

By Senator Campbell

32-524-06

See HB 193

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A bill to be entitled

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

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

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

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

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

(b) The reports of an appointed court monitor relating to the medical condition, financial affairs, or mental health of the ward which are required pursuant to s. 744.107 are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Such reports may be subject to inspection as determined by the court or upon a showing of 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 in accordance with s. 119.15 and shall stand
29 repealed on October 2, 2011, unless reviewed and saved from
30 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 s. 744.107, Florida Statutes, or
4 appointing a court monitor on an emergency basis pursuant to
5 s. 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 for which no probable cause has
26 been 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 191 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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