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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/18/2019	.	
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	.	
	.	

The Committee on Rules (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 renumbered as subsections (5)
through (12), respectively, paragraph (a) of subsection (3) is
amended, and a new subsection (4) is added to that section, to
read:

394.4615 Clinical records; confidentiality.—

(3) Information from the clinical record may be released in



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12 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 may authorize the release of sufficient
22 information to provide adequate warning to the person threatened
23 with harm by the patient.

24
25 For the purpose of determining whether a person meets the
26 criteria for involuntary outpatient placement or for preparing
27 the proposed treatment plan pursuant to s. 394.4655, the
28 clinical record may be released to the state attorney, the
29 public defender or the patient's private legal counsel, the
30 court, and to the appropriate mental health professionals,
31 including the service provider identified in s.
32 394.4655(7)(b)2., in accordance with state and federal law.

33 (4) Information from the clinical record must be released
34 when a patient has communicated to a service provider a specific
35 threat to cause serious bodily injury or death to an identified
36 or a readily available person, if the service provider
37 reasonably believes, or should reasonably believe according to
38 the standards of his or her profession, that the patient has the
39 apparent intent and ability to imminently or immediately carry
40 out such threat. When such communication has been made, the



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41 administrator must authorize the release of sufficient
42 information to communicate the threat to law enforcement. A law
43 enforcement agency that receives notification of a specific
44 threat under this subsection must take appropriate action to
45 prevent the risk of harm, including, but not limited to,
46 notifying the intended victim of such threat or initiating a
47 risk protection order. A service provider's authorization to
48 release information from a clinical record when communicating a
49 threat pursuant to this section may not be the basis of any
50 legal action or criminal or civil liability against the service
51 provider.

52 Section 2. Paragraph (a) of subsection (2) of section
53 394.463, Florida Statutes, is amended, and subsection (4) is
54 added to that section, to read:

55 394.463 Involuntary examination.—

56 (2) INVOLUNTARY EXAMINATION.—

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

59 1. A circuit or county court may enter an ex parte order
60 stating that a person appears to meet the criteria for
61 involuntary examination and specifying the findings on which
62 that conclusion is based. The ex parte order for involuntary
63 examination must be based on written or oral sworn testimony
64 that includes specific facts that support the findings. If other
65 less restrictive means are not available, such as voluntary
66 appearance for outpatient evaluation, a law enforcement officer,
67 or other designated agent of the court, shall take the person
68 into custody and deliver him or her to an appropriate, or the
69 nearest, facility within the designated receiving system



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70 pursuant to s. 394.462 for involuntary examination. The order of
71 the court shall be made a part of the patient's clinical record.
72 A fee may not be charged for the filing of an order under this
73 subsection. A facility accepting the patient based on this order
74 must send a copy of the order to the department within 5 ~~the~~
75 ~~next~~ working days ~~day~~. The order may be submitted electronically
76 through existing data systems, if available. The order shall be
77 valid only until the person is delivered to the facility or for
78 the period specified in the order itself, whichever comes first.
79 If no time limit is specified in the order, the order shall be
80 valid for 7 days after the date that the order was signed.

81 2. A law enforcement officer shall take a person who
82 appears to meet the criteria for involuntary examination into
83 custody and deliver the person or have him or her delivered to
84 an appropriate, or the nearest, facility within the designated
85 receiving system pursuant to s. 394.462 for examination. The
86 officer shall execute a written report detailing the
87 circumstances under which the person was taken into custody,
88 which must be made a part of the patient's clinical record. Any
89 facility accepting the patient based on this report must send a
90 copy of the report to the department within 5 ~~the next~~ working
91 days ~~day~~.

92 3. A physician, clinical psychologist, psychiatric nurse,
93 mental health counselor, marriage and family therapist, or
94 clinical social worker may execute a certificate stating that he
95 or she has examined a person within the preceding 48 hours and
96 finds that the person appears to meet the criteria for
97 involuntary examination and stating the observations upon which
98 that conclusion is based. If other less restrictive means, such



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99 as voluntary appearance for outpatient evaluation, are not
100 available, a law enforcement officer shall take into custody the
101 person named in the certificate and deliver him or her to the
102 appropriate, or nearest, facility within the designated
103 receiving system pursuant to s. 394.462 for involuntary
104 examination. The law enforcement officer shall execute a written
105 report detailing the circumstances under which the person was
106 taken into custody. The report and certificate shall be made a
107 part of the patient's clinical record. Any facility accepting
108 the patient based on this certificate must send a copy of the
109 certificate to the department within 5 ~~the next~~ working days
110 ~~day~~. The document may be submitted electronically through
111 existing data systems, if applicable.

