

By the Committee on Children, Families, and Elder Affairs; and
Senator Brandes

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1 A bill to be entitled
2 An act relating to guardianship; amending s. 744.102,
3 F.S.; redefining the term "audit"; amending s.
4 744.3135, F.S.; revising the requirements and
5 authorizations of the court to require specified
6 guardians to submit to a credit history investigation
7 and background screening; authorizing a
8 nonprofessional guardian to petition the court for
9 reimbursement for the credit history investigation and
10 background screening; amending s. 744.368, F.S.;
11 authorizing a clerk of the court to obtain and review
12 records impacting guardianship assets and to issue
13 subpoenas to nonparties upon application to the court;
14 providing requirements for affidavits, notice, and
15 subpoenas; providing for objection to a subpoena;
16 amending s. 744.3685, F.S.; authorizing the court to
17 require the production of records and documents by a
18 guardian who fails to submit them during an audit;
19 amending s. 744.474, F.S.; providing for the removal
20 of a guardian for a bad faith failure to submit
21 records during an audit; amending ss. 943.0585 and
22 943.059, F.S.; providing that a person seeking an
23 appointment as guardian may not lawfully deny or fail
24 to acknowledge the arrests covered by an expunged or
25 sealed record; reenacting s. 943.0585(4)(c), F.S.,
26 relating to court-ordered expunction of criminal
27 history records, to incorporate the amendments made to
28 s. 943.0585, F.S., in a reference thereto; reenacting
29 s. 943.059(4)(c), relating to court-ordered sealing of

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30 criminal history records, to incorporate the
31 amendments made to s. 943.059, F.S., in a reference
32 thereto; providing an effective date.
33

34 Be It Enacted by the Legislature of the State of Florida:
35

36 Section 1. Subsection (2) of section 744.102, Florida
37 Statutes, is amended to read:

38 744.102 Definitions.—As used in this chapter, the term:

39 (2) "Audit" means a systematic review of financial and all
40 other documents to ensure compliance with s. 744.368, rules of
41 court, and local procedures using generally accepted accounting
42 principles. The term includes various practices that meet
43 professional standards, such as verifications, reviews of
44 substantiating papers and accounts, interviews, inspections, and
45 investigations.

46 Section 2. Subsection (1) of section 744.3135, Florida
47 Statutes, is amended to read:

48 744.3135 Credit and criminal investigation.—

49 (1) The court shall require all guardians who are seeking
50 appointment by the court, other than a corporate guardian as
51 described in s. 744.309(4) ~~may require a nonprofessional~~
52 guardian and shall require a professional or public guardian,
53 and all employees of a professional guardian, other than a
54 corporate guardian as described in s. 744.309(4), who have a
55 fiduciary responsibility to a ward, to submit, at their own
56 expense, to a ~~an investigation of the guardian's~~ credit history
57 investigation and to undergo level 2 background screening as
58 required under s. 435.04. If appointed, a nonprofessional

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59 guardian may petition the court for reimbursement of the
60 reasonable expenses of the credit history investigation and
61 background screening. ~~If a credit or criminal history record~~
62 ~~check is required,~~ The court must consider the results of any
63 investigation before appointing a guardian. At any time, the
64 court may require a guardian or the guardian's employees to
65 submit to an investigation of the person's credit history and
66 complete a level 1 background screening pursuant to ~~as set forth~~
67 ~~in~~ s. 435.03. The court shall consider the results of any
68 investigation in determining whether to reappoint ~~when~~
69 ~~reappointing~~ a guardian. The clerk of the court shall maintain a
70 file on each guardian appointed by the court and retain in the
71 file documentation of the result of any investigation conducted
72 under this section. A professional guardian shall ~~must~~ pay the
73 clerk of the court a fee of up to \$7.50 for handling and
74 processing professional guardian files.

75 Section 3. Subsections (5) through (7) are added to section
76 744.368, Florida Statutes, to read:

77 744.368 Responsibilities of the clerk of the circuit
78 court.—

79 (5) If the clerk has reason to believe further review is
80 appropriate, the clerk may request and review records and
81 documents that reasonably impact guardianship assets, including,
82 but not limited to, the beginning inventory balance and any fees
83 charged to the guardianship.

