

1                                   A bill to be entitled  
2           An act relating to mental health and substance abuse;  
3           amending s. 119.0712, F.S.; authorizing the release of  
4           certain information to a receiving facility, hospital,  
5           or licensed detoxification or addictions receiving  
6           facility only for a specified purpose; amending s.  
7           394.459, F.S.; revising the conditions under which a  
8           patient's communication with persons outside of a  
9           receiving facility may be restricted; revising the  
10          conditions under which a patient's sealed and unopened  
11          incoming or outgoing correspondence may be restricted;  
12          revising the conditions under which a patient's  
13          visitation with persons outside of a receiving  
14          facility may be restricted; revising the frequency  
15          with which the restriction on a patient's right to  
16          communicate or receive visitors must be reviewed;  
17          amending s. 394.4599, F.S.; requiring a receiving  
18          facility to notify specified emergency contacts of  
19          individuals who are being involuntarily held for  
20          examination; amending s. 394.4615, F.S.; requiring  
21          receiving facilities to document that an option to  
22          authorize the release of specified information has  
23          been provided, within a specified timeframe, to  
24          individuals admitted on a voluntary basis; amending s.  
25          394.463, F.S.; requiring that reports issued by law

26 enforcement officers when delivering a person to a  
27 receiving facility contain certain information related  
28 to emergency contacts; limiting the use of certain  
29 information by a receiving facility; requiring the  
30 Department of Children and Families to receive and  
31 maintain reports relating to the transportation of  
32 patients; revising a prohibition on releasing a  
33 patient without certain documented approval;  
34 authorizing a receiving facility to postpone the  
35 release of a patient if certain requirements are met;  
36 prohibiting certain activities relating to examination  
37 and treatment; providing a criminal penalty; amending  
38 s. 394.468, F.S.; requiring that discharge planning  
39 and procedures include and document the consideration  
40 of specified factors and actions; amending s.  
41 394.9086; revising meeting requirements of the  
42 Commission on Mental Health and Substance Abuse;  
43 authorizing reimbursement for per diem and travel  
44 expenses for members of the commission; authorizing  
45 the commission to access certain information or  
46 records; extending the date by which the commission  
47 must submit a certain interim report to the  
48 Legislature and Governor; amending s. 397.601, F.S.;  
49 requiring service providers to document that an option  
50 to authorize the release of specified information has

51 |       been provided, within a specified timeframe, to  
52 |       individuals admitted on a voluntary basis; amending s.  
53 |       397.6772, F.S.; requiring law enforcement officers to  
54 |       include certain information regarding emergency  
55 |       contacts in reports relating to the delivery of a  
56 |       person to a hospital or licensed detoxification or  
57 |       addictions receiving facility; limiting the use of  
58 |       certain information by a hospital or licensed  
59 |       detoxification or addictions receiving facility;  
60 |       requiring a law enforcement officer to provide certain  
61 |       notification and document such notification in a  
62 |       certain report; providing an effective date.

63 |  
64 | Be It Enacted by the Legislature of the State of Florida:

65 |  
66 |       Section 1. Paragraph (d) of subsection (2) of section  
67 |       119.0712, Florida Statutes, is amended to read:

68 |       119.0712 Executive branch agency-specific exemptions from  
69 |       inspection or copying of public records.—

70 |       (2) DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES.—

71 |       (d)1. Emergency contact information contained in a motor  
72 |       vehicle record is confidential and exempt from s. 119.07(1) and  
73 |       s. 24(a), Art. I of the State Constitution.

74 |       2. Without the express consent of the person to whom such  
75 |       emergency contact information applies, the emergency contact

76 information contained in a motor vehicle record may be released  
 77 ~~only~~ to:

78 a. Law enforcement agencies for purposes of contacting  
 79 those listed in the event of an emergency.

80 b. A receiving facility, hospital, or licensed  
 81 detoxification or addictions receiving facility pursuant to ss.  
 82 394.463(2)(a) and 397.6772(1)(a) for the sole purpose of  
 83 informing a patient's emergency contacts of the patient's  
 84 whereabouts.

85 Section 2. Paragraphs (d), (e), and (f) of subsection (5)  
 86 of section 394.459, Florida Statutes, are redesignated as  
 87 paragraphs (e), (f), and (g), respectively, and paragraphs (a),  
 88 (b), and (c) of that subsection are amended to read:

89 394.459 Rights of patients.—

90 (5) COMMUNICATION, ABUSE REPORTING, AND VISITS.—

91 (a) Each person receiving services in a facility providing  
 92 mental health services under this part has the right to  
 93 communicate freely and privately with persons outside the  
 94 facility unless a qualified professional determines ~~it is~~  
 95 ~~determined~~ that such communication is likely to be harmful to  
 96 the person or others in a manner directly related to the  
 97 person's clinical well-being, the clinical well-being of other  
 98 patients, or the general safety of facility staff. Each facility  
 99 shall make available as soon as reasonably possible to persons  
 100 receiving services a telephone that allows for free local calls

101 and access to a long-distance service. A facility is not  
102 required to pay the costs of a patient's long-distance calls.  
103 The telephone shall be readily accessible to the patient and  
104 shall be placed so that the patient may use it to communicate  
105 privately and confidentially. The facility may establish  
106 reasonable rules for the use of this telephone, provided that  
107 the rules do not interfere with a patient's access to a  
108 telephone to report abuse pursuant to paragraph (f) ~~(e)~~.

109 (b) Each patient admitted to a facility under the  
110 provisions of this part shall be allowed to receive, send, and  
111 mail sealed, unopened correspondence; and no patient's incoming  
112 or outgoing correspondence shall be opened, delayed, held, or  
113 censored by the facility unless a qualified professional  
114 determines that such correspondence is likely to be harmful to  
115 the patient or others in a manner directly related to the  
116 patient's clinical well-being, the clinical well-being of other  
117 patients, or the general safety of facility staff. If there is  
118 reason to believe that such correspondence ~~it~~ contains items or  
119 substances which may be harmful to the patient or others, ~~in~~  
120 ~~which case~~ the facility administrator may direct reasonable  
121 examination of such correspondence ~~mail~~ and may regulate the  
122 disposition of such items or substances.

123 (c) Each facility must permit immediate access to any  
124 patient, subject to the patient's right to deny or withdraw  
125 consent at any time, by the patient's family members, guardian,

126 guardian advocate, representative, Florida statewide or local  
 127 advocacy council, or attorney, unless a qualified professional  
 128 determines that such access would be detrimental to the patient  
 129 in a manner directly related to the patient's clinical well-  
 130 being, the clinical well-being of other patients, or the general  
 131 safety of facility staff.

132 (d) If a patient's right to communicate with outside  
 133 persons; receive, send, or mail sealed, unopened correspondence;  
 134 ~~or to~~ receive visitors is restricted by the facility, written  
 135 notice of such restriction and the reasons for the restriction  
 136 shall be served on the patient, the patient's attorney, and the  
 137 patient's guardian, guardian advocate, or representative; a  
 138 qualified professional must document such restriction within 24  
 139 hours; and such restriction shall be recorded on the patient's  
 140 clinical record with the reasons therefor. The restriction of a  
 141 patient's right to communicate or to receive visitors shall be  
 142 reviewed at least every 3 ~~7~~ days. The right to communicate or  
 143 receive visitors shall not be restricted as a means of  
 144 punishment. Nothing in this paragraph shall be construed to  
 145 limit the provisions of paragraph (e) ~~(d)~~.

146 Section 3. Paragraph (b) of subsection (2) of section  
 147 394.4599, Florida Statutes, is amended to read:

148 394.4599 Notice.—

149 (2) INVOLUNTARY ADMISSION.—

150 (b) A receiving facility shall give prompt notice of the

151 | whereabouts of an individual who is being involuntarily held for  
 152 | examination to the individual's guardian, guardian advocate,  
 153 | health care surrogate or proxy, attorney or representative, or  
 154 | other emergency contact identified through electronic databases  
 155 | pursuant to s. 394.463(2)(a) by telephone or in person within 24  
 156 | hours after the individual's arrival at the facility. Contact  
 157 | attempts shall be documented in the individual's clinical record  
 158 | and shall begin as soon as reasonably possible after the  
 159 | individual's arrival.

