.49 are severable from each other.

Section 20. Section 916.45, Florida Statutes, 1998 Supplement, is transferred, renumbered as section 394.925, Florida Statutes, and amended to read:

394.925 916.45 Applicability of act.—~~This part applies Sections 916.31-916.49 apply~~ to all persons currently in custody who have been convicted of a sexually violent offense, as that term is defined in s. 394.912(9) s. 916.32(8), as well as to all persons convicted of a sexually violent offense and sentenced to total confinement in the future.

Section 21. Section 916.46, Florida Statutes, 1998 Supplement, is transferred, renumbered as section 394.926, Florida Statutes, and amended to read:

394.926 916.46 Notice to victims of release of persons committed as sexually violent predators; notice to Department of Corrections and Parole Commission.—

(1) 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 this part ss. 916.31-916.49.

(2) If a sexually violent predator who has an active or pending term of probation, community control, parole, conditional release, or other court-ordered or post-prison release supervision is released from custody, the department must immediately notify the Department of Corrections' Office of Community Corrections in Tallahassee. The Parole Commission must also be immediately notified of any releases of a sexually violent predator who has an active or pending term of parole, conditional release, or other post-prison release supervision that is administered by the Parole Commission.

Section 22. Section 916.47, Florida Statutes, 1998 Supplement, is transferred, renumbered as section 394.927, Florida Statutes, and amended to read:

394.927 916.47 Escape while in lawful custody; notice to victim; notice to the Department of Corrections and Parole Commission.—

(1) A person who is held in lawful custody pursuant to a judicial finding of probable cause under ~~s. 394.915 s. 916.35~~ or pursuant to a commitment as a sexually violent predator under ~~s. 394.916 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.

(2) If a person who is held in custody pursuant to a finding of probable cause or commitment as a sexually violent predator escapes while in custody, the department shall immediately notify the victim in accordance with s. 394.926. The state attorney that filed the petition for civil commitment of the escapee must also be immediately notified by the department. If the escapee has an active or pending term of probation, community control, parole, conditional release, or other court-ordered or post-prison release supervision, the department shall also immediately notify the Department of Corrections' Office of Community Corrections in Tallahassee. The Parole Commission shall also be immediately notified of an escape if the escapee has an active or pending term of parole, conditional release, or other post-prison release supervision that is administered by the Parole Commission.

Section 23. Section 916.48, Florida Statutes, 1998 Supplement, is transferred, renumbered as section 394.928, Florida Statutes, and amended to read:

394.928 916.48 Subsistence fees and costs of treatment.—

(1) In recognition of the fact that persons committed under this part ss. 916.31-916.49 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 this part ss. 916.31-916.49 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 24. Section 916.49, Florida Statutes, 1998 Supplement, is transferred, renumbered as section 394.929, Florida Statutes, and amended to read:

~~394.929~~ ~~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 this part ss. 916.31-916.49. Other costs for psychological examinations, expert witnesses, and court-appointed counsel required by this part ss. 916.31-916.49 shall be paid from state funds appropriated by general law.

Section 25. Section 394.930, Florida Statutes, is created to read:

394.930 Authority to adopt rules.—The Department of Children and Family Services shall adopt rules for:

(1) Procedures that must be followed by members of the multidisciplinary teams when assessing and evaluating persons subject to this part;

(2) The criteria that must exist in order for a multidisciplinary team to recommend to a state attorney that a petition should be filed to involuntarily commit a person under this part. The criteria shall include, but are not limited to, whether:

(a) The person has a propensity to engage in future acts of sexual violence;

(b) The person should be placed in a secure, residential facility; and

(c) The person needs long-term treatment and care.

(3) The designation of secure facilities for sexually violent predators who are subject to involuntary commitment under this part;

(4) The components of the basic treatment plan for all committed persons under this part;

(5) The protocol to inform a person that he or she is being examined to determine whether he or she is a sexually violent predator under this part.

Section 26. Beginning July 1, 1999, the Department of Corrections shall collect information and compile quarterly reports with statistics profiling inmates released the previous quarter who fit the criteria and were referred to the Department of Children and Family Services pursuant to this act. The quarterly reports must be produced beginning October 1, 1999. At a minimum, the information that must be collected and compiled for inclusion in the reports includes: whether the qualifying offense was the current offense or the prior offense; the most serious sexual offense; the total number of distinct victims of the sexual offense; whether the victim was known to the offender; whether the sexual act was consensual; whether the sexual act involved multiple victims; whether direct violence was involved in the sexual offense; the age of each victim at the time of the offense; the age of the offender at the time of the first sexual offense; whether a weapon was used; length of time since the most recent sexual offense; and the total number of prior and current sexual-offense convictions.



Section 27. (1) The Office of Program Policy Analysis and Government Accountability shall conduct a study on the implementation of this act by the Department of Children and Family Services and shall report its findings and make recommendations to the Legislature by March 1, 2000.

(2) The study must include, but need not be limited to, the following issues:

(a) The procedures used in assigning persons to a multidisciplinary team and in assigning a team to a case for evaluation and assessment.

(b) The activities performed by multidisciplinary teams in conducting evaluations and assessments.

(c) The average length of time between the referral of a case by an agency with jurisdiction to the Department of Children and Family Services and the department's recommendation to the state attorney to file a petition or its decision not to make a recommendation to the state attorney to file a petition.

(d) The number of cases referred to the Department of Children and Family Services, the number of cases it recommends to the state attorney for filing, and the number of cases that did not result in a recommendation to the state attorney to file a petition.

(e) A profile of the number of cases and the location of cases that are assigned to the persons who are serving as members of the multidisciplinary teams.

(f) From each of a sample of persons who are serving as members of a multidisciplinary team, the education, professional qualifications, prior work experience, prior and current testimonies as an expert in criminal cases by type of case, and number of cases for which he or she is currently serving as a member of a multidisciplinary team.

Section 28. The Criminal Justice Estimating Conference, created under chapter 216, Florida Statutes, shall continually develop official information relating to the number of eligible discharges and the projected number of civil commitments pursuant to the civil proceedings provided in the Jimmy Ryce Act of 1998 under part V of chapter 394, Florida Statutes.

Section 29. This act shall take effect upon becoming a law.

Approved by the Governor May 26, 1999.

Filed in Office Secretary of State May 26, 1999.