

**FOR CONSIDERATION** By the Committee on Children, Families, and Elder Affairs

586-02187-19

20197048pb

1                                   A bill to be entitled  
2       An act relating to disclosure of confidential records;  
3       amending s. 394.4615, F.S.; requiring service  
4       providers to disclose information from a clinical  
5       record under certain circumstances relating to threats  
6       to cause seriously bodily injury or death; amending s.  
7       456.059, F.S.; requiring, rather than authorizing,  
8       psychiatrists to disclose certain patient  
9       communications for purposes of notifying potential  
10      victims and law enforcement agencies of certain  
11      threats; amending s. 490.0147, F.S.; requiring, rather  
12      than authorizing, psychologists to disclose certain  
13      patient and client communications for purposes of  
14      notifying potential victims and law enforcement  
15      agencies of certain threats; providing psychologists  
16      with immunity from specified liability and actions  
17      under certain circumstances; amending s. 491.0147,  
18      F.S.; requiring, rather than authorizing, certain  
19      license holders and certificate holders to disclose  
20      certain patient and client communications for purposes  
21      of notifying potential victims and law enforcement  
22      agencies of certain threats; providing such persons  
23      with immunity from specified liability and actions;  
24      reenacting s. 490.009, F.S., relating to discipline of  
25      psychiatrists; reenacting s. 491.009, F.S., relating  
26      to discipline of psychologists; providing an effective  
27      date.

28  
29   Be It Enacted by the Legislature of the State of Florida:

586-02187-19

20197048pb

30  
31 Section 1. Present subsections (4) through (11) of section  
32 394.4615, Florida Statutes, are redesignated as subsections (5)  
33 through (12), respectively, a new subsection (4) is added to  
34 that section, and subsection (3) of that section is amended, to  
35 read:

36 394.4615 Clinical records; confidentiality.—

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

39 ~~(a)~~ when a patient has communicated to a service provider a  
40 specific threat to cause serious bodily injury or death to an  
41 identified or a readily available person, if the service  
42 provider reasonably believes, or should reasonably believe  
43 according to the standards of his or her profession, that the  
44 client has the apparent intent and ability to imminently or  
45 immediately carry out such threat ~~declared an intention to harm~~  
46 ~~other persons~~. When such communication ~~declaration~~ has been  
47 made, the administrator must ~~may~~ authorize the release of  
48 sufficient information to provide adequate warning to the person  
49 threatened with harm by the patient and communicate the threat  
50 to law enforcement.

51 (4) (a) ~~(b)~~ Information from the clinical record may be  
52 released when the administrator of the facility or secretary of  
53 the department deems release to a qualified researcher as  
54 defined in administrative rule, an aftercare treatment provider,  
55 or an employee or agent of the department is necessary for  
56 treatment of the patient, maintenance of adequate records,  
57 compilation of treatment data, aftercare planning, or evaluation  
58 of programs.

586-02187-19

20197048pb

59       **(b)** For the purpose of determining whether a person meets  
60 the criteria for involuntary outpatient placement or for  
61 preparing the proposed treatment plan pursuant to s. 394.4655,  
62 the clinical record may be released to the state attorney, the  
63 public defender or the patient's private legal counsel, the  
64 court, and to the appropriate mental health professionals,  
65 including the service provider identified in s.  
66 394.4655(7)(b)2., in accordance with state and federal law.

67       Section 2. Section 456.059, Florida Statutes, is amended to  
68 read:

69       456.059 Communications confidential; exceptions.—  
70 Communications between a patient and a psychiatrist, as defined  
71 in s. 394.455, shall be held confidential and may ~~shall~~ not be  
72 disclosed except upon the request of the patient or the  
73 patient's legal representative. Provision of psychiatric records  
74 and reports are ~~shall be~~ governed by s. 456.057. Notwithstanding  
75 any other provision of this section or s. 90.503, when ~~where~~:

76       (1) A patient is engaged in a treatment relationship with a  
77 psychiatrist;

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

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

87

586-02187-19

20197048pb

88 the psychiatrist shall ~~may~~ disclose patient communications to  
89 the extent necessary to warn any potential victim or to  
90 communicate the threat to a law enforcement agency. A  
91 psychiatrist's disclosure of confidential communications when  
92 communicating a threat pursuant to this section may not be the  
93 basis of any legal action or criminal or civil liability against  
94 the psychiatrist ~~No civil or criminal action shall be~~  
95 ~~instituted, and there shall be no liability on account of~~  
96 ~~disclosure of otherwise confidential communications by a~~  
97 ~~psychiatrist in disclosing a threat pursuant to this section.~~

98 Section 3. Section 490.0147, Florida Statutes, is amended  
99 to read:

100 490.0147 Confidentiality and privileged communications.—

101 (1) Any communication between a psychologist ~~any person~~  
102 ~~licensed under this chapter~~ and her or his patient or client is  
103 ~~shall be~~ confidential.

