

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

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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 that the central abuse hotline, which  
8 is maintained by the Department of Children and Family  
9 Services, immediately transfer reports relating to  
10 vulnerable adults to the appropriate county sheriff's  
11 office; amending s. 415.1051, F.S.; authorizing the  
12 department 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) 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

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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 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

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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 the report to the appropriate  
91 county sheriff's office if the report is of known or suspected  
92 abuse of a vulnerable adult by someone other than the vulnerable  
93 adult's relative, caregiver, or household member.

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

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

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

107 (e) *Continued protective services.*—

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

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

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

115 c. Protective services will be discontinued; or

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

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117 chapter 744.

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

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

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

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

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

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

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

144 c. Emergency protective services will be discontinued; or

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

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

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

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

156 322.142 Color photographic or digital imaged licenses.—

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

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175 to an interagency agreement to facilitate the location of owners  
176 of unclaimed property, the validation of unclaimed property  
177 claims, and the identification of fraudulent or false claims.

178 Section 6. Paragraph (a) of subsection (4) of section  
179 943.0585, Florida Statutes, is amended to read:

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

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

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

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



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

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

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

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262 in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.  
263 402.302(3), s. 402.313(3), s. 409.175(2)(I), s. 415.102(5)~~(4)~~,  
264 chapter 916, s. 985.644, chapter 400, or chapter 429;

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

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

273 Section 7. Paragraph (a) of subsection (4) of section  
274 943.059, Florida Statutes, is amended to read:

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

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291 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.  
292 916.1075, a violation enumerated in s. 907.041, or any violation  
293 specified as a predicate offense for registration as a sexual  
294 predator pursuant to s. 775.21, without regard to whether that  
295 offense alone is sufficient to require such registration, or for  
296 registration as a sexual offender pursuant to s. 943.0435, may  
297 not be sealed, without regard to whether adjudication was  
298 withheld, if the defendant was found guilty of or pled guilty or  
299 nolo contendere to the offense, or if the defendant, as a minor,  
300 was found to have committed or pled guilty or nolo contendere to  
301 committing the offense as a delinquent act. The court may only  
302 order sealing of a criminal history record pertaining to one  
303 arrest or one incident of alleged criminal activity, except as  
304 provided in this section. The court may, at its sole discretion,  
305 order the sealing of a criminal history record pertaining to  
306 more than one arrest if the additional arrests directly relate  
307 to the original arrest. If the court intends to order the  
308 sealing of records pertaining to such additional arrests, such  
309 intent must be specified in the order. A criminal justice agency  
310 may not seal any record pertaining to such additional arrests if  
311 the order to seal does not articulate the intention of the court  
312 to seal records pertaining to more than one arrest. This section  
313 does not prevent the court from ordering the sealing of only a  
314 portion of a criminal history record pertaining to one arrest or  
315 one incident of alleged criminal activity. Notwithstanding any  
316 law to the contrary, a criminal justice agency may comply with  
317 laws, court orders, and official requests of other jurisdictions  
318 relating to sealing, correction, or confidential handling of  
319 criminal history records or information derived therefrom. This

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320 section does not confer any right to the sealing of any criminal  
321 history record, and any request for sealing a criminal history  
322 record may be denied at the sole discretion of the court.

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

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

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

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349           5. Is seeking to be employed or licensed by or to contract  
350 with the Department of Children and Family Services, the Agency  
351 for Health Care Administration, the Agency for Persons with  
352 Disabilities, or the Department of Juvenile Justice or to be  
353 employed or used by such contractor or licensee in a sensitive  
354 position having direct contact with children, the  
355 developmentally disabled, the aged, or the elderly as provided  
356 in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.  
357 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(5)~~(4)~~,  
358 s. 415.103, chapter 916, s. 985.644, chapter 400, or chapter  
359 429;

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

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

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

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