



178120

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2019	.	
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The Committee on Children, Families, and Elder Affairs (Powell) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

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.-



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

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

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

33 (b) For the purpose of determining whether a person meets  
34 the criteria for involuntary outpatient placement or for  
35 preparing the proposed treatment plan pursuant to s. 394.4655,  
36 the clinical record may be released to the state attorney, the  
37 public defender or the patient's private legal counsel, the  
38 court, and to the appropriate mental health professionals,  
39 including the service provider identified in s.



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40 394.4655(7)(b)2., in accordance with state and federal law.

41 Section 2. Paragraph (a) of subsection (2) of section  
42 394.463, Florida Statutes, is amended to read:

43 394.463 Involuntary examination.—

44 (2) INVOLUNTARY EXAMINATION.—

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

47 1. A circuit or county court may enter an ex parte order  
48 stating that a person appears to meet the criteria for  
49 involuntary examination and specifying the findings on which  
50 that conclusion is based. The ex parte order for involuntary  
51 examination must be based on written or oral sworn testimony  
52 that includes specific facts that support the findings. If other  
53 less restrictive means are not available, such as voluntary  
54 appearance for outpatient evaluation, a law enforcement officer,  
55 or other designated agent of the court, shall take the person  
56 into custody and deliver him or her to an appropriate, or the  
57 nearest, facility within the designated receiving system  
58 pursuant to s. 394.462 for involuntary examination. The order of  
59 the court shall be made a part of the patient's clinical record.  
60 A fee may not be charged for the filing of an order under this  
61 subsection. A facility accepting the patient based on this order  
62 must send a copy of the order to the department within 5 ~~the~~  
63 ~~next~~ working days ~~day~~. The order may be submitted electronically  
64 through existing data systems, if available. The order shall be  
65 valid only until the person is delivered to the facility or for  
66 the period specified in the order itself, whichever comes first.  
67 If no time limit is specified in the order, the order shall be  
68 valid for 7 days after the date that the order was signed.



69           2. A law enforcement officer shall take a person who  
70 appears to meet the criteria for involuntary examination into  
71 custody and deliver the person or have him or her delivered to  
72 an appropriate, or the nearest, facility within the designated  
73 receiving system pursuant to s. 394.462 for examination. The  
74 officer shall execute a written report detailing the  
75 circumstances under which the person was taken into custody,  
76 which must be made a part of the patient's clinical record. Any  
77 facility accepting the patient based on this report must send a  
78 copy of the report to the department within 5 ~~the next~~ working  
79 days ~~day~~.

80           3. A physician, clinical psychologist, psychiatric nurse,  
81 mental health counselor, marriage and family therapist, or  
82 clinical social worker may execute a certificate stating that he  
83 or she has examined a person within the preceding 48 hours and  
84 finds that the person appears to meet the criteria for  
85 involuntary examination and stating the observations upon which  
86 that conclusion is based. If other less restrictive means, such  
87 as voluntary appearance for outpatient evaluation, are not  
88 available, a law enforcement officer shall take into custody the  
89 person named in the certificate and deliver him or her to the  
90 appropriate, or nearest, facility within the designated  
91 receiving system pursuant to s. 394.462 for involuntary  
92 examination. The law enforcement officer shall execute a written  
93 report detailing the circumstances under which the person was  
94 taken into custody. The report and certificate shall be made a  
95 part of the patient's clinical record. Any facility accepting  
96 the patient based on this certificate must send a copy of the  
97 certificate to the department within 5 ~~the next~~ working days



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98 ~~day~~. The document may be submitted electronically through  
99 existing data systems, if applicable.

100 Section 3. Section 456.059, Florida Statutes, is amended to  
101 read:

102 456.059 Communications confidential; exceptions.—

103 Communications between a patient and a psychiatrist, as defined  
104 in s. 394.455, shall be held confidential and may ~~shall~~ not be  
105 disclosed except upon the request of the patient or the  
106 patient's legal representative. Provision of psychiatric records  
107 and reports are ~~shall be~~ governed by s. 456.057. Notwithstanding  
108 any other provision of this section or s. 90.503, when ~~where~~:

109 (1) A patient is engaged in a treatment relationship with a  
110 psychiatrist;

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

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

120  
121 the psychiatrist shall ~~may~~ disclose patient communications to  
122 the extent necessary to warn any potential victim or to  
123 communicate the threat to a law enforcement agency. A  
124 psychiatrist's disclosure of confidential communications when  
125 communicating a threat pursuant to this section may not be the  
126 basis of any legal action or criminal or civil liability against



