

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1055 Pub. Rec./Addiction Treatment Facility Personnel  
**SPONSOR(S):** Oversight, Transparency & Administration Subcommittee; DuBose  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1364

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	13 Y, 0 N	Langston	Brazzell
2) Oversight, Transparency & Administration Subcommittee	12 Y, 0 N, As CS	Hoffman	Harrington
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

The Department of Children and Families (DCF) administers a statewide system of safety-net services for substance abuse prevention, treatment, and recovery. DCF regulates substance abuse treatment by licensing individual treatment components under ch. 397, F.S., and ch. 65D-30, F.A.C. Licensed service components include a continuum of substance abuse prevention, intervention, and clinical treatment services.

- Prevention is a process involving strategies that are aimed at the individual, family, community, or substance and that preclude, forestall, or impede the development of substance use problems and promote responsible lifestyles.
- Intervention is structured services directed toward individuals or groups at risk of substance abuse and focused on reducing or impeding those factors associated with the onset or the early stages of substance abuse and related problems.
- Clinical treatment is a professionally directed, deliberate, and planned regimen of services and interventions that are designed to reduce or eliminate the misuse of drugs and alcohol and promote a healthy, drug-free lifestyle.

The bill exempts from public record requirements the home addresses, telephone numbers, dates of birth, and photographs of current or former directors, managers, supervisors, nurses, and clinical employees of addiction treatment facilities. The bill also exempts from public record requirements the home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of the above persons. Additionally, the bill exempts from public record requirements the names and locations of schools and day care facilities attended by the children of those persons.

The bill defines an addiction treatment facility as a county government, or agency thereof, that is licensed pursuant to s. 397.401, F.S., and provides substance abuse prevention, intervention, or clinical treatment, including any licensed service component described in s. 397.311(26), F.S.

The bill provides a statement of public necessity as required by the Florida Constitution. The bill also provides for repeal of the exemption on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill does not appear to have a fiscal impact on the state and may have a minimal fiscal impact on local governments. See Fiscal Comments.

**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 newly created public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Substance Abuse

Substance abuse refers to the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs.<sup>1</sup> Substance abuse disorders occur when the chronic use of alcohol or drugs causes significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.<sup>2</sup> Repeated drug use leads to changes in the brain's structure and function that can make a person more susceptible to developing a substance abuse disorder.<sup>3</sup> Substance abuse causes physical changes in areas of the brain that are critical to judgment, decision making, learning and memory, and behavior control.<sup>4</sup>

A diagnosis of substance abuse disorder is based on evidence of impaired control, social impairment, risky use, and pharmacological criteria.<sup>5</sup> The most common substance abuse disorders in the United States are from the use of alcohol, tobacco, cannabis, stimulants, hallucinogens, and opioids.<sup>6</sup>

##### Substance Abuse Treatment

In the early 1970s, the federal government furnished grants for states to develop continuums of care for individuals and families affected by substance abuse.<sup>7</sup> The grants provided separate funding streams and requirements for alcoholism and drug abuse. In response, the Florida Legislature enacted ch. 396, F.S., (alcohol) and ch. 397, F.S. (drug abuse).<sup>8</sup> In 1993, legislation combined ch. 396 and ch. 397, F.S., into a single law, the Hal S. Marchman Alcohol and Other Drug Services Act ("the Marchman Act").<sup>9</sup> The Marchman Act supports substance abuse prevention and remediation through a system of prevention, detoxification, and treatment services to assist individuals at risk for or affected by substance abuse.

The Department of Children and Families (DCF) administers a statewide system of safety-net services for substance abuse and mental health (SAMH) prevention, treatment, and recovery. SAMH programs include a range of prevention, acute interventions (such as crisis stabilization or detoxification), residential, transitional housing, outpatient treatment, and recovery support services. Services are provided based upon state and federally-established priority populations.<sup>10</sup>

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<sup>1</sup> WORLD HEALTH ORGANIZATION, *Substance Abuse*, [http://www.who.int/topics/substance\\_abuse/en/](http://www.who.int/topics/substance_abuse/en/) (last visited Jan. 19, 2018).

<sup>2</sup> SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION, *Substance Use Disorders*, <http://www.samhsa.gov/disorders/substance-use> (last visited Jan. 19, 2018).

<sup>3</sup> NATIONAL INSTITUTE ON DRUG ABUSE, *Drugs, Brains, and Behavior: The Science of Addiction*, <https://www.drugabuse.gov/publications/drugs-brains-behavior-science-addiction/drug-abuse-addiction> (last visited Jan. 19, 2018).

<sup>4</sup> *Id.*

<sup>5</sup> *Supra*, note 2.

<sup>6</sup> *Id.*

<sup>7</sup> Florida Department of Children and Families, *Baker Act and Marchman Act Project Team Report for Fiscal Year 2016-2017*, p. 4-5. (on file with Children Families and Seniors Subcommittee staff).

