

ENROLLED
 HB 193

2006 Legislature

1 A bill to be entitled
 2 An act relating to public records exemptions; creating s.
 3 744.1076, F.S.; creating exemptions from public records
 4 requirements for certain court records relating to
 5 appointment of certain court monitors, reports of such
 6 monitors, and determinations and orders of a court
 7 relating to findings of no probable cause; providing for
 8 future legislative review and repeal; providing findings
 9 of public necessity; providing a contingent effective
 10 date.

11
 12 Be It Enacted by the Legislature of the State of Florida:

13
 14 Section 1. Section 744.1076, Florida Statutes, is created
 15 to read:

16 744.1076 Court orders appointing court monitors and
 17 emergency court monitors; reports of court monitors; findings of
 18 no probable cause; public records exemptions.--

19 (1) (a) The order of any court appointing a court monitor
 20 pursuant to s. 744.107 is confidential and exempt from s.
 21 119.07(1) and s. 24(a), Art. I of the State Constitution.

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

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

33 (2) (a) The order of any court appointing a court monitor
34 on an emergency basis pursuant to s. 744.1075 is exempt from s.
35 119.07(1) and s. 24(a), Art. I of the State Constitution.

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

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

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

54 (4) This section is subject to the Open Government Sunset
55 Review Act of 1995 in accordance with s. 119.15 and shall stand

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56 repealed on October 2, 2011, unless reviewed and saved from
57 repeal through reenactment by the Legislature.

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

76 (2) The Legislature finds that it is a public necessity
77 that the reports of a court monitor or a court monitor appointed
78 on an emergency basis, relating to the medical condition,
79 financial affairs, or mental health of the ward, be made
80 confidential and exempt from public records requirements. The
81 Legislature finds that the release of the confidential and
82 exempt reports would produce undue harm to the ward. Release of
83 the confidential and exempt reports could hinder the ability of

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84 the monitor to conduct an investigation and interview parties
85 because many parties involved in such an investigation would be
86 reluctant to speak to a court monitor knowing that the
87 information provided would be public. Protecting reports
88 relating to the medical condition, financial affairs, or mental
89 health of a ward would provide an environment in which to
90 discuss information in a free and open way and would allow the
91 court monitor to develop the information needed for reporting
92 purposes. Furthermore, information contained in the reports
93 relating to the medical condition, financial affairs, or mental
94 health of a ward contains sensitive, personal information that,
95 if released, could cause harm or embarrassment to the ward or
96 his or her family.

97 (3) The Legislature finds that it is a public necessity
98 that court determinations relating to a finding of no probable
99 cause and court orders finding no probable cause be made
100 confidential and exempt from public records requirements.
101 Unfounded allegations against a guardian are sometimes made by
102 individuals for unscrupulous reasons. Release of unfounded
103 allegations could be damaging to the reputation of a guardian
104 and could cause undue embarrassment as well as invade the
105 guardian's privacy. If such information were released, it could
106 have a negative impact on the guardian and the ward of that
107 guardian. The guardian program relies heavily on volunteers and,
108 as such, volunteers could be reticent to serve as the guardian
109 of a ward. The release of such information could cause undue
110 harm to a guardian who is the subject of an allegation for which
111 no probable cause has been found.

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

118 Section 3. This act shall take effect on the same date
119 that House Bill 191 or substantially similar legislation takes
120 effect, if such legislation is adopted in the same legislative
121 session or an extension thereof and becomes law.