

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Health & Human Services
2 Committee

3 Representative Silvers offered the following:

4
5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Present subsections (4) through (11) of section
8 394.4615, Florida Statutes, are redesignated as subsections (5)
9 through (12), respectively, a new subsection (4) is added to
10 that section, and paragraph (a) of subsection (3) of that
11 section is amended, to read:

12 394.4615 Clinical records; confidentiality.—

13 (3) Information from the clinical record may be released
14 in the following circumstances:

15 (a) When a patient has communicated to a service provider
16 a specific threat to cause serious bodily injury or death to an

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17 identified or a readily available person, if the service
18 provider reasonably believes, or should reasonably believe
19 according to the standards of his or her profession, that the
20 patient has the apparent intent and ability to imminently or
21 immediately carry out such threat ~~declared an intention to harm~~
22 ~~other persons.~~ When such communication ~~declaration~~ has been
23 made, the administrator may authorize the release of sufficient
24 information to provide adequate warning to the person threatened
25 with harm by the patient.

26
27 For the purpose of determining whether a person meets the
28 criteria for involuntary outpatient placement or for preparing
29 the proposed treatment plan pursuant to s. 394.4655, the
30 clinical record may be released to the state attorney, the
31 public defender or the patient's private legal counsel, the
32 court, and to the appropriate mental health professionals,
33 including the service provider identified in s.
34 394.4655(7)(b)2., in accordance with state and federal law.

35 (4) Information from the clinical record must be released
36 when a patient has communicated to a service provider a specific
37 threat to cause serious bodily injury or death to an identified
38 or a readily available person, if the service provider
39 reasonably believes, or should reasonably believe according to
40 the standards of his or her profession, that the patient has the
41 apparent intent and ability to imminently or immediately carry

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42 out such threat. When such communication has been made, the
43 administrator must authorize the release of sufficient
44 information to communicate the threat to law enforcement. A law
45 enforcement agency that receives notification of a specific
46 threat under this subsection must take appropriate action to
47 prevent the risk of harm, including, but not limited to,
48 notifying the intended victim of such threat or initiating a
49 risk protection order. A service provider's authorization to
50 release information from a clinical record when communicating a
51 threat pursuant to this section may not be the basis of any
52 legal action or criminal or civil liability against the service
53 provider.

54 Section 2. Paragraph (a) of subsection (2) of section
55 394.463, Florida Statutes, is amended, and new subsection (4) is
56 added to that section, to read:

57 394.463 Involuntary examination.—

58 (2) INVOLUNTARY EXAMINATION.—

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

61 1. A circuit or county court may enter an ex parte order
62 stating that a person appears to meet the criteria for
63 involuntary examination and specifying the findings on which
64 that conclusion is based. The ex parte order for involuntary
65 examination must be based on written or oral sworn testimony
66 that includes specific facts that support the findings. If other

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67 less restrictive means are not available, such as voluntary
68 appearance for outpatient evaluation, a law enforcement officer,
69 or other designated agent of the court, shall take the person
70 into custody and deliver him or her to an appropriate, or the
71 nearest, facility within the designated receiving system
72 pursuant to s. 394.462 for involuntary examination. The order of
73 the court shall be made a part of the patient's clinical record.
74 A fee may not be charged for the filing of an order under this
75 subsection. A facility accepting the patient based on this order
76 must send a copy of the order to the department within 5 ~~the~~
77 ~~next~~ working days ~~day~~. The order may be submitted electronically
78 through existing data systems, if available. The order shall be
79 valid only until the person is delivered to the facility or for
80 the period specified in the order itself, whichever comes first.
81 If no time limit is specified in the order, the order shall be
82 valid for 7 days after the date that the order was signed.

83 2. A law enforcement officer shall take a person who
84 appears to meet the criteria for involuntary examination into
85 custody and deliver the person or have him or her delivered to
86 an appropriate, or the nearest, facility within the designated
87 receiving system pursuant to s. 394.462 for examination. The
88 officer shall execute a written report detailing the
89 circumstances under which the person was taken into custody,
90 which must be made a part of the patient's clinical record. Any
91 facility accepting the patient based on this report must send a

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92 copy of the report to the department within 5 ~~the next~~ working
93 days ~~day~~.

