

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1185 Pub. Rec./Participants in Treatment-Based Drug Court Programs

**SPONSOR(S):** Gibbons

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1014

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N	Cox	Cunningham
2) Government Operations Subcommittee			
3) Judiciary Committee			

### SUMMARY ANALYSIS

Rule 2.420, of the Florida Rules of Judicial Administration (Rule 2.420), currently identifies 20 categories of court record information which the clerk of the court must automatically designate and maintain as confidential (Type I information). Information not listed as Type I information may still be treated as confidential, but only upon motion and only after a judicial hearing.

Drug court records contained in court files are not currently listed as Type I information. In order to make these records confidential, a motion must be filed and the trial court must hold a hearing.

In 2011, it was suggested that Rule 2.420 be amended to include pretrial and post-trial psychological and psychiatric evaluations and reports (which would include drug court records) as Type I information. However, the Florida Supreme Court held that "the Legislature would have to expressly make mental health evaluations filed with the court exempt from public access before those evaluations can properly be added to that list."

The bill amends s. 397.334, F.S., to make the following drug court program records confidential and exempt from the public records requirements of ch.119, F.S., and Article 1, section 24(a), of the Florida Constitution:

- Initial screenings for participation in a treatment-based drug court program;
- Substance abuse screenings;
- Behavioral health evaluations; and
- Subsequent treatment status reports.

The bill repeals the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

The bill eliminates the need to file motions and conduct hearings to make drug court records confidential. The Office of the State Courts Administrator reports that this would result in a reduction in judicial and court system workload, but that the precise impact would depend on the number of motions and hearings that would actually be eliminated.

**Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands current public record exemptions; thus, it requires a two-thirds vote for final passage.**

The bill is effective upon becoming a law.

# 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.<sup>1</sup>

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.<sup>2</sup>

##### 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 Act<sup>3</sup> 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."<sup>4</sup> 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.<sup>5</sup>

The Open Government Sunset Review Act requires the automatic repeal of such exemption on October 2<sup>nd</sup> of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>6</sup> The Act also requires specified questions to be considered during the review process.<sup>7</sup>

#### **Records from Treatment-Based Drug Courts**

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<sup>1</sup> Article 1, Sec. 24(a), FLA. CONST.

<sup>2</sup> Article 1, Sec. 24(c), FLA. CONST.

<sup>3</sup> Section 119.15, F.S.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Section 119.15(3), F.S.

<sup>7</sup> Section 119.15(6)(a), F.S., states that 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?

Section 397.334, F.S., establishes pretrial and postadjudicatory treatment-based drug court programs. These programs are designed to divert drug addicted offenders from the criminal justice system and provide supervised community treatment services in lieu of incarceration. Participants in drug court programs receive substance abuse treatment, screenings, and continual monitoring and evaluations.<sup>8</sup> Records of the screenings and evaluations can be reviewed by court officials as part of the process of determining whether the individual is complying with the drug court program.<sup>9</sup>

### **Public Access to Judicial Records**

Rule 2.420, of the Florida Rules of Judicial Administration (Rule 2.420), states that the public must have access to the records of the judicial branch.<sup>10,11</sup> However, the rule currently identifies 20 categories of court record information which the clerk of the court must automatically designate and maintain as confidential (Type I information).<sup>12</sup> Information not listed as Type I information may still be treated as confidential, but only upon motion and only after a judicial hearing.<sup>13</sup>

Drug court records contained in court files are not currently listed as Type I information.<sup>14</sup> In order to make these records confidential, a motion must be filed and the trial court must hold a hearing.

In 2011, it was suggested that Rule 2.420 be amended to include pretrial and post-trial psychological and psychiatric evaluations and reports (which would include drug court records) as Type I information. However, the Florida Supreme Court held that because such information was not expressly exempt from public access by the laws in effect on July 1, 1993, or court rules in effect on September 1992, such information was not appropriate for inclusion as Type I information.<sup>15</sup> The opinion further stated that “the Legislature would have to expressly make mental health evaluations filed with the court exempt from public access before those evaluations can properly be added to that list.”<sup>16</sup>

### **Effect of the Bill**

The bill amends s. 397.334, F.S., to make the following treatment-based drug court program records confidential and exempt from the public records requirements of ch.119, F.S., and Article 1, section 24(a), of the Florida Constitution:

- Initial screenings for participation in a treatment-based drug court program;
- Substance abuse screenings;
- Behavioral health evaluations; and
- Subsequent treatment status reports.

The bill repeals the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

## **B. SECTION DIRECTORY:**

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<sup>8</sup> Section 397.334(4), F.S.

<sup>9</sup> Section 397.334(5), F.S.

<sup>10</sup> Fla. R. Jud. Admin 2.420(b)(1) defines “records of the judicial branch” as all records, regardless of physical form, characteristics, or means of transmission, made or received in connection with the transaction of official business by any judicial branch entity and consist of:

- “Court records,” which are the contents of the court file, including the progress docket and other similar records generated to document activity in a case, transcripts filed with the clerk, documentary exhibits in the custody of the clerk, and electronic records, videotapes, or stenographic tapes of depositions or other proceedings filed with the clerk, and electronic records, videotapes, or stenographic tapes of court proceedings; and
- “Administrative records,” which are all other records made or received pursuant to court rule, law, or ordinance, or in connection with the transaction of official business by any judicial branch entity.

<sup>11</sup> Fla. R. Jud. Admin 2.420(b)(2) defines “judicial branch” as the judicial branch of government, which includes the state courts system, the clerk of court when acting as an arm of the court, The Florida Bar, the Florida Board of Bar Examiners, the Judicial Qualifications Commission, and all entities established by or operating under the authority of the supreme court or the chief justice.

<sup>12</sup> *In re: Amendments to the Florida Rule of Judicial Administration 2.420*, 68 So. 3d 228 (Fla. 2011); Fla. R. Jud Admin 2.420(d)(3).

<sup>13</sup> *Id.*

<sup>14</sup> 2013 Judicial Impact Statement for HB 1185, Office of the State Courts Administrator (OSCA)(on file with the Criminal Justice Subcommittee); Rule 2.420, Fla. R. Jud. Admin.

<sup>15</sup> *In re: Amendments to the Florida Rule of Judicial Administration 2.420*, 68 So. 3d 228 (Fla. 2011);

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

Section 1. Amends s. 397.334, F.S., relating to treatment-based drug court programs.

Section 2. Provides a public necessity statement.

Section 3. The bill is effective upon becoming a law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill does not appear to have any impact on state revenues.

#### 2. Expenditures:

The bill eliminates the need to file motions and conduct hearings to make treatment-based drug court records confidential. The Office of the State Courts Administrator reports that this would result in a reduction in judicial and court system workload but that the precise impact would depend on the number of motions and hearings that would actually be eliminated.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

#### 2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES