

By the Committees on Governmental Oversight and Accountability;  
and Children, Families, and Elder Affairs; and Senator Storms

585-04493-09

20092404c2

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

585-04493-09

20092404c2

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) of  
50 that section are amended, and a new subsection (2) is added to  
51 that section, to 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 ambulation, bathing, dressing, eating,  
56 grooming, toileting, 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

585-04493-09

20092404c2

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 a new paragraph (c) is added to that  
80 subsection, to 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

585-04493-09

20092404c2

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.

585-04493-09

20092404c2

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,

585-04493-09

20092404c2

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

585-04493-09

20092404c2

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

585-04493-09

20092404c2

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



585-04493-09

20092404c2

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.

585-04493-09

20092404c2

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.

585-04493-09

20092404c2

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

585-04493-09

20092404c2

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

585-04493-09

20092404c2

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.