

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 715 Pub. Rec./Problem-solving Court Participant Records

**SPONSOR(S):** Criminal Justice Subcommittee, Maney

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 910

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	17 Y, 0 N, As CS	Leshko	Hall
2) Ethics, Elections & Open Government Subcommittee	17 Y, 0 N	Robinson	Toliver
3) Judiciary Committee			

### SUMMARY ANALYSIS

Problem-solving courts utilize specialized court dockets, multidisciplinary teams, and a non-adversarial approach to address the root causes of a person's involvement with the justice system. Some of the most common types of problem-solving courts include: drug courts; mental health courts; and veterans courts. While screening individuals for placement in such programs and serving program participants, problem-solving courts generate a number of records relating to an individual's health history and treatment plan.

Section 397.334, F.S., makes information relating to a participant or a person considered for participation in a treatment-based drug court program contained in the following records confidential and exempt from public record requirements, with limited exceptions: records created or compiled during screenings for participation in the program; records created or compiled during substance abuse screenings; behavioral health evaluations; and subsequent treatment status reports. However, the same information relating to participants or prospective participants of veterans treatment court and mental health court programs is not currently confidential or exempt from public record requirements.

CS/HB 715 amends ss. 394.47891 and 394.47892, F.S., to make information relating to a participant or a person considered for participation in a veterans treatment court or a mental health court program, respectively, contained in the following records confidential and exempt from public record requirements:

- Records created or compiled during screenings for participation in the program;
- Records created or compiled during substance abuse screenings;
- Behavioral health evaluations; and
- Subsequent treatment status reports.

The bill allows for disclosure of such information: pursuant to a written request of the participant or person considered for participation or his or her legal representative; to another governmental entity in furtherance of its responsibilities associated with the screening of a person considered for participation in or the provision of treatment to a person in a veterans treatment court or mental health court program; and pursuant to ss. 397.501(7) and 394.4615, F.S., regulating the disclosure of substance abuse providers' records and clinical records, respectively.

Pursuant to the Open Government Sunset Review Act, the exemptions created by the bill will be automatically repealed on October 2, 2029, unless reenacted by the Legislature.

The bill provides an effective date of upon becoming a law.

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

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Public Records

The Florida Constitution sets forth the state's public policy regarding access to government records, guaranteeing 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 an exemption<sup>2</sup> from public record requirements provided that the exemption passes by a two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption, and is no broader than necessary to meet its public purpose.<sup>3</sup>

Current law also addresses the public policy regarding access to government records, guaranteeing every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt.<sup>4</sup> Furthermore, the Open Government Sunset Review Act<sup>5</sup> provides that a public record exemption may be created, revised, or maintained only if it serves an identifiable public purpose and the "Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."<sup>6</sup> An identifiable public purpose is served if the exemption meets 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>7</sup>

Pursuant to the Open Government Sunset Review Act, a new public record exemption or substantial amendment of an existing public record exemption is repealed on October 2<sup>nd</sup> of the fifth year following enactment, unless the Legislature reenacts the exemption.<sup>8</sup>

##### Problem-Solving Courts

Problem-solving courts are designed to address the root causes of a person's involvement with the justice system.<sup>9</sup> Such courts do this by utilizing specialized court dockets, multidisciplinary teams, and a non-adversarial approach to ensure a person receives the individualized treatment he or she needs

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<sup>1</sup> Art. I, s. 24(a), Fla. Const.

<sup>2</sup> A public record exemption means a provision of general law which provides that a specified record, or portion thereof, is not subject to the access requirements of s. 119.07(1), F.S., or s. 24, art. I of the Florida Constitution. See s. 119.011(8), F.S.

<sup>3</sup> Art. I, s. 24(c), Fla. Const.

<sup>4</sup> See s. 119.01, F.S.

<sup>5</sup> S. 119.15, F.S.

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

<sup>7</sup> *Id.*

<sup>8</sup> S. 119.15(3), F.S.

<sup>9</sup> Office of the State Courts Administrator (OSCA), *Florida Problem-Solving Courts Report*,

<https://www.flcourts.gov/content/download/863926/file/2022%20Florida%20Problem-Solving%20Courts%20Report.pdf>

(last visited Jan. 14, 2024).

