

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.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 280

INTRODUCER: Senator Garcia

SUBJECT: Public Records/Participants in Treatment-based Drug Court Programs

DATE: January 13, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Cibula	JU	Favorable
2.			GO	
3.			RC	

I. Summary:

SB 280 creates a public records exemption for information relating to a participant or a person considered for participation in a treatment-based drug court program which is contained in the following records, reports, and evaluations:

- Records relating to initial screenings for participation in the program.
- Records relating to substance abuse screenings.
- Behavioral health evaluations.
- Subsequent treatment status reports.

The bill provides that the exemption is subject to legislative review and repeal under the Open Government Sunset Review Act. The bill also contains a statement of public necessity as required by the Florida Constitution.

Because this bill creates a public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for passage.

II. Present Situation:

Treatment-Based Drug Court Programs

Section 397.334, F.S., allows counties to fund a treatment-based drug court program under which persons in the justice system identified as having a substance abuse problem can receive individually tailored treatment.¹ Entry into a treatment-based drug court program must be voluntary. Written consent of the individual is necessary for a court to order him or her into a

¹ Section 397.334(1), F.S.

program.² As part of a program, a person may be required to receive substance abuse screenings and continual monitoring and evaluations.³ Records of the screenings and evaluations can be reviewed by court officials as part of a process of determining the individual's compliance with the treatment-based drug court program.⁴

Confidentiality of Treatment-based Drug Court Program Records

There is no existing public records exemption for records relating to participation in a treatment-based drug court program. A court may order records to be made confidential on a case-by-case basis; however, only the Legislature may create a new general public records exemption for judicial records.⁵ Under existing law, drug court-related records contained in court files are not confidential, and a motion to make the records confidential must be filed, a hearing on the motion must be held, and the court must issue an order granting or denying the motion.⁶ This motion driven process has a significant impact on judicial and court workload.⁷

Nevertheless, federal law may restrict the disclosure of some records relating to participants in a treatment-based drug court program. Specifically, federal law prohibits the disclosure of information that:

- Identifies a person who has applied for or been given diagnosis or treatment for alcohol or drug abuse at a federally assisted program. Such individuals include any individual who, after arrest on a criminal charge, is identified as an alcohol or drug abuser in order to determine that individual's eligibility to participate in a treatment program.
- Is information obtained by a federally assisted drug abuse or alcohol abuse program for the purpose of treating alcohol or drug abuse, making a diagnosis for that treatment, or making a referral for that treatment.⁸

An alcohol abuse or drug abuse program is considered to be federally assisted if it is:

- Conducted in whole or in part by any department or agency of the United States;
- Carried out under a license or other authorization granted by any department or agency of the United States;
- Supported by funds provided by any department or agency of the United States; or
- Assisted by the Internal Revenue Service of the Department of the Treasury through the allowance of income tax deductions for contributions to the program or through the granting of tax exempt status to the program.⁹

² Section 397.334(2), F.S.

³ Section 397.334(4), F.S.

⁴ Section 397.334(5), F.S.

⁵ *In re Amendments to Florida Rule of Judicial Administration 2.420*, 68 So. 3d 228, 229-230 (Fla. 2011).

⁶ Office of the State Courts Administrator, *2014 Judicial Impact Statement for SB 280* (December 2, 2013) (on file with the Senate Committee on Judiciary).

⁷ *Id.*

⁸ See 42 C.F.R. ss. 2.11-2.12.

⁹ 42 C.F.R. s. 2.12(b).

Public Records Laws

The Florida Constitution provides every person 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 of persons acting on their behalf.¹⁰ The records of the legislative, executive, and judicial branches are specifically included.¹¹

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act guarantees every person's right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.¹²

Only the Legislature may create an exemption to public records requirements.¹³ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹⁴

The Open Government Sunset Review Act prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁵ It requires the automatic repeal of such exemptions on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption. 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 to meet such public purpose.¹⁶

III. Effect of Proposed Changes:

The bill provides that information relating to a participant or a person considered for participation in a treatment-based drug court program which is contained in the following records, reports, and evaluations is confidential and exempt from public records disclosure requirements:

- Records relating to initial screenings for participation in the program.
- Records relating to substance abuse screenings.
- Behavioral health evaluations.
- Subsequent treatment status reports.

¹⁰ FLA. CONST., Art. I, s. 24(a).

¹¹ *Id.*

¹² Section 119.07(1)(a), F.S.

¹³ FLA. CONST., Art I s. 24(c).

¹⁴ *Id.*

¹⁵ Section 119.15, F.S.

¹⁶ *Id.*

The bill provides that the public records exemption is subject to legislative review and repeal under the Open Government Sunset Review Act and as such, stands repealed October 2, 2019, unless reviewed and saved from repeal by reenactment of the Legislature.

The bill also contains a statement of public necessity as required by the Florida Constitution.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not appear to be a mandate. The bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds, reduce the authority counties or municipalities have to raise revenue, or reduce the percentage of a state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

This bill creates a public records exemption. To become law, bills creating a public records exemption must be approved by a two-thirds vote of the members present and voting in each house of the Legislature.

According to the public necessity statement included in the bill, maintaining the confidentiality of records is necessary to encourage individuals to participate in treatment-based drug court programs.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Information relating to a person's participation in a treatment-based drug court program will be kept confidential.

C. Government Sector Impact:

By maintaining the confidentiality of records relating to a person's participation in a treatment-based drug court program, more people may be willing to participate. The exemption for drug court-related records will eliminate the need for motions, hearings, and orders to protect these records from disclosure. The precise impact will depend upon the number of motions and hearings that will be eliminated. The fiscal impact on the

expenditures of the State Courts System cannot be accurately determined due to the unavailability of data needed to quantify the decreased court workload.¹⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill is a recommendation of the Supreme Court Task Force on Substance Abuse and Mental Health Issues in the Courts and is part of the 2014 legislative agenda for the judicial branch.¹⁸

VIII. Statutes Affected:

This bill substantially amends section 387.334, Florida Statutes.
The bill creates one undesignated section of Florida Law.

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁷ Office of the State Courts Administrator, *supra* note 6.

¹⁸ Office of the State Courts Administrator, *supra* note 6.