

1 A bill to be entitled
 2 An act relating to adult protective services; amending s.
 3 415.101, F.S.; providing for protective services to apply
 4 to vulnerable adults; amending s. 415.102, F.S.; defining
 5 the term "activities of daily living"; revising the
 6 definition of the term "vulnerable adult"; conforming a
 7 cross-reference; amending s. 415.103, F.S.; providing for
 8 certain suspected abuse cases to be transferred to the
 9 local county sheriff's office; amending s. 415.1051, F.S.;
 10 providing for the Department of Children and Family
 11 Services to file a petition to determine incapacity and
 12 guardianship under certain circumstances; amending s.
 13 322.142, F.S.; authorizing the department to be provided
 14 copies of drivers' license files maintained by the
 15 Department of Highway Safety and Motor Vehicles for the
 16 purpose of conducting protective investigations; amending
 17 ss. 943.0585 and 943.059, F.S.; conforming cross-
 18 references; providing an effective date.

19
 20 Be It Enacted by the Legislature of the State of Florida:

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 22 Section 1. Subsection (2) of section 415.101, Florida
 23 Statutes, is amended to read:

24 415.101 Adult Protective Services Act; legislative
 25 intent.--

26 (2) The Legislature recognizes that there are many persons
 27 in this state who, because of age or disability, are in need of
 28 protective services. Such services should allow such an

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29 individual the same rights as other citizens and, at the same
30 time, protect the individual from abuse, neglect, and
31 exploitation. It is the intent of the Legislature to provide for
32 the detection and correction of abuse, neglect, and exploitation
33 through social services and criminal investigations and to
34 establish a program of protective services for all vulnerable
35 ~~disabled~~ adults ~~or elderly persons~~ in need of them. It is
36 intended that the mandatory reporting of such cases will cause
37 the protective services of the state to be brought to bear in an
38 effort to prevent further abuse, neglect, and exploitation of
39 vulnerable ~~disabled~~ adults ~~or elderly persons~~. In taking this
40 action, the Legislature intends to place the fewest possible
41 restrictions on personal liberty and the exercise of
42 constitutional rights, consistent with due process and
43 protection from abuse, neglect, and exploitation. Further, the
44 Legislature intends to encourage the constructive involvement of
45 families in the care and protection of vulnerable ~~disabled~~
46 adults ~~or elderly persons~~.

47 Section 2. Subsections (2) through (27) of section
48 415.102, Florida Statutes, are renumbered as subsections (3)
49 through (28), respectively, current subsections (4) and (26) are
50 amended, and a new subsection (2) is added to that section, to
51 read:

52 415.102 Definitions of terms used in ss. 415.101-
53 415.113.--As used in ss. 415.101-415.113, the term:

54 (2) "Activities of daily living" means functions and tasks
55 for self-care, including eating, bathing, grooming, dressing,
56 ambulating, and other similar tasks.

57 (5)~~(4)~~ "Caregiver" means a person who has been entrusted
 58 with or has assumed the responsibility for frequent and regular
 59 care of or services to a vulnerable adult on a temporary or
 60 permanent basis and who has a commitment, agreement, or
 61 understanding with that person or that person's guardian that a
 62 caregiver role exists. "Caregiver" includes, but is not limited
 63 to, relatives, household members, guardians, neighbors, and
 64 employees and volunteers of facilities as defined in subsection
 65 (9) ~~(8)~~. For the purpose of departmental investigative
 66 jurisdiction, the term "caregiver" does not include law
 67 enforcement officers or employees of municipal or county
 68 detention facilities or the Department of Corrections while
 69 acting in an official capacity.

70 (27)~~(26)~~ "Vulnerable adult" means a person 18 years of age
 71 or older whose ability to perform the normal activities of daily
 72 living or to provide for his or her own care or protection is
 73 impaired due to a mental, emotional, sensory, long-term
 74 physical, or developmental disability or dysfunction
 75 ~~dysfunctioning~~, or brain damage, or the infirmities of aging.

76 Section 3. Subsection (2) of section 415.103, Florida
 77 Statutes, is amended to read:

78 415.103 Central abuse hotline.--

79 (2) Upon receiving an oral or written report of known or
 80 suspected abuse, neglect, or exploitation of a vulnerable adult,
 81 the central abuse hotline must determine if the report requires
 82 an immediate onsite protective investigation. For reports
 83 requiring an immediate onsite protective investigation, the
 84 central abuse hotline must immediately notify the department's

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85 designated protective investigative district staff responsible
86 for protective investigations to ensure prompt initiation of an
87 onsite investigation. For reports not requiring an immediate
88 onsite protective investigation, the central abuse hotline must
89 notify the department's designated protective investigative
90 district staff responsible for protective investigations in
91 sufficient time to allow for an investigation to be commenced
92 within 24 hours. At the time of notification of district staff
93 with respect to the report, the central abuse hotline must also
94 provide any known information on any previous report concerning
95 a subject of the present report or any pertinent information
96 relative to the present report or any noted earlier reports. If
97 the report is of known or suspected abuse of a vulnerable adult
98 by someone other than a relative, caregiver, or household
99 member, the report shall be immediately transferred to the
100 appropriate county sheriff's office.

