

By the Committee on Children, Families, and Elder Affairs; and
Senator Storms

586-03457-09

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1 A bill to be entitled
2 An act relating to adult protective services; amending
3 s. 415.101, F.S.; revising terminology; amending s.
4 415.102, F.S.; defining the term "activities of daily
5 living" and revising the term "vulnerable adult";
6 conforming a cross-reference; amending s. 415.103,
7 F.S.; requiring the central abuse hotline to
8 immediately transfer certain calls relating to
9 vulnerable adults to the appropriate local law
10 enforcement agency; amending s. 415.1051, F.S.;
11 authorizing the Department of Children and Family
12 Services to file a petition to determine incapacity;
13 prohibiting the department from acting as guardian or
14 providing legal counsel to the guardian; amending s.
15 322.142, F.S.; providing a cross-reference to
16 authorize the release of certain records for purposes
17 of protective investigations; amending ss. 943.0585
18 and 943.059, F.S.; conforming cross-references;
19 providing an effective date.

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

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

25 415.101 Adult Protective Services Act; legislative 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
29 individual the same rights as other citizens and, at the same

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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 vulnerable adults
35 ~~all 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 adults ~~disabled adults or elderly persons~~. In taking
40 this action, the Legislature intends to place the fewest
41 possible 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 adults
46 ~~disabled adults or elderly persons~~.

47 Section 2. Present subsections (2) through (27) of section
48 415.102, Florida Statutes, are redesignated as subsections (3)
49 through (28), respectively, present 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. 415.101-415.113.—
53 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

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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. The term "Caregiver" includes, but is not
63 limited to, relatives, household members, guardians, neighbors,
64 and employees and volunteers at a facility ~~of facilities as~~
65 ~~defined in subsection (8)~~. For the purpose of departmental
66 investigative jurisdiction, the term ~~"caregiver"~~ does not
67 include law enforcement officers or employees of municipal or
68 county detention facilities or the Department of Corrections
69 while 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, long-term physical,
74 sensory, or developmental disability or dysfunction
75 ~~dysfunctioning, or brain damage, or the infirmities of aging.~~

76 Section 3. Present paragraphs (c), (d), (e), (f), and (g)
77 of subsection (1) of section 415.103, Florida Statutes, are
78 redesignated as paragraphs (d), (e), (f), (g), and (h),
79 respectively, and paragraph (c) is added to that subsection, to
80 read:

81 415.103 Central abuse hotline.—

82 (1) The department shall establish and maintain a central
83 abuse hotline that receives all reports made pursuant to s.
84 415.1034 in writing or through a single statewide toll-free
85 telephone number. Any person may use the statewide toll-free
86 telephone number to report known or suspected abuse, neglect, or
87 exploitation of a vulnerable adult at any hour of the day or

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88 night, any day of the week. The central abuse hotline must be
89 operated in such a manner as to enable the department to:

90 (c) Immediately transfer calls to the appropriate law
91 enforcement agency if the report is of known or suspected abuse
92 by someone other than the vulnerable adult's relative caregiver.

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

96 415.1051 Protective services interventions when capacity to
97 consent is lacking; nonemergencies; emergencies; orders;
98 limitations.-

99 (1) NONEMERGENCY PROTECTIVE SERVICES INTERVENTIONS.-If the
100 department has reasonable cause to believe that a vulnerable
101 adult or a vulnerable adult in need of services is being abused,
102 neglected, or exploited and is in need of protective services
103 but lacks the capacity to consent to protective services, the
104 department shall petition the court for an order authorizing the
105 provision of protective services.

106 (e) *Continued protective services.*-

107 1. Within ~~No more than~~ 60 days after the date of the order
108 authorizing the provision of protective services, the department
109 shall petition the court to determine whether:

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

112 b. Protective services will be continued for the vulnerable
113 adult who lacks capacity;

114 c. Protective services will be discontinued; or

115 d. A petition for guardianship should be filed pursuant to
116 chapter 744.

