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CS/HB 91

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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. 435.04, 943.0585, and
19 943.059, F.S.; conforming cross-references; providing an
20 effective date.

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

23
24 Section 1. Subsection (2) of section 415.101, Florida
25 Statutes, is amended to read:
26 415.101 Adult Protective Services Act; legislative
27 intent.—

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

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

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

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

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

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

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

80 415.103 Central abuse hotline.—

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

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

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

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

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

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

116 (e) Continued protective services.—

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

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

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

124 c. Protective services will be discontinued; or

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

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

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

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

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

146 (g) Continued emergency protective services.—

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

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

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

154 c. Emergency protective services will be discontinued; or

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

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

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

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

167 322.142 Color photographic or digital imaged licenses.—

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

189 Section 6. Paragraph (a) of subsection (4) of section
 190 435.04, Florida Statutes, is amended to read:

191 435.04 Level 2 screening standards.—

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

193 (a) For employees or employers licensed or registered
 194 pursuant to chapter 400 or chapter 429, does not have a
 195 confirmed report of abuse, neglect, or exploitation as defined

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196 in s. 415.102~~(6)~~, which has been uncontested or upheld under s.
197 415.103.

198 Section 7. Paragraph (a) of subsection (4) of section
199 943.0585, Florida Statutes, is amended to read:

200 943.0585 Court-ordered expunction of criminal history
201 records.—The courts of this state have jurisdiction over their
202 own procedures, including the maintenance, expunction, and
203 correction of judicial records containing criminal history
204 information to the extent such procedures are not inconsistent
205 with the conditions, responsibilities, and duties established by
206 this section. Any court of competent jurisdiction may order a
207 criminal justice agency to expunge the criminal history record
208 of a minor or an adult who complies with the requirements of
209 this section. The court shall not order a criminal justice
210 agency to expunge a criminal history record until the person
211 seeking to expunge a criminal history record has applied for and
212 received a certificate of eligibility for expunction pursuant to
213 subsection (2). A criminal history record that relates to a
214 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
215 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
216 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
217 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
218 any violation specified as a predicate offense for registration
219 as a sexual predator pursuant to s. 775.21, without regard to
220 whether that offense alone is sufficient to require such
221 registration, or for registration as a sexual offender pursuant
222 to s. 943.0435, may not be expunged, without regard to whether
223 adjudication was withheld, if the defendant was found guilty of

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224 or pled guilty or nolo contendere to the offense, or if the
225 defendant, as a minor, was found to have committed, or pled
226 guilty or nolo contendere to committing, the offense as a
227 delinquent act. The court may only order expunction of a
228 criminal history record pertaining to one arrest or one incident
229 of alleged criminal activity, except as provided in this
230 section. The court may, at its sole discretion, order the
231 expunction of a criminal history record pertaining to more than
232 one arrest if the additional arrests directly relate to the
233 original arrest. If the court intends to order the expunction of
234 records pertaining to such additional arrests, such intent must
235 be specified in the order. A criminal justice agency may not
236 expunge any record pertaining to such additional arrests if the
237 order to expunge does not articulate the intention of the court
238 to expunge a record pertaining to more than one arrest. This
239 section does not prevent the court from ordering the expunction
240 of only a portion of a criminal history record pertaining to one
241 arrest or one incident of alleged criminal activity.
242 Notwithstanding any law to the contrary, a criminal justice
243 agency may comply with laws, court orders, and official requests
244 of other jurisdictions relating to expunction, correction, or
245 confidential handling of criminal history records or information
246 derived therefrom. This section does not confer any right to the
247 expunction of any criminal history record, and any request for
248 expunction of a criminal history record may be denied at the
249 sole discretion of the court.

250 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any
251 criminal history record of a minor or an adult which is ordered

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252 expunged by a court of competent jurisdiction pursuant to this
 253 section must be physically destroyed or obliterated by any
 254 criminal justice agency having custody of such record; except
 255 that any criminal history record in the custody of the
 256 department must be retained in all cases. A criminal history
 257 record ordered expunged that is retained by the department is
 258 confidential and exempt from the provisions of s. 119.07(1) and
 259 s. 24(a), Art. I of the State Constitution and not available to
 260 any person or entity except upon order of a court of competent
 261 jurisdiction. A criminal justice agency may retain a notation
 262 indicating compliance with an order to expunge.