127 ~~the psychiatrist No civil or criminal action shall be~~  
128 ~~instituted, and there shall be no liability on account of~~  
129 ~~disclosure of otherwise confidential communications by a~~  
130 ~~psychiatrist in disclosing a threat pursuant to this section.~~

131 Section 4. Section 490.0147, Florida Statutes, is amended  
132 to read:

133 490.0147 Confidentiality and privileged communications.—

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

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

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

147 (2) Such privilege must be waived, and the psychologist  
148 shall disclose patient and client communications to the extent  
149 necessary to warn any potential victim and to communicate the  
150 threat to a law enforcement agency, if a patient or client has  
151 communicated to the psychologist a specific threat to cause  
152 serious bodily injury or death to an identified or readily  
153 available person, and the psychologist makes a clinical judgment  
154 that the patient or client has the apparent intent and ability  
155 to imminently or immediately carry out such threat. A



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156 psychologist's disclosure of confidential communications when  
157 communicating a threat pursuant to this subsection may not be  
158 the basis of any legal action or criminal or civil liability  
159 against the psychologist

160 ~~(3) When there is a clear and immediate probability of~~  
161 ~~physical harm to the patient or client, to other individuals, or~~  
162 ~~to society and the person licensed under this chapter~~  
163 ~~communicates the information only to the potential victim,~~  
164 ~~appropriate family member, or law enforcement or other~~  
165 ~~appropriate authorities.~~

166 Section 5. Section 491.0147, Florida Statutes, is amended  
167 to read:

168 491.0147 Confidentiality and privileged communications.—Any  
169 communication between any person licensed or certified under  
170 this chapter and her or his patient or client is ~~shall be~~  
171 confidential.

172 (1) This privilege ~~secrecy~~ may be waived under the  
173 following conditions:

174 (a) ~~(1)~~ When the person licensed or certified under this  
175 chapter is a party defendant to a civil, criminal, or  
176 disciplinary action arising from a complaint filed by the  
177 patient or client, in which case the waiver shall be limited to  
178 that action.

179 (b) ~~(2)~~ When the patient or client agrees to the waiver, in  
180 writing, or, when more than one person in a family is receiving  
181 therapy, when each family member agrees to the waiver, in  
182 writing.

183 (2) This privilege must be waived, and the person licensed  
184 or certified under this chapter shall disclose patient and



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185 client communications to the extent necessary to warn any  
186 potential victim and to communicate the threat to a law  
187 enforcement agency, if a patient or client has communicated to  
188 such person a specific threat to cause serious bodily injury or  
189 death to an identified or readily available person, and the  
190 person licensed or certified under this chapter makes a clinical  
191 judgment that the patient or client has the apparent intent and  
192 ability to imminently or immediately carry out such threat. A  
193 disclosure of confidential communications by a person licensed  
194 or certified under this chapter when communicating a threat  
195 pursuant to this subsection may not be the basis of any legal  
196 action or criminal or civil liability against such person

197 ~~(3) When, in the clinical judgment of the person licensed~~  
198 ~~or certified under this chapter, there is a clear and immediate~~  
199 ~~probability of physical harm to the patient or client, to other~~  
200 ~~individuals, or to society and the person licensed or certified~~  
201 ~~under this chapter communicates the information only to the~~  
202 ~~potential victim, appropriate family member, or law enforcement~~  
203 ~~or other appropriate authorities. There shall be no liability on~~  
204 ~~the part of, and no cause of action of any nature shall arise~~  
205 ~~against, a person licensed or certified under this chapter for~~  
206 ~~the disclosure of otherwise confidential communications under~~  
207 ~~this subsection.~~

208 Section 6. Section 1012.583, Florida Statutes, is amended  
209 to read:

210 1012.583 Continuing education and inservice training for  
211 youth suicide awareness and prevention.—

212 (1) By July 1, 2019 ~~Beginning with the 2016-2017 school~~  
213 ~~year,~~ the Department of Education, in consultation with the





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214 Statewide Office for Suicide Prevention and suicide prevention  
215 experts, shall develop a list of approved youth suicide  
216 awareness and prevention training materials and suicide  
217 screening instruments that may be used for training in youth  
218 suicide awareness, suicide ~~and~~ prevention, and suicide screening  
219 for instructional personnel in elementary school, middle school,  
220 and high school. The approved list of materials:

221 (a) Must identify available standardized suicide screening  
222 instruments appropriate for use with a school-age population and  
223 which have validity and reliability and include information  
224 about obtaining instruction in the administration and use of  
225 such instruments.

226 (b) ~~(a)~~ Must include training on how to identify appropriate  
227 mental health services and how to refer youth and their families  
228 to those services.

