

SENATE BILL 786

By Walley

AN ACT to amend Tennessee Code Annotated, Title 63,
Chapter 11, relative to psychological materials.

WHEREAS, the standardized tests used in psychological assessments and evaluations contribute to high stakes decisions, including forensic decisions such as child custody disputes and competency to stand trial; risk assessment decisions such as mental health evaluations for public safety; educational decisions such as identification of educational disabilities or qualifying for educational programs, accommodations, or interventions; occupational decisions such as preemployment evaluations and fitness for duty evaluations; medical and health-related decisions such as presurgical evaluations and conservatorships; and clinical decisions such as diagnostic decisions, qualification for programs, supports, and accommodations; social security eligibility; and treatment recommendations; and

WHEREAS, the integrity of psychological tests is an integral part of conducting psychological evaluations that directly contributes to protecting public safety because these tests have normative data collected in national samples with the result that they are not frequently updated; therefore, test security must be protected so that the public is not harmed by having mental health evaluations compromised by misuse and manipulation of results due to inappropriate disclosures that compromise the validity of the tests themselves; and

WHEREAS, the phrase "test security" means protection of the content and key operational characteristics of a test, including test materials, test data, raw data, audio and video recordings, protocols, technical manuals, testing cards, plates or other stimuli, computerized reports, electronic software, publisher databases, and any other resources derived or used in psychological assessments, and is best protected when disseminated to

other psychologists and other experts who are properly trained in test administration and interpretation, and who have a legal and ethical obligation to protect the integrity of test scores so that they are valid for their intended use; and

WHEREAS, breach of test security by permitting a third-party observer compromises the validity of standardized psychological and neuropsychological examinations, and it is a psychologist's or senior psychological examiner's obligation to protect the public by providing standardized test administration and examination conditions to ensure the results are reliable and valid; and

WHEREAS, there may be instances such as in second opinions or in legal proceedings where it is important for outside parties to be able to evaluate the veracity of the testing, so that a means of providing the test data or materials can be structured in a way that will protect their security by providing them only to another licensed psychologist or other experts properly trained in test administration and interpretation who have a legal and ethical obligation to protect the integrity of test scores so that they are valid for their intended use and can consult with opposing counsel on the veracity of the test results; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 63, Chapter 11, Part 2, is amended by adding the following as a new section:

63-11-227. Protection of psychological data and materials.

(a) As used in this section, "test materials and test data":

- (1) Means the specific test items administered to examinees; and
- (2) Includes the manuals, instruments, protocols, and applicable test stimuli.

(b)

(1) Test materials and test data from psychological or neuropsychological testing must be kept secure to avoid compromising the validity of the testing, which could pose a risk to public safety.

(2) A patient may have access to test responses in the patient's record, but must not have access to test materials and test data, which may only be released to psychologists, senior psychological examiners, or other experts who are properly trained in test administration and interpretation and have a legal and ethical obligation to protect test materials. If the information was compiled in reasonable anticipation of, or for use in, a civil, criminal, forensic, or administrative action or proceeding, then the test materials and test data may only be released to other psychologists and experts who are properly trained in test administration and interpretation, and who have a legal and ethical obligation to protect test data and test materials.

(c)

(1) To ensure the security of test materials and test data from psychological or neuropsychological tests, during the administration of psychological or neuropsychological tests:

(A) A third-party observer shall not be present, including, but not limited to, a family member, attorney, or insurance representative; and

(B) Video or audio recording is not permitted.

(2) An exception to subdivision (c)(1) may be granted when the individual being tested:

(A) Has a documented disability requiring an aide;

(B) Does not adequately speak the language in which the test is formatted and requires a professional language interpreter;

(C) Is a minor, and the observer's presence is deemed necessary and appropriate by the examining licensed psychologist or other licensee who is properly trained in test administration and interpretation to facilitate the testing process; or

(D) Is being observed by a licensed psychologist or other licensee who is properly trained in test administration and interpretation to facilitate the supervision of a trainee.

SECTION 2. This act takes effect upon becoming a law, the public welfare requiring it.