

By the Committee on Children, Families, and Elder Affairs

586-02489-19

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1 A bill to be entitled
2 An act relating to disclosure of confidential records;
3 amending s. 394.4615, F.S.; requiring service
4 providers to disclose information from a clinical
5 record under certain circumstances relating to threats
6 to cause seriously bodily injury or death; amending s.
7 456.059, F.S.; requiring, rather than authorizing,
8 psychiatrists to disclose certain patient
9 communications for purposes of notifying potential
10 victims and law enforcement agencies of certain
11 threats; amending s. 490.0147, F.S.; requiring, rather
12 than authorizing, psychologists to disclose certain
13 patient and client communications for purposes of
14 notifying potential victims and law enforcement
15 agencies of certain threats; providing psychologists
16 with immunity from specified liability and actions
17 under certain circumstances; amending s. 491.0147,
18 F.S.; requiring, rather than authorizing, certain
19 license holders and certificate holders to disclose
20 certain patient and client communications for purposes
21 of notifying potential victims and law enforcement
22 agencies of certain threats; providing such persons
23 with immunity from specified liability and actions;
24 reenacting s. 490.009, F.S., relating to discipline of
25 psychiatrists; reenacting s. 491.009, F.S., relating
26 to discipline of psychologists; providing an effective
27 date.

28
29 Be It Enacted by the Legislature of the State of Florida:

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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.—

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

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

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

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59 **(b)** For the purpose of determining whether a person meets
60 the criteria for involuntary outpatient placement or for
61 preparing the proposed treatment plan pursuant to s. 394.4655,
62 the clinical record may be released to the state attorney, the
63 public defender or the patient's private legal counsel, the
64 court, and to the appropriate mental health professionals,
65 including the service provider identified in s.
66 394.4655(7)(b)2., in accordance with state and federal law.

67 Section 2. Section 456.059, Florida Statutes, is amended to
68 read:

69 456.059 Communications confidential; exceptions.—
70 Communications between a patient and a psychiatrist, as defined
71 in s. 394.455, shall be held confidential and may ~~shall~~ not be
72 disclosed except upon the request of the patient or the
73 patient's legal representative. Provision of psychiatric records
74 and reports are ~~shall be~~ governed by s. 456.057. Notwithstanding
75 any other provision of this section or s. 90.503, when ~~where~~:

76 (1) A patient is engaged in a treatment relationship with a
77 psychiatrist;

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

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

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88 the psychiatrist shall ~~may~~ disclose patient communications to
89 the extent necessary to warn any potential victim or to
90 communicate the threat to a law enforcement agency. A
91 psychiatrist's disclosure of confidential communications when
92 communicating a threat pursuant to this section may not be the
93 basis of any legal action or criminal or civil liability against
94 the psychiatrist ~~No civil or criminal action shall be~~
95 ~~instituted, and there shall be no liability on account of~~
96 ~~disclosure of otherwise confidential communications by a~~
97 ~~psychiatrist in disclosing a threat pursuant to this section.~~

98 Section 3. Section 490.0147, Florida Statutes, is amended
99 to read:

100 490.0147 Confidentiality and privileged communications.—

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

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

110 (b) ~~(2)~~ When the patient or client agrees to the waiver, in
111 writing, or when more than one person in a family is receiving
112 therapy, when each family member agrees to the waiver, in
113 writing.

114 (2) Such privilege must be waived, and the psychologist
115 shall disclose patient and client communications to the extent
116 necessary to warn any potential victim and to communicate the

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117 threat to a law enforcement agency, if a patient or client has
 118 communicated to the psychologist a specific threat to cause
 119 serious bodily injury or death to an identified or readily
 120 available person, and the psychologist makes a clinical judgment
 121 that the patient or client has the apparent intent and ability
 122 to imminently or immediately carry out such threat. A
 123 psychologist's disclosure of confidential communications when
 124 communicating a threat pursuant to this subsection may not be
 125 the basis of any legal action or criminal or civil liability
 126 against the psychologist

127 ~~(3) When there is a clear and immediate probability of~~
 128 ~~physical harm to the patient or client, to other individuals, or~~
 129 ~~to society and the person licensed under this chapter~~
 130 ~~communicates the information only to the potential victim,~~
 131 ~~appropriate family member, or law enforcement or other~~
 132 ~~appropriate authorities.~~

133 Section 4. Section 491.0147, Florida Statutes, is amended
 134 to read:

135 491.0147 Confidentiality and privileged communications.—Any
 136 communication between any person licensed or certified under
 137 this chapter and her or his patient or client is ~~shall be~~
 138 confidential.

139 (1) This privilege ~~secrecy~~ may be waived under the
 140 following conditions:

141 (a) ~~(1)~~ When the person licensed or certified under this
 142 chapter is a party defendant to a civil, criminal, or
 143 disciplinary action arising from a complaint filed by the
 144 patient or client, in which case the waiver shall be limited to
 145 that action.

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

150 (2) This privilege must be waived, and the person licensed
151 or certified under this chapter shall disclose patient and
152 client communications to the extent necessary to warn any
153 potential victim and to communicate the threat to a law
154 enforcement agency, if a patient or client has communicated to
155 such person a specific threat to cause serious bodily injury or
156 death to an identified or readily available person, and the
157 person licensed or certified under this chapter makes a clinical
158 judgment that the patient or client has the apparent intent and
159 ability to imminently or immediately carry out such threat. A
160 disclosure of confidential communications by a person licensed
161 or certified under this chapter when communicating a threat
162 pursuant to this subsection may not be the basis of any legal
163 action or criminal or civil liability against such person

164 ~~(3) When, in the clinical judgment of the person licensed~~
165 ~~or certified under this chapter, there is a clear and immediate~~
166 ~~probability of physical harm to the patient or client, to other~~
167 ~~individuals, or to society and the person licensed or certified~~
168 ~~under this chapter communicates the information only to the~~
169 ~~potential victim, appropriate family member, or law enforcement~~
170 ~~or other appropriate authorities. There shall be no liability on~~
171 ~~the part of, and no cause of action of any nature shall arise~~
172 ~~against, a person licensed or certified under this chapter for~~
173 ~~the disclosure of otherwise confidential communications under~~
174 ~~this subsection.~~

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175 Section 5. For the purpose of incorporating the amendment
176 made by this act to section 490.0147, Florida Statutes, in a
177 reference thereto, paragraph (u) of subsection (1) of section
178 490.009, Florida Statutes, is reenacted to read:

179 490.009 Discipline.—

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

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

185 Section 6. For the purpose of incorporating the amendment
186 made by this act to section 491.0147, Florida Statutes, in a
187 reference thereto, paragraph (u) of subsection (1) of section
188 491.009, Florida Statutes, is reenacted to read:

189 491.009 Discipline.—

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

192 (u) Failure of the licensee, registered intern, or
193 certificateholder to maintain in confidence a communication made
194 by a patient or client in the context of such services, except
195 as provided in s. 491.0147.

196 Section 7. This act shall take effect July 1, 2019.