

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Infrastructure and Security

BILL: SB 7048

INTRODUCER: Children, Families, and Elder Affairs Committee

SUBJECT: Disclosure of Confidential Records

DATE: March 19, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Delia</u>	<u>Hendon</u>		CF Submitted as Committee Bill
1.	<u>Price</u>	<u>Miller</u>	<u>IS</u>	Pre-meeting
2.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

I. Summary:

SB 7048 requires that when a patient communicates a specific threat against an identifiable individual to a mental health service provider, the provider must release information from the clinical record of the patient sufficient to inform the threatened individual. The provider must also inform law enforcement of the threat.

The bill provides immunity from civil or criminal liability to the administrator of a mental health facility, psychiatrists, psychologists, social workers, and other treatment providers who disclose information conveyed to them by a patient communicating a threat to a specific, readily identifiable third party.

The fiscal impact on the state is indeterminate, and the bill has an effective date of July 1, 2019.

II. Present Situation:

Clinical Records and Confidentiality

Clinical records maintained by mental health facilities in Florida “include[] all medical records, progress notes, charts, and admission and discharge data, and all other information recorded by facility staff which pertains to the patient’s hospitalization or treatment¹.” Clinical records are confidential and exempt by statute.² Instances in which clinical records must be disclosed to certain individuals include:

- Authorization from patient or guardian
- Authorization from patient’s attorney needed “for adequate representation”
- Court order
- The Department of Corrections, if the patient is committed to, or is to be returned to, the Department of Corrections from the Department of Children and Families.³

Therapist-Client Privilege

In 1996, the U.S. Supreme Court established a federal psychotherapist-patient privilege protecting a patient’s confidential communication with a psychotherapist in the course of treatment or diagnosis.⁴ The privilege protects a patient’s confidential communication from compelled disclosure.⁵ The majority of states have laws that either permit or require mental health professionals to disclose otherwise confidential information received from patients who the professional reasonably believes may become violent.⁶

Tarasoff and the Duty to Protect

In *Tarasoff v. Regents of the University of California*,⁷ a University of California (UC) Berkeley student, Prosenjit Poddar, told his therapist of his plan to purchase a gun and murder another student, Tatiana Tarasoff.⁸ The therapist informed the campus police of the threat but neither the police nor the therapist warned Tarasoff directly.⁹ Poddar proceeded to carry out his plan and murder Tarasoff roughly two months later. Tarasoff’s parents sued the UC Regents and the Supreme Court of California ultimately developed what is now known as a *Tarasoff* duty: “The general formulation is that a mental health worker is obligated promptly to notify either the potential victim or the police when a patient makes an explicit threat of serious physical harm against a readily identifiable third party”¹⁰

¹ Section 394.4615, F.S.

² *Id.*

³ Section 394.4615(2), F.S.

⁴ See *Jaffee v. Redmond*, 518 U.S. 1 (1996).

⁵ *Id.*

⁶ Edwards, Griffin Sims, Database of State Tarasoff Laws (February 11, 2010), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1551505 (last visited February 16, 2019).

⁷ 551 P.2d 334 (Cal. 1976).

⁸ *Id.*

⁹ *Id.*

¹⁰ Paul B. Herbert & Kathryn A. Young, *Tarasoff at Twenty-Five*, 30 J. Am. Acad. Psychiatry L. 275, 277 (2002).

The *Tarasoff* duty has expanded into many different forms and requirements among the different states.¹¹ There is no blanket federal duty to warn or protect; instead, there is substantial state-by-state variation in whether and how the duties are defined and codified. There are three general categories of states: those that mandate some duty to warn or protect (and that often specify whether law enforcement, the victim, or a combination should be “warned,” generally considered ‘mandatory’ states); those that allow therapists to warn by protecting them from liability for breach of confidentiality if they do so, but do not require them to issue a warning (permissive states); and those that offer no statutory or case law guidance.¹²

Duties of Mental Health Professionals in Florida

Florida is considered a ‘permissive’ duty to warn/protect state: mental health providers are given discretion to breach confidentiality with patients and warn of a threat to a third party where a patient has “declared an intention to harm other persons.”¹³ The Legislature first added a dangerous patient exception to the confidentiality requirement for psychiatrists,¹⁴ and later for psychologists¹⁵ and for social workers and other mental health professionals.¹⁶ Communications between a licensed or certified mental health worker and the patient or client are confidential, and may be waived, only when “there is a clear and immediate probability of physical harm to the patient or client, to other individuals, or to society...” and the licensed professional communicates the information “only to the potential victim, appropriate family member, or ...other appropriate authorities.”¹⁷

III. Effect of Proposed Changes:

Section 1 amends section 394.4615, F.S., requiring the release of confidential information from a patient’s clinical record sufficient to inform a third party of a specific threat to cause serious bodily injury or death to the individual. The threat must be communicated to both law enforcement and the threatened individual by the administrator of a mental health treatment facility or hospital once the patient has made the threat to a service provider at the facility or hospital.

Section 2 amends section 456.059, F.S., requiring a psychiatrist to disclose patient communications to the extent necessary to warn law enforcement and a potential victim of a threat of serious bodily injury or death made by the patient of the threat. The bill provides that such disclosure of confidential communications may not be the basis of legal action or any civil or criminal liability against the psychiatrist.

Section 3 amends section 490.0147, F.S., requiring a psychologist to disclose patient communications to the extent necessary to warn law enforcement and a potential victim of a threat of serious bodily injury or death made by the patient of the threat. The bill provides that

¹¹ *Supra* at Note 6.

¹² *Id.*

¹³ Section 394.4615, F.S.

¹⁴ Section 456.059, F.S.

¹⁵ Section 490.0147, F.S.

¹⁶ Section 491.0147, F.S.

¹⁷ *Id.*

such disclosure of confidential communications may not be the basis of legal action or any civil or criminal liability against the psychologist.

Section 4 amends section 491.0147, F.S., requiring a health care professional licensed under Chapter 491, Florida Statutes, to disclose patient communications to the extent necessary to warn law enforcement and a potential victim of a threat of serious bodily injury or death made by the patient of the threat. The bill provides that such disclosure of confidential communications may not be the basis of legal action or any civil or criminal liability against the health care professional.

Section 5 reenacts paragraph (u) of section 490.009(1), F.S., for the purpose of incorporating changes made by the bill to s. 490.0147, F.S.

Section 6 reenacts paragraph (u) of section 491.009(1), F.S., for the purpose of incorporating changes made by the bill to s. 491.0147, F.S.

Section 7 provides an effective date of July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Local law enforcement offices may need additional training and/or to add personnel to handle what may be an increased threat response from mandatory reporting. However, the impact of these potential needs cannot be determined.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 394.4615, 456.059, 490.0147, and 491.0147.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.