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

121 3. The petition to determine incapacity under s. 744.3201
122 may be filed by the department if the department has a good
123 faith belief that the vulnerable adult lacks capacity. However,
124 once the petition is filed, the department may not be appointed
125 guardian and may not provide legal counsel for the guardian.

126 (2) EMERGENCY PROTECTIVE SERVICES INTERVENTION.—If the
127 department has reasonable cause to believe that a vulnerable
128 adult is suffering from abuse or neglect that presents a risk of
129 death or serious physical injury to the vulnerable adult and
130 that the vulnerable adult lacks the capacity to consent to
131 emergency protective services, the department may take action
132 under this subsection. If the vulnerable adult has the capacity
133 to consent and refuses consent to emergency protective services,
134 emergency protective services may not be provided.

135 (g) *Continued emergency protective services.*—

136 1. Within ~~Not more than~~ 60 days after the date of the order
137 authorizing the provision of emergency protective services, the
138 department shall petition the court to determine whether:

139 a. Emergency protective services will be continued with the
140 consent of the vulnerable adult;

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

143 c. Emergency protective services will be discontinued; or

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

145 2. If it is decided to file a petition under chapter 744,

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146 for good cause shown, the court may order continued emergency
147 protective services until a determination is made by the court.

148 3. The petition to determine incapacity under s. 744.3201
149 may be filed by the department if the department has a good
150 faith belief that the vulnerable adult lacks capacity. However,
151 once the petition is filed, the department may not be appointed
152 guardian and may not provide legal counsel for the guardian.

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

155 322.142 Color photographic or digital imaged licenses.—

156 (4) The department may maintain a film negative or print
157 file. The department shall maintain a record of the digital
158 image and signature of the licensees, together with other data
159 required by the department for identification and retrieval.
160 Reproductions from the file or digital record are exempt from
161 ~~the provisions of~~ s. 119.07(1) and may shall be made and issued
162 only for ~~departmental~~ administrative purposes; for the issuance
163 of duplicate licenses; in response to law enforcement agency
164 requests; to the Department of State pursuant to an interagency
165 agreement to facilitate determinations of eligibility of voter
166 registration applicants and registered voters in accordance with
167 ss. 98.045 and 98.075; to the Department of Revenue pursuant to
168 an interagency agreement for ~~use in~~ establishing paternity and
169 establishing, modifying, or enforcing support obligations in
170 Title IV-D cases; to the Department of Children and Family
171 Services pursuant to an interagency agreement to conduct
172 protective investigations under part III of chapter 39 or
173 chapter 415; or to the Department of Financial Services pursuant
174 to an interagency agreement to facilitate the location of owners

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175 of unclaimed property, the validation of unclaimed property
176 claims, and the identification of fraudulent or false claims.

177 Section 6. Paragraph (a) of subsection (4) of section
178 943.0585, Florida Statutes, is amended to read:

179 943.0585 Court-ordered expunction of criminal history
180 records.—The courts of this state have jurisdiction over their
181 own procedures, including the maintenance, expunction, and
182 correction of judicial records containing criminal history
183 information to the extent such procedures are not inconsistent
184 with the conditions, responsibilities, and duties established by
185 this section. Any court of competent jurisdiction may order a
186 criminal justice agency to expunge the criminal history record
187 of a minor or an adult who complies with the requirements of
188 this section. The court shall not order a criminal justice
189 agency to expunge a criminal history record until the person
190 seeking to expunge a criminal history record has applied for and
191 received a certificate of eligibility for expunction pursuant to
192 subsection (2). A criminal history record that relates to a
193 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
194 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
195 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
196 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
197 any violation specified as a predicate offense for registration
198 as a sexual predator pursuant to s. 775.21, without regard to
199 whether that offense alone is sufficient to require such
200 registration, or for registration as a sexual offender pursuant
201 to s. 943.0435, may not be expunged, without regard to whether
202 adjudication was withheld, if the defendant was found guilty of
203 or pled guilty or nolo contendere to the offense, or if the

