

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 Criminal Justice

BILL: CS/SB 1368

INTRODUCER: Health Policy Committee and Senator Ring

SUBJECT: Clinical, Counseling, and Psychotherapy Services

DATE: April 11, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McElhenny	Stovall	HP	Fav/CS
2.	Clodfelter	Cannon	CJ	Pre-meeting
3.			CF	
4.			AP	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|-----------------------------------------|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 1368 updates and revises ch. 491, F.S., which regulates clinical social workers, marriage and family therapists, and mental health counselors. The bill:

- Requires registered interns to remain under supervision.
- Limits intern registration to 5 years, without renewal. Licenses for interns registered before July 1, 2016, expire 60 months after the date of issuance and cannot be renewed.
- Prohibits a person who has held a provisional license from applying for an intern registration in the same profession, and conversely, prohibits a person who has held an intern registration from applying for a provisional license in the same profession. It also ensures that interns could not continually re-register without completing all requirements.
- Revises the requirements for licensure as a clinical social worker, marriage and family therapist, or mental health counselor.
- Provides for future repeal of dual licensure as a marriage and family therapist and a clinical social worker, mental health counselor, advanced registered nurse practitioner, or psychologist.

- Eases requirements for an applicant seeking a license or certification by endorsement by eliminating the requirement that the applicant have actively engaged in the profession during 3 of the last 5 years immediately preceding application.
- Corrects disciplinary jurisdiction of the Department of Health (DOH) and the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling (Board) over certain professionals.
- Removes the qualifier that sexual misconduct with a former client is a felony of the third degree *when the professional relationship was terminated primarily for the purpose of engaging in sexual contact*.
- Prohibits a person from using the title “mental health counselor coach” without a valid mental health counselor license.
- Requires the use of applicable professional titles by mental health professionals regulated under the chapter on social media and other specified advertising materials.
- Creates a presumption of good faith for the actions of a court-appointed mental health professional who develops a parenting plan recommendation; prohibits anonymous complaints; provides prerequisites for a parent to bring a suit against a mental health professional; and provides for fees and court costs incurred in legal matters.

This bill substantially amends sections 491.004, 491.0045, 491.0046, 491.005, 491.0057, 491.006, 491.007, 491.009, 491.0112, 491.012, 491.0145, and 491.0149, of the Florida Statutes.

This bill creates section 491.017, of the Florida Statutes.

II. Present Situation:

Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling

The Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling is created within the DOH and is responsible for licensing and regulating the practice of clinical social work, marriage and family therapy, and mental health counseling pursuant to ch. 491, F.S.¹

The practice of clinical social work uses scientific and applied knowledge, theories, and methods for the purpose of describing, preventing, evaluating, and treating individual, couple, marital, family, or group behavior. The purpose of such services is the prevention and treatment of undesired behavior and enhancement of mental health. The practice of clinical social work includes methods of a psychological nature used to evaluate, assess, diagnose, treat, and prevent emotional and mental disorders and dysfunctions (whether cognitive, affective, or behavioral), sexual dysfunction, behavioral disorders, alcoholism, and substance abuse. The practice of clinical social work includes, but is not limited to, psychotherapy, hypnotherapy, and sex therapy, counseling, behavior modification, consultation, client-centered advocacy, crisis intervention, and the provision of needed information and education to clients.²

¹ The Department has jurisdiction with respect to the regulation of certified master social workers. *See* s. 491.015, F.S.

² *See* s. 491.003(7), F.S.

The practice of marriage and family therapy is the use of scientific and applied marriage and family theories, methods, and procedures for the purpose of describing, evaluating, and modifying marital, family, and individual behavior, within the context of marital and family systems, including the context of marital formation and dissolution, and is based on marriage and family systems theory, marriage and family development, human development, normal and abnormal behavior, psychopathology, human sexuality, psychotherapeutic and marriage and family therapy theories and techniques. The practice of marriage and family therapy includes methods of a psychological nature used to evaluate, assess, diagnose, treat, and prevent emotional and mental disorders or dysfunctions (whether cognitive, affective, or behavioral), sexual dysfunction, behavioral disorders, alcoholism, and substance abuse. The practice of marriage and family therapy includes, but is not limited to, marriage and family therapy, psychotherapy, including behavioral family therapy, hypnotherapy, and sex therapy, counseling, behavior modification, consultation, client-centered advocacy, crisis intervention, and the provision of needed information and education to clients.³

