

By the Committee on Children, Families, and Elder Affairs; and  
Senator Powell

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1                                   A bill to be entitled  
2       An act relating to mental health; amending s.  
3       394.4615, F.S.; requiring service providers to  
4       disclose information from a clinical record under  
5       certain circumstances relating to threats to cause  
6       seriously bodily injury or death; amending s. 394.463,  
7       F.S.; revising deadlines for submission of  
8       documentation regarding involuntary examinations;  
9       amending s. 456.059, F.S.; requiring, rather than  
10      authorizing, psychiatrists to disclose certain patient  
11      communications for purposes of notifying potential  
12      victims and law enforcement agencies of certain  
13      threats; amending s. 490.0147, F.S.; requiring, rather  
14      than authorizing, psychologists to disclose certain  
15      patient and client communications for purposes of  
16      notifying potential victims and law enforcement  
17      agencies of certain threats; providing psychologists  
18      with immunity from specified liability and actions  
19      under certain circumstances; amending s. 491.0147,  
20      F.S.; requiring, rather than authorizing, certain  
21      license holders and certificate holders to disclose  
22      certain patient and client communications for purposes  
23      of notifying potential victims and law enforcement  
24      agencies of certain threats; providing such persons  
25      with immunity from specified liability and actions;  
26      amending s. 1012.583, F.S.; revising responsibilities  
27      of the Department of Education and the Statewide  
28      Office for Suicide Prevention; revising criteria for  
29      designation as a Suicide Prevention Certified School;

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30 requiring that the department, schools, and school  
31 districts post certain information regarding such  
32 schools be posted on their respective websites;  
33 reenacting s. 490.009, F.S., relating to discipline of  
34 psychiatrists; reenacting s. 491.009, F.S., relating  
35 to discipline of psychologists; providing an effective  
36 date.

37  
38 Be It Enacted by the Legislature of the State of Florida:

39  
40 Section 1. Present subsections (4) through (11) of section  
41 394.4615, Florida Statutes, are redesignated as subsections (5)  
42 through (12), respectively, a new subsection (4) is added to  
43 that section, and subsection (3) of that section is amended, to  
44 read:

45 394.4615 Clinical records; confidentiality.—

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

48 ~~(a)~~ when a patient has communicated to a service provider a  
49 specific threat to cause serious bodily injury or death to an  
50 identified or a readily available person, if the service  
51 provider reasonably believes, or should reasonably believe  
52 according to the standards of his or her profession, that the  
53 patient has the apparent intent and ability to imminently or  
54 immediately carry out such threat ~~declared an intention to harm~~  
55 ~~other persons.~~ When such communication ~~declaration~~ has been  
56 made, the administrator must ~~may~~ authorize the release of  
57 sufficient information to provide adequate warning to the person  
58 threatened with harm by the patient and communicate the threat

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59 to law enforcement.

60 (4) (a) ~~(b)~~ Information from the clinical record may be  
61 released when the administrator of the facility or secretary of  
62 the department deems release to a qualified researcher as  
63 defined in administrative rule, an aftercare treatment provider,  
64 or an employee or agent of the department is necessary for  
65 treatment of the patient, maintenance of adequate records,  
66 compilation of treatment data, aftercare planning, or evaluation  
67 of programs.

68 (b) For the purpose of determining whether a person meets  
69 the criteria for involuntary outpatient placement or for  
70 preparing the proposed treatment plan pursuant to s. 394.4655,  
71 the clinical record may be released to the state attorney, the  
72 public defender or the patient's private legal counsel, the  
73 court, and to the appropriate mental health professionals,  
74 including the service provider identified in s.  
75 394.4655(7)(b)2., in accordance with state and federal law.

76 Section 2. Paragraph (a) of subsection (2) of section  
77 394.463, Florida Statutes, is amended to read:

78 394.463 Involuntary examination.—

79 (2) INVOLUNTARY EXAMINATION.—

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

82 1. A circuit or county court may enter an ex parte order  
83 stating that a person appears to meet the criteria for  
84 involuntary examination and specifying the findings on which  
85 that conclusion is based. The ex parte order for involuntary  
86 examination must be based on written or oral sworn testimony  
87 that includes specific facts that support the findings. If other

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88 less restrictive means are not available, such as voluntary  
89 appearance for outpatient evaluation, a law enforcement officer,  
90 or other designated agent of the court, shall take the person  
91 into custody and deliver him or her to an appropriate, or the  
92 nearest, facility within the designated receiving system  
93 pursuant to s. 394.462 for involuntary examination. The order of  
94 the court shall be made a part of the patient's clinical record.  
95 A fee may not be charged for the filing of an order under this  
96 subsection. A facility accepting the patient based on this order  
97 must send a copy of the order to the department within 5 ~~the~~  
98 ~~next~~ working days ~~day~~. The order may be submitted electronically  
99 through existing data systems, if available. The order shall be  
100 valid only until the person is delivered to the facility or for  
101 the period specified in the order itself, whichever comes first.  
102 If no time limit is specified in the order, the order shall be  
103 valid for 7 days after the date that the order was signed.