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204 defendant, as a minor, was found to have committed, or pled
205 guilty or nolo contendere to committing, the offense as a
206 delinquent act. The court may only order expunction of a
207 criminal history record pertaining to one arrest or one incident
208 of alleged criminal activity, except as provided in this
209 section. The court may, at its sole discretion, order the
210 expunction of a criminal history record pertaining to more than
211 one arrest if the additional arrests directly relate to the
212 original arrest. If the court intends to order the expunction of
213 records pertaining to such additional arrests, such intent must
214 be specified in the order. A criminal justice agency may not
215 expunge any record pertaining to such additional arrests if the
216 order to expunge does not articulate the intention of the court
217 to expunge a record pertaining to more than one arrest. This
218 section does not prevent the court from ordering the expunction
219 of only a portion of a criminal history record pertaining to one
220 arrest or one incident of alleged criminal activity.

221 Notwithstanding any law to the contrary, a criminal justice
222 agency may comply with laws, court orders, and official requests
223 of other jurisdictions relating to expunction, correction, or
224 confidential handling of criminal history records or information
225 derived therefrom. This section does not confer any right to the
226 expunction of any criminal history record, and any request for
227 expunction of a criminal history record may be denied at the
228 sole discretion of the court.

229 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any
230 criminal history record of a minor or an adult which is ordered
231 expunged by a court of competent jurisdiction pursuant to this
232 section must be physically destroyed or obliterated by any

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233 criminal justice agency having custody of such record; except
234 that any criminal history record in the custody of the
235 department must be retained in all cases. A criminal history
236 record ordered expunged that is retained by the department is
237 confidential and exempt from the provisions of s. 119.07(1) and
238 s. 24(a), Art. I of the State Constitution and not available to
239 any person or entity except upon order of a court of competent
240 jurisdiction. A criminal justice agency may retain a notation
241 indicating compliance with an order to expunge.

242 (a) The person who is the subject of a criminal history
243 record that is expunged under this section or under other
244 provisions of law, including former s. 893.14, former s. 901.33,
245 and former s. 943.058, may lawfully deny or fail to acknowledge
246 the arrests covered by the expunged record, except when the
247 subject of the record:

- 248 1. is a candidate for employment with a criminal justice
249 agency;
- 250 2. is a defendant in a criminal prosecution;
- 251 3. Concurrently or subsequently petitions for relief under
252 this section or s. 943.059;
- 253 4. is a candidate for admission to The Florida Bar;
- 254 5. Is seeking to be employed or licensed by or to contract
255 with the Department of Children and Family Services, the Agency
256 for health Care Administration, the Agency for persons with
257 Disabilities, or the Department of Juvenile Justice or to be
258 employed or used by such contractor or licensee in a sensitive
259 position having direct contact with children, the
260 developmentally disabled, the aged, or the elderly as provided
261 in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.

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262 402.302(3), s. 402.313(3), s. 409.175(2)(I), s. 415.102(5)~~(4)~~,
263 chapter 916, s. 985.644, chapter 400, or chapter 429;

264 6. Is seeking to be employed or licensed by the Department
265 of Education, any district school board, any university
266 laboratory school, any charter school, any private or parochial
267 school, or any local governmental entity that licenses child
268 care facilities; or

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

272 Section 7. Paragraph (a) of subsection (4) of section
273 943.059, Florida Statutes, is amended to read:

274 943.059 Court-ordered sealing of criminal history records.—
275 The courts of this state shall continue to have jurisdiction
276 over their own procedures, including the maintenance, sealing,
277 and correction of judicial records containing criminal history
278 information to the extent such procedures are not inconsistent
279 with the conditions, responsibilities, and duties established by
280 this section. Any court of competent jurisdiction may order a
281 criminal justice agency to seal the criminal history record of a
282 minor or an adult who complies with the requirements of this
283 section. The court shall not order a criminal justice agency to
284 seal a criminal history record until the person seeking to seal
285 a criminal history record has applied for and received a
286 certificate of eligibility for sealing pursuant to subsection
287 (2). A criminal history record that relates to a violation of s.
288 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
289 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter
290 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.

