



Open Government Impact Statement

80th Oregon Legislative Assembly
2019 Regular Session

Measure: SB 373

Only impacts on Original or Engrossed
Versions are Considered Official

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SUMMARY

Exempts from public records disclosure medical records of individuals under jurisdiction of Psychiatric Security Review Board that are maintained by board.

Takes effect on 91st day following adjournment sine die.

OPEN GOVERNMENT IMPACT

Legislative Counsel has not adopted standards for drafting measures that establish exemptions from disclosure of public records.

This measure exempts from public disclosure medical records maintained by the Psychiatric Security Review Board for individuals under the board's jurisdiction. The board is required to maintain medical, social and criminal histories for all persons under its jurisdiction. Currently, the confidentiality of those records is determined by ORS 192.338, 192.345 and 192.355. As the board is likely not a covered entity under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the medical records are not protected under HIPAA's privacy rules. Instead, the confidentiality of medical records maintained by the board is determined by applying the public interest balancing test of ORS 192.355 (2). Thus, records kept in a medical file maintained by the board are exempt from public disclosure if disclosure would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. This measure would replace that balancing test for medical records of individuals under the board's jurisdiction with an unconditional exemption from public disclosure.

If those public records that could be subject to public disclosure were instead subject to mandatory disclosure under public records law, the public would be able to receive complete medical histories of individuals found guilty except for insanity including those that had been previously released from the board's jurisdiction.