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**DATE:** 1/18/2024

to successfully leave the justice system.<sup>10</sup> As of December 2023, there were at least 180 problem-solving courts in Florida.<sup>11</sup> The most common types of problem-solving courts include:

- Adult drug courts;
- Adult mental health courts;
- Early childhood courts;
- Veterans courts;
- Juvenile drug courts;
- Dependency drug courts;
- DUI courts; and
- Juvenile mental health courts.<sup>12</sup>

#### *Treatment-Based Drug Court and Mental Health Court Programs*

Sections 397.334 and 394.47892, F.S., authorize each county to fund a treatment-based drug court and mental health court program, respectively, to appropriately address eligible persons in the justice system assessed with a substance abuse problem or mental illness through treatment services tailored to the individual needs of the person.<sup>13</sup> A treatment-based drug court or mental health court program may be offered as a voluntary pretrial program or as a post-adjudicatory program as a condition of probation or community control.<sup>14</sup>

While screening individuals for placement in such programs and serving program participants, problem-solving courts generate a number of records relating to an individual's health history and treatment plan. Additionally, under current law, each treatment-based drug court and mental health court program must collect client-level data<sup>15</sup> and programmatic data<sup>16</sup> for purposes of program evaluation.<sup>17</sup>

#### *Veterans Treatment Court Programs*

Section 394.47891, F.S., authorizes a court with jurisdiction over criminal cases to create and administer a veterans treatment court (VTC) program.<sup>18</sup> Modeled after treatment-based drug court programs, VTCs divert eligible veterans and servicemembers into treatment programs for service-related conditions or trauma, including:

- Traumatic brain injury;
- Substance use disorder;
- Psychological problems; and
- Military sexual trauma.<sup>19</sup>

Diversion to a VTC program may occur at any stage of a criminal proceeding.<sup>20</sup> As in treatment-based drug court and mental health court programs, VTC programs generate a number of records relating to a prospective participant's and a participant's health history and treatment plan.

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<sup>10</sup> *Id.*

<sup>11</sup> OSCA, *Office of Problem-Solving Courts*, <https://www.flcourts.gov/Resources-Services/Office-of-Problem-Solving-Courts> (last visited Jan. 14, 2024).

<sup>12</sup> *Id.*

<sup>13</sup> Ss. 397.334(1) and 394.47892(1), F.S.

<sup>14</sup> Ss. 397.334(2) and (3) and 394.47892(2)-(4), F.S.

<sup>15</sup> "Client-level data" includes the underlying offenses that resulted in the referral to the treatment-based drug court, treatment compliance, completion status and reasons for failure to complete, any offenses committed during treatment and the sanctions imposed, frequency of court appearances, and units of service. Ss. 397.334(6)(b) and 394.47892(5)(b), F.S.

<sup>16</sup> "Programmatic data" includes referral and screening procedures, eligibility criteria, type and duration of treatment offered, and residential treatment resources. *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> S. 394.47891(3)(a), F.S.

<sup>19</sup> S. 394.47891(8)(a)1., F.S.

<sup>20</sup> S. 394.47891(4), F.S.

## Confidentiality and Public Record Exemptions

### *Treatment-Based Drug Court Programs*

Currently, s. 397.334, F.S., makes information relating to a participant or a person considered for participation in a treatment-based drug court program contained in the following records confidential and exempt<sup>21</sup> from public record requirements:

- Records created or compiled during screenings for participation in the program.
- Records created or compiled during substance abuse screenings.
- Behavioral health evaluations.
- Subsequent treatment status reports.<sup>22</sup>

Such confidential and exempt information may be disclosed:

- Pursuant to a written request of the participant or person considered for participation, or his or her legal representative.
- To another governmental entity in the furtherance of its responsibilities associated with the screening of a person considered for participation in or the provision of treatment to a person in a treatment-based drug court program.<sup>23</sup>

Additionally, s. 397.334, F.S., provides that records of a service provider which pertain to the identity, diagnosis, and prognosis of or provision of service to any person shall be disclosed pursuant to s. 397.501(7), F.S.<sup>24</sup>

### *Substance Abuse Providers' Records*

Under s. 397.501, F.S., individuals receiving substance abuse services from any service provider are guaranteed the protection of certain rights, including the right to confidentiality concerning their individual records. Pursuant to s. 397.501, F.S., service providers' records which pertain to the identity, diagnosis, and prognosis of and provision of service to any individual are confidential and exempt from public record requirements. Such records may not be disclosed without the written consent of the individual to whom they pertain except that disclosure may be made without such consent:

- To medical personnel in a medical emergency.
- To service provider personnel if such personnel need to know the information in order to carry out duties relating to the provision of services to an individual.
- To the secretary of the Department of Children and Families (DCF) or the secretary's designee, for purposes of scientific research, in accordance with federal confidentiality regulations, but only upon agreement in writing that the individual's name and other identifying information will not be disclosed.
- In the course of review of service provider records by persons who are performing an audit or evaluation on behalf of any federal, state, or local government agency, or third-party payor providing financial assistance or reimbursement to the service provider; however, reports produced as a result of such audit or evaluation may not disclose names or other identifying information and must be in accordance with federal confidentiality requirements.<sup>25</sup>

