

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Health Regulation Committee

BILL: SB 498

INTRODUCER: Senator Baker

SUBJECT: Clinical, Counseling, and Psychotherapy Services

DATE: April 8, 2009

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Wilson	HR	<b>Favorable</b>
2.			JU	
3.				
4.				
5.				
6.				

**I. Summary:**

The bill provides that there is no liability and no cause of action of any nature may arise against a licensed clinical social worker, marriage and family therapist, or mental health counselor (collectively known as psychotherapists) when the psychotherapist makes a disclosure of otherwise confidential communications regarding a patient or client to the potential victim, appropriate family member, or law enforcement or other appropriate authorities.

In order to obtain the waiver of liability, the licensed psychotherapist must have the appropriate clinical judgment to determine that there is a clear and immediate probability of physical harm to the patient or client, to other individuals, or to society, and the licensed psychotherapist may only communicate the information to the potential victim, appropriate family member, or law enforcement or other appropriate authorities.

This bill amends section 491.0147, Florida Statutes.

**II. Present Situation:**

Chapter 491, F.S., provides for the regulation of psychotherapists by the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling within the Department of Health. Section 491.0147, F.S., specifies that any communication between any person licensed or certified under ch. 491, F.S., and her or his patient or client shall be confidential. This secrecy may be waived under the following conditions:

- When the person licensed or certified under ch. 491, F.S., 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.

- 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.
- When 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.

The waiver of confidentiality is permissive and is made by the licensed psychotherapist. A licensed psychotherapist who does not waive confidentiality may not be sued by any individual who is harmed when the client or patient follows through with a threat;<sup>1</sup> however, a licensed psychotherapist who discloses confidential information about a client may be sued for emotional distress.<sup>2</sup> Under current Florida law, a licensed psychotherapist may avoid the threat of a lawsuit by not disclosing any threats of harm by their clients to another.

Psychiatrists are medical or osteopathic physicians who specialize in diagnosing and treating mental disorders. Psychiatrists have no liability for disclosure of otherwise confidential patient communications in disclosing an actual threat to physically harm an identifiable victim.

Section 456.059, F.S., provides that communications between a patient and a psychiatrist, as defined in s. 394.455, F.S.,<sup>3</sup> shall be held confidential and shall not be disclosed except upon the request of the patient or the patient's legal representative. Provision of psychiatric records and reports is governed by s. 456.057, F.S. Notwithstanding any other provision of s. 456.059, F.S., or s. 90.503, F.S., relating to the psychotherapist-patient privilege, where:

- A patient is engaged in a treatment relationship with a psychiatrist;
- Such patient *has made an actual threat* to physically harm an identifiable victim or victims; and
- The treating psychiatrist makes a *clinical judgment* that the patient has the apparent 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 to communicate the threat to a law enforcement agency. 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 s. 456.059, F.S.

### III. Effect of Proposed Changes:

The bill amends s. 491.0147, F.S., relating to the confidential and privileged communications between patients or clients and their psychotherapists, to provide that when in the clinical judgment of a licensed clinical social worker, marriage and family therapist, or mental health counselor, there is a clear and immediate probability of physical harm to the patient or client, to other individuals, or to society and the psychotherapist communicates the information only to the potential victim, appropriate family member, or law enforcement or other appropriate authorities,

<sup>1</sup> See *Green v. Ross*, 691 So.2d 542 (Fla. 2<sup>nd</sup> DCA 1997) in which the Second District Court of Appeal found no duty to warn.

<sup>2</sup> See also *Gracey v. Eaker*, 837 So.2d 348 (Fla. 2002).

<sup>3</sup>Section 394.455(24) F.S., defines "psychiatrist" to mean a medical practitioner licensed under ch. 458, F.S., or ch. 459, F.S., who has primarily diagnosed and treated mental and nervous disorders for a period of not less than 3 years, inclusive of psychiatric residency.

there is no liability on the part of, and no cause of action of any nature shall arise against, the licensed psychotherapist for the disclosure of otherwise confidential communications.

The bill provides an effective date of July 1, 2009.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill requires a psychotherapist to use “clinical judgment” to determine that there is a high probability of physical harm to the patient or another individual. Chapter 491, F.S., does not define, “clinical judgment” and it is unclear, for purposes of the bill, what the term means.

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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