

**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.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: SB 1014

INTRODUCER: Senator Garcia

SUBJECT: Public Records/Participants in Treatment-based Drug Court Programs

DATE: March 11, 2013

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Shankle	Cibula	JU	<b>Favorable</b>
2.			GO	
3.			RC	
4.				
5.				
6.				

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**I. Summary:**

SB 1014 creates a public records exception for substance abuse screenings, behavioral health evaluations, and subsequent treatment status reports relating to a participant in a treatment-based drug court program under s. 397.344, F.S. The exemption is subject to legislative review and repeal under the Open Government Sunset Review Act. The bill also contains a statement of public necessity as required by the State Constitution.

Because this bill expands a public records exemption, it requires a two-thirds vote of each house of the Legislature for passage.

This bill substantially amends section 397.334, Florida Statutes.

**II. Present Situation:**

**Public Records and Open Meetings Requirements**

The Florida Constitution specifies requirements for public access to government records and meetings. It provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.<sup>1</sup> The records of the legislative, executive, and judicial branches are specifically included.<sup>2</sup> The Florida Constitution also requires all meetings of any collegial public body of the executive branch of state government or of any local government, at

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<sup>1</sup> FLA. CONST., Art. I, s. 24(a).

<sup>2</sup> *Id.*

which official acts are to be taken or at which public business of such body is to be transacted or discussed, to be open and noticed to the public.<sup>3</sup>

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act<sup>4</sup> guarantees every person's right to inspect and copy any state or local government public record<sup>5</sup> at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>6</sup> The Sunshine Law<sup>7</sup> requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken to be noticed and open to the public.<sup>8</sup>

Only the Legislature may create an exemption to public records or open meetings requirements.<sup>9</sup> Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.<sup>10</sup> Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions<sup>11</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>12</sup>

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<sup>3</sup> FLA. CONST., Art. I, s. 24(b).

<sup>4</sup> Chapter 119, F.S.

<sup>5</sup> Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records. *See Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992).

<sup>6</sup> Section 119.07(1)(a), F.S.

<sup>7</sup> Section 286.011, F.S.

<sup>8</sup> Section 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in Art. III, s. 4(e) of the Florida Constitution. That section requires the rules of procedure of each house to provide that:

- All legislative committee and subcommittee meetings of each house and of joint conference committee meetings must be open and noticed to the public; and
- All prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.

<sup>9</sup> FLA. CONST., Art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, the record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. *See* Attorney General Opinion 85-62, August 1, 1985.

<sup>10</sup> FLA. CONST., Art. I, s. 24(c).

<sup>11</sup> The bill may, however, contain multiple exemptions that relate to one subject.

<sup>12</sup> FLA. CONST., Art. I, s. 24(c).

## Open Government Sunset Review Act

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.<sup>13</sup> It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>14</sup>

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.<sup>15</sup> An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- It protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- It protects trade or business secrets.<sup>16</sup>

The Act also requires specified questions to be considered during the review process.<sup>17</sup>

When reenacting an exemption to prevent its automatic repeal, a public necessity statement and a two-thirds vote for passage are required if the exemption is expanded.<sup>18</sup> A public necessity statement and a two-thirds vote for passage are not required if the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception<sup>19</sup> to the exemption is created.<sup>20</sup>

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<sup>13</sup> Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S. The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System. Section 119.15(2), F.S.

<sup>14</sup> Section 119.15(3), F.S.

<sup>15</sup> Section 119.15(6)(b), F.S.

<sup>16</sup> *Id.*

<sup>17</sup> Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

<sup>18</sup> An exemption is expanded when it is amended to include more records, information, or meetings or to include meetings as well as records, or records as well as meetings.

<sup>19</sup> An example of an exception to a public records exemption would be allowing an additional agency access to confidential and exempt records.

<sup>20</sup> See *State of Florida v. Ronald Knight*, 661 So. 2d 344 (Fla. 4th DCA 1995) (holding that nothing in s. 24, Art. I of the Florida Constitution requires exceptions to a public records exemption to contain a public necessity statement).

### **Records from Treatment-Based Drug Court Programs**

Section 397.334, F.S., allows counties to fund a treatment-based drug court program under which persons in the justice system identified as having a substance abuse problem can receive individually tailored treatment.<sup>21</sup> Entry into a treatment-based drug court program must be voluntary. Written consent of the individual is necessary for a court to order him or her into a program.<sup>22</sup> As part of a program, a person may be required to receive substance abuse screenings and continual monitoring and evaluations.<sup>23</sup> Records to the screenings and evaluations can be reviewed by court officials as part of a process of determining the individual's compliance with the treatment-based drug court program.<sup>24</sup>

Currently these records are not exempt from public disclosure. However, 42 C.F.R. 2 exempts the records relating to an individual in a substance abuse program regulated by a department or agency of the United States Government that are confidential under 42 C.F.R. 2.<sup>25</sup>

### **III. Effect of Proposed Changes:**

The bill amends s. 397.334, F.S., to create a public records exemption for substance abuse screenings, behavioral health evaluations, and subsequent treatment status reports relating to a participant in a treatment-based drug court program under s. 397.344, F.S.

The exemption is subject to legislative review and repeal under the Open Government Sunset Review Act and as such, stands repealed October 2, 2018, unless reviewed and saved from repeal by reenactment of the Legislature.

The bill also contains a statement of public necessity as required by the State Constitution. It provides that the exemption is necessary to protect privacy rights of individuals in a treatment-based drug court program. The chilling effect that the release of records of treatment would have on a person seeking treatment outweighs any public benefit derived from disclosure of the records.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

#### **Vote Requirement**

Article I, s. 24(c) of the Florida Constitution requires a newly created or expanded public records or open meetings exemption to pass by a two-thirds vote of the members present

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<sup>21</sup> Section 397.334(1), F.S.

<sup>22</sup> Section 397.334(2), F.S.

<sup>23</sup> Section 397.334(4), F.S.

<sup>24</sup> Section 397.334(5), F.S.

<sup>25</sup> 42 C.F.R. 2

and voting in each house. This bill creates a new public records exemption; therefore, a two-thirds vote is required.

**Public Necessity Statement**

Article I, s. 24(c) of the Florida Constitution requires a bill creating or expanding a public records or open meetings exemption to contain a public necessity statement. This bill creates a new public records exemption; therefore, this bill includes a public necessity statement.

**Single Subject Requirement**

Article I, s. 24(c) of the Florida Constitution requires a bill creating or expanding a public records or open meetings exemption to contain no other substantive provisions. Because this bill creates a public records exemption, it does not contain other substantive provisions.

**Breadth of Exemption**

Article I, s. 24(c) of the Florida Constitution requires a newly created or expanded public records or open meetings exemption to be no broader than necessary to accomplish the stated purpose of the law. This bill creates public records exemption by exempting substance abuse screenings, behavioral health evaluations and subsequent treatment status reports relating to a participant in a treatment-based drug court program. The public necessity statement provides that the expansion is necessary to necessary to protect privacy rights of individuals in a treatment-based drug court program. The chilling effect of a participant who seeks treatment which would result from the release of records of the treatment outweighs any public benefit derived from disclosure to the public.

C. Trust Funds Restrictions:

None.

**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:**

None.

**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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