

July 2019 Legislative Review by:

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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.

Approved by the Governor and effective 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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1
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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59 through (12), respectively, paragraph (a) of subsection (3) is
60 amended, and a new subsection (4) is added to that section, to
61 read:

62 394.4615 Clinical records; confidentiality.—

63 (3) Information from the clinical record may be released in
64 the following circumstances:

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

76
77 For the purpose of determining whether a person meets the
78 criteria for involuntary outpatient placement or for preparing
79 the proposed treatment plan pursuant to s. 394.4655, the
80 clinical record may be released to the state attorney, the
81 public defender or the patient's private legal counsel, the
82 court, and to the appropriate mental health professionals,
83 including the service provider identified in s.

84 394.4655(7)(b)2., in accordance with state and federal law.

85 (4) Information from the clinical record must be released
86 when a patient has communicated to a service provider a specific
87 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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117 less restrictive means are not available, such as voluntary
118 appearance for outpatient evaluation, a law enforcement officer,
119 or other designated agent of the court, shall take the person
120 into custody and deliver him or her to an appropriate, or the
121 nearest, facility within the designated receiving system
122 pursuant to s. 394.462 for involuntary examination. The order of
123 the court shall be made a part of the patient's clinical record.
124 A fee may not be charged for the filing of an order under this
125 subsection. A facility accepting the patient based on this order
126 must send a copy of the order to the department within 5 ~~the~~
127 ~~next~~ working days ~~day~~. The order may be submitted electronically
128 through existing data systems, if available. The order shall be
129 valid only until the person is delivered to the facility or for
130 the period specified in the order itself, whichever comes first.
131 If no time limit is specified in the order, the order shall be
132 valid for 7 days after the date that the order was signed.

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

144 3. A physician, clinical psychologist, psychiatric nurse,
145 mental health counselor, marriage and family therapist, or

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146 clinical social worker may execute a certificate stating that he
147 or she has examined a person within the preceding 48 hours and
148 finds that the person appears to meet the criteria for
149 involuntary examination and stating the observations upon which
150 that conclusion is based. If other less restrictive means, such
151 as voluntary appearance for outpatient evaluation, are not
152 available, a law enforcement officer shall take into custody the
153 person named in the certificate and deliver him or her to the
154 appropriate, or nearest, facility within the designated
155 receiving system pursuant to s. 394.462 for involuntary
156 examination. The law enforcement officer shall execute a written
157 report detailing the circumstances under which the person was
158 taken into custody. The report and certificate shall be made a
159 part of the patient's clinical record. Any facility accepting
160 the patient based on this certificate must send a copy of the
161 certificate to the department within 5 ~~the next~~ working days
162 ~~day~~. The document may be submitted electronically through
163 existing data systems, if applicable.

164
165 When sending the order, report, or certificate to the
166 department, a facility shall at a minimum provide information
167 about which action was taken regarding the patient under
168 paragraph (g), which information shall also be made a part of
169 the patient's clinical record.

170 (4) DATA ANALYSIS.—Using data collected under paragraph
171 (2) (a), the department shall, at a minimum, analyze data on the
172 initiation of involuntary examinations of children, identify any
173 patterns or trends and cases in which involuntary examinations
174 are repeatedly initiated on the same child, study root causes

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175 for such patterns, trends, or repeated involuntary examinations,
176 and make recommendations for encouraging alternatives to and
177 eliminating inappropriate initiations of such examinations. The
178 department shall submit a report on its findings and
179 recommendations to the Governor, the President of the Senate,
180 and the Speaker of the House of Representatives by November 1 of
181 each odd numbered year.

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

184 394.917 Determination; commitment procedure; mistrials;
185 housing; counsel and costs in indigent appellate cases.—

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

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

200 456.059 Communications confidential; exceptions.—
201 Communications between a patient and a psychiatrist, as defined
202 in s. 394.455, shall be held confidential and may ~~shall~~ not be
203 disclosed except upon the request of the patient or the

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204 patient's legal representative. Provision of psychiatric records
205 and reports are ~~shall be~~ governed by s. 456.057. Notwithstanding
206 any other provision of this section or s. 90.503, when ~~where~~:

207 (1) A patient is engaged in a treatment relationship with a
208 psychiatrist;

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

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

218
219 the psychiatrist may disclose patient communications to the
220 extent necessary to warn any potential victim ~~or~~ and must
221 disclose patient communications to the extent necessary to
222 communicate the threat to a law enforcement agency. A law
223 enforcement agency that receives notification of a specific
224 threat under this subsection must take appropriate action to
225 prevent the risk of harm, including, but not limited to,
226 notifying the intended victim of such threat or initiating a
227 risk protection order. A psychiatrist's disclosure of
228 confidential communications when communicating a threat pursuant
229 to this section may not be the basis of any legal action or
230 criminal or civil liability against the psychiatrist ~~No civil or~~
231 ~~eriminal action shall be instituted, and there shall be no~~
232 ~~liability on account of disclosure of otherwise confidential~~