104 (a) This privilege may be waived under the following  
105 conditions:

106 1.~~(1)~~ When the psychologist ~~person licensed under this~~  
107 ~~chapter~~ is a party defendant to a civil, criminal, or  
108 disciplinary action arising from a complaint filed by the  
109 patient or client, in which case the waiver shall be limited to  
110 that action; or—

111 2.~~(2)~~ When the patient or client agrees to the waiver, in  
112 writing, or when more than one person in a family is receiving  
113 therapy, when each family member agrees to the waiver, in  
114 writing.

115 (2) Such privilege must be waived, and the psychologist  
116 shall disclose patient and client communications to the extent

586-02187-19

20197048pb

117 necessary to warn any potential victim and to communicate the  
118 threat to a law enforcement agency, if a patient or client has  
119 communicated to the psychologist a specific threat to cause  
120 serious bodily injury or death to an identified or readily  
121 available person, and the psychologist makes a clinical judgment  
122 that the patient or client has the apparent intent and ability  
123 to imminently or immediately carry out such threat. A  
124 psychologist's disclosure of confidential communications when  
125 communicating a threat pursuant to this subsection may not be  
126 the basis of any legal action or criminal or civil liability  
127 against the psychologist

128 ~~(3) When there is a clear and immediate probability of~~  
129 ~~physical harm to the patient or client, to other individuals, or~~  
130 ~~to society and the person licensed under this chapter~~  
131 ~~communicates the information only to the potential victim,~~  
132 ~~appropriate family member, or law enforcement or other~~  
133 ~~appropriate authorities.~~

134 Section 4. Section 491.0147, Florida Statutes, is amended  
135 to read:

136 491.0147 Confidentiality and privileged communications.—Any  
137 communication between any person licensed or certified under  
138 this chapter and her or his patient or client is ~~shall be~~  
139 confidential.

140 (1) This privilege ~~secrecy~~ may be waived under the  
141 following conditions:

142 (a) ~~(1)~~ When the person licensed or certified under this  
143 chapter is a party defendant to a civil, criminal, or  
144 disciplinary action arising from a complaint filed by the  
145 patient or client, in which case the waiver shall be limited to

586-02187-19

20197048pb

146 that action.

147 ~~(b)(2)~~ When the patient or client agrees to the waiver, in  
148 writing, or, when more than one person in a family is receiving  
149 therapy, when each family member agrees to the waiver, in  
150 writing.

151 (2) This privilege must be waived, and the person licensed  
152 or certified under this chapter shall disclose patient and  
153 client communications to the extent necessary to warn any  
154 potential victim and to communicate the threat to a law  
155 enforcement agency, if a patient or client has communicated to  
156 such person a specific threat to cause serious bodily injury or  
157 death to an identified or readily available person, and the  
158 person licensed or certified under this chapter makes a clinical  
159 judgment that the patient or client has the apparent intent and  
160 ability to imminently or immediately carry out such threat. A  
161 disclosure of confidential communications by a person licensed  
162 or certified under this chapter when communicating a threat  
163 pursuant to this subsection may not be the basis of any legal  
164 action or criminal or civil liability against such person

165 ~~(3) When, in the clinical judgment of the person licensed~~  
166 ~~or certified under this chapter, there is a clear and immediate~~  
167 ~~probability of physical harm to the patient or client, to other~~  
168 ~~individuals, or to society and the person licensed or certified~~  
169 ~~under this chapter communicates the information only to the~~  
170 ~~potential victim, appropriate family member, or law enforcement~~  
171 ~~or other appropriate authorities. There shall be no liability on~~  
172 ~~the part of, and no cause of action of any nature shall arise~~  
173 ~~against, a person licensed or certified under this chapter for~~  
174 ~~the disclosure of otherwise confidential communications under~~

586-02187-19

20197048pb

175 ~~this subsection.~~

176 Section 5. For the purpose of incorporating the amendment  
177 made by this act to section 490.0147, Florida Statutes, in a  
178 reference thereto, paragraph (u) of subsection (1) of section  
179 490.009, Florida Statutes, is reenacted to read:

180 490.009 Discipline.—

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

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

186 Section 6. For the purpose of incorporating the amendment  
187 made by this act to section 491.0147, Florida Statutes, in a  
188 reference thereto, paragraph (u) of subsection (1) of section  
189 491.009, Florida Statutes, is reenacted to read:

190 491.009 Discipline.—

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

193 (u) Failure of the licensee, registered intern, or  
194 certificateholder to maintain in confidence a communication made  
195 by a patient or client in the context of such services, except  
196 as provided in s. 491.0147.

197 Section 7. This act shall take effect July 1, 2019.