

By the Committees on Governmental Oversight and Productivity;  
Judiciary; and Senator Campbell

585-2308-05

1                                   A bill to be entitled

2           An act relating to public records exemptions;

3           creating s. 744.1076, F.S.; creating exemptions

4           from public records requirements for certain

5           court records relating to appointment of

6           certain court monitors, reports of such

7           monitors, and determinations and orders of a

8           court relating to findings of no probable

9           cause; providing for future legislative review

10          and repeal under the Open Government Sunset

11          Review Act; providing findings of public

12          necessity; providing a contingent effective

13          date.

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

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17           Section 1. Section 744.1076, Florida Statutes, is

18   created to read:

19           744.1076 Court orders appointing court monitors and

20   emergency court monitors; reports of court monitors; findings

21   of no probable cause; public-records exemptions.--

22           (1)(a) The order of any court appointing a court

23   monitor pursuant to s. 744.107 is confidential and exempt from

24   s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

25           (b) The reports of an appointed court monitor relating

26   to the medical condition, financial affairs, or mental health

27   of the ward which are required pursuant to s. 744.107 are

28   confidential and exempt from s. 119.07(1) and s. 24(a), Art. I

29   of the State Constitution. Such reports may be subject to

30   inspection as determined by the court or upon a showing of

31   good cause.

1           (c) The public-records exemptions provided in this  
2 subsection expire if a court makes a finding of probable  
3 cause, except that information otherwise made confidential or  
4 exempt shall retain its confidential or exempt status.

5           (2)(a) The order of any court appointing a court  
6 monitor on an emergency basis pursuant to s. 744.1075 is  
7 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
8 Constitution.

9           (b) The reports of a court monitor appointed on an  
10 emergency basis relating to the medical condition, financial  
11 affairs, or mental health of the ward which are required  
12 pursuant to s. 744.1075 are confidential and exempt from s.  
13 119.07(1) and s. 24(a), Art. I of the State Constitution. Such  
14 reports may be subject to inspection as determined by the  
15 court or upon a showing of good cause.

16           (c) The public-records exemptions provided in this  
17 subsection expire if a court makes a finding of probable  
18 cause, except that information otherwise made confidential or  
19 exempt shall retain its confidential or exempt status.

20           (3) Court determinations relating to a finding of no  
21 probable cause and court orders finding no probable cause  
22 pursuant to s. 744.107 or s. 744.1075 are confidential and  
23 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
24 Constitution; however, such determinations and findings may be  
25 subject to inspection as determined by the court or upon a  
26 showing of good cause.

27           (4) This section is subject to the Open Government  
28 Sunset Review Act of 1995 in accordance with s. 119.15 and  
29 shall stand repealed on October 2, 2010, unless reviewed and  
30 saved from repeal through reenactment by the Legislature.  
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1           Section 2. (1) The Legislature finds that it is a  
2 public necessity that the order of any court appointing a  
3 court monitor pursuant to section 744.107, Florida Statutes,  
4 or appointing a court monitor on an emergency basis pursuant  
5 to section 744.1075, Florida Statutes, be made exempt from  
6 public-records requirements. The Legislature finds that the  
7 release of the exempt order would produce undue harm to the  
8 ward. In many instances, a court monitor is appointed to  
9 investigate allegations that may rise to the level of physical  
10 neglect or abuse or financial exploitation. When such  
11 allegations are involved, if the order of appointment is  
12 public, the target of the investigation may be made aware of  
13 the investigation before the investigation is even underway,  
14 raising the risk of concealment of evidence, intimidation of  
15 witnesses, or retaliation against the reporter. The  
16 Legislature finds that public disclosure of the exempt order  
17 would hinder the ability of the monitor to conduct an accurate  
18 investigation if evidence has been concealed and witnesses  
19 have been intimidated.

20           (2) The Legislature finds that it is a public  
21 necessity that the reports of a court monitor or a court  
22 monitor appointed on an emergency basis, relating to the  
23 medical condition, financial affairs, or mental health of the  
24 ward, be made confidential and exempt from public-records  
25 requirements. The Legislature finds that the release of the  
26 confidential and exempt reports would produce undue harm to  
27 the ward. Release of the confidential and exempt reports could  
28 hinder the ability of the monitor to conduct an investigation  
29 and interview parties because many parties involved in such an  
30 investigation would be reluctant to speak to a court monitor  
31 knowing that the information provided would be public.

1 Protecting reports relating to the medical condition,  
2 financial affairs, or mental health of a ward would provide an  
3 environment in which to discuss information in a free and open  
4 way and would allow the court monitor to develop the  
5 information needed for reporting purposes. Furthermore,  
6 information contained in the reports relating to the medical  
7 condition, financial affairs, or mental health of a ward  
8 contains sensitive, personal information that, if released,  
9 could cause harm or embarrassment to the ward or his or her  
10 family.

11 (3) The Legislature finds that it is a public  
12 necessity that court determinations relating to a finding of  
13 no probable cause and court orders finding no probable cause  
14 be made confidential and exempt from public-records  
15 requirements. Unfounded allegations against a guardian are  
16 sometimes made by individuals for unscrupulous reasons.  
17 Release of unfounded allegations could be damaging to the  
18 reputation of a guardian and could cause undue embarrassment  
19 as well as invade the guardian's privacy. If such information  
20 were released, it could have a negative impact on the guardian  
21 and the ward of that guardian. The guardian program relies  
22 heavily on volunteers and, as such, volunteers could be  
23 reticent to serve as the guardian of a ward. The release of  
24 such information could cause undue harm to a guardian who is  
25 the subject of an allegation where no probable cause has been  
26 found.

27 (4) The public's ability to scrutinize and monitor the  
28 actions of the court is not diminished by nondisclosure of the  
29 exempt court order and the confidential and exempt reports  
30 because the exemptions expire if the court has made a finding  
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1 of probable cause. In addition, such information could also be  
2 made public upon a showing of good cause.

3           Section 3. This act shall take effect on the same date  
4 that House Bill 457 or substantially similar legislation takes  
5 effect, if such legislation is adopted in the same legislative  
6 session or an extension thereof and becomes law.

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8                           STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
9   COMMITTEE SUBSTITUTE FOR  
10   CS/SB 1810

11 Narrows the scope of the exemption.  
12 Provides that an order appointing a court monitor on an  
13 emergency basis is exempt only.  
14 Provides for expiration of certain exemptions upon a finding  
15 of probable cause.

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