101 Section 4. Paragraph (e) of subsection (1) and paragraph
102 (g) of subsection (2) of section 415.1051, Florida Statutes, are
103 amended to read:

104 415.1051 Protective services interventions when capacity
105 to consent is lacking; nonemergencies; emergencies; orders;
106 limitations.--

107 (1) NONEMERGENCY PROTECTIVE SERVICES INTERVENTIONS.--If
108 the department has reasonable cause to believe that a vulnerable
109 adult or a vulnerable adult in need of services is being abused,
110 neglected, or exploited and is in need of protective services
111 but lacks the capacity to consent to protective services, the

112 department shall petition the court for an order authorizing the
 113 provision of protective services.

114 (e) Continued protective services.--

115 1. No more than 60 days after the date of the order
 116 authorizing the provision of protective services, the department
 117 shall petition the court to determine whether:

118 a. Protective services will be continued with the consent
 119 of the vulnerable adult pursuant to this subsection;

120 b. Protective services will be continued for the
 121 vulnerable adult who lacks capacity;

122 c. Protective services will be discontinued; or

123 d. A petition for guardianship should be filed pursuant to
 124 chapter 744.

125 2. If the court determines that a petition for
 126 guardianship should be filed pursuant to chapter 744, the court,
 127 for good cause shown, may order continued protective services
 128 until it makes a determination regarding capacity.

129 3. If the department has a good faith belief that the
 130 vulnerable adult lacks the capacity to consent to protective
 131 services, the petition to determine incapacity under s. 744.3201
 132 may be filed by the department. Once the petition is filed, the
 133 department may not be appointed guardian and may not provide
 134 legal counsel for the guardian.

135 (2) EMERGENCY PROTECTIVE SERVICES INTERVENTION.--If the
 136 department has reasonable cause to believe that a vulnerable
 137 adult is suffering from abuse or neglect that presents a risk of
 138 death or serious physical injury to the vulnerable adult and
 139 that the vulnerable adult lacks the capacity to consent to

140 emergency protective services, the department may take action
 141 under this subsection. If the vulnerable adult has the capacity
 142 to consent and refuses consent to emergency protective services,
 143 emergency protective services may not be provided.

144 (g) Continued emergency protective services.--

145 1. Not more than 60 days after the date of the order
 146 authorizing the provision of emergency protective services, the
 147 department shall petition the court to determine whether:

148 a. Emergency protective services will be continued with
 149 the consent of the vulnerable adult;

150 b. Emergency protective services will be continued for the
 151 vulnerable adult who lacks capacity;

152 c. Emergency protective services will be discontinued; or

153 d. A petition should be filed under chapter 744.

154 2. If it is decided to file a petition under chapter 744,
 155 for good cause shown, the court may order continued emergency
 156 protective services until a determination is made by the court.

157 3. If the department has a good faith belief that the
 158 vulnerable adult lacks the capacity to consent to protective
 159 services, the petition to determine incapacity under s. 744.3201
 160 may be filed by the department. Once the petition is filed, the
 161 department may not be appointed guardian and may not provide
 162 legal counsel for the guardian.

163 Section 5. Subsection (4) of section 322.142, Florida
 164 Statutes, is amended to read:

165 322.142 Color photographic or digital imaged licenses.--

166 (4) The department may maintain a film negative or print
 167 file. The department shall maintain a record of the digital

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168 image and signature of the licensees, together with other data
169 required by the department for identification and retrieval.
170 Reproductions from the file or digital record are exempt from
171 the provisions of s. 119.07(1) and shall be made and issued only
172 for departmental administrative purposes; for the issuance of
173 duplicate licenses; in response to law enforcement agency
174 requests; to the Department of State pursuant to an interagency
175 agreement to facilitate determinations of eligibility of voter
176 registration applicants and registered voters in accordance with
177 ss. 98.045 and 98.075; to the Department of Revenue pursuant to
178 an interagency agreement for use in establishing paternity and
179 establishing, modifying, or enforcing support obligations in
180 Title IV-D cases; to the Department of Children and Family
181 Services pursuant to an interagency agreement to conduct
182 protective investigations under part III of chapter 39 and
183 chapter 415; or to the Department of Financial Services pursuant
184 to an interagency agreement to facilitate the location of owners
185 of unclaimed property, the validation of unclaimed property
186 claims, and the identification of fraudulent or false claims.