84 (6) If a guardian fails to produce records and documents to
85 the clerk upon request, the clerk may request the court to enter
86 an order pursuant to s. 744.3685(2) by filing an affidavit that
87 identifies the records and documents requested and shows good

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88 cause as to why the documents and records requested are needed
89 to complete the audit.

90 (7) Upon application to the court supported by an affidavit
91 pursuant to subsection (6), the clerk may issue subpoenas to
92 nonparties to compel production of books, papers, and other
93 documentary evidence. Before issuance of a subpoena by
94 affidavit, the clerk must serve notice on the guardian and the
95 ward, unless the ward is a minor or totally incapacitated, of
96 the intent to serve subpoenas to nonparties.

97 (a) The clerk must attach the affidavit and the proposed
98 subpoena to the notice to the guardian and, if appropriate, to
99 the ward, and must:

100 1. State the time, place, and method for production of the
101 documents or items, and the name and address of the person who
102 is to produce the documents or items, if known, or if not known,
103 a general description sufficient to identify the person or the
104 particular class or group to which the person belongs;

105 2. Include a designation of the items to be produced; and

106 3. State that the person who will be asked to produce the
107 documents or items has the right to object to the production
108 under this section and that the person is not required to
109 surrender the documents or items.

110 (b) A copy of the notice and proposed subpoena may not be
111 furnished to the person upon whom the subpoena is to be served.

112 (c) If the guardian or ward serves an objection to
113 production under this subsection within 10 days after service of
114 the notice, the documents or items may not be required to be
115 produced until resolution of the objection. If an objection is
116 not made within 10 days after service of the notice, the clerk

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117 may issue the subpoena to the nonparty. The court may shorten
118 the period within which a guardian or ward is required to file
119 an objection upon a showing by the clerk by affidavit that the
120 ward's property is in imminent danger of being wasted,
121 misappropriated, or lost unless immediate action is taken.

122 Section 4. Section 744.3685, Florida Statutes, is amended
123 to read:

124 744.3685 Order requiring guardianship report; contempt.—

125 (1) If ~~When~~ a guardian fails to file the guardianship
126 report, the court shall order the guardian to file the report
127 within 15 days after the service of the order upon her or him or
128 show cause why she or he ~~may should~~ not be compelled to do so.

129 (2) If a guardian fails to comply with the submission of
130 records and documents requested by the clerk during the audit,
131 upon a showing of good cause by affidavit of the clerk which
132 shows the reasons the records must be produced, the court may
133 order the guardian to produce the records and documents within a
134 period specified by the court unless the guardian shows good
135 cause as to why the guardian may not be compelled to do so
136 before the deadline specified by the court. The affidavit of the
137 clerk shall be served with the order.

138 (3) A copy of an ~~the~~ order entered pursuant to subsection
139 (1) or subsection (2) shall be served on the guardian or on the
140 guardian's resident agent. If the guardian fails to comply with
141 the order ~~file her or his report~~ within the time specified by
142 the order without good cause, the court may cite the guardian
143 for contempt of court and may fine her or him. The fine may not
144 be paid out of the ward's property.

145 Section 5. Subsection (21) is added to section 744.474,

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146 Florida Statutes, to read:

147 744.474 Reasons for removal of guardian.—A guardian may be
148 removed for any of the following reasons, and the removal shall
149 be in addition to any other penalties prescribed by law:

150 (21) A bad faith failure to submit guardianship records
151 during the audit pursuant to s. 744.368.

