

CHAMBER ACTION

1 The Governmental Operations Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to public records exemptions; creating s.
7 744.1076, F.S.; creating exemptions from public records
8 requirements for certain court records relating to
9 appointment of certain court monitors, reports of such
10 monitors, and determinations and orders of a court
11 relating to findings of no probable cause; providing for
12 future legislative review and repeal; providing findings
13 of public necessity; providing a contingent effective
14 date.

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

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18 Section 1. Section 744.1076, Florida Statutes, is created
19 to read:

20 744.1076 Court orders appointing court monitors and
21 emergency court monitors; reports of court monitors; findings of
22 no probable cause; public records exemptions.--

23 (1)(a) The order of any court appointing a court monitor
 24 pursuant to s. 744.107 is confidential and exempt from s.
 25 119.07(1) and s. 24(a), Art. I of the State Constitution.

26 (b) The reports of an appointed court monitor relating to
 27 the medical condition, financial affairs, or mental health of
 28 the ward that are required pursuant to s. 744.107 are
 29 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 30 of the State Constitution. Such reports may be subject to
 31 inspection as determined by the court or upon a showing of good
 32 cause.

33 (c) The public records exemptions provided in this
 34 subsection expire if a court makes a finding of probable cause,
 35 except that information otherwise made confidential or exempt
 36 shall retain its confidential or exempt status.

37 (2)(a) The order of any court appointing a court monitor
 38 on an emergency basis pursuant to s. 744.1075 is exempt from s.
 39 119.07(1) and s. 24(a), Art. I of the State Constitution.

40 (b) The reports of a court monitor appointed on an
 41 emergency basis relating to the medical condition, financial
 42 affairs, or mental health of the ward that are required pursuant
 43 to s. 744.1075 are confidential and exempt from s. 119.07(1) and
 44 s. 24(a), Art. I of the State Constitution. Such reports may be
 45 subject to inspection as determined by the court or upon a
 46 showing of good cause.

47 (c) The public records exemptions provided in this
 48 subsection expire if a court makes a finding of probable cause,
 49 except that information otherwise made confidential or exempt
 50 shall retain its confidential or exempt status.

51 (3) Court determinations relating to a finding of no
 52 probable cause and court orders finding no probable cause
 53 pursuant to s. 744.107 or s. 744.1075 are confidential and
 54 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 55 Constitution; however, such determinations and findings may be
 56 subject to inspection as determined by the court or upon a
 57 showing of good cause.

58 (4) This section is subject to the Open Government Sunset
 59 Review Act of 1995 in accordance with s. 119.15 and shall stand
 60 repealed on October 2, 2010, unless reviewed and saved from
 61 repeal through reenactment by the Legislature.

62 Section 2. (1) The Legislature finds that it is a public
 63 necessity that the order of any court appointing a court monitor
 64 pursuant to s. 744.107, Florida Statutes, or appointing a court
 65 monitor on an emergency basis pursuant to s. 744.1075, Florida
 66 Statutes, be made exempt from public records requirements. The
 67 Legislature finds that the release of the exempt order would
 68 produce undue harm to the ward. In many instances, a court
 69 monitor is appointed to investigate allegations that may rise to
 70 the level of physical neglect or abuse or financial
 71 exploitation. When such allegations are involved, if the order
 72 of appointment is public, the target of the investigation may be
 73 made aware of the investigation before the investigation is even
 74 underway, raising the risk of concealment of evidence,
 75 intimidation of witnesses, or retaliation against the reporter.
 76 The Legislature finds that public disclosure of the exempt order
 77 would hinder the ability of the monitor to conduct an accurate

78 investigation if evidence has been concealed and witnesses have
 79 been intimidated.

80 (2) The Legislature finds that it is a public necessity
 81 that the reports of a court monitor or a court monitor appointed
 82 on an emergency basis, relating to the medical condition,
 83 financial affairs, or mental health of the ward, be made
 84 confidential and exempt from public records requirements. The
 85 Legislature finds that the release of the confidential and
 86 exempt reports would produce undue harm to the ward. Release of
 87 the confidential and exempt reports could hinder the ability of
 88 the monitor to conduct an investigation and interview parties
 89 because many parties involved in such an investigation would be
 90 reluctant to speak to a court monitor knowing that the
 91 information provided would be public. Protecting reports
 92 relating to the medical condition, financial affairs, or mental
 93 health of a ward would provide an environment in which to
 94 discuss information in a free and open way and would allow the
 95 court monitor to develop the information needed for reporting
 96 purposes. Furthermore, information contained in the reports
 97 relating to the medical condition, financial affairs, or mental
 98 health of a ward contains sensitive, personal information that,
 99 if released, could cause harm or embarrassment to the ward or
 100 his or her family.

101 (3) The Legislature finds that it is a public necessity
 102 that court determinations relating to a finding of no probable
 103 cause and court orders finding no probable cause be made
 104 confidential and exempt from public records requirements.
 105 Unfounded allegations against a guardian are sometimes made by

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106 individuals for unscrupulous reasons. Release of unfounded
107 allegations could be damaging to the reputation of a guardian
108 and could cause undue embarrassment as well as invade the
109 guardian's privacy. If such information were released, it could
110 have a negative impact on the guardian and the ward of that
111 guardian. The guardian program relies heavily on volunteers and,
112 as such, volunteers could be reticent to serve as the guardian
113 of a ward. The release of such information could cause undue
114 harm to a guardian who is the subject of an allegation where no
115 probable cause has been found.

116 (4) The public's ability to scrutinize and monitor the
117 actions of the court is not diminished by nondisclosure of the
118 exempt court order and the confidential and exempt reports
119 because the exemptions expire if the court has made a finding of
120 probable cause. In addition, such information could also be made
121 public upon a showing of good cause.

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