<sup>8</sup> *Id.*

<sup>9</sup> Ch. 93-39, s. 2, Laws of Fla., codified in ch. 397, F.S.

<sup>10</sup> These priority populations include, among others, persons diagnosed with co-occurring substance abuse and mental health disorders, persons who are experiencing an acute mental or emotional crisis, children who have or are at risk of having an emotional disturbance, and children at risk for initiating drug use.

## Substance Abuse Treatment Service Regulation

DCF regulates substance abuse treatment by licensing individual treatment components under ch. 397, F.S., and ch. 65D-30, F.A.C. Licensed service components include a continuum of substance abuse prevention, intervention, and clinical treatment services.<sup>11</sup>

Prevention is a process involving strategies that are aimed at the individual, family, community, or substance and that preclude, forestall, or impede the development of substance use problems and promote responsible lifestyles.<sup>12</sup> Substance abuse prevention is best accomplished through the use of ongoing strategies such as increasing public awareness and education, community-based processes and evidence-based practices.<sup>13</sup>

Intervention is structured services directed toward individuals or groups at risk of substance abuse and focused on reducing or impeding those factors associated with the onset or the early stages of substance abuse and related problems.<sup>14</sup>

Clinical treatment is a professionally directed, deliberate, and planned regimen of services and interventions that are designed to reduce or eliminate the misuse of drugs and alcohol and promote a healthy, drug-free lifestyle.<sup>15</sup> “Clinical treatment services” include, but are not limited to, the following licensable service components:

- Addictions receiving facility,
- Day or night treatment,
- Day or night treatment with community housing,
- Detoxification,
- Intensive inpatient treatment,
- Intensive outpatient treatment,
- Medication-assisted treatment for opiate addiction,
- Outpatient treatment, and
- Residential treatment.<sup>16</sup>

Certain individuals receiving substance abuse treatment may have a criminal or violent history. About 54 percent of state prisoners and 61 percent of sentenced jail inmates incarcerated for violent offenses met the Diagnostic and Statistical Manual of Mental Disorders, 4<sup>th</sup> Edition, (DSM-IV) criteria for drug dependence or abuse.<sup>17</sup> Additionally, individuals who use illicit drugs are more likely to commit crimes, and it is common for many offenses, including violent crimes, to be committed by individuals who had used drugs or alcohol prior to committing the crime, or who were using at the time of the offense.<sup>18</sup>

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<sup>11</sup> S. 397.311(25), F.S.

<sup>12</sup> S. 397.311(26)(c), F.S.

<sup>13</sup> Department of Children and Families, *Substance Abuse: Prevention*, <http://www.myflfamilies.com/service-programs/substance-abuse/prevention>, (last visited Jan. 19, 2018). These prevention programs are focused primarily on youth, and, recent years, have shifted to the local level, giving individual communities the opportunity to identify their own unique prevention needs and develop action plans in response. This community focus allows prevention strategies to have a greater impact on behavioral change by shifting social, cultural and community environments

<sup>14</sup> S. 397.311(26)(b), F.S.

<sup>15</sup> S. 397.311(25), F.S.

<sup>16</sup> S. 397.311(25)(a), F.S.

<sup>17</sup> Jennifer Bronson, et al., *Drug Use, Dependence, and Abuse Among State Prisoners and Jail Inmates, 2007-2009*, U.S. DEPARTMENT OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATISTICS, available at <https://www.bjs.gov/content/pub/pdf/dudaspji0709.pdf> (last visited Jan. 19, 2018).

<sup>18</sup> *Principles of Drug Abuse Treatment for Criminal Justice Populations: A Research-Based Guide*, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, NATIONAL INSTITUTE ON DRUG ABUSE, available at [https://d14rmgtrwzf5a.cloudfront.net/sites/default/files/txcriminaljustice\\_0.pdf](https://d14rmgtrwzf5a.cloudfront.net/sites/default/files/txcriminaljustice_0.pdf) (last visited Jan. 19, 2018).

## Public Records and Open Meetings Requirements

The Florida Constitution provides that the public has the right to access government records and meetings.<sup>19</sup> The public may 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.<sup>20</sup> The public also has a right to notice of, and access to meetings of any collegial public body of the executive branch of state government or of any local government.<sup>21</sup> The Legislature's meetings must also be open and noticed to the public, unless there is an exception provided for by the Constitution.<sup>22</sup>

Florida law specifies the conditions under which public access must be provided to government records and meetings. The Public Records Act guarantees every person's right to inspect and copy any state or local government public record.<sup>23</sup> The Sunshine Law requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be noticed and open to the public.<sup>24</sup>

The Legislature may create an exemption to public records or open meetings requirements.<sup>25</sup> An exemption must specifically state the public necessity justifying the exemption and must be tailored to accomplish the stated purpose of the law.<sup>26</sup> 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 confidential and exempt.<sup>27</sup>

## Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public record or open meeting exemptions.<sup>28</sup> The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment.<sup>29</sup> The Legislature must reenact the exemption in order to save it from repeal.<sup>30</sup>

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<sup>19</sup> FLA. CONST., art. I, s. 24.

