

HB 717

2014

1 A bill to be entitled

2 An act relating to civil commitment of sexually  
3 violent predators; amending s. 394.912, F.S.; revising  
4 definitions; creating s. 394.9125, F.S.; authorizing a  
5 state attorney to refer certain persons for civil  
6 commitment; requiring the state attorney to notify  
7 county and municipal jails of a referral within a  
8 specified period; amending s. 394.913, F.S.; requiring  
9 county and municipal jails to give notice of specified  
10 persons' release to the multidisciplinary team within  
11 certain periods; requiring the Department of Children  
12 and Families to prioritize the assessment of a person  
13 referred for civil commitment based upon the person's  
14 release date; amending s. 394.9135, F.S.; providing a  
15 process whereby civil commitment proceedings may be  
16 commenced upon certain released persons; amending ss.  
17 394.9151 and 394.917, F.S.; correcting references to  
18 the Department of Children and Families; amending s.  
19 394.918, F.S., permitting the petitioner and  
20 respondent to present evidence at a civil commitment  
21 probable cause hearing; amending ss. 394.9215,  
22 394.929, 394.930, and 394.931, F.S.; correcting  
23 references to the Department of Children and Families;  
24 deleting obsolete provisions; providing an effective  
25 date.

26

Page 1 of 12

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb0717-00

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

28  
 29 Section 1. Subsections (1), (3), (7), and (11) of section  
 30 394.912, Florida Statutes, are amended, and paragraph (i) is  
 31 added to subsection (9) of that section, to read:

32 394.912 Definitions.—As used in this part, the term:

33 (1) "Agency with jurisdiction" means the entity ~~agency~~  
 34 that releases, upon lawful order or authority, a person who is  
 35 serving a sentence in the custody of the Department of  
 36 Corrections, a person who was adjudicated delinquent and is  
 37 committed to the custody of the Department of Juvenile Justice,  
 38 ~~or~~ a person who was involuntarily committed to the custody of  
 39 the Department of Children and Families ~~Family Services~~ upon an  
 40 adjudication of not guilty by reason of insanity, or a person  
 41 who is serving a sentence in a county or municipal jail for a  
 42 sexually violent offense as defined in s. 394.912(9)(i).

43 (3) "Department" means the Department of Children and  
 44 Families ~~Family Services~~.

45 (7) "Secretary" means the secretary of the Department of  
 46 Children and Families ~~Family Services~~.

47 (9) "Sexually violent offense" means:

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

51 (11) "Total confinement" means that the person is  
 52 currently being held in any physically secure facility being

53 operated or contractually operated for the Department of  
 54 Corrections, the Department of Juvenile Justice, or the  
 55 Department of Children and Families ~~Family Services~~. A person  
 56 shall also be deemed to be in total confinement for  
 57 applicability of provisions under this part if the person is  
 58 serving an incarcerative sentence under the custody of the  
 59 Department of Corrections or the Department of Juvenile Justice  
 60 and is being held in any other secure facility for any reason. A  
 61 person shall also be deemed to be in total confinement if the  
 62 person is serving a sentence in a county or municipal jail for a  
 63 sexually violent offense as defined in s. 394.912(9)(i).

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

66 394.9125 State attorney; authority to refer a person for  
 67 civil commitment.-

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

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

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

74 (c) Has been sentenced to a term of imprisonment in a  
 75 county or municipal jail for any criminal offense except for  
 76 violations of ss. 316.193, 322.34, and 832.05.

77 (2) A state attorney who refers a person for civil  
 78 commitment pursuant to subsection (1) must notify the county or

HB 717

2014

79 municipal jail to which the person has been sentenced within 1  
80 week of such referral being made.

81 Section 3. Subsection (1) and paragraph (e) of subsection  
82 (3) of section 394.913, Florida Statutes, are amended to read:

83 394.913 Notice to state attorney and multidisciplinary  
84 team of release of sexually violent predator; establishing  
85 multidisciplinary teams; information to be provided to  
86 multidisciplinary teams.—

87 (1) The agency with jurisdiction over a person who has  
88 been convicted of a sexually violent offense shall give written  
89 notice to the multidisciplinary team, and a copy to the state  
90 attorney of the circuit where that person was last convicted of  
91 a sexually violent offense. If the person has never been  
92 convicted of a sexually violent offense in this state but has  
93 been convicted of a sexually violent offense in another state or  
94 in federal court, the agency with jurisdiction shall give  
95 written notice to the multidisciplinary team and a copy to the  
96 state attorney of the circuit where the person was last  
97 convicted of any offense in this state. If the person is being  
98 confined in this state pursuant to interstate compact and has a  
99 prior or current conviction for a sexually violent offense, the  
100 agency with jurisdiction shall give written notice to the  
101 multidisciplinary team and a copy to the state attorney of the  
102 circuit where the person plans to reside upon release or, if no  
103 residence in this state is planned, the state attorney in the  
104 circuit where the facility from which the person to be released

