

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2006

SPONSOR: Senator Cowin

SUBJECT: Public Records/Juvenile Justice Quality Assurance Reports

DATE: March 28, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Favorable
2.	_____	_____	GO	_____
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill would make confidential and exempt from the public records law all work papers and documentation of the quality-assurance review by the Department of Juvenile Justice (DJJ) until the quality-assurance report becomes final. The quality-assurance report would become final when it is presented to the unit of local or state government or to the provider organization that is under contract with the DJJ to provide the service or program. Once the report became final, the quality-assurance review work papers and documentation could be disseminated.

This bill substantially amends section 985.412 of the Florida Statutes.

II. Present Situation:

Constitutional Access to Public Records and Meetings – Article I, s. 24 of the State Constitution provides every person with the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf. The section specifically includes the legislative, executive and judicial branches and each agency or department created under them. It also includes counties, municipalities, and districts, as well as constitutional officers, boards, and commissioners or entities created pursuant to law or the State Constitution.

The term public records has been defined by the Legislature in s. 119.011(1), F.S., to include:

. . . all 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 connection with the transaction of official business by any agency.

This definition of public records has been interpreted by the Florida Supreme Court to include all materials made or received by an agency in connection with official business, which are used to perpetuate, communicate or formalize knowledge.¹ Unless these materials have been made exempt by the Legislature, they are open for public inspection, regardless of whether they are in final form.²

The State Constitution authorizes exemptions to open government requirements and establishes the means by which these exemptions are to be established. Under Article I, s. 24(c) of the State Constitution, the Legislature may provide by general law for the exemption of records. A law enacting an exemption:

1. Must state with specificity the public necessity justifying the exemption;
2. Must be no broader than necessary to accomplish the stated purpose of the law;
3. Must relate to one subject;
4. Must contain only exemptions to public records or meetings requirements; and
5. May contain provisions governing enforcement.

Exemptions to public records requirements are strictly construed because the general purpose of open records requirements is to allow Florida's citizens to discover the actions of their government."³ The Public Records Act is liberally construed in favor of open government, and exemptions from disclosure are to be narrowly construed so they are limited to their stated purpose.⁴

There is a difference between records that the Legislature has made exempt from public inspection and those that are exempt and confidential. If the Legislature makes certain records confidential, with no provision for its release such that its confidential status will be maintained, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.⁵ If a record is not made confidential but is simply exempt from mandatory disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.⁶

Under s. 119.10, F.S., any public officer violating any provision of this chapter is guilty of a noncriminal infraction, punishable by a fine not exceeding \$500. In addition, any person willfully and knowingly violating any provision of the chapter is guilty of a first degree misdemeanor, punishable by potential imprisonment not exceeding one year and a fine not exceeding \$1,000. Section 119.02, F.S., also provides a first degree misdemeanor penalty for public officers who knowingly violate the provisions of s. 119.07(1), F.S., relating to the right to inspect public records, as well as suspension and removal or impeachment from office.

¹ *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

² *Wait v. Florida Power & Light Company*, 372 So. 2d 420 (Fla. 1979).

³ *Christy v. Palm Beach County Sheriff's Office*, 698 So. 2d 1365, 1366 (Fla. 4th DCA 1997).

⁴ *Krischer v. D'Amato*, 674 So.2d 909, 911 (Fla. 4th DCA 1996); *Seminole County v. Wood*, 512 So. 2d 1000, 1002 (Fla. 5th DCA 1987), *review denied*, 520 So. 2d 586 (Fla. 1988); *Tribune Company v. Public Records*, 493 So. Sd 480, 483 (Fla. 2d DCA 1986), *review denied sub nom.*, *Gillum v. Tribune Company*, 503 So. Sd 327 (Fla. 1987).

⁵ Attorney General Opinion 85-62.

⁶ *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA), *review denied*, 589 SO.1 2d 289 (Fla. 1991).

