

May 2019 Legislative Review by:

Francys Calle Martin, Esq., LHRM
Senior Loss Prevention Attorney

Senate Bill 1418 follows this legislative examination (see pages 2-16).

The bill implements two recommendations of a Department of Children and Families (DCF) task force on Baker Act cases involving minors. The Florida Mental Health Act, also known as the Baker Act, allows for voluntary and, under certain circumstances, involuntary, examinations of individuals suspected of having a mental illness and presenting a threat of harm to themselves or others, and establishes procedures for courts, law enforcement, and certain health care practitioners to initiate such examinations and then act in response to the findings. The task force found that Florida has seen an increasing trend statewide and in certain counties to initiate involuntary examinations of minors in recent years.

The first recommendation contained in the bill prepared by the Children, Families, and Elder Affairs Committee, encourages school districts to adopt a standardized suicide assessment tool that school-based mental health professionals would implement prior to initiation of an involuntary examination. The second recommendation increases the number of days, from the next working day to five working days that the receiving facility has to submit forms to DCF. This will allow DCF to capture data on whether the minor was admitted, released, or a petition filed with the court. The bill also increases data gathered on involuntary examinations and requires DCF to submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives, every two years on its findings and recommendations related to involuntary examinations initiated on minors.

Most notably for healthcare providers, the bill also requires that when a patient communicates a specific threat against an identifiable individual to a mental health service provider, the provider must notify law enforcement of the potential threat. The bill further requires that law enforcement notify the target of the threat presented. The bill provides immunity from civil and criminal liability to service providers acting in good faith when releasing such information.

If approved by the Governor, these provisions take effect July 1, 2019.

To learn more about the Florida Academic Healthcare Patient Safety Organization's efforts to improve the standardized mental health assessments and behavioral health integration for university students in Florida, please read our recommendation at <http://flbog.sip.ufl.edu/florida-academic-healthcare-pso/>

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2 An act relating to mental health; amending s.
3 394.4615, F.S.; requiring service providers to
4 disclose information from a clinical record under
5 certain circumstances relating to threats to cause
6 serious bodily injury or death; requiring a law
7 enforcement agency that receives notification of a
8 specific threat to take appropriate action; providing
9 immunity for service providers for certain actions;
10 amending s. 394.463, F.S.; revising deadlines for
11 submission of documentation regarding involuntary
12 examinations; requiring that additional information be
13 included in reports to the department; requiring the
14 department to report to the Governor and Legislature
15 on data collected from such reports; amending s.
16 394.917, F.S.; revising the purpose of civil
17 commitment of sexually violent predators to the
18 department after completion of their criminal
19 incarceration sentences; amending s. 456.059, F.S.;
20 requiring psychiatrists to disclose certain patient
21 communications for purposes of notifying law
22 enforcement agencies of certain threats; requiring the
23 notified law enforcement agency to take appropriate
24 action to prevent the risk of harm to the victim;
25 providing psychiatrists with immunity from specified
26 liability and actions under certain circumstances;
27 amending s. 490.0147, F.S.; requiring psychologists to
28 disclose certain patient or client communications for
29 purposes of notifying law enforcement agencies of

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30 certain threats; requiring the notified law
31 enforcement agency to take appropriate action to
32 prevent the risk of harm to the victim; providing
33 psychologists with immunity from specified liability
34 and actions under certain circumstances; amending s.
35 491.0147, F.S.; requiring certain license holders and
36 certificate holders to disclose certain patient or
37 client communications for purposes of notifying law
38 enforcement agencies of certain threats; requiring the
39 notified law enforcement agency to take appropriate
40 action to prevent the risk of harm to the victim;
41 providing such persons with immunity from specified
42 liability and actions; amending s. 1012.583, F.S.;
43 revising responsibilities of the Department of
44 Education and the Statewide Office for Suicide
45 Prevention; revising criteria for designation as a
46 Suicide Prevention Certified School; requiring that
47 the department, schools, and school districts post
48 certain information regarding such schools be posted
49 on their respective websites; reenacting ss. 490.009
50 and 491.009, F.S., relating to discipline of
51 psychologists and other licensed therapists, to
52 incorporate amendments made by the act; providing an
53 effective date.

54
55 Be It Enacted by the Legislature of the State of Florida:

56
57 Section 1. Present subsections (4) through (11) of section
58 394.4615, Florida Statutes, are renumbered as subsections (5)

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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

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88 or a readily available person, if the service provider
89 reasonably believes, or should reasonably believe according to
90 the standards of his or her profession, that the patient has the
91 apparent intent and ability to imminently or immediately carry
92 out such threat. When such communication has been made, the
93 administrator must authorize the release of sufficient
94 information to communicate the threat to law enforcement. A law
95 enforcement agency that receives notification of a specific
96 threat under this subsection must take appropriate action to
97 prevent the risk of harm, including, but not limited to,
98 notifying the intended victim of such threat or initiating a
99 risk protection order. A service provider's authorization to
100 release information from a clinical record when communicating a
101 threat pursuant to this section may not be the basis of any
102 legal action or criminal or civil liability against the service
103 provider.

104 Section 2. Paragraph (a) of subsection (2) of section
105 394.463, Florida Statutes, is amended, and subsection (4) is
106 added to that section, to read:

107 394.463 Involuntary examination.—

108 (2) INVOLUNTARY EXAMINATION.—

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

111 1. A circuit or county court may enter an ex parte order
112 stating that a person appears to meet the criteria for
113 involuntary examination and specifying the findings on which
114 that conclusion is based. The ex parte order for involuntary
115 examination must be based on written or oral sworn testimony
116 that includes specific facts that support the findings. If other

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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

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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

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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

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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 eriminal action shall be instituted, and there shall be no liability on account of disclosure of otherwise confidential~~

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~~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

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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 ~~secrecy~~ may be waived under the
following conditions:

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

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

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

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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

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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) ~~(c)~~ 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

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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

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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.