94 3. A physician, clinical psychologist, psychiatric nurse,
95 mental health counselor, marriage and family therapist, or
96 clinical social worker may execute a certificate stating that he
97 or she has examined a person within the preceding 48 hours and
98 finds that the person appears to meet the criteria for
99 involuntary examination and stating the observations upon which
100 that conclusion is based. If other less restrictive means, such
101 as voluntary appearance for outpatient evaluation, are not
102 available, a law enforcement officer shall take into custody the
103 person named in the certificate and deliver him or her to the
104 appropriate, or nearest, facility within the designated
105 receiving system pursuant to s. 394.462 for involuntary
106 examination. The law enforcement officer shall execute a written
107 report detailing the circumstances under which the person was
108 taken into custody. The report and certificate shall be made a
109 part of the patient's clinical record. Any facility accepting
110 the patient based on this certificate must send a copy of the
111 certificate to the department within 5 ~~the next~~ working days
112 ~~day~~. The document may be submitted electronically through
113 existing data systems, if applicable.

114
115 When sending the certificate to the department, a facility shall
116 at a minimum provide information about which action was taken

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117 regarding the patient under paragraph (g), which information
118 shall also be made a part of the patient's clinical record.

119 (4) Using data collected under paragraph (2) (a), the
120 department shall, at a minimum, analyze data on the initiation
121 of involuntary examinations of children, identify any patterns
122 or trends and cases where involuntary examinations are
123 repeatedly initiated on the same child, study root causes for
124 such patterns, trends, or repeated involuntary examinations, and
125 make recommendations for encouraging alternatives to and
126 eliminating inappropriate initiations of such examinations. The
127 department shall submit a report on its findings and
128 recommendations to the Governor, the President of the Senate,
129 and the Speaker of the House of Representatives by November 1 of
130 each odd numbered year.

131 Section 3. Subsection (2) of section 394.917, Florida
132 Statutes, is amended to read:

133 394.917 Determination; commitment procedure; mistrials;
134 housing; counsel and costs in indigent appellate cases.—

135 (2) If the court or jury determines that the person is a
136 sexually violent predator, upon the expiration of the
137 incarcerative portion of all criminal sentences and disposition
138 of any detainers, the person shall be committed to the custody
139 of the Department of Children and Families for control, care,
140 ~~and treatment,~~ and rehabilitation of criminal offenders, until
141 such time as the person's mental abnormality or personality

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142 disorder has so changed that it is safe for the person to be at
143 large. At all times, persons who are detained or committed under
144 this part shall be kept in a secure facility segregated from
145 patients of the department who are not detained or committed
146 under this part.

147 Section 4. Section 456.059, Florida Statutes, is amended
148 to read:

149 456.059 Communications confidential; exceptions.—
150 Communications between a patient and a psychiatrist, as defined
151 in s. 394.455, shall be held confidential and may ~~shall~~ not be
152 disclosed except upon the request of the patient or the
153 patient's legal representative. Provision of psychiatric records
154 and reports are ~~shall be~~ governed by s. 456.057. Notwithstanding
155 any other provision of this section or s. 90.503, when ~~where~~:

156 (1) A patient is engaged in a treatment relationship with
157 a psychiatrist;

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

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

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167
168 the psychiatrist may disclose patient communications to the
169 extent necessary to warn any potential victim ~~or~~ and must
170 disclose patient communications to the extent necessary to
171 communicate the threat to a law enforcement agency. A law
172 enforcement agency that receives notification of a specific
173 threat under this subsection must take appropriate action to
174 prevent the risk of harm, including, but not limited to,
175 notifying the intended victim of such threat or initiating a
176 risk protection order. A psychiatrist's disclosure of
177 confidential communications when communicating a threat pursuant
178 to this section may not be the basis of any legal action or
179 criminal or civil liability against the psychiatrist ~~No civil or~~
180 ~~criminal action shall be instituted, and there shall be no~~
181 ~~liability on account of disclosure of otherwise confidential~~
182 ~~communications by a psychiatrist in disclosing a threat pursuant~~
183 ~~to this section.~~

184 Section 5. Section 490.0147, Florida Statutes, is amended
185 to read:

186 490.0147 Confidentiality and privileged communications.—

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

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191 (a)(1) When the psychologist person licensed under this
192 ~~chapter~~ is a party defendant to a civil, criminal, or
193 disciplinary action arising from a complaint filed by the
194 patient or client, in which case the waiver shall be limited to
195 that action~~;~~;

196 (b)(2) When the patient or client agrees to the waiver, in
197 writing, or when more than one person in a family is receiving
198 therapy, when each family member agrees to the waiver, in
199 writing~~;~~ or

200 (c)(3) When a patient or client has communicated to the
201 psychologist a specific threat to cause serious bodily injury or
202 death to an identified or readily available person, and the
203 psychologist makes a clinical judgment that the patient or
204 client has the apparent intent and ability to imminently or
205 immediately carry out such threat and the psychologist there is
206 ~~a clear and immediate probability of physical harm to the~~
207 ~~patient or client, to other individuals, or to society and the~~
208 ~~person licensed under this chapter communicates the information~~
209 ~~only to the potential victim, appropriate family member, or law~~
210 ~~enforcement or other appropriate authorities. A disclosure of~~
211 confidential communications by a psychologist when communicating
212 a threat pursuant to this subsection may not be the basis of any
213 legal action or criminal or civil liability against the
214 psychologist.