The practice of mental health counseling is the use of scientific and applied behavioral science theories, methods, and techniques for the purpose of describing, preventing, and treating undesired behavior and enhancing mental health and human development and is based on the person-in-situation perspectives derived from research and theory in personality, family, group, and organizational dynamics and development, career planning, cultural diversity, human growth and development, human sexuality, normal and abnormal behavior, psychopathology, psychotherapy, and rehabilitation. The practice of mental health counseling includes methods of a psychological nature used to evaluate, assess, diagnose, and treat emotional and mental dysfunctions or disorders (whether cognitive, affective, or behavioral), behavioral disorders, interpersonal relationships, sexual dysfunction, alcoholism, and substance abuse. The practice of mental health counseling includes, but is not limited to, psychotherapy, hypnotherapy, sex therapy, counseling, behavior modification, consultation, client-centered advocacy, crisis intervention, and the provision of needed information and education to clients.⁴

Internships

An individual who intends to practice in Florida to satisfy the postgraduate or post master's level experience requirements or to satisfy part of the required graduate-level practicum, internship, or field experience, outside the academic arena for any profession, must register as an intern in the profession for which he or she is seeking licensure. This must be done prior to commencing the post-master's experience, practicum, internship, or field experience. To become an intern the applicant must complete the application form and submit a nonrefundable application fee not exceeding \$200 as set by the Board. The applicant must also have completed the necessary education requirements, submitted an acceptable supervision plan, and identified a qualified supervisor.⁵

Currently, an intern may renew his or her license every biennium, with no time limit, by payment of a renewal fee. No continuing education is required for interns. There are 2,708 clinical social work interns, 726 marriage and family therapy interns, and 3,394 mental health counseling

³ See s. 491.003(8), F.S.

⁴ See s. 491.003(9), F.S.

⁵ Section 491.0045, F.S.

interns. Of this total, 697 interns have been renewing their registered intern license for over 10 years, and 151 of them have been renewing since the inception of this law in 1998.⁶

Disciplinary cases have shown that those who have held intern licenses for many years are no longer remaining under supervision as is required by law, and many are in private practice without meeting minimum competency standards such as passing the national examination.⁷

Provisional License

A provisional license permits an individual applying by endorsement or examination, who has satisfied the clinical experience requirements, to practice under supervision while completing all licensure requirements. Provisional licenses expire 24 months after the date issued and may not be renewed or reissued.⁸

Licensure Requirements

Clinical Social Work:

- An applicant seeking a Clinical Social Work license must submit the application, pay the appropriate fee, and have received a doctoral degree in social work from an accredited graduate school of social work.
- The applicant's graduate program must have emphasized direct clinical patient or client health care services and include specific coursework related to the field. Each applicant must have had no less than 2 years of specific clinical experience under a qualified supervisor.
- The applicant must also pass a theory and practice examination provided by the DOH and demonstrate knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling.

Marriage and Family Therapy:

- An applicant seeking a Marriage and Family Therapy license must submit the application, pay the appropriate fee, and have at least a master's degree with major emphasis in marriage and family therapy, or a closely related field, and have completed all of the specific semester hour requirements.
- The required master's degree must be from an accredited institution of higher education. The applicant must have had no less than 2 years of specific clinical experience under a qualified supervisor.
- The applicant must pass a theory and practice examination provided by the DOH and demonstrate knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling.

⁶ DOH Bill Analysis for SB 1368, dated March 4, 2013, on file with the Senate Health Policy Committee.

⁷ *Id.*

⁸ Section 491.0046, F.S.

Mental Health Counseling:

- An applicant seeking a Mental Health Counseling license must submit the application, pay the appropriate fee, and have at least a master's degree from a mental health counseling program accredited by the Council for the Accreditation of Counseling and Related Educational Programs. The education and training must be received in an accredited institution of higher education recognized by the Commission on Recognition of Postsecondary Accreditation.
- The applicant must have had no less than 2 years of specific clinical experience in mental health counseling, post masters, and under a specific qualified supervisor.
- The applicant must pass a theory and practice examination provided by the DOH and demonstrate knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling⁹

Dual Licensure

The Board is authorized¹⁰ to issue a dual license as a marriage and family therapist if the applicant:

- Holds a valid, active license as a psychologist, a clinical social worker, mental health counselor, or is a certified advanced registered nurse practitioner.
- Has held a valid, active license for at least 3 years.
- Has passed the examination provided by the DOH for marriage and family therapy.

Promotional Materials

A licensed clinical social worker, marriage and family therapist, or mental health counselor, or certified master social worker shall conspicuously display the valid license issued by the DOH or a true copy thereof at each location at which the licensee practices his or her profession. All promotional materials, including cards, brochures, stationery, advertisements, and signs, naming the licensee must be provided by the following professionals:

- A licensed clinical social worker shall include the words "licensed clinical social worker" or the letters "LCSW."
- A licensed marriage and family therapist shall include the words "licensed marriage and family therapist" or the letters "LMFT."
- A licensed mental health counselor shall include the words "licensed mental health counselor" or the letters "LMHC."
- A registered clinical social worker intern shall include the words "registered clinical social worker intern," a registered marriage and family therapist intern shall include the words "registered marriage and family therapist intern," and a registered mental health counselor intern shall include the words "registered mental health counselor intern."
- A provisional clinical social worker licensee shall include the words "provisional clinical social worker licensee," a provisional marriage and family therapist licensee shall include the

⁹ Section 491.005, F.S.

