

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB OTM 19-10 OGSR/Treatment-based Drug Court Programs
SPONSOR(S): Oversight, Transparency & Public Management Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:** SB 7010

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Oversight, Transparency & Public Management Subcommittee		Harrington	Harrington

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record exemption and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Treatment-based drug courts are a type of problem-solving court aimed at addressing one of the root causes of criminal behavior and domestic violence: substance abuse and addiction. Generally, drug court programs identify individuals in either the criminal justice or dependency system who may benefit from substance abuse treatment. Those individuals are diverted to a substance abuse treatment center or may be required to complete treatment as a condition of probation or community control.

Current law provides a public record exemption for information relating to a participant or a person considered for participation in a treatment-based drug court program found in certain screening, health evaluation, and treatment records. Such information is confidential and exempt from public record requirements.

The bill reenacts the public record exemption, which will repeal on October 2, 2019, if this bill does not become law.

The bill does not appear to have a fiscal impact on the state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect 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.
- Protect trade or business secrets.³

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.⁴ 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 to the exemption is created⁵ then a public necessity statement and a two-thirds vote for passage are not required.

Treatment-based Drug Courts

Treatment-based drug courts are a type of problem-solving court aimed at addressing one of the root causes of criminal behavior and domestic violence: substance abuse and addiction.⁶ Generally, drug court programs identify individuals in either the criminal justice or dependency system who may benefit from substance abuse treatment. Those individuals are either sent to a substance abuse treatment center (pre-adjudication) or required to complete treatment as a condition of probation or community control (post-adjudication). To assist these individuals with treatment, drug courts provide incentives, such as reduced penalties, and support to the individual. Ultimately, entry into a treatment-based drug court program is voluntary and the written consent and agreement of the participant is necessary for the court to order him or her into a treatment program. Throughout the drug court evaluation and treatment process, records of a drug court participant's screenings,⁷ diagnosis, and progress⁸ are made part of the participant's court record.

¹ Section 119.15, F.S.

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Section 24(c), Art. I of the State Constitution.

⁵ An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.

⁶ See Florida Courts, *Problem-Solving Courts*, at: <https://www.flcourts.org/Resources-Services/Court-Improvement/Problem-Solving-Courts> (last visited January 23, 2019).

⁷ Eligibility screening by mental health treatment professionals uses "evidence-based assessment tools and procedures" in order to determine the individual's level of risk and whether he or she can be treated safely and effectively. Section 397.334(2)-(3) and (5), F.S.

Public Record Exemption under Review

In 2014, the Legislature created a public record exemption for information relating to a participant or a person considered for participation in a treatment-based drug court program if such information is contained in the following records:⁹

- 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.

Such information is confidential and exempt¹⁰ from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.¹¹

The 2014 public necessity statement for the exemption provided that:

Protecting information contained in records created or compiled during screenings for participation in a treatment-based drug court program, records created or compiled during substance abuse screenings, behavioral health evaluations, and subsequent treatment status reports is necessary to protect the privacy rights of participants or individuals considered for participation in treatment-based drug court programs. Protecting against the release of information that is sensitive and personal in nature prevents unwarranted damage to the reputation of treatment-based drug court program participants. Public disclosure of such information could result in a substantial chilling effect on participation in treatment-based drug court programs. Preventing such chilling effect by making this information confidential substantially outweighs any public benefit derived from public disclosure of such information. Accordingly, it is a public necessity that this information be made confidential to protect the privacy rights of program participants, encourage individuals to participate in such programs, and promote the effective and efficient administration of treatment-based drug court programs.¹²

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2019, unless reenacted by the Legislature.¹³

During the 2018 interim, subcommittee staff sent a questionnaire to each drug court program coordinator or administrator as part of its review under the Open Government Sunset Review Act. Responses were received from all 20 judicial circuits. The majority of the drug court administrators recommended reenactment of the public record exemption to encourage participation in the program, protect individuals who are in a vulnerable position, and to prevent the release of information that may

⁸ A participant's treatment plan and progress is overseen by a multi-disciplinary drug court team, usually consisting of a judge or judicial officer, a case manager or treatment provider, the participant's legal representative, the participant, and representatives from any relevant state agencies. Section 397.334(5), F.S.

⁹ Chapter 2014-174, L.O.F.; codified as s. 397.334(10), F.S.

¹⁰ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems 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, 53 (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 1994); *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, 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 Attorney General Opinion 85-62 (August 1, 1985).

¹¹ Section 397.334(10), F.S.

¹² Section 2, ch. 2014-174, L.O.F.

¹³ Section 397.334(10)(e), F.S.

cause additional trauma to the participant. Some administrators recommended expanding the exemption to cover participant records in other problem-solving courts.

Effect of the Bill

The bill removes the scheduled repeal date of the public record exemption, thereby reenacting the public record exemption for information relating to a participant or a person considered for participation in a treatment-based drug court program found in certain screening, health evaluation, and treatment records.

B. SECTION DIRECTORY:

Section 1 amends s. 397.334, F.S., to save from repeal the public record exemption for information relating to a participant or a person considered for participation in a treatment-based drug court program found in certain records.

Section 2 provides an effective date of October 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

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:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure 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:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.