104 2. A law enforcement officer shall take a person who  
105 appears to meet the criteria for involuntary examination into  
106 custody and deliver the person or have him or her delivered to  
107 an appropriate, or the nearest, facility within the designated  
108 receiving system pursuant to s. 394.462 for examination. The  
109 officer shall execute a written report detailing the  
110 circumstances under which the person was taken into custody,  
111 which must be made a part of the patient's clinical record. Any  
112 facility accepting the patient based on this report must send a  
113 copy of the report to the department within 5 ~~the next~~ working  
114 days ~~day~~.

115 3. A physician, clinical psychologist, psychiatric nurse,  
116 mental health counselor, marriage and family therapist, or

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117 clinical social worker may execute a certificate stating that he  
118 or she has examined a person within the preceding 48 hours and  
119 finds that the person appears to meet the criteria for  
120 involuntary examination and stating the observations upon which  
121 that conclusion is based. If other less restrictive means, such  
122 as voluntary appearance for outpatient evaluation, are not  
123 available, a law enforcement officer shall take into custody the  
124 person named in the certificate and deliver him or her to the  
125 appropriate, or nearest, facility within the designated  
126 receiving system pursuant to s. 394.462 for involuntary  
127 examination. The law enforcement officer shall execute a written  
128 report detailing the circumstances under which the person was  
129 taken into custody. The report and certificate shall be made a  
130 part of the patient's clinical record. Any facility accepting  
131 the patient based on this certificate must send a copy of the  
132 certificate to the department within 5 ~~the next~~ working days  
133 ~~day~~. The document may be submitted electronically through  
134 existing data systems, if applicable.

135 Section 3. Section 456.059, Florida Statutes, is amended to  
136 read:

137 456.059 Communications confidential; exceptions.-  
138 Communications between a patient and a psychiatrist, as defined  
139 in s. 394.455, shall be held confidential and may ~~shall~~ not be  
140 disclosed except upon the request of the patient or the  
141 patient's legal representative. Provision of psychiatric records  
142 and reports are ~~shall be~~ governed by s. 456.057. Notwithstanding  
143 any other provision of this section or s. 90.503, when ~~where~~:

144 (1) A patient is engaged in a treatment relationship with a  
145 psychiatrist;

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

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

155  
 156 the psychiatrist shall ~~may~~ disclose patient communications to  
 157 the extent necessary to warn any potential victim or to  
 158 communicate the threat to a law enforcement agency. A  
 159 psychiatrist's disclosure of confidential communications when  
 160 communicating a threat pursuant to this section may not be the  
 161 basis of any legal action or criminal or civil liability against  
 162 the psychiatrist ~~No civil or criminal action shall be~~  
 163 ~~instituted, and there shall be no liability on account of~~  
 164 ~~disclosure of otherwise confidential communications by a~~  
 165 ~~psychiatrist in disclosing a threat pursuant to this section.~~

166 Section 4. Section 490.0147, Florida Statutes, is amended  
 167 to read:

168 490.0147 Confidentiality and privileged communications.—

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

173 (a) ~~(1)~~ When the psychologist ~~person licensed under this~~  
 174 ~~chapter~~ is a party defendant to a civil, criminal, or

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175 disciplinary action arising from a complaint filed by the  
176 patient or client, in which case the waiver shall be limited to  
177 that action; or-

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

182 (2) Such privilege must be waived, and the psychologist  
183 shall disclose patient and client communications to the extent  
184 necessary to warn any potential victim and to communicate the  
185 threat to a law enforcement agency, if a patient or client has  
186 communicated to the psychologist a specific threat to cause  
187 serious bodily injury or death to an identified or readily  
188 available person, and the psychologist makes a clinical judgment  
189 that the patient or client has the apparent intent and ability  
190 to imminently or immediately carry out such threat. A  
191 psychologist's disclosure of confidential communications when  
192 communicating a threat pursuant to this subsection may not be  
193 the basis of any legal action or criminal or civil liability  
194 against the psychologist

195 ~~(3) When there is a clear and immediate probability of~~  
196 ~~physical harm to the patient or client, to other individuals, or~~  
197 ~~to society and the person licensed under this chapter~~  
198 ~~communicates the information only to the potential victim,~~  
199 ~~appropriate family member, or law enforcement or other~~  
200 ~~appropriate authorities.~~

201 Section 5. Section 491.0147, Florida Statutes, is amended  
202 to read:

203 491.0147 Confidentiality and privileged communications.—Any

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204 communication between any person licensed or certified under  
205 this chapter and her or his patient or client is ~~shall be~~  
206 confidential.

207 (1) This privilege ~~secrecy~~ may be waived under the  
208 following conditions:

209 (a) ~~(1)~~ When the person licensed or certified under this  
210 chapter is a party defendant to a civil, criminal, or  
211 disciplinary action arising from a complaint filed by the  
212 patient or client, in which case the waiver shall be limited to  
213 that action.