The restrictions on disclosure and use, however, do not apply to:

- Communications from provider personnel to law enforcement officers which are:

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<sup>21</sup> There is a difference between records the Legislature designates exempt from public record 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. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So.2d 1015 (Fla. 2004); *State v. Wooten*, 260 So. 3d 1060, 1070 (Fla. 4th DCA 2018); *City of Rivera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Op. Att'y Gen. Fla. 04- 09 (2004).

<sup>22</sup> S. 397.334(10)(a), F.S.

<sup>23</sup> S. 397.334(10)(b), F.S.

<sup>24</sup> S. 397.334(10)(c), F.S.

<sup>25</sup> S. 397.501(7)(a), F.S.

- Directly related to an individual's commission of a crime on the premises of the provider or against provider personnel or to a threat to commit such a crime; and
- Limited to the circumstances of the incident, including the status of the individual committing or threatening to commit the crime, that individual's name and address, and that individual's last known whereabouts.
- The reporting of incidents of suspected child abuse and neglect to the appropriate state or local authorities as required by law. However, such restrictions continue to apply to the original substance abuse records maintained by the provider, including their disclosure and use for civil and criminal proceedings which may arise out of the report of suspected child abuse and neglect.<sup>26</sup>

Additionally, a person having a legally recognized interest in the disclosure of such information may apply for a court order authorizing such disclosure.<sup>27</sup>

### *Clinical Records*

Section 394.4615, F.S., makes clinical records confidential and exempt from public record requirements. A "clinical record" means all parts of the record required to be maintained and includes all medical records, progress notes, charts, and admission and discharge data, and all other information recorded by facility staff which pertains to the patient's hospitalization or treatment.<sup>28</sup>

A clinical record must be released when:

- The patient or the patient's guardian authorizes the release.
- The patient is represented by counsel and the records are needed by the patient's counsel for adequate representation.
- The court orders such release.
- The patient is committed to, or is to be returned to, the Department of Corrections (DOC) from DCF, and DOC requests such records.<sup>29</sup>
- A patient makes a specific threat to a service provider to cause serious bodily injury or death to an identified or readily available person, if the service provider reasonably believes, or should reasonably believe according to the standards of his or her profession, that the patient has the apparent intent and ability to imminently or immediately carry out such threat.<sup>30</sup>
- Requested by the Medicaid Fraud Control Unit of the Department of Legal Affairs.<sup>31</sup>

Additionally, information from a clinical record may be released:

- When the administrator of the facility or secretary of DCF deems release to a qualified researcher, an aftercare treatment provider, or an employee or agent of DCF is necessary for treatment of the patient, maintenance of adequate records, compilation of treatment data, aftercare planning, or evaluation of programs.
- To the state attorney, the patient's legal representation, the court, and to the appropriate mental health professionals, including the service provider, to determine whether a person meets the criteria for involuntary outpatient placement or for preparing the proposed treatment plan.<sup>32</sup>
- For statistical and research purposes if the information is abstracted in such a way as to protect the identity of individuals.<sup>33</sup>
- To the Agency for Health Care Administration, DCF, and the Florida advocacy councils for the purpose of monitoring facility activity and complaints concerning facilities.<sup>34</sup>

<sup>26</sup> S. 397.501(7)(b-c), F.S.

<sup>27</sup> S. 397.501(7)(f-j), F.S.

<sup>28</sup> S. 394.455(6), F.S.

<sup>29</sup> S. 394.4615(2), F.S.

<sup>30</sup> S. 394.4615(4), F.S. Additionally, s. 394.4615(3)(a), F.S., authorizes the administrator of the facility to release sufficient information to provide adequate warning to the person threatened with harm by the patient.

<sup>31</sup> S. 394.4615(7), F.S.

<sup>32</sup> S. 394.4615(3), F.S.

<sup>33</sup> S. 394.4615(5), F.S.

<sup>34</sup> S. 394.4615(6), F.S.

## *Forensic Behavioral Health Evaluations*

Under s. 916.1065, F.S., forensic behavioral health evaluations filed with the court are confidential and exempt from public record requirements. “Forensic behavioral health evaluations” include any records, including supporting documentation, derived from a competency, substance abuse, psychosexual, psychological, psychiatric, psychosocial, cognitive impairment, sanity, or other mental health evaluation of an individual.<sup>35</sup>

### *Petitions for Voluntary and Involuntary Admission for Mental Health Treatment*

Under s. 394.464, F.S., all petitions for voluntary and involuntary admission for mental health treatment, court orders, and related records that are filed with or by a court are confidential and exempt from public record requirements.

