

**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 Governmental Oversight and Accountability

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BILL: SB 910

INTRODUCER: Senator Rouson

SUBJECT: Public Records/Veterans Treatment and Mental Health Court Programs

DATE: February 5, 2024

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
2.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	<b>Pre-meeting</b>
3.	_____	_____	<u>RC</u>	_____

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**I. Summary:**

SB 910 makes confidential and exempt from public records inspection and copying requirements certain information about a participant or potential participant which is contained in specific records of veterans treatment court programs and mental health programs. The proposed exemptions track an existing exemption for comparable records of treatment-based drug court programs.

The veterans treatment court program and the mental health court program are part of the state’s “problem-solving courts.” The problem-solving courts are pre-trial intervention court programs that are intended to afford a defendant the opportunity to participate in getting the help he or she needs to deal with substance abuse and mental health disorders and avoid a criminal conviction.

This bill provides a public necessity statement as required by the State Constitution. A two-third vote of both the House and the Senate is required for final passage. The exemptions are subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2029, unless reviewed and saved from repeal by reenactment of the Legislature.

The bill is not expected to impact state or local government revenues and expenditures.

The bill takes effect upon becoming a law.

**II. Present Situation:**

**Problem-solving Courts**

Florida’s “problem-solving courts” are unique among the trial and appellate courts in the state. They are non-adversarial courts specifically designed to address the root causes of why people

are involved in the criminal justice system and to help those people receive the treatment they need to leave the system.<sup>1</sup>

The problem-solving courts currently include 52 adult drug courts, 32 adult mental health courts, 32 early childhood courts, 32 veterans courts, 14 juvenile drug courts, 13 dependency drug courts, 4 DUI courts, and 1 juvenile mental health court, as well as other types of problem-solving courts that may be in operation in the state.<sup>2,3</sup>

### ***Record Creation***

These problem-solving courts create a number of records for participants and people who are considered for participation. The records often contain sensitive information that relates to a person's health history or treatment plan. If this information is released and made publicly available, the release could harm a participant or potential participant and detrimentally impact his or her participation in the program.<sup>4</sup>

### ***Public Records Exemption for Treatment-based Drug Court Programs***

In 2014, the Legislature created a public records exemption to shield from public records inspection and copying requirements certain information for a participant or person considered for participation in a treatment-based drug court program.<sup>5</sup> The following information is confidential and exempt:

- 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.

This confidential and exempt information may be disclosed upon a written request of the participant or person considered for participation or his or her legal representative. It may also be disclosed to a governmental entity responsible for the screening or treatment of a person being considered for participation in a treatment-based drug court program.<sup>6</sup>

Similar provisions are not contained in the statutes governing the veterans treatment court programs or the mental health court programs. If the proposals contained in this bill are adopted,

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<sup>1</sup> Rather than operate in the traditional adversarial model, problem-solving courts provide non-adversarial proceedings with a dedicated judge who holds each participant accountable for his or her actions. The courts also provide a broad-based problem-solving team made up of case managers, attorneys, treatment professionals, even law enforcement and correctional officers, and a guardian ad litem, if necessary. Florida's 10<sup>th</sup> Judicial Circuit, *Problem Solving Court*, <https://www.jud10.flcourts.org/problem-solving-court> (last visited Feb. 1, 2024).

<sup>2</sup> This list of "problem-solving courts" is contained in s. 43.51, F.S., which requires the Office of the State Courts Administrator to provide an annual report to the President of the Senate and the Speaker of the House of Representatives detailing participant, service, and financial data.

<sup>3</sup> Florida Courts, Office of the State Courts Administrator, *Office of Problem-Solving Courts*, <https://www.flcourts.gov/Resources-Services/Office-of-Problem-Solving-Courts> (last visited Feb. 1, 2024).

<sup>4</sup> Office of the State Courts Administrator, *2024 Judicial Impact Statement for SB 910* (Jan. 8, 2024) (on file with the Senate Committee on Judiciary).