112
113 When sending the order, report, or certificate to the
114 department, a facility shall at a minimum provide information
115 about which action was taken regarding the patient under
116 paragraph (g), which information shall also be made a part of
117 the patient's clinical record.

118 (4) DATA ANALYSIS.—Using data collected under paragraph
119 (2)(a), the department shall, at a minimum, analyze data on the
120 initiation of involuntary examinations of children, identify any
121 patterns or trends and cases in which involuntary examinations
122 are repeatedly initiated on the same child, study root causes
123 for such patterns, trends, or repeated involuntary examinations,
124 and make recommendations for encouraging alternatives to and
125 eliminating inappropriate initiations of such examinations. The
126 department shall submit a report on its findings and
127 recommendations to the Governor, the President of the Senate,



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128 and the Speaker of the House of Representatives by November 1 of
129 each odd numbered year.

130 Section 3. Subsection (2) of section 394.917, Florida
131 Statutes, is amended to read:

132 394.917 Determination; commitment procedure; mistrials;
133 housing; counsel and costs in indigent appellate cases.—

134 (2) If the court or jury determines that the person is a
135 sexually violent predator, upon the expiration of the
136 incarcerative portion of all criminal sentences and disposition
137 of any detainers, the person shall be committed to the custody
138 of the Department of Children and Families for control, care,
139 ~~and~~ treatment, and rehabilitation of criminal offenders, until
140 such time as the person's mental abnormality or personality
141 disorder has so changed that it is safe for the person to be at
142 large. At all times, persons who are detained or committed under
143 this part shall be kept in a secure facility segregated from
144 patients of the department who are not detained or committed
145 under this part.

146 Section 4. Section 456.059, Florida Statutes, is amended to
147 read:

148 456.059 Communications confidential; exceptions.—

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

155 (1) A patient is engaged in a treatment relationship with a
156 psychiatrist;



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

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

166
167 the psychiatrist may disclose patient communications to the
168 extent necessary to warn any potential victim ~~or~~ and must
169 disclose patient communications to the extent necessary to
170 communicate the threat to a law enforcement agency. A law
171 enforcement agency that receives notification of a specific
172 threat under this subsection must take appropriate action to
173 prevent the risk of harm, including, but not limited to,
174 notifying the intended victim of such threat or initiating a
175 risk protection order. A psychiatrist's disclosure of
176 confidential communications when communicating a threat pursuant
177 to this section may not be the basis of any legal action or
178 criminal or civil liability against the psychiatrist ~~No civil or~~
179 ~~eriminal action shall be instituted, and there shall be no~~
180 ~~liability on account of disclosure of otherwise confidential~~
181 ~~communications by a psychiatrist in disclosing a threat pursuant~~
182 ~~to this section.~~

183 Section 5. Section 490.0147, Florida Statutes, is amended
184 to read:

185 490.0147 Confidentiality and privileged communications.—



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

190 ~~(a)(1)~~ When the psychologist ~~person licensed under this~~
191 ~~chapter~~ is a party defendant to a civil, criminal, or
192 disciplinary action arising from a complaint filed by the
193 patient or client, in which case the waiver shall be limited to
194 that action~~;~~;

195 ~~(b)(2)~~ When the patient or client agrees to the waiver, in
196 writing, or when more than one person in a family is receiving
197 therapy, when each family member agrees to the waiver, in
198 writing~~;~~ or

199 ~~(c)(3)~~ When a patient or client has communicated to the
200 psychologist a specific threat to cause serious bodily injury or
201 death to an identified or readily available person, and the
202 psychologist makes a clinical judgment that the patient or
203 client has the apparent intent and ability to imminently or
204 immediately carry out such threat and the psychologist ~~there is~~
205 ~~a clear and immediate probability of physical harm to the~~
206 ~~patient or client, to other individuals, or to society and the~~
207 ~~person licensed under this chapter~~ communicates the information
208 ~~only to the potential victim, appropriate family member, or law~~
209 ~~enforcement or other appropriate authorities.~~ A disclosure of
210 confidential communications by a psychologist when communicating
211 a threat pursuant to this subsection may not be the basis of any
212 legal action or criminal or civil liability against the
213 psychologist.

214 (2) Such privilege must be waived, and the psychologist



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215 shall disclose patient or client communications to the extent
216 necessary to communicate the threat to a law enforcement agency,
217 if a patient or client has communicated to the psychologist a
218 specific threat to cause serious bodily injury or death to an
219 identified or readily available person, and the psychologist
220 makes a clinical judgment that the patient or client has the
221 apparent intent and ability to imminently or immediately carry
222 out such threat. A law enforcement agency that receives
223 notification of a specific threat under this subsection must
224 take appropriate action to prevent the risk of harm, including,
225 but not limited to, notifying the intended victim of such threat
226 or initiating a risk protection order. A psychologist's
227 disclosure of confidential communications when communicating a
228 threat pursuant to this subsection may not be the basis of any
229 legal action or criminal or civil liability against the
230 psychologist.

231 Section 6. Section 491.0147, Florida Statutes, is amended
232 to read:

233 491.0147 Confidentiality and privileged communications.—Any
234 communication between any person licensed or certified under
235 this chapter and her or his patient or client is ~~shall be~~
236 confidential.

237 (1) This privilege ~~secrecy~~ may be waived under the
238 following conditions:

239 (a) ~~(1)~~ When the person licensed or certified under this
240 chapter is a party defendant to a civil, criminal, or
241 disciplinary action arising from a complaint filed by the
242 patient or client, in which case the waiver shall be limited to
243 that action.



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244 (b) (2) When the patient or client agrees to the waiver, in
245 writing, or, when more than one person in a family is receiving
246 therapy, when each family member agrees to the waiver, in
247 writing.

248 (c) (3) When a patient or client has communicated to the
249 person licensed or certified under this chapter a specific
250 threat to cause serious bodily injury or death to an identified
251 or readily available person, and the person licensed or
252 certified under this chapter makes a clinical judgment that the
253 patient or client has the apparent intent and ability to
254 imminently or immediately carry out such threat, ~~in the clinical~~
255 ~~judgment of the person licensed or certified under this chapter,~~
256 ~~there is a clear and immediate probability of physical harm to~~
257 ~~the patient or client, to other individuals, or to society and~~
258 ~~the person licensed or certified under this chapter communicates~~
259 ~~the information only to the potential victim, appropriate family~~
260 ~~member, or law enforcement or other appropriate authorities.~~
261 ~~There shall be no liability on the part of, and no cause of~~
262 ~~action of any nature shall arise against, a person licensed or~~
263 ~~certified under this chapter for the disclosure of otherwise~~
264 ~~confidential communications under this subsection. A disclosure~~
265 ~~of confidential communications by a person licensed or certified~~
266 ~~under this chapter when communicating a threat pursuant to this~~
267 ~~subsection may not be the basis of any legal action or criminal~~
268 ~~or civil liability against such person.~~

269 (2) This privilege must be waived, and the person licensed
270 or certified under this chapter shall disclose patient or client
271 communications to the extent necessary to communicate the threat
272 to a law enforcement agency, if a patient or client has



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273 communicated to such person a specific threat to cause serious
274 bodily injury or death to an identified or readily available
275 person, and the person licensed or certified under this chapter
276 makes a clinical judgment that the patient or client has the
277 apparent intent and ability to imminently or immediately carry
278 out such threat. A law enforcement agency that receives
279 notification of a specific threat under this subsection must
280 take appropriate action to prevent the risk of harm, including,
281 but not limited to, notifying the intended victim of such threat
282 or initiating a risk protection order. A disclosure of
283 confidential communications by a person licensed or certified
284 under this chapter when communicating a threat pursuant to this
285 subsection may not be the basis of any legal action or criminal
286 or civil liability against such person.

287 Section 7. Section 1012.583, Florida Statutes, is amended
288 to read:

289 1012.583 Continuing education and inservice training for
290 youth suicide awareness and prevention.—

291 (1) By July 1, 2019 ~~Beginning with the 2016-2017 school~~
292 ~~year,~~ the Department of Education, in consultation with the
293 Statewide Office for Suicide Prevention and suicide prevention
294 experts, shall develop a list of approved youth suicide
295 awareness and prevention training materials and suicide
296 screening instruments that may be used for training in youth
297 suicide awareness, suicide and prevention, and suicide screening
298 for instructional personnel in elementary school, middle school,
299 and high school. The approved list of materials:

300 (a) Must identify available standardized suicide screening
301 instruments appropriate for use with a school-age population and



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302 which have validity and reliability and include information
303 about obtaining instruction in the administration and use of
304 such instruments.

305 (b) ~~(a)~~ Must include training on how to identify appropriate
306 mental health services and how to refer youth and their families
307 to those services.

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

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

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

317 (a) Incorporates 2 hours of training offered pursuant to
318 this section. The training must be included in the existing
319 continuing education or inservice training requirements for
320 instructional personnel and may not add to the total hours
321 currently required by the department. A school that chooses to
322 participate in the training must require all instructional
323 personnel to participate.

324 (b) Has at least two school-based staff members certified
325 or otherwise deemed competent in the use of a suicide screening
326 instrument approved under subsection (1) and has a policy to use
327 such suicide risk screening instrument to evaluate a student's
328 suicide risk before requesting the initiation of, or initiating,
329 an involuntary examination due to concerns about that student's
330 suicide risk.



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331 (3) A school that meets the criteria in subsection (2)
332 ~~participates in the suicide awareness and prevention training~~
333 ~~pursuant to this section~~ must report its compliance
334 ~~participation~~ to the department. The department shall keep an
335 updated record of all Suicide Prevention Certified Schools and
336 shall post the list of these schools on the department's
337 website. Each school shall also post on its own website whether
338 it is a Suicide Prevention Certified School, and each school
339 district shall post on its district website a list of the
340 Suicide Prevention Certified Schools in that district.

341 (4) A person has no cause of action for any loss or damage
342 caused by an act or omission resulting from the implementation
343 of this section or resulting from any training required by this
344 section unless the loss or damage was caused by willful or
345 wanton misconduct. This section does not create any new duty of
346 care or basis of liability.

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

349 Section 8. For the purpose of incorporating the amendment
350 made by this act to section 490.0147, Florida Statutes, in a
351 reference thereto, paragraph (u) of subsection (1) of section
352 490.009, Florida Statutes, is reenacted to read:

353 490.009 Discipline.—

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

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

359 Section 9. For the purpose of incorporating the amendment



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360 made by this act to section 491.0147, Florida Statutes, in a
361 reference thereto, paragraph (u) of subsection (1) of section
362 491.009, Florida Statutes, is reenacted to read:

363 491.009 Discipline.—

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

366 (u) Failure of the licensee, registered intern, or
367 certificateholder to maintain in confidence a communication made
368 by a patient or client in the context of such services, except
369 as provided in s. 491.0147.

370 Section 10. This act shall take effect July 1, 2019.

371

372 ===== T I T L E A M E N D M E N T =====

373 And the title is amended as follows:

374 Delete everything before the enacting clause
375 and insert:

376 A bill to be entitled

377 An act relating to mental health; amending s.

378 394.4615, F.S.; requiring service providers to

379 disclose information from a clinical record under

380 certain circumstances relating to threats to cause

381 seriously bodily injury or death; requiring a law

382 enforcement agency that receives notification of a

383 specific threat to take appropriate action; providing

384 immunity for service providers for certain actions;

385 amending s. 394.463, F.S.; revising deadlines for

386 submission of documentation regarding involuntary

387 examinations; requiring additional information be

388 included in reports to the department; requiring the



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389 department to report to the Governor and Legislature
390 on data collected from such reports; amending s.
391 394.917, F.S.; revising the purpose of civil
392 commitment of sexually violent predators to the
393 department after completion of their criminal
394 incarceration sentences; amending s. 456.059, F.S.;
395 requiring psychiatrists to disclose certain patient
396 communications for purposes of notifying law
397 enforcement agencies of certain threats; requiring the
398 notified law enforcement agency to take appropriate
399 action to prevent the risk of harm to the victim;
400 providing psychiatrists with immunity from specified
401 liability and actions under certain circumstances;
402 amending s. 490.0147, F.S.; requiring psychologists to
403 disclose certain patient or client communications for
404 purposes of notifying law enforcement agencies of
405 certain threats; requiring the notified law
406 enforcement agency to take appropriate action to
407 prevent the risk of harm to the victim; providing
408 psychologists with immunity from specified liability
409 and actions under certain circumstances; amending s.
410 491.0147, F.S.; requiring certain license holders and
411 certificate holders to disclose certain patient or
412 client communications for purposes of notifying law
413 enforcement agencies of certain threats; requiring the
414 notified law enforcement agency to take appropriate
415 action to prevent the risk of harm to the victim;
416 providing such persons with immunity from specified
417 liability and actions; amending s. 1012.583, F.S.;



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418 revising responsibilities of the Department of
419 Education and the Statewide Office for Suicide
420 Prevention; revising criteria for designation as a
421 Suicide Prevention Certified School; requiring that
422 the department, schools, and school districts post
423 certain information regarding such schools be posted
424 on their respective websites; reenacting ss. 490.009
425 and 491.009, F.S., relating to discipline of
426 psychologists and other licensed therapists, to
427 incorporate amendments made by the act; providing an
428 effective date.