



178120

LEGISLATIVE ACTION

Senate

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House

The Committee on Children, Families, and Elder Affairs (Powell) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Present subsections (4) through (11) of section 394.4615, Florida Statutes, are redesignated as subsections (5) through (12), respectively, a new subsection (4) is added to that section, and subsection (3) of that section is amended, to read:

394.4615 Clinical records; confidentiality.-



11 (3) Information from the clinical record must ~~may~~ be
12 released ~~in the following circumstances:~~

13 ~~(a)~~ when a patient has communicated to a service provider a
14 specific threat to cause serious bodily injury or death to an
15 identified or a readily available person, if the service
16 provider reasonably believes, or should reasonably believe
17 according to the standards of his or her profession, that the
18 patient has the apparent intent and ability to imminently or
19 immediately carry out such threat ~~declared an intention to harm~~
20 ~~other persons.~~ When such communication ~~declaration~~ has been
21 made, the administrator must ~~may~~ authorize the release of
22 sufficient information to provide adequate warning to the person
23 threatened with harm by the patient and communicate the threat
24 to law enforcement.

25 (4) (a) ~~(b)~~ Information from the clinical record may be
26 released when the administrator of the facility or secretary of
27 the department deems release to a qualified researcher as
28 defined in administrative rule, an aftercare treatment provider,
29 or an employee or agent of the department is necessary for
30 treatment of the patient, maintenance of adequate records,
31 compilation of treatment data, aftercare planning, or evaluation
32 of programs.

33 (b) For the purpose of determining whether a person meets
34 the criteria for involuntary outpatient placement or for
35 preparing the proposed treatment plan pursuant to s. 394.4655,
36 the clinical record may be released to the state attorney, the
37 public defender or the patient's private legal counsel, the
38 court, and to the appropriate mental health professionals,
39 including the service provider identified in s.



178120

40 394.4655(7)(b)2., in accordance with state and federal law.

41 Section 2. Paragraph (a) of subsection (2) of section
42 394.463, Florida Statutes, is amended to read:

43 394.463 Involuntary examination.—

44 (2) INVOLUNTARY EXAMINATION.—

45 (a) An involuntary examination may be initiated by any one
46 of the following means:

47 1. A circuit or county court may enter an ex parte order
48 stating that a person appears to meet the criteria for
49 involuntary examination and specifying the findings on which
50 that conclusion is based. The ex parte order for involuntary
51 examination must be based on written or oral sworn testimony
52 that includes specific facts that support the findings. If other
53 less restrictive means are not available, such as voluntary
54 appearance for outpatient evaluation, a law enforcement officer,
55 or other designated agent of the court, shall take the person
56 into custody and deliver him or her to an appropriate, or the
57 nearest, facility within the designated receiving system
58 pursuant to s. 394.462 for involuntary examination. The order of
59 the court shall be made a part of the patient's clinical record.
60 A fee may not be charged for the filing of an order under this
61 subsection. A facility accepting the patient based on this order
62 must send a copy of the order to the department within 5 ~~the~~
63 ~~next~~ working days ~~day~~. The order may be submitted electronically
64 through existing data systems, if available. The order shall be
65 valid only until the person is delivered to the facility or for
66 the period specified in the order itself, whichever comes first.
67 If no time limit is specified in the order, the order shall be
68 valid for 7 days after the date that the order was signed.



178120

69 2. A law enforcement officer shall take a person who
70 appears to meet the criteria for involuntary examination into
71 custody and deliver the person or have him or her delivered to
72 an appropriate, or the nearest, facility within the designated
73 receiving system pursuant to s. 394.462 for examination. The
74 officer shall execute a written report detailing the
75 circumstances under which the person was taken into custody,
76 which must be made a part of the patient's clinical record. Any
77 facility accepting the patient based on this report must send a
78 copy of the report to the department within 5 ~~the next~~ working
79 days ~~day~~.

