

House Bill No. 193

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 that 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.

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

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

(b) The reports of a court monitor appointed on an emergency basis relating to the medical condition, financial affairs, or mental health of the ward that are required pursuant to s. 744.1075 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.

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

(3) Court determinations relating to a finding of no probable cause and court orders finding no probable cause pursuant to s. 744.107 or s. 744.1075 are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State

Constitution; however, such determinations and findings may be subject to inspection as determined by the court or upon a showing of good cause.

(4) This section is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15 and shall stand repealed on October 2, 2011, unless reviewed and saved from repeal through reenactment by the Legislature.

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

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

(3) The Legislature finds that it is a public necessity that court determinations relating to a finding of no probable cause and court orders finding no probable cause be made confidential and exempt from public records requirements. Unfounded allegations against a guardian are sometimes made by individuals for unscrupulous reasons. Release of unfounded allegations could be damaging to the reputation of a guardian and could cause undue embarrassment as well as invade the guardian's privacy. If such information were released, it could have a negative impact on the guardian and the ward of that guardian. The guardian program relies heavily on volunteers and, as such, volunteers could be reticent to serve as the guardian of a ward. The release of such information could cause undue harm to

a guardian who is the subject of an allegation for which no probable cause has been found.

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

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

Approved by the Governor June 9, 2006.

Filed in Office Secretary of State June 9, 2006.