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233 ~~communications by a psychiatrist in disclosing a threat pursuant~~
234 ~~to this section.~~

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

237 490.0147 Confidentiality and privileged communications.—

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

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

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

251 (c)(3) When a patient or client has communicated to the
252 psychologist a specific threat to cause serious bodily injury or
253 death to an identified or readily available person, and the
254 psychologist makes a clinical judgment that the patient or
255 client has the apparent intent and ability to imminently or
256 immediately carry out such threat and the psychologist ~~there is~~
257 ~~a clear and immediate probability of physical harm to the~~
258 ~~patient or client, to other individuals, or to society and the~~
259 ~~person licensed under this chapter~~ communicates the information
260 ~~only to the potential victim, appropriate family member, or law~~
261 ~~enforcement or other appropriate authorities.~~ A disclosure of

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262 confidential communications by a psychologist when communicating
263 a threat pursuant to this subsection may not be the basis of any
264 legal action or criminal or civil liability against the
265 psychologist.

266 (2) Such privilege must be waived, and the psychologist
267 shall disclose patient or client communications to the extent
268 necessary to communicate the threat to a law enforcement agency,
269 if a patient or client has communicated to the psychologist a
270 specific threat to cause serious bodily injury or death to an
271 identified or readily available person, and the psychologist
272 makes a clinical judgment that the patient or client has the
273 apparent intent and ability to imminently or immediately carry
274 out such threat. A law enforcement agency that receives
275 notification of a specific threat under this subsection must
276 take appropriate action to prevent the risk of harm, including,
277 but not limited to, notifying the intended victim of such threat
278 or initiating a risk protection order. A psychologist's
279 disclosure of confidential communications when communicating a
280 threat pursuant to this subsection may not be the basis of any
281 legal action or criminal or civil liability against the
282 psychologist.

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

285 491.0147 Confidentiality and privileged communications.—Any
286 communication between any person licensed or certified under
287 this chapter and her or his patient or client is ~~shall be~~
288 confidential.

289 (1) This privilege ~~secrecy~~ may be waived under the
290 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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320 or civil liability against such person.

321 (2) This privilege must be waived, and the person licensed
322 or certified under this chapter shall disclose patient or client
323 communications to the extent necessary to communicate the threat
324 to a law enforcement agency, if a patient or client has
325 communicated to such person a specific threat to cause serious
326 bodily injury or death to an identified or readily available
327 person, and the person licensed or certified under this chapter
328 makes a clinical judgment that the patient or client has the
329 apparent intent and ability to imminently or immediately carry
330 out such threat. A law enforcement agency that receives
331 notification of a specific threat under this subsection must
332 take appropriate action to prevent the risk of harm, including,
333 but not limited to, notifying the intended victim of such threat
334 or initiating a risk protection order. A disclosure of
335 confidential communications by a person licensed or certified
336 under this chapter when communicating a threat pursuant to this
337 subsection may not be the basis of any legal action or criminal
338 or civil liability against such person.

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

341 1012.583 Continuing education and inservice training for
342 youth suicide awareness and prevention.—

343 (1) By July 1, 2019 ~~Beginning with the 2016-2017 school~~
344 ~~year,~~ the Department of Education, in consultation with the
345 Statewide Office for Suicide Prevention and suicide prevention
346 experts, shall develop a list of approved youth suicide
347 awareness and prevention training materials and suicide
348 screening instruments that may be used for training in youth

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349 suicide awareness, suicide ~~and~~ prevention, and suicide screening
350 for instructional personnel in elementary school, middle school,
351 and high school. The approved list of materials:

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

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

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

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

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

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

376 (b) Has at least two school-based staff members certified
377 or otherwise deemed competent in the use of a suicide screening

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378 instrument approved under subsection (1) and has a policy to use
379 such suicide risk screening instrument to evaluate a student's
380 suicide risk before requesting the initiation of, or initiating,
381 an involuntary examination due to concerns about that student's
382 suicide risk.

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

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

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

401 Section 8. For the purpose of incorporating the amendment
402 made by this act to section 490.0147, Florida Statutes, in a
403 reference thereto, paragraph (u) of subsection (1) of section
404 490.009, Florida Statutes, is reenacted to read:

405 490.009 Discipline.—

406 (1) The following acts constitute grounds for denial of a

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407 license or disciplinary action, as specified in s. 456.072(2):

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

411 Section 9. For the purpose of incorporating the amendment
412 made by this act to section 491.0147, Florida Statutes, in a
413 reference thereto, paragraph (u) of subsection (1) of section
414 491.009, Florida Statutes, is reenacted to read:

415 491.009 Discipline.—

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

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

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