

Committee Substitute for Senate Bill No. 2866

An act relating to sexually violent predators; amending s. 394.913, F.S.; providing for information concerning sexual acts and sexual motivation in a person's criminal history to be provided to multidisciplinary teams treating sexually violent predators; creating s. 394.9223, F.S.; providing for the use of physical force against a person confined in a secure facility as a sexually violent predator under certain circumstances; providing for examinations, reports, and investigations following the use of force; providing for criminal penalties when force is used with malicious intent; creating s. 394.9221, F.S.; authorizing the employment of certified correctional officers at a secure facility; amending s. 916.1091, F.S.; authorizing the employment of certified correctional officers at forensic facilities; providing for such authority to operate retroactively; providing an effective date.

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

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

394.913 Notice to state attorney and multidisciplinary team of release of sexually violent predator; establishing multidisciplinary teams; information to be provided to multidisciplinary teams.—

(2) The agency ~~having 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;

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

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

(d) 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.

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

394.9223 Use of force.—

(1) When necessary to provide protection and security to any client, to the personnel, equipment, buildings, or grounds of a secure facility, or to citizens in the surrounding community, an employee or agent of a secure facility, or an employee of a state or local law enforcement agency, may apply physical force upon a person confined in a secure facility under this part only when and to the extent that it reasonably appears necessary. This includes the use of nonlethal devices, such as chemical agents and hand-held electronic immobilization devices, when authorized by the administrator of the facility or her or his designee when the administrator is not present, and only after an employee has been trained in the appropriate use of such chemical agents and electronic devices. Chemical agents and hand-held electronic devices shall be used only to the extent necessary to provide protection and security. A staff person may not carry a chemical agent or hand-held electronic immobilization device on her or his person under any circumstances, except during escort of a facility resident outside of the secure perimeter of the facility, or as an authorized response to an incident within the facility which threatens the safety or security of staff or residents. Hand-held electronic immobilization devices are only used during escort of a confined person outside of the secure perimeter of the facility. Circumstances under which reasonable force may be employed include:

- (a) Defending oneself against imminent use of unlawful force;
- (b) Preventing the escape of a person confined at the secure facility.
- (c) Preventing damage to property;
- (d) Quelling a disturbance; or
- (e) Overcoming physical resistance to a lawful command.

(2) Following any use of force, each person who was physically involved shall receive a medical examination by a qualified health care provider, unless the person refuses such examination, to determine the extent of injury, if any. The examining health care provider shall prepare a report that includes, but need not be limited to, a statement of whether further examination by a physician is necessary. Any noticeable physical injury shall be examined by a physician who shall prepare a report documenting the extent and cause of the injury and the treatment prescribed. Such report shall be completed within 5 working days after the incident and shall be submitted to the facility superintendent for investigation as appropriate.

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

employee's use of force and the facility superintendent's evaluation shall be kept in the employee's file.

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

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

(b) Commits a battery or inflicts cruel or inhuman treatment by neglect or otherwise, and in so doing causes great bodily harm, permanent disability, or permanent disfigurement to a person confined in the facility, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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

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

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

916.1091 Duties, functions, and powers of institutional security personnel.—

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

(2) The department, the agency, or an entity contracting with the department or agency to operate a forensic facility under this chapter is considered an employing agency as that term is defined in s. 943.10 and is authorized to employ certified correctional officers as institutional security personnel. This authority applies retroactively to all certified officers employed in such capacity beginning January 1, 1974.

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

Approved by the Governor June 27, 2007.

Filed in Office Secretary of State June 27, 2007.