

Senate File 291

H-1367

1 Amend Senate File 291, as passed by the Senate, as
2 follows:

3 1. By striking everything after the enacting clause
4 and inserting:

5 <Section 1. Section 228.6, subsection 4, Code 2011,
6 is amended to read as follows:

7 4. a. Mental health information may be disclosed
8 in a civil or administrative proceeding in which
9 an individual eighteen years of age or older or an
10 individual's legal representative or, in the case of
11 a deceased individual, a party claiming or defending
12 through a beneficiary of the individual, offers the
13 individual's mental or emotional condition as an
14 element of a claim or a defense.

15 b. An alleged victim's mental health information
16 may be disclosed in a criminal proceeding pursuant to
17 section 622.10, subsection 3A.

18 Sec. 2. Section 622.10, Code 2011, is amended by
19 adding the following new subsection:

20 NEW SUBSECTION. 3A. a. Except as otherwise
21 provided in this subsection, the confidentiality
22 privilege under this section shall be absolute with
23 regard to a criminal action and this subsection shall
24 not be construed to authorize or require the disclosure
25 of any privileged records to a defendant in a criminal
26 action unless either of the following occur:

27 (1) The privilege holder voluntarily waives the
28 confidentiality privilege.

29 (2) (a) The defendant seeking access to an alleged
30 victim's privileged records under this subsection
31 files a motion with the court demonstrating a good
32 faith factual basis that the records sought contain
33 evidence relevant to the defendant's innocence. The
34 motion shall set forth specific facts establishing
35 a reasonable probability the records sought contain
36 exculpatory evidence tending to create a reasonable
37 doubt as to the defendant's guilt. The motion shall
38 also request the court to issue a subpoena requiring
39 the custodian of the records to produce the records
40 sought by the defendant under seal of the court. Such
41 a motion shall be filed not later than forty days after
42 arraignment. Failure of the defendant to timely file
43 such a motion constitutes a waiver of the right to seek
44 access to records under this subsection, except that
45 the court, for good cause shown, may grant relief from
46 such waiver.

47 (b) Within three working days of the filing of
48 the motion pursuant to subparagraph division (a),
49 the county attorney shall notify the alleged victim
50 that the defendant has made a request for the alleged

1 victim's privileged records and shall, after conferring
2 with the alleged victim, provide the court with an
3 affidavit signed by the alleged victim stating that
4 the alleged victim either consents to or opposes the
5 disclosure of the records. If the alleged victim
6 consents to the disclosure, the court shall issue a
7 subpoena for the records to be produced under seal
8 of the court. If the alleged victim opposes the
9 disclosure, the court shall hold a hearing within ten
10 days of the filing of defendant's motion pursuant to
11 subparagraph division (a) to determine if a reasonable
12 probability exists that the records contain exculpatory
13 evidence tending to create a reasonable doubt as to the
14 defendant's guilt.

15 (c) If, after the hearing, the court determines
16 a reasonable probability exists that the privileged
17 records sought by the defendant contain exculpatory
18 evidence tending to create a reasonable doubt as to the
19 defendant's guilt, the court shall immediately issue
20 a subpoena for the records to be produced under seal
21 of the court.

22 (d) The defendant's attorney shall have the right
23 to inspect any privileged records produced pursuant to
24 the subpoena at the courthouse. However, prior to any
25 such inspection, the court shall issue a protective
26 order containing stringent nondisclosure provisions
27 prohibiting any attorney or county attorney who is
28 allowed to inspect or review the records under this
29 subsection from copying, disclosing, or disseminating
30 the information contained in the records to any person,
31 including the defendant, unless otherwise authorized in
32 this subsection or by the court.

33 (e) After the defendant's attorney has had the
34 opportunity to review and identify the specific
35 privileged records the defendant's attorney believes
36 contain exculpatory evidence, the defendant's attorney
37 shall file a motion under seal of the court designating
38 the specific records requested, summarizing the alleged
39 exculpatory evidence contained therein, and requesting
40 that the matter be set for hearing. Prior to the
41 hearing, the county attorney may review the designated
42 records at the courthouse, subject to the protective
43 order entered by the court pursuant to subparagraph
44 division (d).

45 (f) Within seven days of the filing of the
46 defendant's motion under subparagraph division (e),
47 the court shall hold a hearing to determine if the
48 designated privileged records contain exculpatory
49 evidence. The court shall give notice of the hearing
50 to the defendant's attorney and the county attorney.

1 If the court determines the designated records contain
2 exculpatory evidence, the court shall provide a copy of
3 any such records to the defendant's attorney and to the
4 county attorney. Prior to providing these records to
5 the defendant's attorney and the county attorney, the
6 court shall order that all nonexculpatory matters in
7 the records provided be redacted prior to the records
8 being removed from the courthouse and, unless otherwise
9 provided by the court, the records shall continue to be
10 subject to the protective order entered by the court
11 pursuant to subparagraph division (d).

12 (g) Before the defendant's attorney or the county
13 attorney may disclose the privileged records to a
14 third party, including potential expert witnesses, the
15 defendant's attorney or the county attorney shall first
16 obtain an order from the court allowing such disclosure
17 and requiring the person to whom the records are to be
18 disclosed be bound to the same nondisclosure provisions
19 imposed on the attorneys. A copy of the protective
20 order shall be given to the third party when the party
21 receives copies of the records.

22 b. The determination of whether either information
23 contained in the privileged records released pursuant
24 to this subsection or the privileged records themselves
25 meet the requirements for admission at trial under the
26 rules of evidence is a separate determination that the
27 court shall make at trial or in a ruling on a motion in
28 limine. If the court ultimately determines the records
29 are admissible, the court shall consider alternatives
30 to the introduction of the records as proffered,
31 which may include stipulations by the parties or the
32 introduction of redacted portions of the records.

33 c. Information derived from privileged records
34 obtained by any means other than as provided in
35 paragraph "a" shall not be admissible in any criminal
36 action.

37 d. All privileged records produced under seal
38 of the court pursuant to this subsection shall be
39 preserved for purposes of appeal. Upon completion of
40 the appeal, all persons who have copies of the records
41 shall destroy such copies and certify to the court that
42 the records in their possession have been destroyed.

43 Sec. 3. EFFECTIVE UPON ENACTMENT. This Act, being
44 deemed of immediate importance, takes effect upon
45 enactment.>

WOLFE of Clinton