160 | Section 4. Paragraph (a) of subsection (2) of section  
 161 | 394.4615, Florida Statutes, is amended to read:

162 | 394.4615 Clinical records; confidentiality.—

163 | (2) The clinical record shall be released when:

164 | (a) The patient or the patient's guardian authorizes the  
 165 | release. The guardian or guardian advocate shall be provided  
 166 | access to the appropriate clinical records of the patient. The  
 167 | patient or the patient's guardian or guardian advocate may  
 168 | authorize the release of information and clinical records to  
 169 | appropriate persons to ensure the continuity of the patient's  
 170 | health care or mental health care. A receiving facility must  
 171 | document that, within 24 hours after admission, an individual  
 172 | admitted on a voluntary basis has been provided with the option  
 173 | to authorize the release of information from his or her clinical  
 174 | record to the individual's health care surrogate or proxy,  
 175 | attorney, representative, or other known emergency contact.

176 Section 5. Paragraphs (a), (e), (f), and (g) of subsection  
177 (2) of section 394.463, Florida Statutes, are amended, and  
178 subsection (5) is added to that section, to read:

179 394.463 Involuntary examination.—

180 (2) INVOLUNTARY EXAMINATION.—

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

183 1. A circuit or county court may enter an ex parte order  
184 stating that a person appears to meet the criteria for  
185 involuntary examination and specifying the findings on which  
186 that conclusion is based. The ex parte order for involuntary  
187 examination must be based on written or oral sworn testimony  
188 that includes specific facts that support the findings. If other  
189 less restrictive means are not available, such as voluntary  
190 appearance for outpatient evaluation, a law enforcement officer,  
191 or other designated agent of the court, shall take the person  
192 into custody and deliver him or her to an appropriate, or the  
193 nearest, facility within the designated receiving system  
194 pursuant to s. 394.462 for involuntary examination. The order of  
195 the court shall be made a part of the patient's clinical record.  
196 A fee may not be charged for the filing of an order under this  
197 subsection. A facility accepting the patient based on this order  
198 must send a copy of the order to the department within 5 working  
199 days. The order may be submitted electronically through existing  
200 data systems, if available. The order shall be valid only until

201 the person is delivered to the facility or for the period  
202 specified in the order itself, whichever comes first. If a time  
203 limit is not specified in the order, the order is valid for 7  
204 days after the date that the order was signed.

205 2. A law enforcement officer shall take a person who  
206 appears to meet the criteria for involuntary examination into  
207 custody and deliver the person or have him or her delivered to  
208 an appropriate, or the nearest, facility within the designated  
209 receiving system pursuant to s. 394.462 for examination. The  
210 officer shall execute a written report detailing the  
211 circumstances under which the person was taken into custody,  
212 which must be made a part of the patient's clinical record. The  
213 report must include all emergency contact information for the  
214 person that is readily accessible to the law enforcement  
215 officer, including information available through electronic  
216 databases maintained by the Department of Law Enforcement or by  
217 the Department of Highway Safety and Motor Vehicles. Such  
218 emergency contact information may be used by a receiving  
219 facility only for the purpose of informing listed emergency  
220 contacts of a patient's whereabouts pursuant to s.  
221 119.0712(2)(d). Any facility accepting the patient based on this  
222 report must send a copy of the report to the department within 5  
223 working days.