<sup>20</sup> FLA. CONST., art. I, s. 24(a).

<sup>21</sup> FLA. CONST., art. I, s. 24(b).

<sup>22</sup> FLA. CONST., art. I, s. 24(b).

<sup>23</sup> Ch. 119, F.S.; "Public record" means "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." S. 119.011(12), F.S. "Agency" means "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." S. 119.011(2), F.S. The Public Records Act does not apply to legislative or judicial records, *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992), however, the Legislature's records are public pursuant to s. 11.0431, F.S.

<sup>24</sup> S. 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in the Florida Constitution. Article III, section 4(e) of the Florida Constitution provides that legislative committee meetings must be open and noticed to the public. In addition, prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.

<sup>25</sup> FLA. CONST., art. I, s. 24(c).

<sup>26</sup> FLA. CONST., art. I, s. 24(c).

<sup>27</sup> A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991) *review denied*, 589 So. 2d 289 (Fla. 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 *WFTV, Inc. v. Sch. Bd. of Seminole Cnty*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004); Op. Att'y Gen. Fla. 85-692 (1985).

<sup>28</sup> S. 119.15, F.S. An exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

<sup>29</sup> S. 119.15(3), F.S.

<sup>30</sup> *Id.*

The OGSR provides that a public record or open meeting exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary<sup>31</sup> to meet one of the following purposes:

- Allow the state or its political subdivision to effectively and efficiently administer a program, the administration of which would be significantly impaired without the exemption; or
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only personal identifying information may be exempted under this provision; or
- Protect trade or business secrets.<sup>32</sup>

In addition, the Legislature must find that the identifiable public purpose is compelling enough to override Florida's open government public policy and that the purpose of the exemption cannot be accomplished without the exemption.<sup>33</sup>

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>34</sup> If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will retain their exempt status unless provided for by law.<sup>35</sup>

### **Effect of Proposed Changes**

The bill exempts from public records requirements the home addresses, telephone numbers, dates of birth, and photographs of:

- Current or former directors, managers, supervisors, nurses, and clinical employees of addiction treatment facilities, and
- Spouses and children of the above persons.

Additionally, the bill exempts the places of employment of spouses and children of these personnel and the names and locations of schools and day care facilities attended by the children of those persons.

The bill defines an addiction treatment facility as a county government, or agency thereof, that is licensed pursuant to s. 397.401, F.S., and provides substance abuse prevention, intervention, or clinical treatment, including any licensed service component described in s. 397.311(26), F.S. The bill would not apply to any facility that is not owned by a county government or an agency thereof.

The bill provides a public necessity statement as required by the Florida Constitution, specifying that the named employees of addiction treatment facilities and their family members may be in danger of physical or emotional harm from disgruntled individuals with substance use and mental health disorders who react inappropriately and violently. The bill finds that the named employees of addiction treatment facilities and their family members may become a target of an act of revenge. It also states that the harm that may result from the release of such personal identifying and location information outweighs any public benefit that may be derived from the disclosure of the information.

The bill also provides that the public record exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

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

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> FLA. CONST., art. I, s. 24(c).

<sup>35</sup> S. 119.15(7), F.S.

The bill provides an effective date of July 1, 2018.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 119.071, F.S., relating to general exemptions from inspecting or copying of public records.

**Section 2:** Provides a statement of public necessity.

**Section 3:** Provides an effective date.

**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:

See Fiscal Comments.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

The bill could have a minimal fiscal impact on local governments because staff responsible for complying with public record requests may require training related to the creation of the public record exemption. In addition, local governments could incur costs associated with redacting the exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of local governments.

**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 take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

## 2. Other:

### Vote Requirement

Article I, section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; therefore, it requires a two-thirds vote for final passage.

### Public Necessity Statement

Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; therefore, it includes a public necessity statement.

### Breadth of Exemption

Article I, section 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill seeks to prevent the disclosure certain identifying information of employees of addiction treatment facilities and their families to protect their safety. Thus, the bill does not appear to be in conflict with the constitutional requirement that an exemption be no broader than necessary to accomplish its purpose.

## B. RULE-MAKING AUTHORITY:

None.

## C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 23, 2018, the Oversight, Transparency & Administration Subcommittee adopted one amendment and reported the bill favorably with a committee substitute. The amendment removed the reference to social security numbers because there is a general exemption for social security numbers in s. 119.071(5)(a)5., F.S.

The analysis is drafted to the committee substitute as adopted by the Oversight, Transparency & Administration Subcommittee.