152 Section 6. Paragraph (a) of subsection (4) of section
153 943.0585, Florida Statutes, is amended, and paragraph (c) of
154 that subsection is reenacted, to read:

155 943.0585 Court-ordered expunction of criminal history
156 records.—The courts of this state have jurisdiction over their
157 own procedures, including the maintenance, expunction, and
158 correction of judicial records containing criminal history
159 information to the extent such procedures are not inconsistent
160 with the conditions, responsibilities, and duties established by
161 this section. Any court of competent jurisdiction may order a
162 criminal justice agency to expunge the criminal history record
163 of a minor or an adult who complies with the requirements of
164 this section. The court shall not order a criminal justice
165 agency to expunge a criminal history record until the person
166 seeking to expunge a criminal history record has applied for and
167 received a certificate of eligibility for expunction pursuant to
168 subsection (2). A criminal history record that relates to a
169 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
170 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
171 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
172 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
173 any violation specified as a predicate offense for registration
174 as a sexual predator pursuant to s. 775.21, without regard to

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175 whether that offense alone is sufficient to require such
176 registration, or for registration as a sexual offender pursuant
177 to s. 943.0435, may not be expunged, without regard to whether
178 adjudication was withheld, if the defendant was found guilty of
179 or pled guilty or nolo contendere to the offense, or if the
180 defendant, as a minor, was found to have committed, or pled
181 guilty or nolo contendere to committing, the offense as a
182 delinquent act. The court may only order expunction of a
183 criminal history record pertaining to one arrest or one incident
184 of alleged criminal activity, except as provided in this
185 section. The court may, at its sole discretion, order the
186 expunction of a criminal history record pertaining to more than
187 one arrest if the additional arrests directly relate to the
188 original arrest. If the court intends to order the expunction of
189 records pertaining to such additional arrests, such intent must
190 be specified in the order. A criminal justice agency may not
191 expunge any record pertaining to such additional arrests if the
192 order to expunge does not articulate the intention of the court
193 to expunge a record pertaining to more than one arrest. This
194 section does not prevent the court from ordering the expunction
195 of only a portion of a criminal history record pertaining to one
196 arrest or one incident of alleged criminal activity.

197 Notwithstanding any law to the contrary, a criminal justice
198 agency may comply with laws, court orders, and official requests
199 of other jurisdictions relating to expunction, correction, or
200 confidential handling of criminal history records or information
201 derived therefrom. This section does not confer any right to the
202 expunction of any criminal history record, and any request for
203 expunction of a criminal history record may be denied at the

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204 sole discretion of the court.

205 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any
206 criminal history record of a minor or an adult which is ordered
207 expunged by a court of competent jurisdiction pursuant to this
208 section must be physically destroyed or obliterated by any
209 criminal justice agency having custody of such record; except
210 that any criminal history record in the custody of the
211 department must be retained in all cases. A criminal history
212 record ordered expunged that is retained by the department is
213 confidential and exempt from the provisions of s. 119.07(1) and
214 s. 24(a), Art. I of the State Constitution and not available to
215 any person or entity except upon order of a court of competent
216 jurisdiction. A criminal justice agency may retain a notation
217 indicating compliance with an order to expunge.

218 (a) The person who is the subject of a criminal history
219 record that is expunged under this section or under other
220 provisions of law, including former s. 893.14, former s. 901.33,
221 and former s. 943.058, may lawfully deny or fail to acknowledge
222 the arrests covered by the expunged record, except when the
223 subject of the record:

- 224 1. Is a candidate for employment with a criminal justice
225 agency;
- 226 2. Is a defendant in a criminal prosecution;
- 227 3. Concurrently or subsequently petitions for relief under
228 this section, s. 943.0583, or s. 943.059;
- 229 4. Is a candidate for admission to The Florida Bar;
- 230 5. Is seeking to be employed or licensed by or to contract
231 with the Department of Children and Families, the Division of
232 Vocational Rehabilitation within the Department of Education,

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233 the Agency for Health Care Administration, the Agency for
234 Persons with Disabilities, the Department of Health, the
235 Department of Elderly Affairs, or the Department of Juvenile
236 Justice or to be employed or used by such contractor or licensee
237 in a sensitive position having direct contact with children, the
238 disabled, or the elderly; ~~or~~

239 6. Is seeking to be employed or licensed by the Department
240 of Education, any district school board, any university
241 laboratory school, any charter school, any private or parochial
242 school, or any local governmental entity that licenses child
243 care facilities; or.

244 7. Is seeking to be appointed as a guardian pursuant to s.
245 744.3125.

