

CHAPTER 2014-2

Committee Substitute for Committee Substitute for Senate Bill No. 522

An act relating to involuntary civil commitment of sexually violent predators; amending s. 394.912, F.S.; redefining terms; creating s. 394.9125, F.S.; authorizing and requiring a state attorney to refer certain persons for civil commitment under certain circumstances; requiring the state attorney to notify county and municipal jails of a referral within a specified timeframe; authorizing the state attorney to file a petition requesting that a person be taken into custody for civil commitment proceedings; requiring a judge to order a person into custody for civil commitment proceedings upon making specified findings; amending s. 394.913, F.S.; requiring the agency with jurisdiction over a person who has been convicted of a sexually violent offense to give written notice to the multidisciplinary team as soon as practicable after receipt into custody of such person in a county or municipal jail facility; requiring the multidisciplinary team to prioritize assessments based on release dates; authorizing the multidisciplinary team to consult with law enforcement agencies and victim advocate groups as part of the assessment and evaluation process; authorizing a clinical evaluation; requiring a second clinical evaluation under certain circumstances; requiring the multidisciplinary team to proceed without a personal interview under certain circumstances; requiring the multidisciplinary team to provide the state attorney with a written assessment and recommendation as to whether a person meets the definition of a sexually violent predator within specified timeframes; requiring the Department of Children and Families to recommend that the state attorney file a civil commitment petition under certain circumstances; requiring the department to send the recommendation and assessment to the state attorney for further review; requiring the multidisciplinary team to reexamine the case under certain circumstances; requiring the multidisciplinary team to give equal consideration to an attempt, criminal solicitation, or conspiracy to commit certain offenses as it does to the commission of such offenses; conforming provisions to changes made by the act; amending s. 394.9135, F.S.; providing for certain released persons to be taken into custody by the Department of Children and Families; authorizing the state attorney to file, within a specific timeframe, a petition alleging that a person released from a local detention facility was not referred as required before release because of a mistake, oversight, or intentional act or was referred for commitment consideration but released rather than transferred to custody, as required, due to a mistake, oversight, or intentional act; requiring a judge to order that a person so released be taken into custody and delivered to an appropriate secure facility under certain circumstances; amending s. 394.914, F.S.; authorizing the state attorney to file a petition for civil commitment regardless of the multidisciplinary team's recommendation; amending s. 394.918, F.S.; authorizing the petitioner and respondent to present evidence at a civil

commitment probable cause hearing; amending s. 394.926, F.S.; requiring the department to provide written notice of placement of a person in the department's custody to a victim of such person; requiring the department to notify the Department of Corrections, the Department of Law Enforcement, and the sheriff of the county in which such person intends to reside of the release of a sexually violent predator or a person who is in custody; requiring the Department of Children and Families to enroll certain persons in an arrest notification program and to notify the state attorney upon receiving an arrest alert; amending s. 394.931, F.S.; requiring the Department of Corrections to collect recidivism information and include the information in their annual report; amending s. 943.053, F.S.; requiring the Department of Law Enforcement to provide the Department of Children and Families access to the arrest notification program; providing for severability; providing an effective date.

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

Section 1. Subsections (1), (3), (7), and (11) of section 394.912, Florida Statutes, are amended, and paragraph (i) is added to subsection (9) of that section, to read:

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

(1) “Agency with jurisdiction” means the entity ~~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 Families ~~Family Services~~ upon an adjudication of not guilty by reason of insanity, or a person who is serving a sentence in a county or municipal jail for a sexually violent offense as defined in paragraph (9)(i).

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

(7) “Secretary” means the secretary of the Department of Children and Families ~~Family Services~~.

(9) “Sexually violent offense” means:

(i) A criminal offense in which the state attorney refers a person to the department for civil commitment proceedings pursuant to s. 394.9125.

(11) “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 Families ~~Family Services~~. A person shall also be deemed to be in total confinement for applicability of provisions under this part if:

(a) 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;

(b) The person is serving a sentence in a county or municipal jail for a sexually violent offense as defined in paragraph (9)(i); or

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

Section 2. Section 394.9125, Florida Statutes, is created to read:

394.9125 State attorney; authority to refer a person for civil commitment.—

(1) A state attorney shall refer a person to the department for civil commitment proceedings if:

(a) The state attorney receives an arrest alert on the person pursuant to s. 394.926(4); and

(b) The person is subsequently sentenced to a term of imprisonment in a county or municipal jail for any criminal offense.

