

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 Health Policy

BILL: SB 1364

INTRODUCER: Senator Rader

SUBJECT: Public Records/Substance Abuse Service Providers

DATE: February 12, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	Pre-meeting
2.			GO	
3.			RC	

I. Summary:

SB 1364 amends s. 119.071, F.S., to exempt from public records laws certain personal identifying information of current and former directors, managers, supervisors, nurses, and clinical employees of a substance abuse service provider licensed under part II of ch. 397, F.S., as well as certain personal identifying information of their spouses and children, if their duties include counseling and treatment of persons who have mental health or substance abuse disorders. The bill provides a statement of public necessity and establishes an Open Government Sunset Review Act automatic repeal date of October 2, 2023, unless reviewed and saved from repeal by the Legislature.

This bill requires a two-thirds vote if each chamber for passage because it creates a public records exemption.

The bill establishes and effective date of July 1, 2018.

II. Present Situation:

Substance Abuse Treatment Service Regulation

Substance Abuse

Substance abuse refers to the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs.¹ 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.² Repeated drug use leads to changes in the

¹ World Health Organization, *Substance Abuse*, http://www.who.int/topics/substance_abuse/en/ (last visited Feb. 8, 2018).

² Substance Abuse and Mental Health Services Administration, *Substance Use Disorders*, (October 27, 2015) <https://www.samhsa.gov/disorders/substance-use> (last visited Feb. 8, 2018).

brain's structure and function that can make a person more susceptible to developing a substance abuse disorder.³ Substance abuse causes physical changes in areas of the brain that are critical to judgment, decision making, learning and memory, and behavior control.⁴

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

Substance Abuse Treatment

The Department of Children and Families (DCF) regulates substance abuse treatment by licensing individual treatment components under ch. 397, F.S., and Rule 65D-30, F.A.C. Licensed service components include a continuum of substance abuse prevention, intervention, and clinical treatment services.⁷

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.⁸ 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.⁹

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.¹⁰

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.¹¹ "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;

³ National Institute on Drug Abuse, *Drugs, Brains, and Behavior: The Science of Addiction*, (July 2014) <https://www.drugabuse.gov/publications/drugs-brains-behavior-science-addiction/drug-abuse-addiction> (last visited Feb. 8, 2018).

⁴ Id.

⁵ Supra note 2.

⁶ Id.

⁷ Section 397.311(25), F.S.

⁸ Section 397.311(26)(c), F.S.

⁹ Department of Children and Families, *Substance Abuse: Prevention*, <http://www.myflfamilies.com/service-programs/substance-abuse/prevention>, (last visited Feb. 8, 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.

¹⁰ Section 397.311(26)(b), F.S.

¹¹ Section 397.311(25), F.S.

- Intensive inpatient treatment;
- Intensive outpatient treatment;
- Medication-assisted treatment for opiate addiction;
- Outpatient treatment; and
- Residential treatment.¹²

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, 4th Edition, (DSM-IV) criteria for drug dependence or abuse.¹³ 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.¹⁴

Some substance abuse treatment facilities are owned by county governments or county government agencies. Because these facilities are government-owned, the public has a right to access their records, including records of the home addresses, telephone numbers, dates of birth, and photographs of employees of those facilities, as well as information about their families. In at least one instance in Broward County, a client at the Broward Addiction Recovery Center (BARC) spontaneously came to the home of a BARC employee seeking after hours counseling. The client had found the employee's home address through an internet search.¹⁵

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹⁶ This applies to the official business of any public body, officer or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.¹⁷

In addition to the Florida Constitution, the Florida Statutes provides that the public may access legislative and executive branch records.¹⁸ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.¹⁹ The Public Records Act states that:

¹² Section 397.311(25)(a), F.S.

¹³ 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, (June 2017) available at <https://www.bjs.gov/content/pub/pdf/dudaspji0709.pdf> (last visited Feb. 8, 2018).

¹⁴ 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, p. 12, available at https://d14rmgrtwzf5a.cloudfront.net/sites/default/files/txcriminaljustice_0.pdf (last visited Feb. 8, 2018).

¹⁵ Information provided by Broward County, on file with Senate Health Policy Committee staff.

¹⁶ FLA. CONST., art. I, s. 24(a).

¹⁷ *Id.*

¹⁸ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature's records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

¹⁹ Public records laws are found throughout the Florida Statutes.