¹⁰ Section 491.0057, F.S.

words “provisional marriage and family therapist licensee,” and a provisional mental health counselor licensee shall include the words “provisional mental health counselor licensee.”¹¹

Currently, none of these requirements for the above professional promotional materials include social media.

Parenting Plan Recommendation

Chapter 61, F.S., relating to dissolution of marriage; support; and time-sharing was created to preserve the integrity of marriage and to safeguard meaningful family relationships, promote the amicable settlement of disputes that arise between parties to a marriage and to mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage. Within this chapter, at s. 61.122, F.S.:

- A psychologist who has been appointed by the court to develop a parenting plan recommendation in a dissolution of marriage, a case of domestic violence, or a paternity matter involving the relationship of a child and a parent, including time-sharing of children, is presumed to be acting in good faith if the psychologist’s recommendation has been reached under standards that a reasonable psychologist would use to develop a parenting plan recommendation.
- An administrative complaint against a court-appointed psychologist which relates to a parenting plan recommendation conducted by the psychologist may not be filed anonymously. The individual who files an administrative complaint must include in the complaint his or her name, address, and telephone number.
- A parent who desires to file a legal action against a court-appointed psychologist who has acted in good faith in developing a parenting plan recommendation must petition the judge who presided over the dissolution of marriage, case of domestic violence, or paternity matter involving the relationship of a child and a parent, including time-sharing of children, to appoint another psychologist. Upon the parent’s showing of good cause, the court shall appoint another psychologist. The court shall determine who is responsible for all court costs and attorney’s fees associated with making such an appointment.
- If a legal action, whether it be a civil action, a criminal action, or an administrative proceeding, is filed against a court-appointed psychologist in a dissolution of marriage, case of domestic violence, or paternity matter involving the relationship of a child and a parent, including time-sharing of children, the claimant is responsible for all reasonable costs and reasonable attorney’s fees associated with the action for both parties if the psychologist is held not liable. If the psychologist is held liable in civil court, the psychologist must pay all reasonable costs and reasonable attorney’s fees for the claimant.

III. Effect of Proposed Changes:

In addition to substantive changes, changes are made throughout the bill to remove obsolete language and make grammatical and conforming changes.

¹¹ Section 491.0149, F.S.

Section 1 amends s. 491.004, F.S., to delete obsolete timeframes for Governor appointments to the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling. Also, unnecessary verbiage is deleted.

Section 2 amends s. 491.0045, F.S., to require registered interns to remain under supervision and limit intern registration to 5 years. Licenses for interns registered before July 1, 2016, expire 60 months after the date of issuance and cannot be renewed. A person who has held a provisional license may not apply for an intern registration in the same profession. It also ensures that interns may not continually re-register without completing all requirements.

Section 3 amends s. 491.0046, F.S., to prohibit a person who has previously held an intern registration from applying for a provisional license.

Section 4 amends s. 491.005, F.S., to clarify that a licensed mental health professional must be on the premises when clinical services are provided by a registered intern in clinical social work, marriage and family therapy, or mental health counseling in a private practice setting, and that a registered intern may not engage in his or her own independent private practice.

The bill amends subsection (3) relating to licensure of a marriage and family therapist to require that the master's degree must be from one of several specified accredited programs¹² or from a program accepted by the Board. The number of graduate-level coursework hours is increased from 36 to 60 semester hours or from 48 to 80 quarter hours and additional course subjects are added to the statute. The supervised clinical practicum or field experience is increased from 180 to 400 direct client contact hours of marriage and family therapy.

Authority for the DOH to issue dual licensure as a marriage and family therapist and one of the following health care professionals will expire on July 1, 2020: advanced registered nurse practitioner, clinical social worker, mental health counselor, or psychologist. See section 5 of the bill also.

The bill amends subsection (4) relating to licensure of mental health counselors to update the licensure examinations and course subjects. Coursework in legal, ethical, and professional standards issues in the practice of mental health counseling replaces counseling in community settings. The bill reduces the hours of university-sponsored supervised clinical practicum, internship, or field experience from 1,000 to 700 hours which must include at least 280 hours of direct client services. This will make the requirement for all graduates the same regardless of whether they have graduated from a Council for Accreditation of Counseling and Related Educational Programs (CACREP) or non-CACREP approved program.¹³

Effective July 1, 2020, all applicants for a mental health counselors' license are required to have a master's degree accredited by the CACREP consisting of at least 60 semester hours or 80 quarter hours.