The clerk of court may disclose such petitions, orders, and records to the following persons or entities:

- The petitioner.
- The petitioner’s attorney.
- The respondent, or his or her parent, guardian, legal custodian, or guardian advocate, if applicable.
- The respondent’s attorney.
- The respondent’s treating health care practitioner.
- The respondent’s health care surrogate or proxy.
- DCF.
- DOC, if the respondent is committed or is to be returned to the custody of DOC from DCF.
- A person or entity authorized to view records upon a court order issued for good cause.<sup>36</sup>

As such, while certain information and records are currently confidential and exempt from public record requirements in problem-solving courts, only treatment-based drug court programs specifically make the following information relating to a participant or a person considered for participation in a treatment-based drug court program confidential and exempt from public record requirements:

- Records created or compiled during screenings for participation in the program.
- Records created or compiled during substance abuse screenings.
- Behavioral health evaluations.
- Subsequent treatment status reports.

The same information relating to participants or prospective participants of other problem-solving court programs, such as veterans treatment court programs and mental health court programs, is not currently confidential or exempt from public records requirements.

### **Effect of Proposed Changes**

CS/HB 715 amends ss. 394.47891 and 394.47892, F.S., to make information relating to a participant or a person considered for participation in a veterans treatment court or a mental health court program, respectively, contained in the following records confidential and exempt from public record requirements:

- Records created or compiled during screenings for participation in the program.
- Records created or compiled during substance abuse screenings.
- Behavioral health evaluations.
- Subsequent treatment status reports.

The bill provides that under both ss. 394.47891 and 394.47892, F.S., such information may be disclosed:

- Pursuant to a written request of the participant or person considered for participation or his or her legal representative.

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<sup>35</sup> S. 916.1065(1) and (2), F.S.

<sup>36</sup> S. 394.464(1), F.S.

- To another governmental entity in the furtherance of its responsibilities associated with the screening of a person considered for participation in or the provision of treatment to a person in a veterans treatment court or mental health court program.
- If it is a substance abuse service provider record that pertains to the identity, diagnosis, or prognosis of or provision of services to a participant or prospective participant pursuant to s. 397.501(7), F.S.
- If it is a service provider record pertaining to the mental health of the participant or prospective participant pursuant to s. 394.4615, F.S.

The bill applies to such information collected before, on, or after the effective date of the bill. Additionally, pursuant to the Open Government Sunset Review Act, the exemptions created by the bill will be automatically repealed on October 2, 2029, unless reenacted by the Legislature.

The bill provides an effective date of upon becoming a law.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 394.47891, F.S., relating to veterans treatment court programs.

**Section 2:** Amends s. 394.47892, F.S., relating to mental health court programs.

**Section 3:** Provides a public necessity statement.

**Section 4:** Provides an effective date of upon becoming a law.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

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

None.

**D. FISCAL COMMENTS:**

The bill may have an indeterminate, but likely insignificant, negative fiscal impact on agencies holding records created or compiled during screenings for participation in a veterans treatment court or mental health court program and for substance abuse, behavioral health evaluations, and treatment status reports related to those persons participating in such programs as staff responsible for complying with public record requests may require training related to the new public record exemption. However, any additional costs will likely be absorbed within existing resources.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement

Article I, section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly-created or expanded public record exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it includes a public necessity statement. The public necessity statement provides that the Legislature finds that protection of records created or compiled during screenings for participation in a veterans treatment court or mental health court program and for substance abuse, behavioral health evaluations, and treatment status reports is necessary to protect against the release of information that is sensitive and personal in nature, which may result in unwarranted damage to the reputation of program participants. Additionally, the Legislature finds that public disclosure of such information could result in a decrease in program participation and that the harm that may result from the disclosure of such information significantly outweighs any public benefit that may be derived from such disclosure. The Legislature finds that it is necessary to make such information confidential and exempt in order to promote the effective and efficient administration of veterans treatment court and mental health court programs.

Breadth of Exemption

Article I, section 24(c) of the Florida Constitution requires a newly created or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for records created or compiled during screenings for participation in a veterans treatment court or mental health court program and for substance abuse, behavioral health evaluations, and treatment status reports related to those persons participating in such programs, which does not appear to be broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On January 10, 2024, the Criminal Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment made a technical change.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.