224 3. A physician, a physician assistant, a clinical  
225 psychologist, a psychiatric nurse, an advanced practice

226 registered nurse registered under s. 464.0123, a mental health  
227 counselor, a marriage and family therapist, or a clinical social  
228 worker may execute a certificate stating that he or she has  
229 examined a person within the preceding 48 hours and finds that  
230 the person appears to meet the criteria for involuntary  
231 examination and stating the observations upon which that  
232 conclusion is based. If other less restrictive means, such as  
233 voluntary appearance for outpatient evaluation, are not  
234 available, a law enforcement officer shall take into custody the  
235 person named in the certificate and deliver him or her to the  
236 appropriate, or nearest, facility within the designated  
237 receiving system pursuant to s. 394.462 for involuntary  
238 examination. The law enforcement officer shall execute a written  
239 report detailing the circumstances under which the person was  
240 taken into custody. The report must include all emergency  
241 contact information for the person that is readily accessible to  
242 the law enforcement officer, including information available  
243 through electronic databases maintained by the Department of Law  
244 Enforcement or by the Department of Highway Safety and Motor  
245 Vehicles. Such emergency contact information may be used by a  
246 receiving facility only for the purpose of informing listed  
247 emergency contacts of a patient's whereabouts pursuant to s.  
248 119.0712(2)(d). The report and certificate shall be made a part  
249 of the patient's clinical record. Any facility accepting the  
250 patient based on this certificate must send a copy of the

251 certificate to the department within 5 working days. The  
252 document may be submitted electronically through existing data  
253 systems, if applicable.

254  
255 When sending the order, report, or certificate to the  
256 department, a facility shall, at a minimum, provide information  
257 about which action was taken regarding the patient under  
258 paragraph (g), which information shall also be made a part of  
259 the patient's clinical record.

260 (e) The department shall receive and maintain the copies  
261 of ex parte orders, involuntary outpatient services orders  
262 issued pursuant to s. 394.4655, involuntary inpatient placement  
263 orders issued pursuant to s. 394.467, professional certificates,  
264 ~~and~~ law enforcement officers' reports, and reports relating to  
265 the transportation of patients. These documents shall be  
266 considered part of the clinical record, governed by the  
267 provisions of s. 394.4615. These documents shall be used to  
268 prepare annual reports analyzing the data obtained from these  
269 documents, without information identifying patients, and shall  
270 provide copies of reports to the department, the President of  
271 the Senate, the Speaker of the House of Representatives, and the  
272 minority leaders of the Senate and the House of Representatives.

273 (f) A patient shall be examined by a physician or a  
274 clinical psychologist, or by a psychiatric nurse performing  
275 within the framework of an established protocol with a

276 | psychiatrist at a facility without unnecessary delay to  
277 | determine if the criteria for involuntary services are met.  
278 | Emergency treatment may be provided upon the order of a  
279 | physician if the physician determines that such treatment is  
280 | necessary for the safety of the patient or others. The patient  
281 | may not be released by the receiving facility or its contractor  
282 | without the documented approval of a psychiatrist or a clinical  
283 | psychologist or, if the receiving facility is owned or operated  
284 | by a hospital, ~~or~~ health system, or nationally accredited  
285 | community mental health center, the release may also be approved  
286 | by a psychiatric nurse performing within the framework of an  
287 | established protocol with a psychiatrist, or an attending  
288 | emergency department physician with experience in the diagnosis  
289 | and treatment of mental illness after completion of an  
290 | involuntary examination pursuant to this subsection. A  
291 | psychiatric nurse may not approve the release of a patient if  
292 | the involuntary examination was initiated by a psychiatrist  
293 | unless the release is approved by the initiating psychiatrist.

294 | (g) The examination period must be for up to 72 hours. For  
295 | a minor, the examination shall be initiated within 12 hours  
296 | after the patient's arrival at the facility. Within the  
297 | examination period ~~or, if the examination period ends on a~~  
298 | ~~weekend or holiday, no later than the next working day~~  
299 | ~~thereafter~~, one of the following actions must be taken, based on  
300 | the individual needs of the patient:

301 1. The patient shall be released, unless he or she is  
 302 charged with a crime, in which case the patient shall be  
 303 returned to the custody of a law enforcement officer;

304 2. The patient shall be released, subject to subparagraph  
 305 1., for voluntary outpatient treatment;

