

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1183 Pub. Rec./Forensic Behavioral Health Evaluations

SPONSOR(S): Gibbons

TIED BILLS: **IDEN./SIM. BILLS:** SB 824

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Healthy Families Subcommittee	12 Y, 0 N	Entress	Schoolfield
2) Criminal Justice Subcommittee	12 Y, 0 N	Cox	Cunningham
3) Government Operations Subcommittee			
4) Health & Human Services Committee			

SUMMARY ANALYSIS

There are currently twenty types of records contained in court files that are automatically exempt from disclosure as public records. Forensic behavioral health evaluations are not included in these exemptions. Record exemptions for forensic behavioral health evaluations are currently determined on a case by case basis.

The bill states that the Legislature finds it a public necessity that forensic behavioral health evaluations filed with the court pursuant to ch. 916, F.S., be confidential and exempt from disclosure under public records requirements.

The bill defines the term "forensic behavioral health evaluation" and creates a public records exemption for these evaluations during court proceedings. The bill authorizes the release of the evaluations if the evaluation becomes part of a clinical record.

The Office of the State Courts Administrator reports that the bill will help reduce court workload related to the case-by-case analysis which is currently required to deem these reports as confidential. However, OSCA reports the fiscal impact on the State Courts System cannot be accurately determined due to the unavailability of data needed to quantifiably establish the decrease in judicial and staff workload due to the decrease in hearings on these motions.

The bill provides an effective date of upon enactment.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Public Records Laws

Florida Constitution

Article I, section 24(a), of the Florida Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.¹

The Legislature, however, may provide by general law passed by two-thirds vote of each chamber for the exemption of records from the requirements of Article I, section 24 of the Florida Constitution, provided the exemption:

- States with specificity the public necessity justifying the exemption (public necessity statement); and
- Is no broader than necessary to meet that public purpose.²

Florida Statutes

Florida Statutes also address the public policy regarding access to government records through a variety of statutes in ch. 119, F.S. Currently, s. 119.07, F.S., guarantees every person a right to inspect, examine, and copy any state, county, or municipal record, unless the record is exempt.

The Open Government Sunset Review Act³ provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose and the "[l]egislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."⁴ However, the exemption may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- 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
- Protects trade or business secrets.⁵

Forensic Clients

The Department of Children and Families and the Agency for Persons with Disabilities establish, locate, and maintain separate and secure forensic facilities and programs for the treatment and training of defendants who have been charged with a felony and found to be incompetent to proceed due to their mental illness, mental retardation, or autism. These agencies also provide services for individuals who have been acquitted of a felony by reason of insanity. Except for those defendants found by the DCF or APD to be appropriate for treatment or training in a civil facility or program, forensic facilities are designed and administered so that entry and exit may be strictly controlled by staff responsible for security in order to protect the defendant, facility personnel, other clients, and citizens in adjacent communities.⁶

Competency restoration training and mental health services are provided by DCF in four state forensic mental health treatment facilities with a total secure capacity of 1108 beds. There are also 435 non-secure, forensic step-down beds in civil hospitals. In fiscal year 2011-2012, DCF served a total of

¹ Article 1, Sec. 24(a), FLA. CONST.

² Article 1, Sec. 24(c), FLA. CONST.

³ Section 119.15, F.S.

⁴ *Id.*

⁵ *Id.*

⁶ S. 916.105, F.S.

2,531 individuals with a Chapter 916, F.S., commitment. Evaluators employed at state mental health treatment facilities, as well as court-appointed evaluators, are tasked with evaluating defendants to determine if they meet criteria for involuntary commitment. Those reports are received by the circuit clerks of courts, presiding judges, defense counsel and opposing counsel.⁷

Clinical Records

Clinical records for individuals adjudicated as incompetent to proceed due to mental illness, mental retardation, or autism, or who have been acquitted of a felony by reason of insanity are confidential and exempt from public records requirements of s. 119.07(1), F.S., and s. 24(a), Art I of the State Constitution.⁸ These records may be released to a variety of individuals, including persons authorized by order of the court and to the client's counsel when the records are need by the counsel for adequate representation.⁹ Behavioral health records filed with the courts in chapter 916, F.S., proceedings are not automatically exempt from public records as a Type I exemption. Chapter 916, F.S., governs mentally deficient and mentally ill defendants.