80 3. A physician, clinical psychologist, psychiatric nurse,
81 mental health counselor, marriage and family therapist, or
82 clinical social worker may execute a certificate stating that he
83 or she has examined a person within the preceding 48 hours and
84 finds that the person appears to meet the criteria for
85 involuntary examination and stating the observations upon which
86 that conclusion is based. If other less restrictive means, such
87 as voluntary appearance for outpatient evaluation, are not
88 available, a law enforcement officer shall take into custody the
89 person named in the certificate and deliver him or her to the
90 appropriate, or nearest, facility within the designated
91 receiving system pursuant to s. 394.462 for involuntary
92 examination. The law enforcement officer shall execute a written
93 report detailing the circumstances under which the person was
94 taken into custody. The report and certificate shall be made a
95 part of the patient's clinical record. Any facility accepting
96 the patient based on this certificate must send a copy of the
97 certificate to the department within 5 ~~the next~~ working days



178120

98 ~~day~~. The document may be submitted electronically through
99 existing data systems, if applicable.

100 Section 3. Section 456.059, Florida Statutes, is amended to
101 read:

102 456.059 Communications confidential; exceptions.—

103 Communications between a patient and a psychiatrist, as defined
104 in s. 394.455, shall be held confidential and may ~~shall~~ not be
105 disclosed except upon the request of the patient or the
106 patient's legal representative. Provision of psychiatric records
107 and reports are ~~shall be~~ governed by s. 456.057. Notwithstanding
108 any other provision of this section or s. 90.503, when ~~where~~:

109 (1) A patient is engaged in a treatment relationship with a
110 psychiatrist;

111 (2) Such patient has communicated to the psychiatrist a
112 specific threat to cause serious bodily injury or death to an
113 identified or a readily available person ~~made an actual threat~~
114 ~~to physically harm an identifiable victim or victims;~~ and

115 (3) The treating psychiatrist makes a clinical judgment
116 that the patient has the apparent intent and ability to
117 imminently or immediately carry out such threat ~~capability to~~
118 ~~commit such an act and that it is more likely than not that in~~
119 ~~the near future the patient will carry out that threat,~~

120
121 the psychiatrist shall ~~may~~ disclose patient communications to
122 the extent necessary to warn any potential victim or to
123 communicate the threat to a law enforcement agency. A
124 psychiatrist's disclosure of confidential communications when
125 communicating a threat pursuant to this section may not be the
126 basis of any legal action or criminal or civil liability against



127 ~~the psychiatrist No civil or criminal action shall be~~
128 ~~instituted, and there shall be no liability on account of~~
129 ~~disclosure of otherwise confidential communications by a~~
130 ~~psychiatrist in disclosing a threat pursuant to this section.~~

131 Section 4. Section 490.0147, Florida Statutes, is amended
132 to read:

133 490.0147 Confidentiality and privileged communications.—

134 (1) Any communication between a psychologist any person
135 ~~licensed under this chapter~~ and her or his patient or client is
136 ~~shall be~~ confidential. This privilege may be waived under the
137 following conditions:

138 (a)(1) When the psychologist person licensed under this
139 ~~chapter~~ is a party defendant to a civil, criminal, or
140 disciplinary action arising from a complaint filed by the
141 patient or client, in which case the waiver shall be limited to
142 that action; or—

143 (b)(2) When the patient or client agrees to the waiver, in
144 writing, or when more than one person in a family is receiving
145 therapy, when each family member agrees to the waiver, in
146 writing.

147 (2) Such privilege must be waived, and the psychologist
148 shall disclose patient and client communications to the extent
149 necessary to warn any potential victim and to communicate the
150 threat to a law enforcement agency, if a patient or client has
151 communicated to the psychologist a specific threat to cause
152 serious bodily injury or death to an identified or readily
153 available person, and the psychologist makes a clinical judgment
154 that the patient or client has the apparent intent and ability
155 to imminently or immediately carry out such threat. A



178120

156 psychologist's disclosure of confidential communications when
157 communicating a threat pursuant to this subsection may not be
158 the basis of any legal action or criminal or civil liability
159 against the psychologist

160 ~~(3) When there is a clear and immediate probability of~~
161 ~~physical harm to the patient or client, to other individuals, or~~
162 ~~to society and the person licensed under this chapter~~
163 ~~communicates the information only to the potential victim,~~
164 ~~appropriate family member, or law enforcement or other~~
165 ~~appropriate authorities.~~

166 Section 5. Section 491.0147, Florida Statutes, is amended
167 to read:

168 491.0147 Confidentiality and privileged communications.—Any
169 communication between any person licensed or certified under
170 this chapter and her or his patient or client is ~~shall be~~
171 confidential.