306 3. The patient, unless he or she is charged with a crime,  
 307 shall be asked to give express and informed consent to placement  
 308 as a voluntary patient and, if such consent is given, the  
 309 patient shall be admitted as a voluntary patient; or

310 4. A petition for involuntary services shall be filed in  
 311 the circuit court if inpatient treatment is deemed necessary or  
 312 with the criminal county court, as defined in s. 394.4655(1), as  
 313 applicable. When inpatient treatment is deemed necessary, the  
 314 least restrictive treatment consistent with the optimum  
 315 improvement of the patient's condition shall be made available.  
 316 When a petition is to be filed for involuntary outpatient  
 317 placement, it shall be filed by one of the petitioners specified  
 318 in s. 394.4655(4) (a). A petition for involuntary inpatient  
 319 placement shall be filed by the facility administrator. If a  
 320 patient's 72-hour examination period ends on a weekend or  
 321 holiday, and the receiving facility:

322 a. Intends to file a petition for involuntary services,  
 323 such patient may be held at the receiving facility through the  
 324 next working day thereafter and such petition for involuntary  
 325 services must be filed no later than such date. If the receiving

326 facility fails to file a petition for involuntary services at  
 327 the close of the next working day, the patient shall be released  
 328 from the receiving facility.

329 b. Does not intend to file a petition for involuntary  
 330 services, the receiving facility may postpone release of such  
 331 patient until the next working day thereafter only if a  
 332 qualified professional documents that adequate discharge  
 333 planning and procedures in accordance with s. 394.468 are not  
 334 possible until the next working day.

335 (5) UNLAWFUL ACTIVITIES RELATING TO EXAMINATION AND  
 336 TREATMENT; PENALTIES.-

337 (a) A person may not knowingly and willfully:

338 1. Furnish false information for the purpose of obtaining  
 339 emergency or other involuntary admission of another person; or

340 2. Cause or otherwise secure, or conspire with or assist  
 341 another person to cause or secure, any emergency or other  
 342 involuntary procedure of another person under false pretenses.

343 3. Cause, or conspire with or assist another to cause,  
 344 without lawful justification, the denial to any person of any  
 345 right accorded pursuant to this chapter.

346 (b) A person who violates this subsection commits a  
 347 misdemeanor of the first degree, punishable as provided in s.  
 348 775.082 and by a fine not exceeding \$5,000.

349 Section 6. Section 394.468, Florida Statutes, is amended  
 350 to read:

351 394.468 Admission and discharge procedures.—

352 (1) Admission and discharge procedures and treatment  
 353 policies of the department are governed solely by this part.  
 354 Such procedures and policies shall not be subject to control by  
 355 court procedure rules. The matters within the purview of this  
 356 part are deemed to be substantive, not procedural.

357 (2) Discharge planning and procedures for any patient's  
 358 release from a receiving facility or treatment facility must  
 359 include and document consideration of, at a minimum:

360 (a) Followup behavioral health appointments;

361 (b) Information on how to obtain prescribed medications;

362 and

363 (c) Information pertaining to:

364 1. Available living arrangements;

365 2. Transportation; and

366 3. Recovery support opportunities.

367 Section 7. Paragraph (c) of subsection (3) and subsection  
 368 (5) of section 394.9086, Florida Statutes, are amended, and  
 369 paragraphs (d) and (e) are added to subsection (3) of that  
 370 section, to read:

371 394.9086 Commission on Mental Health and Substance Abuse.—

372 (3) MEMBERSHIP; TERM LIMITS; MEETINGS.—

373 (c) The commission shall convene no later than September  
 374 1, 2021. The commission shall meet quarterly or upon the call of  
 375 the chair. The commission ~~may~~ shall hold its meetings in person

376 | at locations throughout the state or via teleconference or other  
 377 | electronic means.

378 | (d) Members of the commission are entitled to receive  
 379 | reimbursement for per diem and travel expenses pursuant to s.  
 380 | 112.061.

