

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1199 Pub. Rec./Diversion Programs
SPONSOR(S): Ahern
TIED BILLS: HB 1197 **IDEN./SIM. BILLS:** SB 1394

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	10 Y, 0 N	Bruno	Sumner
2) Oversight, Transparency & Administration Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Under current Florida law, there is no public records exemption for the records of an adult who participates in a prearrest diversion program. HB 1199 amends s. 904.10, F.S., created by HB 1197 (2018), to create a public records exemption for the personal identifying information of an adult who participates in such a program.

The bill repeals the exemption on October 2, 2023, unless reviewed and saved from repeal by the Legislature, and includes a statement of public necessity as required by the Florida Constitution.

The bill may have a minimal fiscal impact on state and local governments.

Article I, s. 24(c) of the Florida Constitution requires a two-third vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. As the bill creates a public record exemption for the personal identifying information of an adult who participates in a prearrest diversion program, it therefore requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide for the exemption of records from the requirements of Article I, section 24(a), by general law,¹ which must state with specificity the public necessity justifying the exemption² and must be no more broad than necessary to accomplish its purpose.³

Public policy regarding access to government records is addressed further in s. 119.07(1)(a), F.S., which guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act⁴ (the Act) provides that a public records exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no more broad than 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.⁵

The Act also requires the automatic repeal of a public records exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.⁶ Specified questions must be considered by the Legislature during the review process.⁷

Prearrest Diversion Programs

HB 1197 (2018), which is tied to this bill, creates s. 901.40, F.S., to encourage local communities and public or private educational institutions to implement prearrest diversion programs. HB 1197 creates a model prearrest diversion program for adults that allows a law enforcement officer, at the officer's sole discretion, to offer prearrest diversion to an adult who meets eligibility requirements, as determined by local stakeholders.

Participants in a prearrest diversion program must be provided appropriate assessment, intervention, education, and behavioral health care services. The program must also require the participant to perform community service hours and pay restitution to the victim. If the participant does not

¹ FLA. CONST. art. I, s. 24(c).

² This portion of a public records exemption is commonly referred to as a "public necessity statement."

³ FLA. CONST. art. I, s. 24(c).

⁴ S. 119.15, F.S.

⁵ S. 119.15(6)(b), F.S.

⁶ S. 119.15(3), F.S.

⁷ Section 119.15(6)(a), F.S., requires the Legislature to consider the following questions as part of the review process: 1) What specific records or meetings are affected by the exemption? 2) What specific parties does the exemption affect? 3) What is the public purpose of the exemption? 4) Can the information contained in the records or meetings be readily obtained by alternative means? If so, how? 5) Is the record or meeting protected by another exemption? 6) Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

successfully complete the program's requirements, the officer determines whether there is good cause to arrest the individual for the original offense and, if so, refers the case to the state attorney.

Public Records Exemptions for Certain Criminal Records

Adult Criminal History Records

A criminal history record includes the disposition of an arrest, whether it results in a conviction, acquittal, or dismissal of the charges before trial.⁸ Generally, Florida law allows dissemination of criminal justice information⁹ to the public. Section 943.053, F.S., provides that an adult's criminal history information¹⁰ is available to criminal justice agencies for criminal justice purposes free of charge and to persons in the private sector upon payment of a fee.¹¹ Adults seeking to prevent such disclosure may obtain a court order making criminal history records confidential and exempt from the provisions of s. 119.07(1), F.S., and article I, s. 24(a) of the Florida Constitution by petitioning for:

- Court-ordered sealing;¹² or
- Court-ordered expunction.¹³

Pre-Arrest Diversion Program Records

Due to the prearrest nature of the programs, records held by a civil citation or similar prearrest diversion program are created before any arrest occurs and, thus, do not become part of the criminal history record system. As such, there is no ability to seal or expunge a civil citation or prearrest diversion program record. Instead, such records are subject to public disclosure because there is no public records exemption applicable under current Florida law.

Effect of Proposed Changes

HB 1199 amends s. 904.10, F.S., created by HB 1197 (2018), to create a public records exemption related to prearrest diversion programs. Under the exemption, the personal identifying information of an adult who participates in a prearrest diversion program is exempt from the requirements of s. 119.07(1), F.S., and article I, s. 24(a) of the Florida Constitution.

The bill repeals the exemption on October 2, 2023, unless reviewed and saved from repeal by the Legislature.

The bill provides a statement of public necessity as required by the Florida Constitution,¹⁴ specifying that the Legislature finds that the goal of prearrest diversion programs is to give a second chance to adults who commit misdemeanor offenses and allow them the opportunity to avoid having an arrest record. As such, prearrest diversion program records must be exempt, as disclosure would defeat the program's goal of giving adults who commit misdemeanor offenses a means to avoid the negative consequences of an arrest and prosecution, and disclosure might negatively impact the effectiveness of the program.

⁸ Florida Department of Law Enforcement, *Seal and Expunge Frequently Asked Questions*, available at: http://www.fdle.state.fl.us/cms/Seal-and-Expunge-Process/Frequently-Asked-Questions.aspx#Charges_dropped_dismissed (last visited January 10, 2018).

⁹ Criminal justice information means information on individuals collected or disseminated as a result of arrest, detention, or the initiation of a criminal proceeding by criminal justice agencies, including arrest record information, correctional and release information, criminal history record information, conviction record information, offender registration information, identification record information, and wanted persons record information. S. 943.045(12), F.S.

¹⁰ Criminal history information means information collected by criminal justice agencies on persons, which information consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges and the disposition thereof. The term does not include identification information, such as biometric records, if the information does not indicate involvement of the person in the criminal justice system. S. 943.045(5), F.S.

¹¹ S. 943.053(3)(a), F.S.

¹² S. 943.059, F.S.

¹³ S. 943.0585, F.S.

¹⁴ FLA. CONST. art. I, s. 24(c).

The bill is effective on the same date that HB 1197 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law. HB 1197 provides an effective date of July 1, 2018.

B. SECTION DIRECTORY:

Section 1: Amends s. 901.40, F.S., as created by HB 1197 (2018), relating to prearrest diversion programs.

Section 2: Provides a public necessity statement.

Section 3: Provides an effective date of the same date that HB 1197 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill could have a minimal impact on state agencies because agency staff responsible for complying with public records requests may require training related to the creation of the public record exemption. Agencies could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed by existing resources, as they are part of the day-to-day responsibilities of agencies.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

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

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. The bill does not appear to affect municipal or county governments.

2. Other:

Vote Requirement

Article I, s. 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 newly expanded public records or public meetings exemption. The bill creates a public records exemption; therefore, it requires a two-thirds vote for final passage.

Public Necessity Statement

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

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created public records or public meetings exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a limited public records exemption for the personal identifying information of an adult who participates in a civil citation or similar prearrest diversion program which does not appear to be in conflict with the constitutional requirement that the 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