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January 19, 2016

The Honorable Senator Jeremy Ring
The Florida Senate
405 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Re: SB 1278 Exemption/Incapacity Petitions

Dear Representative Adkins:

We are writing to express our concerns regarding SB 1278, amending various sections of ch. 394, F.S., to exempt identifying information for petitions to determine incapacity. It is our position that this bill is unwarranted and unconstitutionally overbroad, and we respectfully suggest SB 1278 be withdrawn from further consideration.

Article I, s. 24(c), Fla. Con., requires that proposed exemptions be no broader than their stated purpose. Senate Bill 1278, we believe, violates this constitutional standard. For example, section 1 and section 2 exempt the entire petition. The statement of public necessity, however, indicates the bill exempts "all personal identifying information about *an individual for whom a petition is filed.*" (emphasis added.) There is, therefore, a glaring discrepancy regarding the breadth of information intended to be exempt. The name of the person filing the petition, for instance, is not addressed in the statement of public necessity but would be exempt according to the broad language in sections 1 and 2. The ability to know the identity of the individual filing a petition is critically important, and should not be exempt from public disclosure.

Furthermore, we question both the efficacy and purpose of this legislation. Section 394.463(2)(a)2., F.S., currently requires law enforcement to submit a written report pursuant to taking an individual into custody for the purpose of involuntary examination. That report is part of the individual's clinical record and is exempt from disclosure. However, a separate written incident

or report prepared after a specific crime has been committed which contains information given during the initial reporting of the crime, is not confidential pursuant to ch. 394, F.S. See AGO 93-51. This legislation does not address law enforcement records, and consequently it is not clear how the bill will serve a practical purpose given the information at issue is publicly accessible from other government sources.

In addition, the proposed bill is not supported by an adequate statement of public necessity, as the State Constitution requires. The statement is critically flawed and simply asserts that the availability of this information “would produce undue harm to an individual.” But the statement does not identify examples of such harm, either threatened or actual. Further, we have seen no evidence that a threat of harm exists to these individuals or that such harm has in fact occurred. An exception to the public’s right of access cannot be based on mere conjecture, but must be justified by ample evidence.

For these reasons, Senator Ring, we respectfully request SB 1278 be withdrawn from consideration. Thank you for your attention to our concerns; if we may be of any assistance, please do not hesitate to contact us.

Sincerely,



Barbara A. Petersen

Cc: The Honorable Andy Gardiner, President, Florida Senate
Jon Kaney, General Counsel, First Amendment Foundation
Sam Morley, General Counsel, Florida Press Association