<sup>5</sup> Ch. 2014-174, s. 1, Laws of Fla. This is now contained in s. 397.334(10), F.S.

<sup>6</sup> Section 397.334(10)(b), F.S.

the problem-solving court statutes will become consistent with the public records exemptions contained in the treatment-based drug court programs.

### **Veterans Treatment Court Programs**

A defendant may participate in a veterans treatment court program if he or she is approved by the state attorney, in consultation with the court, and has:

- A service-related mental health condition;
- A service-related traumatic brain injury;
- A service-related substance use disorder;
- A service-related psychological problem; or
- Has experienced military sexual trauma.<sup>7</sup>

### ***Mental Health Court Programs***

Unlike the statute governing the veterans treatment court programs, the statute governing the mental health court programs does not specify the eligibility criteria for admittance. However, the statute states that counties may fund a mental health court program in which a defendant in the justice system is assessed with a mental illness. He or she is to be “processed in such a manner as to appropriately address the severity of the identified mental illness through treatment services tailored to the individual needs of the participant.” Entry into a program is voluntary.<sup>8</sup>

### **Access to Public Records - Generally**

The State Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.<sup>9</sup> The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.<sup>10</sup>

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the Legislature.<sup>11</sup> Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.<sup>12</sup> Lastly, ch. 119, F.S., known as the Public Records Act, provides requirements for public records held by executive agencies.

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<sup>7</sup> Section 394.47891(8)(a), F.S.

<sup>8</sup> Section 394.47892(1) and (3), F.S.

<sup>9</sup> FLA. CONST. art. I, s. 24(a).

<sup>10</sup> *Id.* See also, *Sarasota Citizens for Responsible Gov't v. City of Sarasota*, 48 So. 3d 755, 762-763 (Fla. 2010).

<sup>11</sup> See Rule 1.48, *Rules and Manual of the Florida Senate*, (2022-2024) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2022-2024).

<sup>12</sup> *State v. Wooten*, 260 So. 3d 1060 (Fla. 4<sup>th</sup> DCA 2018).

## Executive Agency Records – The Public Records Act

The Public Records Act provides that all state, county, and municipal records are open for inspection and copying by any person, and that providing access to public records is a duty of each agency.<sup>13</sup>

Section 119.011(12), F.S., defines “public records” to include:

[a]ll 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 connections with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business that are used to “perpetuate, communicate, or formalize knowledge of some type.”<sup>14</sup>

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>15</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>16</sup>

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.<sup>17</sup> The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.<sup>18</sup>

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<sup>13</sup> Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” 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.”

<sup>14</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>15</sup> Section 119.07(1)(a), F.S.

<sup>16</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

<sup>17</sup> FLA. CONST. art. I, s. 24(c).

<sup>18</sup> *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

General exemptions from the public records requirements are contained in the Public Records Act.<sup>19</sup> Specific exemptions are often placed in the substantive statutes relating to a particular agency or program.<sup>20</sup>

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.<sup>21</sup> Records designated as “confidential and exempt” are not subject to inspection by the public and may only be released under the circumstances defined by statute.<sup>22</sup> Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.<sup>23</sup>

### **Open Government Sunset Review Act**

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act<sup>24</sup> (the Act), prescribes a legislative review process for newly created or substantially amended<sup>25</sup> public records or open meetings exemptions, with specified exceptions.<sup>26</sup> The Act requires the repeal of the exemption on October 2nd of the fifth year after its creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption or repeal the sunset date.<sup>27</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.<sup>28</sup> An exemption serves an identifiable purpose if the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption and it meets one of the following purposes:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;<sup>29</sup>
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;<sup>30</sup> or

<sup>19</sup> See, e.g., s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

<sup>20</sup> See, e.g., s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

<sup>21</sup> *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5<sup>th</sup> DCA 2004).

<sup>22</sup> *Id.*

<sup>23</sup> *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5<sup>th</sup> DCA 1991).