Current statutes do not expressly make these records contained in court files exempt from public access. Therefore, in order for behavioral records (which includes psychological or psychiatric evaluations and treatment records) to qualify for the exemption, the Legislature would have to expressly make such records filed with the court exempt from public access.

The Florida Supreme Court found that a motion to make the records confidential must be filed in every case involving court-ordered psychiatric and psychological evaluations and attached records contained in court files. The Court indicated that legislative action was needed in order to make court-ordered pretrial psychiatric and psychological evaluations automatic exemptions.¹⁰ The Florida Public Defenders Association filed a comment with the Supreme Court advocating that "psychological or psychiatric evaluations and treatment records filed in a criminal case" should be automatically exempt from public records. The Rules of Judicial Administration Committee (RJAC) responded to the FPDA's comment and agreed that there is no statutory basis for a rule as requested by the FPDA and that such a change would require legislation.¹¹

Effect of Proposed Changes:

The bill states that the Legislature finds it a public necessity that forensic behavioral health evaluations filed with the court pursuant to ch. 916, F.S., be confidential and exempt from disclosure under public records requirements. The bill states that the personal health of an individual and the treatment received is an intensely private matter and should not be made public merely because it is filed with the court. The bill states that protecting forensic behavioral health evaluations is necessary to consistently protect the health care privacy rights of all people.

The bill provides confidentiality to forensic mental health records and exempts these records from the public records requirements of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This applies during all judicial proceedings unless such records are released as provided by law.

The bill defines the term "forensic behavioral health evaluation" as any record, including supporting documentation, which was derived from a competency, substance abuse, psychosexual, psychological, psychiatric, psychosocial, cognitive impairment, sanity, or any other mental health evaluation.

The bill clarifies that if the evaluation becomes part of a clinical record, it can be released, as required by law, under s. 916.107(8), F.S.

⁷ Department of Children and Families Analysis of HB 1183, February 18, 2013.

⁸ S. 916.107(8), F.S.

⁹ S. 916.107(8)(a)(2), F.S.

¹⁰ The Supreme Court in re Amendments to Florida Rule of Judicial Administration 2.420, 68 So. 3d 228 (Fla. 2011), declined to amend the rule to include court-ordered psychiatric and psychological records contained in court files as an automatic Type I exemption, stating that any records not expressly exempt from public access by laws in effect on July 1, 1993, or court rules in effect on September 1992 are not appropriate for inclusion as an automatic Type I exemption under the rule.

¹¹ Supreme Court rules case SC11-2466.

The bill clarifies that the exemption is limited and no broader than necessary to accomplish the stated purpose.

The bill contains a sunset clause and will be repealed on October 2, 2018, unless reenacted by the legislature.

B. SECTION DIRECTORY:

Section 1: Creates s. 916.1065, F.S., related to confidentiality of forensic behavioral health evaluations.

Section 2: Provides for an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill creates a statutory public records exemption which will enable Rule 2.420, of the Florida Rules of Judicial Administration to be amended to include “forensic behavioral health evaluations.” The Office of State Courts Administrator reports that without this exemption there is a potential for a tremendous increase in court workload as a result of attorneys filing motions to protect these evaluations in every case where a psychological evaluation was ordered.¹² OSCA reports that the bill will help reduce court workload related to ruling on these motions on a case-by-case basis.¹³ However, OSCA reports the fiscal impact on expenditures of the State Courts System cannot be accurately determined due to the unavailability of data needed to quantifiably establish the decrease in judicial and staff workload due to the decrease in hearings on these motions.¹⁴

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

¹² Office of the State Courts Administrator, 2013 Judicial Impact Statement for HB 1185.

¹³ *Id.*

¹⁴ *Id.*

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.