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291 916.1075, a violation enumerated in s. 907.041, or any violation
292 specified as a predicate offense for registration as a sexual
293 predator pursuant to s. 775.21, without regard to whether that
294 offense alone is sufficient to require such registration, or for
295 registration as a sexual offender pursuant to s. 943.0435, may
296 not be sealed, without regard to whether adjudication was
297 withheld, if the defendant was found guilty of or pled guilty or
298 nolo contendere to the offense, or if the defendant, as a minor,
299 was found to have committed or pled guilty or nolo contendere to
300 committing the offense as a delinquent act. The court may only
301 order sealing of a criminal history record pertaining to one
302 arrest or one incident of alleged criminal activity, except as
303 provided in this section. The court may, at its sole discretion,
304 order the sealing of a criminal history record pertaining to
305 more than one arrest if the additional arrests directly relate
306 to the original arrest. If the court intends to order the
307 sealing of records pertaining to such additional arrests, such
308 intent must be specified in the order. A criminal justice agency
309 may not seal any record pertaining to such additional arrests if
310 the order to seal does not articulate the intention of the court
311 to seal records pertaining to more than one arrest. This section
312 does not prevent the court from ordering the sealing of only a
313 portion of a criminal history record pertaining to one arrest or
314 one incident of alleged criminal activity. Notwithstanding any
315 law to the contrary, a criminal justice agency may comply with
316 laws, court orders, and official requests of other jurisdictions
317 relating to sealing, correction, or confidential handling of
318 criminal history records or information derived therefrom. This
319 section does not confer any right to the sealing of any criminal

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320 history record, and any request for sealing a criminal history
321 record may be denied at the sole discretion of the court.

322 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal
323 history record of a minor or an adult which is ordered sealed by
324 a court of competent jurisdiction pursuant to this section is
325 confidential and exempt from the provisions of s. 119.07(1) and
326 s. 24(a), Art. I of the State Constitution and is available only
327 to the person who is the subject of the record, to the subject's
328 attorney, to criminal justice agencies for their respective
329 criminal justice purposes, which include conducting a criminal
330 history background check for approval of firearms purchases or
331 transfers as authorized by state or federal law, to judges in
332 the state courts system for the purpose of assisting them in
333 their case-related decisionmaking responsibilities, as set forth
334 in s. 943.053(5), or to those entities set forth in
335 subparagraphs (a)1., 4., 5., 6., and 8. for their respective
336 licensing, access authorization, and employment purposes.

337 (a) The subject of a criminal history record sealed under
338 this section or under other provisions of law, including former
339 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
340 deny or fail to acknowledge the arrests covered by the sealed
341 record, except when the subject of the record:

- 342 1. is a candidate for employment with a criminal justice
343 agency;
- 344 2. Is a defendant in a criminal prosecution;
- 345 3. Concurrently or subsequently petitions for relief under
346 this section or s. 943.0585;
- 347 4. is a candidate for admission to The Florida Bar;
- 348 5. Is seeking to be employed or licensed by or to contract

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349 with the Department of Children and Family Services, the Agency
350 for Health Care Administration, the Agency for Persons with
351 Disabilities, or the Department of Juvenile Justice or to be
352 employed or used by such contractor or licensee in a sensitive
353 position having direct contact with children, the
354 developmentally disabled, the aged, or the elderly as provided
355 in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.
356 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(5)+4),
357 s. 415.103, chapter 916, s. 985.644, chapter 400, or chapter
358 429;

359 6. Is seeking to be employed or licensed by the Department
360 of Education, any district school board, any university
361 laboratory school, any charter school, any private or parochial
362 school, or any local governmental entity that licenses child
363 care facilities;

364 7. Is attempting to purchase a firearm from a licensed
365 importer, licensed manufacturer, or licensed dealer and is
366 subject to a criminal history background check under state or
367 federal law; or

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

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