229 (c) ~~(b)~~ May include materials currently being used by a  
230 school district if such materials meet any criteria established  
231 by the department.

232 (d) ~~(e)~~ May include programs that instructional personnel  
233 can complete through a self-review of approved youth suicide  
234 awareness and prevention materials.

235 (2) A school ~~that chooses to incorporate 2 hours of~~  
236 ~~training offered pursuant to this section~~ shall be considered a  
237 "Suicide Prevention Certified School-" if it:

238 (a) Incorporates 2 hours of training offered pursuant to  
239 this section. The training must be included in the existing  
240 continuing education or inservice training requirements for  
241 instructional personnel and may not add to the total hours  
242 currently required by the department. A school that chooses to



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243 participate in the training must require all instructional  
244 personnel to participate.

245 (b) Has at least two school-based staff members certified  
246 or otherwise deemed competent in the use of a suicide screening  
247 instrument approved under subsection (1) and has a policy to use  
248 such suicide risk screening instrument to evaluate a student's  
249 suicide risk before requesting the initiation of, or initiating,  
250 an involuntary examination due to concerns about that student's  
251 suicide risk.

252 (3) A school that meets the criteria in subsection (2)  
253 ~~participates in the suicide awareness and prevention training~~  
254 ~~pursuant to this section~~ must report its compliance  
255 ~~participation~~ to the department. The department shall keep an  
256 updated record of all Suicide Prevention Certified Schools and  
257 shall post the list of these schools on the department's  
258 website. Each school shall also post on its own website whether  
259 it is a Suicide Prevention Certified School, and each school  
260 district shall post on its district website a list of the  
261 Suicide Prevention Certified Schools in that district.

262 (4) A person has no cause of action for any loss or damage  
263 caused by an act or omission resulting from the implementation  
264 of this section or resulting from any training required by this  
265 section unless the loss or damage was caused by willful or  
266 wanton misconduct. This section does not create any new duty of  
267 care or basis of liability.

268 (5) The State Board of Education may adopt rules to  
269 implement this section.

270 Section 7. For the purpose of incorporating the amendment  
271 made by this act to section 490.0147, Florida Statutes, in a



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272 reference thereto, paragraph (u) of subsection (1) of section  
273 490.009, Florida Statutes, is reenacted to read:

274 490.009 Discipline.—

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

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

280 Section 8. For the purpose of incorporating the amendment  
281 made by this act to section 491.0147, Florida Statutes, in a  
282 reference thereto, paragraph (u) of subsection (1) of section  
283 491.009, Florida Statutes, is reenacted to read:

284 491.009 Discipline.—

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

287 (u) Failure of the licensee, registered intern, or  
288 certificateholder to maintain in confidence a communication made  
289 by a patient or client in the context of such services, except  
290 as provided in s. 491.0147.

291 Section 9. This act shall take effect upon becoming a law.

292  
293 ===== T I T L E A M E N D M E N T =====

294 And the title is amended as follows:

295 Delete everything before the enacting clause  
296 and insert:

297 A bill to be entitled  
298 An act relating to mental health; amending s.  
299 394.4615, F.S.; requiring service providers to  
300 disclose information from a clinical record under



301 certain circumstances relating to threats to cause  
302 seriously bodily injury or death; amending s. 394.463,  
303 F.S.; revising deadlines for submission of  
304 documentation regarding involuntary examinations;  
305 amending s. 456.059, F.S.; requiring, rather than  
306 authorizing, psychiatrists to disclose certain patient  
307 communications for purposes of notifying potential  
308 victims and law enforcement agencies of certain  
309 threats; amending s. 490.0147, F.S.; requiring, rather  
310 than authorizing, psychologists to disclose certain  
311 patient and client communications for purposes of  
312 notifying potential victims and law enforcement  
313 agencies of certain threats; providing psychologists  
314 with immunity from specified liability and actions  
315 under certain circumstances; amending s. 491.0147,  
316 F.S.; requiring, rather than authorizing, certain  
317 license holders and certificate holders to disclose  
318 certain patient and client communications for purposes  
319 of notifying potential victims and law enforcement  
320 agencies of certain threats; providing such persons  
321 with immunity from specified liability and actions;  
322 amending s. 1012.583, F.S.; revising responsibilities  
323 of the Department of Education and the Statewide  
324 Office for Suicide Prevention; revising criteria for  
325 designation as a Suicide Prevention Certified School;  
326 requiring that the department, schools, and school  
327 districts post certain information regarding such  
328 schools be posted on their respective websites;  
329 reenacting s. 490.009, F.S., relating to discipline of



330 psychiatrists; reenacting s. 491.009, F.S., relating  
331 to discipline of psychologists; providing an effective  
332 date.