

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1183 Pub. Rec./Forensic Behavioral Health Evaluations

SPONSOR(S): Gibbons

TIED BILLS: **IDEN./SIM. BILLS:** SB 824

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Healthy Families Subcommittee	12 Y, 0 N	Entress	Schoolfield
2) Criminal Justice Subcommittee			
3) Government Operations Subcommittee			
4) Health & Human Services Committee			

SUMMARY ANALYSIS

There are currently twenty types of records contained in court files that are automatically exempt from disclosure as public records. Forensic behavioral health evaluations are not included in these exemptions. Record exemptions for forensic behavioral health evaluations are currently determined on a case by case basis.

The bill states that the Legislature finds it a public necessity that forensic behavioral health evaluations filed with the court pursuant to ch. 916, F.S., be confidential and exempt from disclosure under public records requirements.

The bill defines the term "forensic behavioral health evaluation" and creates a public records exemption for these evaluations during court proceedings. The bill authorizes the release of the evaluations if the evaluation becomes part of a clinical record.

The bill has no fiscal impact.

The bill provides an effective date of upon enactment.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation:

The Department of Children and Families and the Agency for Persons with Disabilities establish, locate, and maintain separate and secure forensic facilities and programs for the treatment and training of defendants who have been charged with a felony and found to be incompetent to proceed due to their mental illness, mental retardation, or autism. These agencies also provide services for individuals who have been acquitted of a felony by reason of insanity. Except for those defendants found by the DCF or APD to be appropriate for treatment or training in a civil facility or program, forensic facilities are designed and administered so that entry and exit may be strictly controlled by staff responsible for security in order to protect the defendant, facility personnel, other clients, and citizens in adjacent communities.¹

Competency restoration training and mental health services are provided by DCF in four state forensic mental health treatment facilities with a total secure capacity of 1108 beds. There are also 435 non-secure, forensic step-down beds in civil hospitals. In fiscal year 2011-2012, DCF served a total of 2,531 individuals with a Chapter 916, F.S., commitment. Evaluators employed at state mental health treatment facilities, as well as court-appointed evaluators, are tasked with evaluating defendants to determine if they meet criteria for involuntary commitment. Those reports are received by the circuit clerks of courts, presiding judges, defense counsel and opposing counsel.²

Clinical Records

Clinical records for individuals adjudicated as incompetent to proceed due to mental illness, mental retardation, or autism, or who have been acquitted of a felony by reason of insanity are confidential and exempt from public records requirements of s. 119.07(1), F.S., and s. 24(a), Art I of the State Constitution.³ These records may be released to a variety of individuals, including persons authorized by order of the court and to the client's counsel when the records are needed by the counsel for adequate representation.⁴ Behavioral health records filed with the courts in chapter 916, F.S., proceedings are not automatically exempt from public records as a Type I exemption. Chapter 916, F.S., governs mentally deficient and mentally ill defendants.

Current statutes do not expressly make these records contained in court files exempt from public access. Therefore, in order for behavioral records (which includes psychological or psychiatric evaluations and treatment records) to qualify for the exemption, the Legislature would have to expressly make such records filed with the court exempt from public access.

The Florida Supreme Court found that a motion to make the records confidential must be filed in every case involving court-ordered psychiatric and psychological evaluations and attached records contained in court files. The Court indicated that legislative action was needed in order to make court-ordered pretrial psychiatric and psychological evaluations automatic exemptions.⁵ The Florida Public Defenders Association filed a comment with the Supreme Court advocating that "psychological or psychiatric evaluations and treatment records filed in a criminal case" should be automatically exempt from public records. The Rules of Judicial Administration Committee (RJAC) responded to the FPDA's comment

¹ S. 916.105, F.S.

² Department of Children and Families Analysis of HB 1183, February 18, 2013.

³ S. 916.107(8), F.S.

⁴ S. 916.107(8)(a)(2), F.S.

⁵ The Supreme Court in re Amendments to Florida Rule of Judicial Administration 2.420, 68 So. 3d 228 (Fla. 2011), declined to amend the rule to include court-ordered psychiatric and psychological records contained in court files as an automatic Type I exemption, stating that any records not expressly exempt from public access by laws in effect on July 1, 1993, or court rules in effect on September 1992 are not appropriate for inclusion as an automatic Type I exemption under the rule.

and agreed that there is no statutory basis for a rule as requested by the FPDA and that such a change would require legislation.⁶

Effect of Proposed Changes:

The bill states that the Legislature finds it a public necessity that forensic behavioral health evaluations filed with the court pursuant to ch. 916, F.S., be confidential and exempt from disclosure under public records requirements. The bill states that the personal health of an individual and the treatment received is an intensely private matter and should not be made public merely because it is filed with the court. The bill states that protecting forensic behavioral health evaluations is necessary to consistently protect the health care privacy rights of all people.

The bill provides confidentiality to forensic mental health records and exempts these records from the public records requirements of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This applies during all judicial proceedings unless such records are released as provided by law.

The bill defines the term “forensic behavioral health evaluation” as any record, including supporting documentation, which was derived from a competency, substance abuse, psychosexual, psychological, psychiatric, psychosocial, cognitive impairment, sanity, or any other mental health evaluation.

The bill clarifies that if the evaluation becomes part of a clinical record, it can be released, as required by law, under s. 916.107(8), F.S.

The bill clarifies that the exemption is limited and no broader than necessary to accomplish the stated purpose.

The bill contains a sunset clause and will be repealed on October 2, 2018, unless reenacted by the legislature.

B. SECTION DIRECTORY:

Section 1: Creates s. 916.1065, F.S., related to confidentiality of forensic behavioral health evaluations

Section 2: Provides for an effective date of upon becoming law.

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.

⁶ Supreme Court rules case SC11-2466.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

By providing for the information to be exempt automatically, the bill helps reduce court workload related to disposing of these individual motions. The precise impact would depend on the number of motions and hearings that would actually be eliminated.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.