

By Senator Smith

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1 A bill to be entitled
2 An act relating to public records; creating s.
3 790.0652, F.S.; providing definitions; creating an
4 exemption from public records requirements for certain
5 information of patients and health care providers
6 under the mandatory reporting of mental health status
7 for firearm safety program; providing for disclosure
8 of such information under specified conditions;
9 providing guidelines for the use of such information
10 and penalties for violations; providing for future
11 legislative review and repeal of the exemption under
12 the Open Government Sunset Review Act; providing a
13 statement of public necessity; providing a contingent
14 effective date.

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16 Be It Enacted by the Legislature of the State of Florida:

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18 Section 1. Section 790.0652, Florida Statutes, is created
19 to read:

20 790.0652 Public records exemption for reports of mental
21 health status for firearm safety.—

22 (1) As used in this section, the term:

23 (a) "Department" means the Department of Law Enforcement.

24 (b) "Firearm-prohibited persons database" has the same
25 meaning as in s. 790.0651.

26 (c) "Health care provider" has the same meaning as in s.
27 790.0651.

28 (d) "Patient" means a person who is the subject of a mental
29 health status report under s. 790.0651.

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30 (e) "Personal identifying information" means the name,
31 address, social security number or other unique government-
32 issued identification number, race, sex, date of birth, or known
33 alias of a referenced person.

34 (2) The following information that is contained in records
35 held by the department under s. 790.065 or s. 790.0651 is
36 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
37 of the State Constitution:

38 (a) Any information contained in a report made by a health
39 care provider pursuant to s. 790.0651, which includes:

40 1. The personal identifying information of a patient.

41 2. Protected health information of a patient.

42 (b) The personal identifying information and license number
43 of a health care provider who makes a report pursuant to s.
44 790.0651.

45 (c) Any record created by the department for inclusion in
46 the firearm-prohibited persons database based upon a report
47 pursuant to s. 790.0651.

48 (d) Any information contained in a certification provided
49 to the department by a patient to facilitate the removal of the
50 patient's record from the firearm-prohibited persons database.

51 (3) The department may disclose such confidential and
52 exempt information to the following entities after using a
53 verification process to ensure the legitimacy of the entity's
54 request for the information:

55 (a) The relevant Department of Health regulatory boards
56 responsible for the licensure, regulation, or discipline of a
57 health care provider for the purpose of imposing discipline for
58 failure to comply with s. 790.0651 or investigating a complaint

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59 of reporting abuse. The regulatory boards may request
60 information but may not have direct access to the firearm-
61 prohibited persons database.

62 (b) A law enforcement agency that has initiated an active
63 investigation involving a specific violation of the law. A law
64 enforcement agency may request information but may not have
65 direct access to the firearm-prohibited persons database.

66 (c) A patient or patient's legal representative to confirm
67 that a record of the patient in the firearm-prohibited persons
68 database which was based solely upon a health care provider
69 report pursuant to s. 790.0651 was removed from the database in
70 accordance with s. 790.065. For purposes of this paragraph, the
71 department shall disclose confidential and exempt information
72 relating only to the patient, not the reporting health care
73 provider.

74 (d) An entity with authorized access to the firearm-
75 prohibited persons database under s. 790.065(2)(a) in order to
76 determine the lawfulness of a firearm sale or transfer, or the
77 eligibility to carry a concealed weapon. For purposes of this
78 paragraph, the department may disclose information contained
79 only in active mental health records of the firearm-prohibited
80 persons database.

81 (4) An agency or person who obtains confidential and exempt
82 information pursuant to this section must maintain the
83 confidential and exempt status of that information.

84 (5) A person who willfully and knowingly violates this
85 section commits a felony of the third degree, punishable as
86 provided in s. 775.082, s. 775.083, or s. 775.084.

87 (6) This section is subject to the Open Government Sunset

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88 Review Act in accordance with s. 119.15 and shall stand repealed
89 on October 2, 2018, unless reviewed and saved from repeal
90 through reenactment by the Legislature.

91 Section 2. The Legislature finds that it is a public
92 necessity that certain information of a patient or a health care
93 provider which is contained in records held by the Department of
94 Law Enforcement under s. 790.0651, Florida Statutes, the
95 mandatory reporting program of mental health status for firearm
96 safety, be made confidential and exempt from public records
97 requirements. Information concerning the mental health status of
98 a patient is a private, personal matter between the patient, his
99 or her family, and his or her health care provider.
100 Nevertheless, the reporting to law enforcement of those patients
101 who suffer a mental illness or disorder and who pose a risk of
102 harm to themselves or others will ensure the ability of the
103 state to prevent access to firearms to those who may use them to
104 harm innocent persons in this state. However, if the information
105 that would identify a patient or the reporting health care
106 provider is not made confidential and exempt from disclosure,
107 any person could inspect and copy such records and have access
108 to a patient's protected health information. The availability of
109 such information to the public would result in the invasion of
110 the patient's privacy, and this information could be used to
111 embarrass or humiliate the patient or to discriminate against
112 him or her. Requiring the reporting of patients who suffer
113 certain mental illnesses and pose a risk of harm to themselves
114 or others, while protecting patient personal identifying
115 information, will ensure that the patient does not have the
116 ability to purchase a firearm while maintaining patient privacy.

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117 Additionally, exempting the personal identifying information of
118 the reporting health care provider from disclosure ensures that
119 health care providers are not targeted in acts of retaliation by
120 patients who have been identified as having a risk of causing
121 harm to others. This exemption from public records requirements
122 also prevents a person with mental illness who poses a risk of
123 harm to others from identifying and seeking out health care
124 providers who make the fewest reports to the Department of Law
125 Enforcement pursuant to s. 790.0651, Florida Statutes, thereby
126 increasing the likelihood of escaping detection by the
127 department during a firearm background check. Thus, the
128 Legislature finds that the harm to patients, health care
129 providers, and the public which would result from the release of
130 protected health information and personal identifying
131 information contained in reports and records made pursuant to s.
132 790.0651, Florida Statutes, outweighs any minimal public benefit
133 derived from disclosure to the public.

134 Section 3. This act shall take effect July 1, 2013, if SB
135 _____, or similar legislation establishing a mandatory reporting
136 program of mental health status for firearm safety, is adopted
137 in the same legislative session or an extension thereof and
138 becomes a law.