

CHAPTER 97-209

Committee Substitute for House Bill No. 605

An act relating to public records and meetings; providing for application of public records exemptions in ss. 455.225(2) and (10) and 455.261(3)(e) and (5)(a), F.S., to certain information concerning provisional psychologists, registered clinical social worker interns, registered marriage and family therapist interns, registered mental health counselor interns, provisional clinical social workers, provisional marriage and family therapists, and provisional mental health counselors; providing for application of the public meetings exemption in s. 455.225(4), F.S., to proceedings of a probable cause panel with respect to investigations concerning such practitioners; providing for future review and repeal; providing a finding of public necessity; providing a contingent effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. The exemptions from s. 119.07(1), Florida Statutes, provided by ss. 455.225(2) and (10) and 455.261(3)(e) and (5)(a), Florida Statutes, also apply to information concerning a provisional psychologist regulated by the Agency for Health Care Administration and the Department of Health under chapter 490, Florida Statutes, a registered clinical social worker intern, a registered marriage and family therapist intern, a registered mental health counselor intern, a provisional clinical social worker, a provisional marriage and family therapist, or a provisional mental health counselor regulated by the Agency for Health Care Administration and the Department of Health under chapter 491, Florida Statutes. The exemption from s. 286.011, Florida Statutes, provided by s. 455.225(4), Florida Statutes, also applies to the proceedings of a probable cause panel with respect to an investigation concerning a provisional psychologist, a registered clinical social worker intern, a registered marriage and family therapist intern, a registered mental health counselor intern, a provisional clinical social worker, a provisional marriage and family therapist, or a provisional mental health counselor regulated by the agency and department under chapter 490 or chapter 491, Florida Statutes. This section is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, Florida Statutes, and shall stand repealed on October 2, 2002, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. Subsections (2), (4), and (10) of section 455.225, Florida Statutes, 1996 Supplement, read:

455.225 Disciplinary proceedings.—Disciplinary proceedings for each board shall be within the jurisdiction of the department or the Agency for Health Care Administration, as appropriate.

(2) The department and the Agency for Health Care Administration shall allocate sufficient and adequately trained staff to expeditiously and thoroughly determine legal sufficiency and investigate all legally sufficient com-

plaints. When its investigation is complete and legally sufficient, the department or the agency shall prepare and submit to the probable cause panel of the appropriate regulatory board the investigative report of the department or the agency. The report shall contain the investigative findings and the recommendations of the department or the agency concerning the existence of probable cause. At any time after legal sufficiency is found, the department or the agency may dismiss any case, or any part thereof, if the department or the agency determines that there is insufficient evidence to support the prosecution of allegations contained therein. The department or the agency shall provide a detailed report to the appropriate probable cause panel prior to dismissal of any case or part thereof, and to the subject of the complaint after dismissal of any case or part thereof, under this section. For cases dismissed prior to a finding of probable cause, such report is confidential and exempt from s. 119.07(1). The probable cause panel shall have access, upon request, to the investigative files pertaining to a case prior to dismissal of such case. If the department or the agency dismisses a case, the probable cause panel may retain independent legal counsel, employ investigators, and continue the investigation and prosecution of the case as it deems necessary.

(4) The determination as to whether probable cause exists shall be made by majority vote of a probable cause panel of the board, or by the department or the Agency for Health Care Administration, as appropriate. Each regulatory board shall provide by rule that the determination of probable cause shall be made by a panel of its members or by the department or the agency. Each board may provide by rule for multiple probable cause panels composed of at least two members. Each board may provide by rule that one or more members of the panel or panels may be a former board member. The length of term or repetition of service of any such former board member on a probable cause panel may vary according to the direction of the board when authorized by board rule. Any probable cause panel must include one of the board's former or present consumer members, if one is available, willing to serve, and is authorized to do so by the board chairman. Any probable cause panel must include a present board member. Any probable cause panel must include a former or present professional board member. However, any former professional board member serving on the probable cause panel must hold an active valid license for that profession. All proceedings of the panel are exempt from s. 286.011 until 10 days after probable cause has been found to exist by the panel or until the subject of the investigation waives his privilege of confidentiality. The probable cause panel may make a reasonable request, and upon such request the department or the agency shall provide such additional investigative information as is necessary to the determination of probable cause. A request for additional investigative information shall be made within 15 days from the date of receipt by the probable cause panel of the investigative report of the department or the agency. The probable cause panel or the department or the agency, as may be appropriate, shall make its determination of probable cause within 30 days after receipt by it of the final investigative report of the department or the agency. The secretary may grant extensions of the 15-day and the 30-day time limits. If the probable cause panel does not find probable cause within the 30-day time limit, as may be extended, or if the probable cause panel finds no probable cause, the department or the agency may determine,

