

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

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

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

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

27 (2) The Legislature recognizes that there are many persons
 28 in this state who, because of age or disability, are in need of

HB 91

2010

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

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

53 415.102 Definitions of terms used in ss. 415.101-
54 415.113.--As used in ss. 415.101-415.113, the term:

HB 91

2010

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

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

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

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

79 415.103 Central abuse hotline.--

80 (2) Upon receiving an oral or written report of known or
 81 suspected abuse, neglect, or exploitation of a vulnerable adult,
 82 the central abuse hotline must determine if the report requires

HB 91

2010

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

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

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

108 (1) NONEMERGENCY PROTECTIVE SERVICES INTERVENTIONS.--If
109 the department has reasonable cause to believe that a vulnerable
110 adult or a vulnerable adult in need of services is being abused,

HB 91

2010

111 neglected, or exploited and is in need of protective services
 112 but lacks the capacity to consent to protective services, the
 113 department shall petition the court for an order authorizing the
 114 provision of protective services.

115 (e) Continued protective services.--

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

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

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

123 c. Protective services will be discontinued; or

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

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

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

136 (2) EMERGENCY PROTECTIVE SERVICES INTERVENTION.--If the
 137 department has reasonable cause to believe that a vulnerable
 138 adult is suffering from abuse or neglect that presents a risk of

HB 91

2010

139 death or serious physical injury to the vulnerable adult and
 140 that the vulnerable adult lacks the capacity to consent to
 141 emergency protective services, the department may take action
 142 under this subsection. If the vulnerable adult has the capacity
 143 to consent and refuses consent to emergency protective services,
 144 emergency protective services may not be provided.

145 (g) Continued emergency protective services.--

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

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

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

153 c. Emergency protective services will be discontinued; or

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

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

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

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

166 322.142 Color photographic or digital imaged licenses.--

HB 91

2010

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

188 Section 6. Paragraph (a) of subsection (4) of section
189 943.0585, Florida Statutes, is amended to read:

190 943.0585 Court-ordered expunction of criminal history
191 records.--The courts of this state have jurisdiction over their
192 own procedures, including the maintenance, expunction, and
193 correction of judicial records containing criminal history
194 information to the extent such procedures are not inconsistent

HB 91

2010

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

HB 91

2010

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

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

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

HB 91

2010

251 jurisdiction. A criminal justice agency may retain a notation
 252 indicating compliance with an order to expunge.

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

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

261 2. Is a defendant in a criminal prosecution;

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

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

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

275 6. Is seeking to be employed or licensed by the Department
 276 of Education, any district school board, any university
 277 laboratory school, any charter school, any private or parochial

HB 91

2010

278 school, or any local governmental entity that licenses child
 279 care facilities; or

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

283 Section 7. Paragraph (a) of subsection (4) of section
 284 943.059, Florida Statutes, is amended to read:

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

HB 91

2010

306 offense alone is sufficient to require such registration, or for
307 registration as a sexual offender pursuant to s. 943.0435, may
308 not be sealed, without regard to whether adjudication was
309 withheld, if the defendant was found guilty of or pled guilty or
310 nolo contendere to the offense, or if the defendant, as a minor,
311 was found to have committed or pled guilty or nolo contendere to
312 committing the offense as a delinquent act. The court may only
313 order sealing of a criminal history record pertaining to one
314 arrest or one incident of alleged criminal activity, except as
315 provided in this section. The court may, at its sole discretion,
316 order the sealing of a criminal history record pertaining to
317 more than one arrest if the additional arrests directly relate
318 to the original arrest. If the court intends to order the
319 sealing of records pertaining to such additional arrests, such
320 intent must be specified in the order. A criminal justice agency
321 may not seal any record pertaining to such additional arrests if
322 the order to seal does not articulate the intention of the court
323 to seal records pertaining to more than one arrest. This section
324 does not prevent the court from ordering the sealing of only a
325 portion of a criminal history record pertaining to one arrest or
326 one incident of alleged criminal activity. Notwithstanding any
327 law to the contrary, a criminal justice agency may comply with
328 laws, court orders, and official requests of other jurisdictions
329 relating to sealing, correction, or confidential handling of
330 criminal history records or information derived therefrom. This
331 section does not confer any right to the sealing of any criminal
332 history record, and any request for sealing a criminal history
333 record may be denied at the sole discretion of the court.

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

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

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

362 for Health Care Administration, the Agency for Persons with
 363 Disabilities, or the Department of Juvenile Justice or to be
 364 employed or used by such contractor or licensee in a sensitive
 365 position having direct contact with children, the
 366 developmentally disabled, the aged, or the elderly as provided
 367 in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.
 368 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(5)~~(4)~~,
 369 s. 415.103, chapter 916, s. 985.644, chapter 400, or chapter
 370 429;

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

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

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

383 Section 8. This act shall take effect July 1, 2010.