The Open Government Sunset Review Act of 1995 - Section 119.15, F.S., the Open Government Sunset Review Act of 1995, establishes a review and repeal process for exemptions to public records or meetings requirements. Under s. 119.15(3)(a), F.S., a law that enacts a new exemption or substantially amends an existing exemption must state that the exemption is repealed at the end of 5 years. Further, a law that enacts or substantially amends an exemption must state that the exemption must be reviewed by the Legislature before the scheduled repeal date. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption.

Under the Open Government Sunset Review Act, an exemption may be created or maintained only if it serves an identifiable public purpose. An identifiable public purpose is served if the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, the administration of which would be significantly impaired without the exemption;
2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals; or
3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

Further, the exemption must be no broader than is necessary to meet the public purpose it serves. In addition, the Legislature must find that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption.

Quality Assurance Report by Department of Juvenile Justice- In 1994, when the Legislature created the DJJ, it mandated the establishment of a quality assurance review for the juvenile justice system as a way to monitor programs. Under s. 985.412, F.S., the department is required to submit a Quality Assurance Annual Report to the President of the Senate, the Speaker of the House of Representatives, the Minority Leader of each house of the Legislature, the appropriate substantive and fiscal committees of each house of the Legislature, and the Governor, no later than February 1 of each year. The statute requires the annual report to contain at least the following for each specific program component:

- A comprehensive description of the population served by the program;
- A specific description of the services provided by the program;
- Cost;
- A comparison of expenditures to federal and state funding;

- Immediate and long-range concerns; and
- Recommendations to maintain, expand, improve, modify, or eliminate each program component so that changes in services lead to enhancement in program quality.

The DJJ has developed and continues to revise minimum standards for each program model and performs on-site program reviews using a peer review process. The *1999 Quality Assurance Annual Report* (on file with the Senate Criminal Justice Committee) (Tallahassee, Florida) contains reviews of 523 programs, including intervention, prevention, detention, commitment, aftercare, and case management services. Review teams look at such standards and key indicators as health care, treatment services, program management, behavior management, admission and orientation, food services, security, safety and emergency procedures, education, and training and staff development, as well as many others. The results are then used to improve overall program quality.

The quality assurance annual report, along with quality assurance review documentation and work papers, are public records under ch. 119, F.S. According to the DJJ, however, the review documentation and work papers contain confidential health, mental health, and educational information about juveniles in evaluated programs. The department indicates that it is current practice to receive public record requests of quality assurance review documentation and work papers prior to the annual report being finalized, which discloses this confidential information to the public. Complying with these requests prior to the annual report being finalized also results in public dissemination of incorrect information because program evaluation scores have not been totaled and verified. Informal objections are then filed in an attempt to affect the final evaluation scores before the report is officially released.

III. Effect of Proposed Changes:

This bill would make confidential and exempt from the public records law all work papers and documentation of the quality-assurance review by the DJJ until the quality-assurance report becomes final. The quality-assurance report would become final when it is presented to the unit of local or state government or to the provider organization that is under contract with the DJJ to provide the service or program. Once the report becomes final, the quality-assurance review work papers and documentation could be disseminated. The DJJ would not be prohibited under the bill from providing such information to any law enforcement agency or to any other regulatory agency.

Senate Bill 2006 would also provide a public necessity statement justifying the exemption that uncontrolled dissemination of the review and documentation could result in the infringement of the right to privacy of youths within the evaluated programs and could lead to attempts to influence the results of the report before it is officially released. Furthermore, the bill would provide that the exemption is justified because the harm done by releasing this information outweighs any public benefit gained from releasing it.

The exemption would expire October 2, 2006, unless it is reviewed and reenacted by the Legislature.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

The bill would create a limited public records exemption for quality-assurance review work papers and documentation. It is limited in time; once the quality-assurance report becomes final (when it is released to the provider organization) the information becomes a public record. It appears to meet the requirements of s. 24, Art. I of the State Constitution in that it states with specificity the public necessity justifying the exemption, it relates only to one subject, and it is no broader than necessary to accomplish the stated purpose of the law.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.