381 | (e) Notwithstanding any other law, the commission may  
 382 | request and shall be provided with access to any information or  
 383 | records, including exempt or confidential and exempt information  
 384 | or records, which are necessary for the commission to carry out  
 385 | its duties. Information or records obtained by the commission  
 386 | which are otherwise exempt or confidential and exempt shall  
 387 | retain such exempt or confidential and exempt status, and the  
 388 | commission may not disclose any such information or records.

389 | (5) REPORTS.—By January 1, 2023 ~~September 1, 2022~~, the  
 390 | commission shall submit an interim report to the President of  
 391 | the Senate, the Speaker of the House of Representatives, and the  
 392 | Governor containing its findings and recommendations on how to  
 393 | best provide and facilitate mental health and substance abuse  
 394 | services in the state. The commission shall submit its final  
 395 | report to the President of the Senate, the Speaker of the House  
 396 | of Representatives, and the Governor by September 1, 2023.

397 | Section 8. Subsection (5) is added to section 397.601,  
 398 | Florida Statutes, to read:

399 | 397.601 Voluntary admissions.—

400 | (5) A service provider must document that, within 24 hours

401 after admission, an individual admitted on a voluntary basis has  
 402 been provided with the option to authorize the release of  
 403 information from his or her clinical record to the individual's  
 404 health care surrogate or proxy, attorney, representative, or  
 405 other known emergency contact.

406 Section 9. Section 397.6772, Florida Statutes, is amended  
 407 to read:

408 397.6772 Protective custody without consent.—

409 (1) If a person in circumstances which justify protective  
 410 custody as described in s. 397.677 fails or refuses to consent  
 411 to assistance and a law enforcement officer has determined that  
 412 a hospital or a licensed detoxification or addictions receiving  
 413 facility is the most appropriate place for the person, the  
 414 officer may, after giving due consideration to the expressed  
 415 wishes of the person:

416 (a) Take the person to a hospital or to a licensed  
 417 detoxification or addictions receiving facility against the  
 418 person's will but without using unreasonable force. The officer  
 419 shall use the standard form developed by the department pursuant  
 420 to s. 397.321 to execute a written report detailing the  
 421 circumstances under which the person was taken into custody. The  
 422 report must include all emergency contact information for the  
 423 person that is readily accessible to the law enforcement  
 424 officer, including information available through electronic  
 425 databases maintained by the Department of Law Enforcement or by

426 the Department of Highway Safety and Motor Vehicles. Such  
 427 emergency contact information may be used by a hospital or  
 428 licensed detoxification or addictions receiving facility only  
 429 for the purpose of informing listed emergency contacts of a  
 430 patient's whereabouts pursuant to s. 119.0712(2)(d). The written

431 report shall be included in the patient's clinical record; or

432 (b) In the case of an adult, detain the person for his or  
 433 her own protection in any municipal or county jail or other  
 434 appropriate detention facility.

435  
 436 Such detention is not to be considered an arrest for any  
 437 purpose, and no entry or other record may be made to indicate  
 438 that the person has been detained or charged with any crime. The  
 439 officer in charge of the detention facility must notify the  
 440 nearest appropriate licensed service provider within the first 8  
 441 hours after detention that the person has been detained. It is  
 442 the duty of the detention facility to arrange, as necessary, for  
 443 transportation of the person to an appropriate licensed service  
 444 provider with an available bed. Persons taken into protective  
 445 custody must be assessed by the attending physician within the  
 446 72-hour period and without unnecessary delay, to determine the  
 447 need for further services.

448 (2) The law enforcement officer must notify the nearest  
 449 relative of a minor in protective custody and ~~must be notified~~  
 450 ~~by the law enforcement officer,~~ as must notify the nearest

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451 relative or other known emergency contact of an adult, unless  
452 the adult requests that there be no notification. The law  
453 enforcement officer must document such notification, and any  
454 attempts at such notification, in the written report detailing  
455 the circumstances under which the person was taken into custody  
456 as required under paragraph (1)(a).

457 Section 10. This act shall take effect July 1, 2022.