(2) A state attorney may refer a person to the department for civil commitment proceedings if the person:

(a) Is required to register as a sexual offender pursuant to s. 943.0435;

(b) Has previously been convicted of a sexually violent offense as defined in s. 394.912(9)(a)-(h); and

(c) Has been sentenced to a term of imprisonment in a county or municipal jail for any criminal offense.

(3) A state attorney who refers a person for civil commitment pursuant to subsection (1) or subsection (2) shall notify the county or municipal jail to which the person has been sentenced within 24 hours after the referral is made.

(4)(a) If a person is sentenced to a term of imprisonment in a county or municipal jail but is not subsequently totally confined in the jail due to receiving credit for time served, the state attorney may file a petition with the circuit court within 120 hours after such person’s sentencing proceeding requesting the court to order such person into the department’s custody for purposes of initiating civil commitment proceedings.

(b) If the judge determines that there is probable cause to believe that the person should have been referred to the department pursuant to subsection (1) or subsection (2) but that the referral was not made because the person

was not totally confined in a county or municipal jail due to receiving credit for time served, the judge shall order that the person be taken into custody and delivered to the custody of the department for civil commitment proceedings.

Section 3. 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.—

(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 shall provide a copy of the notice to the state attorney of the circuit in which 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 in which 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 shall provide a copy to the state attorney of the circuit in which where the person plans to reside upon release or, if no residence in this state is planned, the state attorney in the circuit in which where the facility from which the person to be released is located. Except as provided in s. 394.9135, the written notice must be given:

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

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

(c) At least 180 days before ~~prior to~~ the anticipated hearing regarding possible release of a person committed to the custody of the department who has been found not guilty by reason of insanity or mental incapacity of a sexually violent offense; ~~or~~;

(d) At least 180 days before the anticipated release from total confinement of a person serving a sentence in a county or municipal jail, except that in the case of a person who is totally confined for a period of less than 180 days, written notice must be given as soon as practicable.

(2) The agency having 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.

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

(b) Each team shall include, but need is not be limited to, two licensed psychiatrists or psychologists or one licensed psychiatrist and one licensed psychologist.

(c) The multidisciplinary team shall assess and evaluate each person referred to the team. The multidisciplinary team shall prioritize the assessment and evaluation of persons referred under subsection (1) based upon the person's scheduled release date. The assessment and evaluation must ~~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 the ~~such~~ person is a sexually violent predator.

(d) The multidisciplinary team may consult with law enforcement agencies and victim advocate groups during the assessment and evaluation process. A clinical evaluation of the person may be conducted. A second clinical evaluation must be conducted if a member of the multidisciplinary team questions the conclusion of the first clinical evaluation. All members of the multidisciplinary team shall review, at a minimum, the information provided in subsection (2) and any clinical evaluation before making a recommendation pursuant to paragraph (f).

~~(e)~~^(e) 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 shall ~~may~~ proceed with its recommendation without the ~~a~~ personal interview of the person.

(f) The multidisciplinary team shall complete all clinical evaluations and provide the state attorney a written assessment and recommendation as to whether the person meets the definition of a sexually violent predator at least 1 month before the person's scheduled release date from the Department of Corrections, the Department of Juvenile Justice, or the Department of Children and Families. The multidisciplinary team shall complete all clinical evaluations and provide the state attorney a written assessment and recommendation as to whether the person meets the definition of a sexually violent predator at least 24 hours before the person's scheduled release date from a county or municipal jail.

1. The department must recommend that the state attorney file a petition for civil commitment if at least two members of the multidisciplinary team determine that the person meets the definition of a sexually violent predator.

2. When the department determines that a person who has received a clinical evaluation does or does not meet the definition of a sexually violent predator, the written assessment and recommendation shall be sent to the state attorney. If the state attorney questions, in writing, the determination that the person does or does not meet the definition of a sexually violent predator, the multidisciplinary team must reexamine the case before a final written assessment and recommendation is provided to the state attorney.

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

~~(e)1. Within 180 days after receiving notice, there shall be a written assessment as to whether the person meets the definition of a sexually violent predator and a written recommendation, which shall be provided to the state attorney. The written recommendation shall be provided by the Department of Children and Family Services and shall include the written report of the multidisciplinary team.~~

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

(4) The multidisciplinary team shall give equal consideration in the evaluation and assessment of an offender whose sexually violent offense was

an attempt, criminal solicitation, or conspiracy, in violation of s. 777.04, to commit a sexually violent offense enumerated in s. 394.912(9) as it does in the evaluation and assessment of an offender who completed such an enumerated sexually violent offense. A rule or policy may not be established which reduces the level of consideration because the sexually violent offense was an attempt, criminal solicitation, or conspiracy.