...it is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.²⁰

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.²¹ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”²² A violation of the Public Records Act may result in civil or criminal liability.²³

The Legislature may create an exemption to public records requirements.²⁴ An exemption must pass by a two-thirds vote of the House and the Senate.²⁵ In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.²⁶ A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.²⁷

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”²⁸ Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as “exempt” are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.²⁹

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open

²⁰ Section 119.01(1), F.S.

²¹ Section 119.011(12), F.S., defines “public record” to mean “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.” Section 119.011(2), F.S., defines “agency” to mean as “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.”

²² *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

²³ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

²⁴ FLA. CONST., art. I, s. 24(c).

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). See also *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004).

²⁸ If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

²⁹ *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

meetings exemptions.³⁰ The OGSR provides that an exemption automatically repeals on October 2 of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.³¹

The OGSR 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.³² An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;³³
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;³⁴ or
- It protects trade or business secrets.³⁵

The OGSR also requires specified questions to be considered during the review process.³⁶ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.³⁷ 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 remain exempt unless otherwise provided for by law.³⁸

III. Effect of Proposed Changes:

Section 1 amends s. 119.071, F.S., to exempt the following information from the requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution:

³⁰ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that 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.

³¹ Section 119.15(3), F.S.

³² Section 119.15(6)(b), F.S.

³³ Section 119.15(6)(b)1., F.S.

³⁴ Section 119.15(6)(b)2., F.S.

³⁵ Section 119.15(6)(b)3., F.S.

³⁶ Section 119.15(6)(a), F.S. The specified questions are:

1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?
3. What is the identifiable public purpose or goal of the exemption?
4. Can the information contained in the records or discussed in the meeting 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?

³⁷ FLA. CONST. art. I, s. 24(c).

³⁸ Section 119.15(7), F.S.

- The home addresses, telephone numbers, social security numbers, dates of birth, and photographs of current or former directors, managers, supervisors, nurses, and clinical employees of a substance abuse service provider that is licensed under part II of ch. 397, F.S., and whose duties include the counseling and treatment of persons who have mental health or substance abuse disorders;
- The home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and
- The names and locations of schools and day care facilities attended by the children of such personnel.

The bill establishes an Open Government Sunset Review Act automatic repeal date of October 2, 2023, unless reviewed and saved from repeal by the Legislature.

Section 2 provides the public necessity statement required by Article I, Section 24(c) of the Florida Constitution. The bill states that it is a public necessity to establish the public records exemption since the release of the information protected by the exemption may place the specified personnel of a licensed substance abuse provider and their family members in danger of physical and emotional harm from hostile persons who may react inappropriately and violently to actions taken by such personnel. The bill states that such personnel provide services that are necessary and appropriate for persons who have mental health or substance abuse disorders and provide valuable and supportive services to the state's most vulnerable residents. Despite the value of such services, some persons may become hostile toward the personnel and may pose a threat to them indefinitely. 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.

Section 3 of the bill establishes an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Voting Requirement

Article I, Section 24(c) of the Florida Constitution requires a two-thirds vote of each chamber for public records exemptions to pass.

Public Necessity Statement

Article I, Section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public-records exemption. The Florida Constitution provides that an exemption must state with specificity the public necessity of the exemption. The public necessity statement provides that the exemption is needed to protect the safety of the licensed substance abuse treatment provider's directors, managers, supervisors, nurses, or clinical employees and their family members since

those individuals treat clients who have mental health and substance abuse disorders and who may become hostile toward the treatment provider.

Breadth of Exemption

Article I, Section 24(c) of the Florida Constitution requires a newly created public records exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill exempts the home addresses, telephone numbers, social security numbers, dates of birth, and photographs of current or former directors, managers, supervisors, nurses, and clinical employees of a substance abuse service provider that is licensed under part II of ch. 397, F.S., and whose duties include the counseling and treatment of persons who have mental health or substance abuse disorders. Additionally, the bill exempts the home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel. This bill appears to be no broader than necessary to accomplish the public necessity for this public records exemption.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill includes social security numbers as one of the items of information exempted from public records laws by the bill. Currently, all government employee social security numbers and social security numbers collected by any government agency³⁹ are made confidential and exempt

³⁹ Defined in s. 119.011, F.S., to include 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.

in s. 119.071(4)(a) and (5)(a), F.S., respectively, and may not need to be included in the exemption created by the bill.

VIII. Statutes Affected:

This bill substantially amends section 119.071 of the Florida Statutes.

This 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.