172 (1) This privilege ~~secrecy~~ may be waived under the
173 following conditions:

174 (a) ~~(1)~~ When the person licensed or certified under this
175 chapter is a party defendant to a civil, criminal, or
176 disciplinary action arising from a complaint filed by the
177 patient or client, in which case the waiver shall be limited to
178 that action.

179 (b) ~~(2)~~ When the patient or client agrees to the waiver, in
180 writing, or, when more than one person in a family is receiving
181 therapy, when each family member agrees to the waiver, in
182 writing.

183 (2) This privilege must be waived, and the person licensed
184 or certified under this chapter shall disclose patient and



178120

185 client communications to the extent necessary to warn any
186 potential victim and to communicate the threat to a law
187 enforcement agency, if a patient or client has communicated to
188 such person a specific threat to cause serious bodily injury or
189 death to an identified or readily available person, and the
190 person licensed or certified under this chapter makes a clinical
191 judgment that the patient or client has the apparent intent and
192 ability to imminently or immediately carry out such threat. A
193 disclosure of confidential communications by a person licensed
194 or certified under this chapter when communicating a threat
195 pursuant to this subsection may not be the basis of any legal
196 action or criminal or civil liability against such person

197 ~~(3) When, in the clinical judgment of the person licensed~~
198 ~~or certified under this chapter, there is a clear and immediate~~
199 ~~probability of physical harm to the patient or client, to other~~
200 ~~individuals, or to society and the person licensed or certified~~
201 ~~under this chapter communicates the information only to the~~
202 ~~potential victim, appropriate family member, or law enforcement~~
203 ~~or other appropriate authorities. There shall be no liability on~~
204 ~~the part of, and no cause of action of any nature shall arise~~
205 ~~against, a person licensed or certified under this chapter for~~
206 ~~the disclosure of otherwise confidential communications under~~
207 ~~this subsection.~~

208 Section 6. Section 1012.583, Florida Statutes, is amended
209 to read:

210 1012.583 Continuing education and inservice training for
211 youth suicide awareness and prevention.—

212 (1) By July 1, 2019 ~~Beginning with the 2016-2017 school~~
213 ~~year,~~ the Department of Education, in consultation with the



178120

214 Statewide Office for Suicide Prevention and suicide prevention
215 experts, shall develop a list of approved youth suicide
216 awareness and prevention training materials and suicide
217 screening instruments that may be used for training in youth
218 suicide awareness, suicide ~~and~~ prevention, and suicide screening
219 for instructional personnel in elementary school, middle school,
220 and high school. The approved list of materials:

221 (a) Must identify available standardized suicide screening
222 instruments appropriate for use with a school-age population and
223 which have validity and reliability and include information
224 about obtaining instruction in the administration and use of
225 such instruments.

226 (b) ~~(a)~~ Must include training on how to identify appropriate
227 mental health services and how to refer youth and their families
228 to those services.

229 (c) ~~(b)~~ May include materials currently being used by a
230 school district if such materials meet any criteria established
231 by the department.

232 (d) ~~(e)~~ May include programs that instructional personnel
233 can complete through a self-review of approved youth suicide
234 awareness and prevention materials.

235 (2) A school ~~that chooses to incorporate 2 hours of~~
236 ~~training offered pursuant to this section~~ shall be considered a
237 "Suicide Prevention Certified School-" if it:

238 (a) Incorporates 2 hours of training offered pursuant to
239 this section. The training must be included in the existing
240 continuing education or inservice training requirements for
241 instructional personnel and may not add to the total hours
242 currently required by the department. A school that chooses to



178120

243 participate in the training must require all instructional
244 personnel to participate.

