

By the Committee on Governmental Oversight and Accountability;
and Senator Storms

585-02024-10

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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. 435.04,
18 943.0585, and 943.059, F.S.; conforming cross-
19 references; 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 further the ~~be brought~~
38 ~~to bear in an~~ effort to prevent ~~further~~ abuse, neglect, and
39 exploitation of vulnerable adults ~~disabled adults or elderly~~
40 ~~persons~~. In taking this action, the Legislature intends to place
41 the fewest possible restrictions on personal liberty and the
42 exercise of constitutional rights, consistent with due process
43 and protection from abuse, neglect, and exploitation. Further,
44 the Legislature intends to encourage the constructive
45 involvement of families in the care and protection of vulnerable
46 adults ~~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 shall be made and issued only
163 for departmental administrative purposes; for the issuance of
164 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
179 435.04, Florida Statutes, is amended to read:

180 435.04 Level 2 screening standards.—

181 (4) Standards must also ensure that the person:

182 (a) For employees or employers licensed or registered
183 pursuant to chapter 400 or chapter 429, does not have a
184 confirmed report of abuse, neglect, or exploitation as defined
185 in s. 415.102~~(6)~~, which has been uncontested or upheld under s.
186 415.103.

187 Section 7. 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
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,

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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
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

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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 if ~~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

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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 seaport listed in s.
280 311.09 for employment within or access to one or more of such
281 seaports pursuant to s. 311.12.

282 Section 8. 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 records.—
285 The courts of this state shall continue to have jurisdiction
286 over their own procedures, including the maintenance, sealing,
287 and correction of judicial records containing criminal history
288 information to the extent such procedures are not inconsistent
289 with the conditions, responsibilities, and duties established by
290 this section. Any court of competent jurisdiction may order a

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291 criminal justice agency to seal the criminal history record of a
292 minor or an adult who complies with the requirements of this
293 section. The court shall not order a criminal justice agency to
294 seal a criminal history record until the person seeking to seal
295 a criminal history record has applied for and received a
296 certificate of eligibility for sealing pursuant to subsection
297 (2). A criminal history record that relates to a violation of s.
298 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
299 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter
300 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.
301 916.1075, a violation enumerated in s. 907.041, or any violation
302 specified as a predicate offense for registration as a sexual
303 predator pursuant to s. 775.21, without regard to whether that
304 offense alone is sufficient to require such registration, or for
305 registration as a sexual offender pursuant to s. 943.0435, may
306 not be sealed, without regard to whether adjudication was
307 withheld, if the defendant was found guilty of or pled guilty or
308 nolo contendere to the offense, or if the defendant, as a minor,
309 was found to have committed or pled guilty or nolo contendere to
310 committing the offense as a delinquent act. The court may only
311 order sealing of a criminal history record pertaining to one
312 arrest or one incident of alleged criminal activity, except as
313 provided in this section. The court may, at its sole discretion,
314 order the sealing of a criminal history record pertaining to
315 more than one arrest if the additional arrests directly relate
316 to the original arrest. If the court intends to order the
317 sealing of records pertaining to such additional arrests, such
318 intent must be specified in the order. A criminal justice agency
319 may not seal any record pertaining to such additional arrests if

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320 the order to seal does not articulate the intention of the court
321 to seal records pertaining to more than one arrest. This section
322 does not prevent the court from ordering the sealing of only a
323 portion of a criminal history record pertaining to one arrest or
324 one incident of alleged criminal activity. Notwithstanding any
325 law to the contrary, a criminal justice agency may comply with
326 laws, court orders, and official requests of other jurisdictions
327 relating to sealing, correction, or confidential handling of
328 criminal history records or information derived therefrom. This
329 section does not confer any right to the sealing of any criminal
330 history record, and any request for sealing a criminal history
331 record may be denied at the sole discretion of the court.

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

347 (a) The subject of a criminal history record sealed under
348 this section or under other provisions of law, including former

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349 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
350 deny or fail to acknowledge the arrests covered by the sealed
351 record, except when the subject of the record:

- 352 1. Is a candidate for employment with a criminal justice
353 agency;
- 354 2. Is a defendant in a criminal prosecution;
- 355 3. Concurrently or subsequently petitions for relief under
356 this section or s. 943.0585;
- 357 4. Is a candidate for admission to The Florida Bar;
- 358 5. Is seeking to be employed or licensed by or to contract
359 with the Department of Children and Family Services, the Agency
360 for Health Care Administration, the Agency for Persons with
361 Disabilities, or the Department of Juvenile Justice or to be
362 employed or used by such contractor or licensee in a sensitive
363 position having direct contact with children, the
364 developmentally disabled, the aged, or the elderly as provided
365 in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.
366 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(5)+~~4~~,
367 s. 415.103, chapter 916, s. 985.644, chapter 400, or chapter
368 429;
- 369 6. Is seeking to be employed or licensed by the Department
370 of Education, any district school board, any university
371 laboratory school, any charter school, any private or parochial
372 school, or any local governmental entity that licenses child
373 care facilities;
- 374 7. Is attempting to purchase a firearm from a licensed
375 importer, licensed manufacturer, or licensed dealer and is
376 subject to a criminal history check under state or federal law;
377 or

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

381 Section 9. This act shall take effect July 1, 2010.