187 Section 6. Paragraph (a) of subsection (4) of section
188 943.0585, Florida Statutes, is amended to read:

189 943.0585 Court-ordered expunction of criminal history
190 records.--The courts of this state have jurisdiction over their
191 own procedures, including the maintenance, expunction, and
192 correction of judicial records containing criminal history
193 information to the extent such procedures are not inconsistent
194 with the conditions, responsibilities, and duties established by
195 this section. Any court of competent jurisdiction may order a

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196 criminal justice agency to expunge the criminal history record
197 of a minor or an adult who complies with the requirements of
198 this section. The court shall not order a criminal justice
199 agency to expunge a criminal history record until the person
200 seeking to expunge a criminal history record has applied for and
201 received a certificate of eligibility for expunction pursuant to
202 subsection (2). A criminal history record that relates to a
203 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
204 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
205 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
206 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
207 any violation specified as a predicate offense for registration
208 as a sexual predator pursuant to s. 775.21, without regard to
209 whether that offense alone is sufficient to require such
210 registration, or for registration as a sexual offender pursuant
211 to s. 943.0435, may not be expunged, without regard to whether
212 adjudication was withheld, if the defendant was found guilty of
213 or pled guilty or nolo contendere to the offense, or if the
214 defendant, as a minor, was found to have committed, or pled
215 guilty or nolo contendere to committing, the offense as a
216 delinquent act. The court may only order expunction of a
217 criminal history record pertaining to one arrest or one incident
218 of alleged criminal activity, except as provided in this
219 section. The court may, at its sole discretion, order the
220 expunction of a criminal history record pertaining to more than
221 one arrest if the additional arrests directly relate to the
222 original arrest. If the court intends to order the expunction of
223 records pertaining to such additional arrests, such intent must

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224 be specified in the order. A criminal justice agency may not
225 expunge any record pertaining to such additional arrests if the
226 order to expunge does not articulate the intention of the court
227 to expunge a record pertaining to more than one arrest. This
228 section does not prevent the court from ordering the expunction
229 of only a portion of a criminal history record pertaining to one
230 arrest or one incident of alleged criminal activity.

231 Notwithstanding any law to the contrary, a criminal justice
232 agency may comply with laws, court orders, and official requests
233 of other jurisdictions relating to expunction, correction, or
234 confidential handling of criminal history records or information
235 derived therefrom. This section does not confer any right to the
236 expunction of any criminal history record, and any request for
237 expunction of a criminal history record may be denied at the
238 sole discretion of the court.

239 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any
240 criminal history record of a minor or an adult which is ordered
241 expunged by a court of competent jurisdiction pursuant to this
242 section must be physically destroyed or obliterated by any
243 criminal justice agency having custody of such record; except
244 that any criminal history record in the custody of the
245 department must be retained in all cases. A criminal history
246 record ordered expunged that is retained by the department is
247 confidential and exempt from the provisions of s. 119.07(1) and
248 s. 24(a), Art. I of the State Constitution and not available to
249 any person or entity except upon order of a court of competent
250 jurisdiction. A criminal justice agency may retain a notation
251 indicating compliance with an order to expunge.

252 (a) The person who is the subject of a criminal history
 253 record that is expunged under this section or under other
 254 provisions of law, including former s. 893.14, former s. 901.33,
 255 and former s. 943.058, may lawfully deny or fail to acknowledge
 256 the arrests covered by the expunged record, except when the
 257 subject of the record:

258 1. Is a candidate for employment with a criminal justice
 259 agency;

260 2. Is a defendant in a criminal prosecution;

261 3. Concurrently or subsequently petitions for relief under
 262 this section or s. 943.059;

263 4. Is a candidate for admission to The Florida Bar;

264 5. Is seeking to be employed or licensed by or to contract
 265 with the Department of Children and Family Services, the Agency
 266 for Health Care Administration, the Agency for Persons with
 267 Disabilities, or the Department of Juvenile Justice or to be
 268 employed or used by such contractor or licensee in a sensitive
 269 position having direct contact with children, the
 270 developmentally disabled, the aged, or the elderly as provided
 271 in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.
 272 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(5)~~(4)~~,
 273 chapter 916, s. 985.644, chapter 400, or chapter 429;

274 6. Is seeking to be employed or licensed by the Department
 275 of Education, any district school board, any university
 276 laboratory school, any charter school, any private or parochial
 277 school, or any local governmental entity that licenses child
 278 care facilities; or

279 7. Is seeking authorization from a Florida seaport
 280 identified in s. 311.09 for employment within or access to one
 281 or more of such seaports pursuant to s. 311.12 or s. 311.125.

