

CHAPTER 2019-134

Committee Substitute for Committee Substitute for Senate Bill No. 1418

An act relating to mental health; amending s. 394.4615, F.S.; requiring service providers to disclose information from a clinical record under certain circumstances relating to threats to cause serious bodily injury or death; requiring a law enforcement agency that receives notification of a specific threat to take appropriate action; providing immunity for service providers for certain actions; amending s. 394.463, F.S.; revising deadlines for submission of documentation regarding involuntary examinations; requiring that additional information be included in reports to the department; requiring the department to report to the Governor and Legislature on data collected from such reports; amending s. 394.917, F.S.; revising the purpose of civil commitment of sexually violent predators to the department after completion of their criminal incarceration sentences; amending s. 456.059, F.S.; requiring psychiatrists to disclose certain patient communications for purposes of notifying law enforcement agencies of certain threats; requiring the notified law enforcement agency to take appropriate action to prevent the risk of harm to the victim; providing psychiatrists with immunity from specified liability and actions under certain circumstances; amending s. 490.0147, F.S.; requiring psychologists to disclose certain patient or client communications for purposes of notifying law enforcement agencies of certain threats; requiring the notified law enforcement agency to take appropriate action to prevent the risk of harm to the victim; providing psychologists with immunity from specified liability and actions under certain circumstances; amending s. 491.0147, F.S.; requiring certain license holders and certificate holders to disclose certain patient or client communications for purposes of notifying law enforcement agencies of certain threats; requiring the notified law enforcement agency to take appropriate action to prevent the risk of harm to the victim; providing such persons with immunity from specified liability and actions; amending s. 1012.583, F.S.; revising responsibilities of the Department of Education and the State-wide Office for Suicide Prevention; revising criteria for designation as a Suicide Prevention Certified School; requiring that the department, schools, and school districts post certain information regarding such schools be posted on their respective websites; reenacting ss. 490.009 and 491.009, F.S., relating to discipline of psychologists and other licensed therapists, to incorporate amendments made by the act; providing an effective date.

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

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 the following circumstances:

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

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

(4) Information from the clinical record must be released when a patient has communicated to a service provider a specific threat to cause serious bodily injury or death to an identified or a readily available person, if the service provider reasonably believes, or should reasonably believe according to the standards of his or her profession, that the patient has the apparent intent and ability to imminently or immediately carry out such threat. When such communication has been made, the administrator must authorize the release of sufficient information to communicate the threat to law enforcement. A law enforcement agency that receives notification of a specific threat under this subsection must take appropriate action to prevent the risk of harm, including, but not limited to, notifying the intended victim of such threat or initiating a risk protection order. A service provider's authorization to release information from a clinical record when communicating a threat pursuant to this section may not be the basis of any legal action or criminal or civil liability against the service provider.

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

394.463 Involuntary examination.—

(2) INVOLUNTARY EXAMINATION.—

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

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

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

3. A physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker may execute a certificate stating that he or she has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination and stating the observations upon which that conclusion is based. If other less restrictive means, such as voluntary appearance for outpatient evaluation, are not available, a law enforcement officer shall take into custody the person named in the certificate and deliver him or her to the appropriate, or nearest, facility within the designated receiving system pursuant to s. 394.462 for involuntary examination. The law enforcement officer shall execute a written report detailing the circumstances under which the person was taken into custody. The report and certificate shall be made a part of the patient's clinical record. Any facility accepting the patient based on this certificate must send a copy of the certificate to the department within 5 the next working days day. The document may be submitted electronically through existing data systems, if applicable.

When sending the order, report, or certificate to the department, a facility shall at a minimum provide information about which action was taken

regarding the patient under paragraph (g), which information shall also be made a part of the patient's clinical record.

(4) DATA ANALYSIS.—Using data collected under paragraph (2)(a), the department shall, at a minimum, analyze data on the initiation of involuntary examinations of children, identify any patterns or trends and cases in which involuntary examinations are repeatedly initiated on the same child, study root causes for such patterns, trends, or repeated involuntary examinations, and make recommendations for encouraging alternatives to and eliminating inappropriate initiations of such examinations. The department shall submit a report on its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 1 of each odd numbered year.

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

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

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

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

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

- (1) A patient is engaged in a treatment relationship with a psychiatrist;
- (2) Such patient has communicated to the psychiatrist a specific threat to cause serious bodily injury or death to an identified or a readily available person ~~made an actual threat to physically harm an identifiable victim or victims;~~ and
- (3) The treating psychiatrist makes a clinical judgment that the patient has the apparent intent and ability to imminently or immediately carry out such threat ~~capability to commit such an act and that it is more likely than not that in the near future the patient will carry out that threat,~~

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

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

490.0147 Confidentiality and privileged communications.—

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

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

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

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

~~(2) Such privilege must be waived, and the psychologist shall disclose patient or client communications to the extent necessary to communicate the threat to a law enforcement agency, if a patient or client has communicated to the psychologist a specific threat to cause serious bodily injury or death to an identified or readily available person, and the psychologist makes a clinical judgment that the patient or client has the apparent intent and~~

ability to imminently or immediately carry out such threat. A law enforcement agency that receives notification of a specific threat under this subsection must take appropriate action to prevent the risk of harm, including, but not limited to, notifying the intended victim of such threat or initiating a risk protection order. A psychologist's disclosure of confidential communications when communicating a threat pursuant to this subsection may not be the basis of any legal action or criminal or civil liability against the psychologist.

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

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

(1) This privilege seereey may be waived under the following conditions:

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

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

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

(2) This privilege must be waived, and the person licensed or certified under this chapter shall disclose patient or client communications to the extent necessary to communicate the threat to a law enforcement agency, if a patient or client has communicated to such person a specific threat to cause serious bodily injury or death to an identified or readily available person, and the person licensed or certified under this chapter makes a clinical

judgment that the patient or client has the apparent intent and ability to imminently or immediately carry out such threat. A law enforcement agency that receives notification of a specific threat under this subsection must take appropriate action to prevent the risk of harm, including, but not limited to, notifying the intended victim of such threat or initiating a risk protection order. A disclosure of confidential communications by a person licensed or certified under this chapter when communicating a threat pursuant to this subsection may not be the basis of any legal action or criminal or civil liability against such person.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

490.009 Discipline.—

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

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

Section 9. For the purpose of incorporating the amendment made by this act to section 491.0147, Florida Statutes, in a reference thereto, paragraph (u) of subsection (1) of section 491.009, Florida Statutes, is reenacted to read:

491.009 Discipline.—

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

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

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

Approved by the Governor June 25, 2019.

Filed in Office Secretary of State June 25, 2019.