

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 109
SPONSOR(S): Bemby
TIED BILLS: None
IDEN./SIM. BILLS: SB 498
Clinical, Counseling, and Psychotherapy Services

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Civil Justice & Courts Policy Committee	6 Y, 0 N	Bond	De La Paz
2)	Criminal & Civil Justice Policy Council	12 Y, 0 N	Bond	Havlicak
3)	Health Care Regulation Policy Committee		Cicccone	Calamas
4)	Health & Family Services Policy Council			
5)	Policy Council			

SUMMARY ANALYSIS

Under current law, a licensed or certified clinical social worker, marriage and family therapist, or mental health counselor may, but is not required to, disclose confidential communications with their patient or client when the patient or client has threatened physical harm against another person.

This bill provides that a licensed or certified clinical social worker, marriage and family therapist, or mental health counselor who elects to notify a potential victim or law enforcement of a threat of physical harm that has been made by a patient or client may not be sued in civil court by such patient or client for having disclosed the confidential communication wherein the threat was made.

This bill does not appear to have a fiscal impact on state or local government.

The bill provides an effective date of July 1, 2009.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Chapter 491, F.S., regulates the medical practices of persons who are not psychiatrists and who are providing clinical, counseling and psychotherapy services. Regulation is through the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling. The board is housed in the Department of Health. Regulated professions included clinical social work, marriage and family therapy, and mental health counseling.

Like other healthcare professions, communications between patients or clients and the practitioner are generally confidential. The legislative intent for the chapter speaks, in part, to the issue of confidentiality:

The Legislature finds that as society becomes increasingly complex, emotional survival is equal in importance to physical survival. Therefore, in order to preserve the health, safety, and welfare of the public, the Legislature must provide privileged communication for members of the public or those acting on their behalf to encourage needed or desired counseling, clinical and psychotherapy services, or certain other services of a psychological nature to be sought out.¹

Section 491.0147, F.S., provides that "[a]ny communication between any person licensed or certified under this chapter and her or his patient or client shall be confidential." The section then provides three exceptions: where the patient is suing the licensed person, if the patient consents to disclosure, and where there is possibility of physical harm to another. The third exception is the only one affected by this bill. A licensed person who discloses confidential communications, other than those within one of the exceptions, is subject to professional discipline.²

Specifically, subsection (3) of s. 491.0147, F.S., provides that communications between a patient or client and a person licensed or certified under ch. 491, F.S., may be disclosed by the licensed person to others when there is a clear and immediate probability of physical harm to the patient or client, to other individuals, or to society and the person licensed or certified under this chapter communicates the

¹ Section 491.002, F.S.

² Section 491.009(1)(u), F.S., provides for discipline of a licensed person for "[f]ailure of the licensee, registered intern, or certificateholder to maintain in confidence a communication made by a patient or client in the context of such services, except as provided in s. 491.0147."

information only to the potential victim, appropriate family member, or law enforcement or other appropriate authorities.

A decision to waive the confidentiality under s. 491.0147, F.S., is made by the licensed or certified person, not the patient or client. The waiver of confidentiality is permissive in nature, not mandatory. A licensed or certified person who decides not to waive the confidentiality may not be sued by an individual who is harmed when the client or patient follows through with the threat,³ but a licensed or certified person who discloses confidential information about a client or patient without statutory authority may be sued for emotional distress.⁴ The effect of these court decisions is that a licensed or certified person may avoid being sued by never disclosing threats of harm to an innocent third party, but risks suit when warning victims or notifying law enforcement of such threats.

Psychiatrists, who similarly treat persons with mental disorders and who face the same dilemma regarding when to disclose a threat of harm to the victim or law enforcement, are statutorily protected from suit when disclosing a threat to the potential victim or to law enforcement.⁵

Effect of Bill

This bill amends s. 491.0147, F.S., to provide that a licensed or certified clinical social worker, marriage and family therapist, or mental health counselor who elects to notify a potential victim or law enforcement of a threat of physical harm that has been made by a patient or client may not be sued in civil court by such patient or client for having disclosed the confidential communication wherein the threat was made.

B. SECTION DIRECTORY:

Section 1 amends s. 491.0147, F.S., regarding confidential and privileged communications.

Section 2 provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

³ *Green v. Ross*, 691 So.2d 542 (Fla. 2nd DCA 1997) (finding no duty to warn).

⁴ *Gracey v. Eaker*, 837 So.2d 348 (Fla. 2002).

⁵ Section 455.059, F.S., which provides in part: "No civil or criminal action shall be instituted, and there shall be no liability on account of disclosure of otherwise confidential communications by a psychiatrist in disclosing a threat pursuant to this section."

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

None.