within 10 days after the panel fails to determine probable cause or 10 days after the time limit has elapsed, that probable cause exists. In lieu of a finding of probable cause, the probable cause panel, or the department or the agency when there is no board, may issue a letter of guidance to the subject. If the probable cause panel finds that probable cause exists, it shall direct the department or the agency to file a formal complaint against the licensee. The department or the agency shall follow the directions of the probable cause panel regarding the filing of a formal complaint. If directed to do so, the department or the agency shall file a formal complaint against the subject of the investigation and prosecute that complaint pursuant to chapter 120. However, the department or the agency may decide not to prosecute the complaint if it finds that probable cause had been improvidently found by the panel. In such cases, the department or the agency shall refer the matter to the board. The board may then file a formal complaint and prosecute the complaint pursuant to chapter 120. The department or the agency shall also refer to the board any investigation or disciplinary proceeding not before the Division of Administrative Hearings pursuant to chapter 120 or otherwise completed by the department or the agency within 1 year after the filing of a complaint. A probable cause panel or a board may retain independent legal counsel, employ investigators, and continue the investigation as it deems necessary; all costs thereof shall be paid from the Health Care Trust Fund or the Professional Regulation Trust Fund, as appropriate. All proceedings of the probable cause panel are exempt from s. 120.525.

(10) The complaint and all information obtained pursuant to the investigation by the department or the Agency for Health Care Administration are confidential and exempt from s. 119.07(1) until 10 days after probable cause has been found to exist by the probable cause panel or by the department or the agency, or until the regulated professional or subject of the investigation waives his privilege of confidentiality, whichever occurs first. Upon completion of the investigation and pursuant to a written request by the subject, the department or the agency shall provide the subject an opportunity to inspect the investigative file or, at the subject's expense, forward to the subject a copy of the investigative file. Notwithstanding s. 455.241, the subject may inspect or receive a copy of any expert witness report or patient record connected with the investigation, if the subject agrees in writing to maintain the confidentiality of any information received under this subsection until 10 days after probable cause is found and to maintain the confidentiality of patient records pursuant to s. 455.241. The subject may file a written response to the information contained in the investigative file. Such response must be filed within 20 days, unless an extension of time has been granted by the department or the agency. This subsection does not prohibit the department or the Agency for Health Care Administration from providing such information to any law enforcement agency or to any other regulatory agency.

Section 3. Paragraph (e) of subsection (3) and paragraph (a) of subsection (5) of section 455.261, Florida Statutes, 1996 Supplement, read:

455.261 Treatment programs for impaired practitioners.—

(3)

(e) The probable cause panel, or the department when there is no board, shall work directly with the consultant, and all information concerning a practitioner obtained from the consultant by the panel, or the department when there is no board, shall remain confidential and exempt from the provisions of s. 119.07(1), subject to the provisions of subsections (5) and (6).

(5)(a) An approved treatment provider shall, upon request, disclose to the consultant all information in its possession regarding the issue of a licensee's impairment and participation in the treatment program. All information obtained by the consultant and department pursuant to this section is confidential and exempt from the provisions of s. 119.07(1), subject to the provisions of this subsection and subsection (6). Failure to provide such information to the consultant is grounds for withdrawal of approval of such program or provider.

Section 4. The Legislature finds that the disclosure of information concerning an investigation of a practitioner regulated under chapter 490 or chapter 491, Florida Statutes, and the disclosure of information concerning an impaired practitioner regulated under chapter 490 or chapter 491, Florida Statutes, would constitute an unwarranted invasion into the personal privacy of the practitioner. In addition, the Legislature finds that it is necessary that the meetings of a probable cause panel investigating a practitioner regulated under chapter 490 or chapter 491, Florida Statutes, be exempt from s. 286.011, Florida Statutes, until 10 days after probable cause has been found to exist by the panel or until the subject of the investigation waives his or her privilege of confidentiality. Therefore, the Legislature finds that it is a public necessity that certain information of the Agency for Health Care Administration and the Department of Health with respect to a provisional psychologist, a registered clinical social worker intern, a registered marriage and family therapist intern, a registered mental health counselor intern, a provisional clinical social worker, a provisional marriage and family therapist, or a provisional mental health counselor be kept confidential and exempt from disclosure under the public records law. The Legislature further finds that it is a public necessity that proceedings of a probable cause panel with respect to a provisional psychologist, a registered clinical social worker intern, a registered marriage and family therapist intern, a registered mental health counselor intern, a provisional clinical social worker, a provisional marriage and family therapist, or a provisional mental health counselor be exempt for a certain period from the public meetings law.

Section 5. This act shall take effect on the same date that House Bill 329 or similar legislation revising chapters 490 and 491, Florida Statutes, to create the categories of practitioners specified in this act, takes effect, if such legislation is adopted in the same legislative session or an extension thereof.

Became a law without the Governor's approval May 30, 1997.

Filed in Office Secretary of State May 29, 1997.