¹² The bill requires that the degree must be from a university in Florida if the program is a mental health counseling program with a marriage and family track from a university accredited by the Council for the Accreditation of Counseling and Related Educational Programs.

¹³ *Supra* note 6.

Section 5 amends s. 491.0057, F.S., to provide for future repeal of provisions authorizing dual licensure as a marriage and family therapist and a clinical social worker, mental health counselor, advanced registered nurse practitioner, or psychologist on July 1, 2020. Currently, there are 12 advanced registered nurse practitioners, 8 clinical social workers, 48 mental health counselors, and no psychologists dually licensed.¹⁴

Section 6 amends s. 491.006, F.S., to ease requirements for an applicant seeking a license or certification by endorsement by eliminating the requirement that the applicant have actively practiced the profession for which licensure is sought in another state for 3 of the last 5 years immediately preceding licensure.

Section 7 amends s. 491.007, F.S., to delete the rulemaking authority for biennial renewal of an intern registration. The bill transfers an exemption from continuing education requirements for the first renewal of a certified master social worker certificate to s. 491.0145, F.S., in section 11 of the bill.

Section 8 amends s. 491.009, F.S., to correctly identify disciplinary jurisdiction of the DOH over certified master social workers and the Board over mental health professionals, except for psychologists who are regulated by the Board of Psychology under ch. 490, F.S.

Section 9 amends s. 491.0112 F.S., to provide that a psychotherapist who commits sexual misconduct with a client or former client commits a felony of the third degree. The bill removes the qualifier that the misconduct is a felony with a former client when the professional relationship was terminated primarily for the purpose of engaging in sexual contact. While most statutes that prohibit sexual misconduct between a practitioner and a patient define sexual conduct as misuse of the practitioner-patient relationship to induce the patient to engage in sexual activity, s. 491.0112, F.S., simply prohibits any sexual activity between the psychotherapist and the client. Therefore, removal of the qualifier means that a psychotherapist would be subject to imprisonment for up to five years if he or she ever engages in sexual activity with a former client, even if the activity is many years after the professional relationship has ended and is not connected with the psychotherapist-client relationship. Removal of the qualifier may make the amended statute subject to constitutional challenge because it would prohibit otherwise lawful activity, particularly if the activity is within a marital relationship.

Section 10 amends s. 491.012, F.S., to prohibit a person from using the title “mental health counselor coach” without having a valid mental health counselor license.

Section 11 amends s. 491.0145, F.S., to exempt a certified master social worker from continuing education requirements for the first renewal of the certificate. This provision is transferred from s. 491.007, F.S., in section 7 of the bill.

Section 12 amends s. 491.0149, F.S., to add social media to the list of materials in which mental health professionals and registered interns must include their appropriate professional title.

¹⁴ *Id.*

Section 13 creates s. 491.017, F.S., to provide a presumption of good faith for the actions of a court-appointed mental health professional who develops a parenting plan recommendation. This section prohibits anonymous complaints, provides prerequisites for a parent to bring a suit against a mental health professional, and provides for fees and court costs incurred in legal matters.

Section 14 provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Although CS/SB 1368 provides a period of time for interns and applicants to complete full licensure requirements, some interns and applicants may be adversely affected by the changes in the bill.

Section 12 requires certain titles and/or acronyms to be included on all forms of social media used as advertising material. Persons might incur a cost to update existing social media advertisements.

C. Government Sector Impact:

The Board will experience a decrease in renewal funds from the 2,000 interns who have been licensed over 5 years and will be required to relinquish their intern license. However, these interns may complete their requirements and become fully licensed, therefore the fiscal impact is expected to be minimal. Any additional workload from the bill can be handled within existing resources.¹⁵

¹⁵ *Id.*

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 491.017, F.S., which is created in section 13 of this bill, duplicates provisions in s. 61.122, F.S. Mental health professionals licensed under ch. 491, F.S., could be added to s. 61.122, F.S., to avoid creating essentially a duplicative section of law.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Policy on April 9, 2013:

The CS makes the following changes:

- Adds the Council for Accreditation of Counseling and Related Educational Program as an entity that may accredit a supplemental training program for marriage and family therapy licensure.
- Clarifies that intern registrations will expire after 5 years and cannot be renewed without approval by the Board.
- Extends the date from July 1, 2013, to July 1, 2016, for implementation of the 5-year intern license expiration provision.
- Adds the word reissued to ensure that interns could not continually re-register without completing all requirements.
- Deletes duplicative material regarding clinical social work minimum graduate level course requirements.
- Makes other technical and conforming changes.

- B. **Amendments:**

None.