105 is located. Except as provided in s. 394.9135, the written  
 106 notice must be given:

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

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

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

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

128 (3)

129 (e) The department ~~1. Within 180 days after receiving~~  
 130 ~~notice, there shall~~ conduct ~~be~~ a written assessment as to

131 whether the person meets the definition of a sexually violent  
 132 predator and provide a written recommendation, including the  
 133 written report of the multidisciplinary team, ~~which shall be~~  
 134 ~~provided to the state attorney. The written recommendation shall~~  
 135 ~~be provided by the Department of Children and Family Services~~  
 136 ~~and shall include the written report of the multidisciplinary~~  
 137 ~~team.~~

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

143 Section 4. Subsections (1) and (2) of section 394.9135,  
 144 Florida Statutes, are amended to read:

145 394.9135 Immediate releases from total confinement;  
 146 transfer of person to department; time limitations on  
 147 assessment, notification, and filing petition to hold in  
 148 custody; filing petition after release.-

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

155 (b) If the release from total confinement of a person who  
 156 has been convicted of a sexually violent offense occurs due to a

HB 717

2014

157 reason specified in subparagraph 1. or subparagraph 2., the  
158 state attorney may file a petition with the circuit court within  
159 120 hours after such person's release requesting the court to  
160 order such person into the department's custody for purposes of  
161 initiating civil commitment proceedings. The petition must  
162 allege that:

163 1. Part V of chapter 394 requires that the person be  
164 referred for civil commitment proceedings before the person's  
165 release, but the person was not referred due to mistake,  
166 oversight, or intentional act; or

167 2. The person was referred for civil commitment  
168 proceedings but, through mistake, oversight, or intentional act,  
169 the person was released rather than transferred to the custody  
170 of the department.

171  
172 If the judge determines that there is probable cause to believe  
173 that the person was released due to the reasons specified in  
174 subparagraph 1. or subparagraph 2., the judge shall order that  
175 the person be taken into custody and delivered to the custody of  
176 the department for civil commitment proceedings.

177 (2) Within 72 hours after transfer pursuant to paragraph  
178 (1) (a) or receipt into the department's custody pursuant to  
179 paragraph (1) (b), the multidisciplinary team shall assess  
180 whether the person meets the definition of a sexually violent  
181 predator. If the multidisciplinary team determines that the  
182 person does not meet the definition of a sexually violent

183 predator, that person shall be immediately released. If the  
 184 multidisciplinary team determines that the person meets the  
 185 definition of a sexually violent predator, the team shall  
 186 provide the state attorney, as designated by s. 394.913, with  
 187 its written assessment and recommendation within the 72-hour  
 188 period or, if the 72-hour period ends after 5 p.m. on a working  
 189 day or on a weekend or holiday, within the next working day  
 190 thereafter.

191 Section 5. Section 394.9151, Florida Statutes, is amended  
 192 to read:

193 394.9151 Contract authority.—The department ~~of Children~~  
 194 ~~and Family Services~~ may contract with a private entity or state  
 195 agency for use of and operation of facilities to comply with the  
 196 requirements of this part act. The department ~~of Children and~~  
 197 ~~Family Services~~ may also contract with the Department of  
 198 Management Services to issue a request for proposals and monitor  
 199 contract compliance for these services.

200 Section 6. Subsection (2) of section 394.917, Florida  
 201 Statutes, is amended to read:

202 394.917 Determination; commitment procedure; mistrials;  
 203 housing; counsel and costs in indigent appellate cases.—

204 (2) If the court or jury determines that the person is a  
 205 sexually violent predator, upon the expiration of the  
 206 incarcerative portion of all criminal sentences and disposition  
 207 of any detainers, the person shall be committed to the custody  
 208 of the department ~~of Children and Family Services~~ for control,



209 care, and treatment until such time as the person's mental  
 210 abnormality or personality disorder has so changed that it is  
 211 safe for the person to be at large. At all times, persons who  
 212 are detained or committed under this part shall be kept in a  
 213 secure facility segregated from patients of the department who  
 214 are not detained or committed under this part.