<sup>24</sup> Section 119.15, F.S.

<sup>25</sup> An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

<sup>26</sup> Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

<sup>27</sup> Section 119.15(3), F.S.

<sup>28</sup> Section 119.15(6)(b), F.S.

<sup>29</sup> Section 119.15(6)(b)1., F.S.

<sup>30</sup> Section 119.15(6)(b)2., F.S.

- It protects information of a confidential nature concerning entities, such as trade or business secrets.<sup>31</sup>

The Act also requires specified questions to be considered during the review process.<sup>32</sup> In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are again required.<sup>33</sup> If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.<sup>34</sup>

### III. Effect of Proposed Changes:

#### Public Records Exemptions

**Sections 1 and 2** amend the veterans treatment court programs statute (section 1) and the mental health court programs statute (section 2) with virtually identical language to create public records exemptions. The bill, with limited exceptions, makes confidential and exempt from public records inspection and copying requirements the following information contained in a participant's or a potential participant's records in veterans treatment court programs or mental health court programs:

- 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 confidential and exempt information may be disclosed:

- Upon a written request of the participant or person considered for participation or his or her legal representative.
- To another governmental entity responsible for the screening or treatment of a person considered for participation in a program.

If the confidential and exempt information is a substance abuse record of a service provider that pertains to the identity, diagnosis, or prognosis of or provision of services to a person, the

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<sup>31</sup> Section 119.15(6)(b)3., F.S.

<sup>32</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>33</sup> See generally s. 119.15, F.S.

<sup>34</sup> Section 119.15(7), F.S.

information may be disclosed pursuant to s. 397.501(7), F.S., which pertains to substance abuse services and a client's rights.

If the confidential and exempt information is a record of a service provider that pertains to mental health, the information may be disclosed pursuant to s. 394.4615, F.S., which pertains to the clinical records of mental health patients.

The public records exemptions apply to information collected before, on, or after the date the bill takes effect. They will stand repealed on October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature.

### **Statement of Public Necessity**

**Section 3** contains the public necessity statement as required by the State Constitution, which provides that the exemptions are necessary to protect the privacy rights of participants or people considered for participation in the programs. Protecting against the release of sensitive and personal information contained in records or compiled during screenings and treatment prevents unwarranted damage to the reputation of those persons. Additionally, if the protected information were disclosed publicly, it could have a substantial negative effect on participation in the programs. The public necessity statement concludes that the harm that may result from the release of the protected information significantly outweighs any public benefit that may be derived by disclosing the information. Finally, the statement notes that protecting this sensitive information will promote the effective and efficient administration of a veterans treatment court program or a mental health court program.

The act takes effect upon becoming a law.

## **IV. Constitutional Issues:**

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

Not applicable. The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

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

#### **Vote Requirement**

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 bill creating or expanding an exemption to the public records requirements. This bill enacts a new exemption, therefore, the bill requires a two-thirds vote of each chamber for enactment.

### **Public Necessity Statement**

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 3 of the bill contains a statement of public necessity for the exemption.

### **Breadth of Exemption**

Article I, s. 24(c), of the State Constitution requires that an exemption to the public records requirements be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect sensitive information of participants or potential participants in the veterans treatment court programs and mental health court programs. This bill exempts from the public records requirements only specific records pertaining to these programs. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

### **V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The Office of the State Courts Administrator does not anticipate any judicial or court workload impact created by this bill. However, the bill may require an amendment to Rule 2.420. Public Access to Judicial Branch Records, which governs public access to and protection of judicial branch records.<sup>35</sup>

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<sup>35</sup> Office of the State Courts Administrator, *2024 Judicial Impact Statement for SB 910*, (Jan. 8, 2024) (on file with the Senate Committee on Judiciary). Rule 2.420, Public Access to Judicial Branch Records, may be found here: <https://www.flcourts.gov/content/download/219096/file/RULE-2-420-Jan2014.pdf>.



**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 394.47891 and 394.47892 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.