263 (a) The person who is the subject of a criminal history
 264 record that is expunged under this section or under other
 265 provisions of law, including former s. 893.14, former s. 901.33,
 266 and former s. 943.058, may lawfully deny or fail to acknowledge
 267 the arrests covered by the expunged record, except when the
 268 subject of the record:

- 269 1. Is a candidate for employment with a criminal justice
 270 agency;
- 271 2. Is a defendant in a criminal prosecution;
- 272 3. Concurrently or subsequently petitions for relief under
 273 this section or s. 943.059;
- 274 4. Is a candidate for admission to The Florida Bar;
- 275 5. Is seeking to be employed or licensed by or to contract
 276 with the Department of Children and Family Services, the Agency
 277 for Health Care Administration, the Agency for Persons with
 278 Disabilities, or the Department of Juvenile Justice or to be
 279 employed or used by such contractor or licensee in a sensitive

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280 position having direct contact with children, the
281 developmentally disabled, the aged, or the elderly as provided
282 in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.
283 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(5)~~(4)~~,
284 chapter 916, s. 985.644, chapter 400, or chapter 429;

285 6. Is seeking to be employed or licensed by the Department
286 of Education, any district school board, any university
287 laboratory school, any charter school, any private or parochial
288 school, or any local governmental entity that licenses child
289 care facilities; or

290 7. Is seeking authorization from a seaport listed in s.
291 311.09 for employment within or access to one or more of such
292 seaports pursuant to s. 311.12.

293 Section 8. Paragraph (a) of subsection (4) of section
294 943.059, Florida Statutes, is amended to read:

295 943.059 Court-ordered sealing of criminal history
296 records.—The courts of this state shall continue to have
297 jurisdiction over their own procedures, including the
298 maintenance, sealing, and correction of judicial records
299 containing criminal history information to the extent such
300 procedures are not inconsistent with the conditions,
301 responsibilities, and duties established by this section. Any
302 court of competent jurisdiction may order a criminal justice
303 agency to seal the criminal history record of a minor or an
304 adult who complies with the requirements of this section. The
305 court shall not order a criminal justice agency to seal a
306 criminal history record until the person seeking to seal a
307 criminal history record has applied for and received a

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308 certificate of eligibility for sealing pursuant to subsection
 309 (2). A criminal history record that relates to a violation of s.
 310 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
 311 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter
 312 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.
 313 916.1075, a violation enumerated in s. 907.041, or any violation
 314 specified as a predicate offense for registration as a sexual
 315 predator pursuant to s. 775.21, without regard to whether that
 316 offense alone is sufficient to require such registration, or for
 317 registration as a sexual offender pursuant to s. 943.0435, may
 318 not be sealed, without regard to whether adjudication was
 319 withheld, if the defendant was found guilty of or pled guilty or
 320 nolo contendere to the offense, or if the defendant, as a minor,
 321 was found to have committed or pled guilty or nolo contendere to
 322 committing the offense as a delinquent act. The court may only
 323 order sealing of a criminal history record pertaining to one
 324 arrest or one incident of alleged criminal activity, except as
 325 provided in this section. The court may, at its sole discretion,
 326 order the sealing of a criminal history record pertaining to
 327 more than one arrest if the additional arrests directly relate
 328 to the original arrest. If the court intends to order the
 329 sealing of records pertaining to such additional arrests, such
 330 intent must be specified in the order. A criminal justice agency
 331 may not seal any record pertaining to such additional arrests if
 332 the order to seal does not articulate the intention of the court
 333 to seal records pertaining to more than one arrest. This section
 334 does not prevent the court from ordering the sealing of only a
 335 portion of a criminal history record pertaining to one arrest or

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336 one incident of alleged criminal activity. Notwithstanding any
337 law to the contrary, a criminal justice agency may comply with
338 laws, court orders, and official requests of other jurisdictions
339 relating to sealing, correction, or confidential handling of
340 criminal history records or information derived therefrom. This
341 section does not confer any right to the sealing of any criminal
342 history record, and any request for sealing a criminal history
343 record may be denied at the sole discretion of the court.

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

359 (a) The subject of a criminal history record sealed under
360 this section or under other provisions of law, including former
361 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
362 deny or fail to acknowledge the arrests covered by the sealed
363 record, except when the subject of the record:

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- 364 1. Is a candidate for employment with a criminal justice
365 agency;
- 366 2. Is a defendant in a criminal prosecution;
- 367 3. Concurrently or subsequently petitions for relief under
368 this section or s. 943.0585;
- 369 4. Is a candidate for admission to The Florida Bar;
- 370 5. Is seeking to be employed or licensed by or to contract
371 with the Department of Children and Family Services, the Agency
372 for Health Care Administration, the Agency for Persons with
373 Disabilities, or the Department of Juvenile Justice or to be
374 employed or used by such contractor or licensee in a sensitive
375 position having direct contact with children, the
376 developmentally disabled, the aged, or the elderly as provided
377 in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.
378 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(5)~~(4)~~,
379 s. 415.103, chapter 916, s. 985.644, chapter 400, or chapter
380 429;
- 381 6. Is seeking to be employed or licensed by the Department
382 of Education, any district school board, any university
383 laboratory school, any charter school, any private or parochial
384 school, or any local governmental entity that licenses child
385 care facilities;
- 386 7. Is attempting to purchase a firearm from a licensed
387 importer, licensed manufacturer, or licensed dealer and is
388 subject to a criminal history check under state or federal law;
389 or

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

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