282 Section 7. Paragraph (a) of subsection (4) of section
 283 943.059, Florida Statutes, is amended to read:

284 943.059 Court-ordered sealing of criminal history
 285 records.--The courts of this state shall continue to have
 286 jurisdiction over their own procedures, including the
 287 maintenance, sealing, and correction of judicial records
 288 containing criminal history information to the extent such
 289 procedures are not inconsistent with the conditions,
 290 responsibilities, and duties established by this section. Any
 291 court of competent jurisdiction may order a criminal justice
 292 agency to seal the criminal history record of a minor or an
 293 adult who complies with the requirements of this section. The
 294 court shall not order a criminal justice agency to seal a
 295 criminal history record until the person seeking to seal a
 296 criminal history record has applied for and received a
 297 certificate of eligibility for sealing pursuant to subsection
 298 (2). A criminal history record that relates to a violation of s.
 299 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
 300 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter
 301 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.
 302 916.1075, a violation enumerated in s. 907.041, or any violation
 303 specified as a predicate offense for registration as a sexual
 304 predator pursuant to s. 775.21, without regard to whether that
 305 offense alone is sufficient to require such registration, or for
 306 registration as a sexual offender pursuant to s. 943.0435, may

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307 | not be sealed, without regard to whether adjudication was
308 | withheld, if the defendant was found guilty of or pled guilty or
309 | nolo contendere to the offense, or if the defendant, as a minor,
310 | was found to have committed or pled guilty or nolo contendere to
311 | committing the offense as a delinquent act. The court may only
312 | order sealing of a criminal history record pertaining to one
313 | arrest or one incident of alleged criminal activity, except as
314 | provided in this section. The court may, at its sole discretion,
315 | order the sealing of a criminal history record pertaining to
316 | more than one arrest if the additional arrests directly relate
317 | to the original arrest. If the court intends to order the
318 | sealing of records pertaining to such additional arrests, such
319 | intent must be specified in the order. A criminal justice agency
320 | may not seal any record pertaining to such additional arrests if
321 | the order to seal does not articulate the intention of the court
322 | to seal records pertaining to more than one arrest. This section
323 | does not prevent the court from ordering the sealing of only a
324 | portion of a criminal history record pertaining to one arrest or
325 | one incident of alleged criminal activity. Notwithstanding any
326 | law to the contrary, a criminal justice agency may comply with
327 | laws, court orders, and official requests of other jurisdictions
328 | relating to sealing, correction, or confidential handling of
329 | criminal history records or information derived therefrom. This
330 | section does not confer any right to the sealing of any criminal
331 | history record, and any request for sealing a criminal history
332 | record may be denied at the sole discretion of the court.

333 | (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A criminal
334 | history record of a minor or an adult which is ordered sealed by

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335 a court of competent jurisdiction pursuant to this section is
336 confidential and exempt from the provisions of s. 119.07(1) and
337 s. 24(a), Art. I of the State Constitution and is available only
338 to the person who is the subject of the record, to the subject's
339 attorney, to criminal justice agencies for their respective
340 criminal justice purposes, which include conducting a criminal
341 history background check for approval of firearms purchases or
342 transfers as authorized by state or federal law, to judges in
343 the state courts system for the purpose of assisting them in
344 their case-related decisionmaking responsibilities, as set forth
345 in s. 943.053(5), or to those entities set forth in
346 subparagraphs (a)1., 4., 5., 6., and 8. for their respective
347 licensing, access authorization, and employment purposes.

348 (a) The subject of a criminal history record sealed under
349 this section or under other provisions of law, including former
350 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
351 deny or fail to acknowledge the arrests covered by the sealed
352 record, except when the subject of the record:

- 353 1. Is a candidate for employment with a criminal justice
354 agency;
- 355 2. Is a defendant in a criminal prosecution;
- 356 3. Concurrently or subsequently petitions for relief under
357 this section or s. 943.0585;
- 358 4. Is a candidate for admission to The Florida Bar;
- 359 5. Is seeking to be employed or licensed by or to contract
360 with the Department of Children and Family Services, the Agency
361 for Health Care Administration, the Agency for Persons with
362 Disabilities, or the Department of Juvenile Justice or to be

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363 employed or used by such contractor or licensee in a sensitive
364 position having direct contact with children, the
365 developmentally disabled, the aged, or the elderly as provided
366 in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.
367 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(5)~~(4)~~,
368 s. 415.103, chapter 916, s. 985.644, chapter 400, or chapter
369 429;

370 6. Is seeking to be employed or licensed by the Department
371 of Education, any district school board, any university
372 laboratory school, any charter school, any private or parochial
373 school, or any local governmental entity that licenses child
374 care facilities;

375 7. Is attempting to purchase a firearm from a licensed
376 importer, licensed manufacturer, or licensed dealer and is
377 subject to a criminal history background check under state or
378 federal law; or

379 8. Is seeking authorization from a Florida seaport
380 identified in s. 311.09 for employment within or access to one
381 or more of such seaports pursuant to s. 311.12 or s. 311.125.

382 Section 8. This act shall take effect July 1, 2009.