215 Section 7. Subsection (3) of section 394.918, Florida  
 216 Statutes, is amended to read:

217 394.918 Examinations; notice; court hearings for release  
 218 of committed persons; burden of proof.—

219 (3) The court shall hold a limited hearing to determine  
 220 whether there is probable cause to believe that the person's  
 221 condition has so changed that it is safe for the person to be at  
 222 large and that the person will not engage in acts of sexual  
 223 violence if discharged. The person has the right to be  
 224 represented by counsel at the probable cause hearing, and the  
 225 right ~~but the person is not entitled~~ to be present. Both the  
 226 petitioner and the respondent may present evidence that the  
 227 court may weigh and consider. If the court determines that there  
 228 is probable cause to believe it is safe to release the person,  
 229 the court shall set a trial before the court on the issue.

230 Section 8. Paragraph (b) of subsection (1) of section  
 231 394.9215, Florida Statutes, is amended to read:

232 394.9215 Right to habeas corpus.—

233 (1)

234 (b) Upon filing a legally sufficient petition stating a

235 prima facie case under paragraph (a), the court may direct the  
 236 department ~~of Children and Family Services~~ to file a response.  
 237 If necessary, the court may conduct an evidentiary proceeding  
 238 and issue an order to correct a violation of state or federal  
 239 rights found to exist by the court. A final order entered under  
 240 this section may be appealed to the district court of appeal. A  
 241 nonfinal order may be appealed to the extent provided by the  
 242 Florida Rules of Appellate Procedure. An appeal by the  
 243 department shall stay the trial court's order until disposition  
 244 of the appeal.

245 Section 9. Section 394.929, Florida Statutes, is amended  
 246 to read:

247 394.929 Program costs.—The department ~~of Children and~~  
 248 ~~Family Services~~ is responsible for all costs relating to the  
 249 evaluation and treatment of persons committed to the  
 250 department's custody as sexually violent predators. A county is  
 251 not obligated to fund costs for psychological examinations,  
 252 expert witnesses, court-appointed counsel, or other costs  
 253 required by this part. Other costs for psychological  
 254 examinations, expert witnesses, and court-appointed counsel  
 255 required by this part shall be paid from state funds  
 256 appropriated by general law.

257 Section 10. Section 394.930, Florida Statutes, is amended  
 258 to read:

259 394.930 Authority to adopt rules.—The department ~~of~~  
 260 ~~Children and Family Services~~ shall adopt rules for:

261 (1) Procedures that must be followed by members of the  
 262 multidisciplinary teams when assessing and evaluating persons  
 263 subject to this part.†

264 (2) Education and training requirements for members of the  
 265 multidisciplinary teams and professionals who assess and  
 266 evaluate persons under this part.†

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

272 (a) The person has a propensity to engage in future acts  
 273 of sexual violence.†

274 (b) The person should be placed in a secure, residential  
 275 facility.†~~and~~

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

277 (4) The designation of secure facilities for sexually  
 278 violent predators who are subject to involuntary commitment  
 279 under this part.†

280 (5) The components of the basic treatment plan for all  
 281 committed persons under this part.†

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

285 Section 11. Section 394.931, Florida Statutes, is amended  
 286 to read:

HB 717

2014

287           394.931 Quarterly reports. ~~Beginning July 1, 1999,~~ The  
288 Department of Corrections shall collect information and compile  
289 quarterly reports with statistics profiling inmates released the  
290 previous quarter who fit the criteria and were referred to the  
291 Department of Children and Families ~~Family Services~~ pursuant to  
292 this part act. ~~The quarterly reports must be produced beginning~~  
293 ~~October 1, 1999.~~ At a minimum, the information that must be  
294 collected and compiled for inclusion in the reports includes:  
295 whether the qualifying offense was the current offense or the  
296 prior offense; the most serious sexual offense; the total number  
297 of distinct victims of the sexual offense; whether the victim  
298 was known to the offender; whether the sexual act was  
299 consensual; whether the sexual act involved multiple victims;  
300 whether direct violence was involved in the sexual offense; the  
301 age of each victim at the time of the offense; the age of the  
302 offender at the time of the first sexual offense; whether a  
303 weapon was used; length of time since the most recent sexual  
304 offense; and the total number of prior and current sexual-  
305 offense convictions. In addition, the Department of Children and  
306 Families ~~Family Services~~ shall implement a long-term study to  
307 determine the overall efficacy of ~~the provisions of~~ this part.  
308           Section 12. This act shall take effect July 1, 2014.