214 (b) ~~(2)~~ When the patient or client agrees to the waiver, in  
215 writing, or, when more than one person in a family is receiving  
216 therapy, when each family member agrees to the waiver, in  
217 writing.

218 (2) This privilege must be waived, and the person licensed  
219 or certified under this chapter shall disclose patient and  
220 client communications to the extent necessary to warn any  
221 potential victim and to communicate the threat to a law  
222 enforcement agency, if a patient or client has communicated to  
223 such person a specific threat to cause serious bodily injury or  
224 death to an identified or readily available person, and the  
225 person licensed or certified under this chapter makes a clinical  
226 judgment that the patient or client has the apparent intent and  
227 ability to imminently or immediately carry out such threat. A  
228 disclosure of confidential communications by a person licensed  
229 or certified under this chapter when communicating a threat  
230 pursuant to this subsection may not be the basis of any legal  
231 action or criminal or civil liability against such person

232 ~~(3) When, in the clinical judgment of the person licensed~~



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233 ~~or certified under this chapter, there is a clear and immediate~~  
234 ~~probability of physical harm to the patient or client, to other~~  
235 ~~individuals, or to society and the person licensed or certified~~  
236 ~~under this chapter communicates the information only to the~~  
237 ~~potential victim, appropriate family member, or law enforcement~~  
238 ~~or other appropriate authorities. There shall be no liability on~~  
239 ~~the part of, and no cause of action of any nature shall arise~~  
240 ~~against, a person licensed or certified under this chapter for~~  
241 ~~the disclosure of otherwise confidential communications under~~  
242 ~~this subsection.~~

243 Section 6. Section 1012.583, Florida Statutes, is amended  
244 to read:

245 1012.583 Continuing education and inservice training for  
246 youth suicide awareness and prevention.—

247 (1) By July 1, 2019 ~~Beginning with the 2016-2017 school~~  
248 ~~year,~~ the Department of Education, in consultation with the  
249 Statewide Office for Suicide Prevention and suicide prevention  
250 experts, shall develop a list of approved youth suicide  
251 awareness and prevention training materials and suicide  
252 screening instruments that may be used for training in youth  
253 suicide awareness, suicide ~~and prevention,~~ and suicide screening  
254 for instructional personnel in elementary school, middle school,  
255 and high school. The approved list of materials:

256 (a) Must identify available standardized suicide screening  
257 instruments appropriate for use with a school-age population and  
258 which have validity and reliability and include information  
259 about obtaining instruction in the administration and use of  
260 such instruments.

261 (b) ~~(a)~~ Must include training on how to identify appropriate

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262 mental health services and how to refer youth and their families  
263 to those services.

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

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

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

273 (a) Incorporates 2 hours of training offered pursuant to  
274 this section. The training must be included in the existing  
275 continuing education or inservice training requirements for  
276 instructional personnel and may not add to the total hours  
277 currently required by the department. A school that chooses to  
278 participate in the training must require all instructional  
279 personnel to participate.

280 (b) Has at least two school-based staff members certified  
281 or otherwise deemed competent in the use of a suicide screening  
282 instrument approved under subsection (1) and has a policy to use  
283 such suicide risk screening instrument to evaluate a student's  
284 suicide risk before requesting the initiation of, or initiating,  
285 an involuntary examination due to concerns about that student's  
286 suicide risk.

287 (3) A school that meets the criteria in subsection (2)  
288 ~~participates in the suicide awareness and prevention training~~  
289 ~~pursuant to this section~~ must report its compliance  
290 ~~participation~~ to the department. The department shall keep an

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291 updated record of all Suicide Prevention Certified Schools and  
292 shall post the list of these schools on the department's  
293 website. Each school shall also post on its own website whether  
294 it is a Suicide Prevention Certified School, and each school  
295 district shall post on its district website a list of the  
296 Suicide Prevention Certified Schools in that district.

297 (4) A person has no cause of action for any loss or damage  
298 caused by an act or omission resulting from the implementation  
299 of this section or resulting from any training required by this  
300 section unless the loss or damage was caused by willful or  
301 wanton misconduct. This section does not create any new duty of  
302 care or basis of liability.

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

305 Section 7. For the purpose of incorporating the amendment  
306 made by this act to section 490.0147, Florida Statutes, in a  
307 reference thereto, paragraph (u) of subsection (1) of section  
308 490.009, Florida Statutes, is reenacted to read:

309 490.009 Discipline.—

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

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

315 Section 8. For the purpose of incorporating the amendment  
316 made by this act to section 491.0147, Florida Statutes, in a  
317 reference thereto, paragraph (u) of subsection (1) of section  
318 491.009, Florida Statutes, is reenacted to read:

319 491.009 Discipline.—

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

322           (u) Failure of the licensee, registered intern, or  
323 certificateholder to maintain in confidence a communication made  
324 by a patient or client in the context of such services, except  
325 as provided in s. 491.0147.

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