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215 (2) Such privilege must be waived, and the psychologist
216 shall disclose patient or client communications to the extent
217 necessary to communicate the threat to a law enforcement agency,
218 if a patient or client has communicated to the psychologist a
219 specific threat to cause serious bodily injury or death to an
220 identified or readily available person, and the psychologist
221 makes a clinical judgment that the patient or client has the
222 apparent intent and ability to imminently or immediately carry
223 out such threat. A law enforcement agency that receives
224 notification of a specific threat under this subsection must
225 take appropriate action to prevent the risk of harm, including,
226 but not limited to, notifying the intended victim of such threat
227 or initiating a risk protection order. A psychologist's
228 disclosure of confidential communications when communicating a
229 threat pursuant to this subsection may not be the basis of any
230 legal action or criminal or civil liability against the
231 psychologist.

232 Section 6. Section 491.0147, Florida Statutes, is amended
233 to read:

234 491.0147 Confidentiality and privileged communications.—
235 Any communication between any person licensed or certified under
236 this chapter and her or his patient or client is ~~shall be~~
237 confidential.

238 (1) This privilege ~~secrecy~~ may be waived under the
239 following conditions:

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240 ~~(a)(1)~~ When the person licensed or certified under this
241 chapter is a party defendant to a civil, criminal, or
242 disciplinary action arising from a complaint filed by the
243 patient or client, in which case the waiver shall be limited to
244 that action.

245 ~~(b)(2)~~ When the patient or client agrees to the waiver, in
246 writing, or, when more than one person in a family is receiving
247 therapy, when each family member agrees to the waiver, in
248 writing.

249 ~~(c)(3)~~ When a patient or client has communicated to the
250 person licensed or certified under this chapter a specific
251 threat to cause serious bodily injury or death to an identified
252 or readily available person, and the person licensed or
253 certified under this chapter makes a clinical judgment that the
254 patient or client has the apparent intent and ability to
255 imminently or immediately carry out such threat and the
256 psychologist, in the clinical judgment of the person licensed or
257 certified under this chapter, there is a clear and immediate
258 probability of physical harm to the patient or client, to other
259 individuals, or to society and the person licensed or certified
260 under this chapter communicates the information only to the
261 potential victim, appropriate family member, or law enforcement
262 or other appropriate authorities. There shall be no liability on
263 the part of, and no cause of action of any nature shall arise
264 against, a person licensed or certified under this chapter for

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265 ~~the disclosure of otherwise confidential communications under~~
266 ~~this subsection. A disclosure of confidential communications by~~
267 ~~a person licensed or certified under this chapter when~~
268 ~~communicating a threat pursuant to this subsection may not be~~
269 ~~the basis of any legal action or criminal or civil liability~~
270 ~~against such person.~~

271 (2) This privilege must be waived, and the person licensed
272 or certified under this chapter shall disclose patient or client
273 communications to the extent necessary to communicate the threat
274 to a law enforcement agency, if a patient or client has
275 communicated to such person a specific threat to cause serious
276 bodily injury or death to an identified or readily available
277 person, and the person licensed or certified under this chapter
278 makes a clinical judgment that the patient or client has the
279 apparent intent and ability to imminently or immediately carry
280 out such threat. A law enforcement agency that receives
281 notification of a specific threat under this subsection must
282 take appropriate action to prevent the risk of harm, including,
283 but not limited to, notifying the intended victim of such threat
284 or initiating a risk protection order. A disclosure of
285 confidential communications by a person licensed or certified
286 under this chapter when communicating a threat pursuant to this
287 subsection may not be the basis of any legal action or criminal
288 or civil liability against such person.

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289 Section 7. Section 1012.583, Florida Statutes, is amended
290 to read:

291 1012.583 Continuing education and inservice training for
292 youth suicide awareness and prevention.—

293 (1) By July 1, 2019 ~~Beginning with the 2016-2017 school~~
294 ~~year,~~ the Department of Education, in consultation with the
295 Statewide Office for Suicide Prevention and suicide prevention
296 experts, shall develop a list of approved youth suicide
297 awareness and prevention training materials and suicide
298 screening instruments that may be used for training in youth
299 suicide awareness, suicide ~~and~~ prevention, and suicide screening
300 for instructional personnel in elementary school, middle school,
301 and high school. The approved list of materials:

302 (a) Must identify available standardized suicide screening
303 instruments appropriate for use with a school-age population and
304 which have validity and reliability and include information
305 about obtaining instruction in the administration and use of
306 such instruments.

