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## **APPENDIX E**

**Criminal Court Steering Committee  
The Honorable Kevin Emas, Chair  
May 13, 2014**

## The Florida Senate

### 2013 Florida Statutes

<u>Title XXIX</u> PUBLIC HEALTH	<u>Chapter 394</u> MENTAL HEALTH  <u>Entire Chapter</u>	<b>SECTION 918</b> <b>Examinations; notice; court</b> <b>hearings for release of committed</b> <b>persons; burden of proof.</b>
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#### **394.918 Examinations; notice; court hearings for release of committed persons; burden of proof. —**

(1) A person committed under this part 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. 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.

**History.**—s. 10, ch. 98-64; s. 13, ch. 99-222.

**Note.**— Former s. 916.38.

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