245 (b) Has at least two school-based staff members certified
246 or otherwise deemed competent in the use of a suicide screening
247 instrument approved under subsection (1) and has a policy to use
248 such suicide risk screening instrument to evaluate a student's
249 suicide risk before requesting the initiation of, or initiating,
250 an involuntary examination due to concerns about that student's
251 suicide risk.

252 (3) A school that meets the criteria in subsection (2)
253 ~~participates in the suicide awareness and prevention training~~
254 ~~pursuant to this section~~ must report its compliance
255 ~~participation~~ to the department. The department shall keep an
256 updated record of all Suicide Prevention Certified Schools and
257 shall post the list of these schools on the department's
258 website. Each school shall also post on its own website whether
259 it is a Suicide Prevention Certified School, and each school
260 district shall post on its district website a list of the
261 Suicide Prevention Certified Schools in that district.

262 (4) A person has no cause of action for any loss or damage
263 caused by an act or omission resulting from the implementation
264 of this section or resulting from any training required by this
265 section unless the loss or damage was caused by willful or
266 wanton misconduct. This section does not create any new duty of
267 care or basis of liability.

268 (5) The State Board of Education may adopt rules to
269 implement this section.

270 Section 7. For the purpose of incorporating the amendment
271 made by this act to section 490.0147, Florida Statutes, in a



178120

272 reference thereto, paragraph (u) of subsection (1) of section
273 490.009, Florida Statutes, is reenacted to read:

274 490.009 Discipline.—

275 (1) The following acts constitute grounds for denial of a
276 license or disciplinary action, as specified in s. 456.072(2):

277 (u) Failing to maintain in confidence a communication made
278 by a patient or client in the context of such services, except
279 as provided in s. 490.0147.

280 Section 8. For the purpose of incorporating the amendment
281 made by this act to section 491.0147, Florida Statutes, in a
282 reference thereto, paragraph (u) of subsection (1) of section
283 491.009, Florida Statutes, is reenacted to read:

284 491.009 Discipline.—

285 (1) The following acts constitute grounds for denial of a
286 license or disciplinary action, as specified in s. 456.072(2):

287 (u) Failure of the licensee, registered intern, or
288 certificateholder to maintain in confidence a communication made
289 by a patient or client in the context of such services, except
290 as provided in s. 491.0147.

291 Section 9. This act shall take effect upon becoming a law.

292
293 ===== T I T L E A M E N D M E N T =====

294 And the title is amended as follows:

295 Delete everything before the enacting clause
296 and insert:

297 A bill to be entitled
298 An act relating to mental health; amending s.
299 394.4615, F.S.; requiring service providers to
300 disclose information from a clinical record under



178120

301 certain circumstances relating to threats to cause
302 seriously bodily injury or death; amending s. 394.463,
303 F.S.; revising deadlines for submission of
304 documentation regarding involuntary examinations;
305 amending s. 456.059, F.S.; requiring, rather than
306 authorizing, psychiatrists to disclose certain patient
307 communications for purposes of notifying potential
308 victims and law enforcement agencies of certain
309 threats; amending s. 490.0147, F.S.; requiring, rather
310 than authorizing, psychologists to disclose certain
311 patient and client communications for purposes of
312 notifying potential victims and law enforcement
313 agencies of certain threats; providing psychologists
314 with immunity from specified liability and actions
315 under certain circumstances; amending s. 491.0147,
316 F.S.; requiring, rather than authorizing, certain
317 license holders and certificate holders to disclose
318 certain patient and client communications for purposes
319 of notifying potential victims and law enforcement
320 agencies of certain threats; providing such persons
321 with immunity from specified liability and actions;
322 amending s. 1012.583, F.S.; revising responsibilities
323 of the Department of Education and the Statewide
324 Office for Suicide Prevention; revising criteria for
325 designation as a Suicide Prevention Certified School;
326 requiring that the department, schools, and school
327 districts post certain information regarding such
328 schools be posted on their respective websites;
329 reenacting s. 490.009, F.S., relating to discipline of



330 psychiatrists; reenacting s. 491.009, F.S., relating
331 to discipline of psychologists; providing an effective
332 date.