

HOUSE BILL REPORT

HB 1030

As Passed House:

February 23, 2009

Title: An act relating to exempting special commitment center security information from disclosure under the public records act.

Brief Description: Concerning the exemption of the special commitment center under the public records act.

Sponsors: Representatives Appleton, Chandler, Hunt, Lias, Angel, Hope, Dammeier and Moeller; by request of Department of Social and Health Services.

Brief History:

Committee Activity:

State Government & Tribal Affairs: 1/20/09, 1/29/09 [DP].

Floor Activity

Passed House: 2/23/09, 94-0.

Brief Summary of Bill

- Exempts certain records containing specific and unique vulnerability assessments of emergency and escape plans at the Special Commitment Center from disclosure under the Public Records Act.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL AFFAIRS

Majority Report: Do pass. Signed by 7 members: Representatives Hunt, Chair; Appleton, Vice Chair; Armstrong, Ranking Minority Member; Alexander, Flannigan, Hurst and Miloscia.

Staff: Tracey O'Brien (786-7196)

Background:

The Public Records Act (PRA) requires that all state and local government agencies make all public records available for public inspection and copying unless they fall within certain statutory exemptions. The provisions requiring public records disclosure must be interpreted

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liberally and the exemptions narrowly in order to effectuate a general policy favoring disclosure.

Among the statutory exemptions are portions of records containing specific and unique vulnerability assessments of emergency and escape plans at a city, county, or state juvenile correctional facility. To meet this exemption, the disclosure must pose a substantial likelihood that the safety of the correctional facility or any individual would be threatened.

The PRA requires agencies to respond to public records requests within five business days. The agency must provide the records, provide a reasonable estimate of the time the agency will take to respond to this request, or deny the request. Additional time may be required to respond to a request where the agency needs to notify third parties or agencies affected by the request or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request. For practical purposes, the law treats a failure to properly respond as denial. A denial of a public records request must be accompanied by a written statement of the specific reasons for denial.

Any person who is denied the opportunity to inspect or copy a public record may file a motion to show cause in superior court why the agency refused access to the record. The burden of proof rests with the agency to establish that the refusal is consistent with the statute that exempts or prohibits disclosure. Judicial review of the agency decision is de novo and the court may examine the record in camera. Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record shall be awarded all costs, including reasonable attorney fees. In addition, the court has the discretion to award such person no less than \$5 and not to exceed \$100 for each day he or she was denied the right to inspect or copy the public record. The court's discretion lies in the amount per day, but the court may not adjust the number of days for which the agency is fined.

Summary of Bill:

Records containing specific and unique vulnerability assessments of emergency and escape plans at the Special Commitment Center are exempt from the PRA as long as the disclosure of these records would pose a substantial likelihood that, if disclosed, the safety of the correctional facility or any individual would be threatened.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Current law prevents the disclosure of any vulnerability assessments and emergency and escape response plans of state and local correctional facilities. Although the Special Commitment Center (SCC) is not a correctional facility, the residents of the SCC are dangerous persons who are receiving treatment. In addition, the public expects the SCC to

be secure. This bill would prevent the disclosure of information that could threaten the security of the facility, its residents, its staff, and the public.

(Opposed) None.

Persons Testifying: Representative Appleton, prime sponsor; and Kelly Cunningham, Department of Social and Health Services Special Commitment Center.

Persons Signed In To Testify But Not Testifying: None.