~~(5)(4) The provisions of This section is are not jurisdictional, and failure to comply with it them in no way prevents the state attorney from proceeding against a person otherwise subject to the provisions of this part.~~

Section 4. Section 394.9135, Florida Statutes, is amended 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; order into custody of department after release.—

(1)(a) 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.

(b) If a person who committed a sexually violent offense and who is serving an incarcerative sentence under the custody of the Department of Corrections, the Department of Juvenile Justice, or a local detention facility, or who is committed to the custody of the department due to an adjudication of not guilty by reason of insanity is released, the state attorney, as designated in s. 394.913, may file a petition with the circuit court within 120 hours after the person's release alleging that:

1. Section 394.9125, s. 394.913, or this section requires that the person be referred for consideration for civil commitment before release and the person was not referred because of a mistake, oversight, or intentional act; or

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

If the judge determines that there is probable cause to believe that the person was released in contravention of s. 394.913 or this section, the judge shall order the person to be taken into custody and delivered to an appropriate secure facility designated by the Department of Children and Families.

(2) Within 72 hours after transfer pursuant to paragraph (1)(a) or receipt into the department's custody pursuant to paragraph (1)(b) or s. 394.9125(4), 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 at least two members of the multidisciplinary team, after all clinical evaluations have been conducted, determine ~~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 after 5 p.m. on a working day or 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 the ~~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, except that, if the 48-hour period ends after 5 p.m. on a working day or on a weekend or holiday, the petition may be filed on the next working day without resulting in the person's release. 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 that 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 is~~ 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 5. Section 394.914, Florida Statutes, is amended to read:

394.914 Petition; contents.—After ~~Following~~ receipt from the multidisciplinary team of the written assessment and positive or negative recommendation as to whether the person meets the definition of a sexually violent predator ~~from the multidisciplinary team~~, the state attorney, in accordance with 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. ~~A No fee~~ may not shall be charged for the filing of a petition under this section.

Section 6. Subsection (3) of section 394.918, Florida Statutes, is amended to read:

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

(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 and the right, ~~but the person is not entitled to be present. Both the petitioner and the respondent may present evidence that the court may weigh and consider.~~ 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.

Section 7. Section 394.926, Florida Statutes, is amended to read:

394.926 Notice to victims and others of release of persons in the custody of the department ~~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 in the custody of the department ~~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.

(2) If a person in the custody of the department ~~sexually violent predator~~ who has an active or pending term of probation, community control, parole, conditional release, or other court-ordered or postprison 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 person ~~sexually violent predator~~ who has an active or pending term of parole, conditional release, or other postprison release supervision that is administered by the Parole Commission.

(3) If a person in the custody of the department is released, the department must notify the Department of Law Enforcement and the sheriff of the county in which the person intends to reside, or if unknown, the sheriff of the county in which the person was last convicted.

(4)(a) The department, in conjunction with the Department of Law Enforcement, shall enroll and maintain a sexually violent offender in the arrest notification program through the Florida Criminal Justice Network maintained by the Department of Law Enforcement upon such offender's release from the department's custody. Upon receiving an alert that a sexually violent offender has been arrested for a criminal offense subsequent to his or her release, the department must immediately notify the state attorney of the circuit in which the arrest occurred.

(b) As used in this subsection, the term "sexually violent offender" means a person who has been committed to the department as a sexually violent

predator or who has been in the department's custody based upon a court finding of probable cause to believe the person is a sexually violent predator.

Section 8. Section 394.931, Florida Statutes, is amended to read:

394.931 Quarterly and annual reports.—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 Families 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 offender's 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 sexual-offense convictions. The Department of Corrections shall compile recidivism data on those referred, detained, or committed to the department. The data shall be included in the Department of Corrections' annual report In addition, the department of Children and Family Services shall implement a long-term study to determine the overall efficacy of the provisions of this part.

Section 9. Subsection (14) is added to section 943.053, Florida Statutes, to read:

943.053 Dissemination of criminal justice information; fees.—

(14) Notwithstanding any other law, the department shall provide to the Sexually Violent Predator Program within the Department of Children and Families online access to the arrest notification program through the Florida Criminal Justice Network to be used solely in support of the duties of the Department of Children and Families as provided in s. 394.926(4).

Section 10. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 11. This act shall take effect July 1, 2014.

Approved by the Governor April 1, 2014.

Filed in Office Secretary of State April 1, 2014.