307 (b) ~~(a)~~ Must include training on how to identify
308 appropriate mental health services and how to refer youth and
309 their families to those services.

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

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

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

319 (a) Incorporates 2 hours of training offered pursuant to
320 this section. The training must be included in the existing
321 continuing education or inservice training requirements for
322 instructional personnel and may not add to the total hours
323 currently required by the department. A school that chooses to
324 participate in the training must require all instructional
325 personnel to participate.

326 (b) Has at least two school-based staff members certified
327 or otherwise deemed competent in the use of a suicide screening
328 instrument approved pursuant to paragraph (1) (a) and has a
329 policy to use such suicide risk screening instrument to evaluate
330 a student's suicide risk before requesting the initiation of, or
331 initiating, an involuntary examination due to concerns about
332 that student's suicide risk.

333 (3) A school that meets the criteria in subsection (2)
334 ~~participates in the suicide awareness and prevention training~~
335 ~~pursuant to this section~~ must report its compliance
336 ~~participation~~ to the department. The department shall keep an
337 updated record of all Suicide Prevention Certified Schools and

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338 shall post the list of these schools on the department's
339 website. Each school shall also post on its own website whether
340 it is a Suicide Prevention Certified School, and each school
341 district shall post on its district website a list of the
342 suicide prevention certified schools in that district.

343 (4) A person has no cause of action for any loss or damage
344 caused by an act or omission resulting from the implementation
345 of this section or resulting from any training required by this
346 section unless the loss or damage was caused by willful or
347 wanton misconduct. This section does not create any new duty of
348 care or basis of liability.

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

351 Section 8. For the purpose of incorporating the amendment
352 made by this act to section 490.0147, Florida Statutes, in a
353 reference thereto, paragraph (u) of subsection (1) of section
354 490.009, Florida Statutes, is reenacted to read:

355 490.009 Discipline.—

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

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

361 Section 9. For the purpose of incorporating the amendment
362 made by this act to section 491.0147, Florida Statutes, in a

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363 reference thereto, paragraph (u) of subsection (1) of section
364 491.009, Florida Statutes, is reenacted to read:

365 491.009 Discipline.—

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

368 (u) Failure of the licensee, registered intern, or
369 certificateholder to maintain in confidence a communication made
370 by a patient or client in the context of such services, except
371 as provided in s. 491.0147.

372 Section 10. This act shall take effect July 1, 2019.

373

374 -----

375 **T I T L E A M E N D M E N T**

376 Remove everything before the enacting clause and insert:

377 An act relating to mental health; amending s. 394.4615, F.S.;
378 requiring service providers to disclose information from a
379 clinical record under certain circumstances relating to threats
380 to cause seriously bodily injury or death; amending s. 394.463,
381 F.S.; revising deadlines for submission of documentation
382 regarding involuntary examinations; requiring additional
383 information be included in reports to the department; requiring
384 the department to report to the Governor and Legislature every
385 two years on data collected from such reports; amending s.
386 394.917, F.S.; revising the purpose of civil commitment of
387 sexually violent predators to the department after completion of

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388 their criminal incarceration sentences; amending s. 456.059,
389 F.S.; requiring psychiatrists to disclose certain patient
390 communications for purposes of notifying law enforcement
391 agencies of certain threats; requiring the notified law
392 enforcement agency to take appropriate action to prevent the
393 risk of harm to the victim; providing psychiatrists with
394 immunity from specified liability and actions under certain
395 circumstances; amending s. 490.0147, F.S.; requiring
396 psychologists to disclose certain patient or client
397 communications for purposes of notifying law enforcement
398 agencies of certain threats; requiring the notified law
399 enforcement agency to take appropriate action to prevent the
400 risk of harm to the victim; providing psychologists with
401 immunity from specified liability and actions under certain
402 circumstances; amending s. 491.0147, F.S.; requiring certain
403 license holders and certificate holders to disclose certain
404 patient or client communications for purposes of notifying law
405 enforcement agencies of certain threats; requiring the notified
406 law enforcement agency to take appropriate action to prevent the
407 risk of harm to the victim; providing such persons with immunity
408 from specified liability and actions; amending s. 1012.583,
409 F.S.; revising responsibilities of the Department of Education
410 and the Statewide Office for Suicide Prevention; revising
411 criteria for designation as a Suicide Prevention Certified
412 School; requiring that the department, schools, and school

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 361 (2019)

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413 | districts post certain information regarding such schools be
414 | posted on their respective websites; reenacting s. 490.009,
415 | F.S., relating to discipline of psychiatrists; reenacting s.
416 | 491.009, F.S., relating to discipline of psychologists;
417 | providing an effective date.