246 (c) Information relating to the existence of an expunged
247 criminal history record which is provided in accordance with
248 paragraph (a) is confidential and exempt from the provisions of
249 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
250 except that the department shall disclose the existence of a
251 criminal history record ordered expunged to the entities set
252 forth in subparagraphs (a)1., 4., 5., 6., and 7. for their
253 respective licensing, access authorization, and employment
254 purposes, and to criminal justice agencies for their respective
255 criminal justice purposes. It is unlawful for any employee of an
256 entity set forth in subparagraph (a)1., subparagraph (a)4.,
257 subparagraph (a)5., subparagraph (a)6., or subparagraph (a)7. to
258 disclose information relating to the existence of an expunged
259 criminal history record of a person seeking employment, access
260 authorization, or licensure with such entity or contractor,
261 except to the person to whom the criminal history record relates

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262 or to persons having direct responsibility for employment,
263 access authorization, or licensure decisions. Any person who
264 violates this paragraph commits a misdemeanor of the first
265 degree, punishable as provided in s. 775.082 or s. 775.083.

266 Section 7. Paragraph (a) of subsection (4) of section
267 943.059, Florida Statutes, is amended, and paragraph (c) of that
268 subsection is reenacted, to read:

269 943.059 Court-ordered sealing of criminal history records.—
270 The courts of this state shall continue to have jurisdiction
271 over their own procedures, including the maintenance, sealing,
272 and correction of judicial records containing criminal history
273 information to the extent such procedures are not inconsistent
274 with the conditions, responsibilities, and duties established by
275 this section. Any court of competent jurisdiction may order a
276 criminal justice agency to seal the criminal history record of a
277 minor or an adult who complies with the requirements of this
278 section. The court shall not order a criminal justice agency to
279 seal a criminal history record until the person seeking to seal
280 a criminal history record has applied for and received a
281 certificate of eligibility for sealing pursuant to subsection
282 (2). A criminal history record that relates to a violation of s.
283 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
284 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter
285 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.
286 916.1075, a violation enumerated in s. 907.041, or any violation
287 specified as a predicate offense for registration as a sexual
288 predator pursuant to s. 775.21, without regard to whether that
289 offense alone is sufficient to require such registration, or for
290 registration as a sexual offender pursuant to s. 943.0435, may

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

317 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal
318 history record of a minor or an adult which is ordered sealed by
319 a court of competent jurisdiction pursuant to this section is

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320 confidential and exempt from the provisions of s. 119.07(1) and
321 s. 24(a), Art. I of the State Constitution and is available only
322 to the person who is the subject of the record, to the subject's
323 attorney, to criminal justice agencies for their respective
324 criminal justice purposes, which include conducting a criminal
325 history background check for approval of firearms purchases or
326 transfers as authorized by state or federal law, to judges in
327 the state courts system for the purpose of assisting them in
328 their case-related decisionmaking responsibilities, as set forth
329 in s. 943.053(5), or to those entities set forth in
330 subparagraphs (a)1., 4., 5., 6., and 8. for their respective
331 licensing, access authorization, and employment purposes.

332 (a) The subject of a criminal history record sealed under
333 this section or under other provisions of law, including former
334 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
335 deny or fail to acknowledge the arrests covered by the sealed
336 record, except when the subject of the record:

- 337 1. Is a candidate for employment with a criminal justice
338 agency;
- 339 2. Is a defendant in a criminal prosecution;
- 340 3. Concurrently or subsequently petitions for relief under
341 this section, s. 943.0583, or s. 943.0585;
- 342 4. Is a candidate for admission to The Florida Bar;
- 343 5. Is seeking to be employed or licensed by or to contract
344 with the Department of Children and Families, the Division of
345 Vocational Rehabilitation within the Department of Education,
346 the Agency for Health Care Administration, the Agency for
347 Persons with Disabilities, the Department of Health, the
348 Department of Elderly Affairs, or the Department of Juvenile

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349 Justice or to be employed or used by such contractor or licensee
350 in a sensitive position having direct contact with children, the
351 disabled, or the elderly;

352 6. Is seeking to be employed or licensed by the Department
353 of Education, any district school board, any university
354 laboratory school, any charter school, any private or parochial
355 school, or any local governmental entity that licenses child
356 care facilities; ~~or~~

357 7. Is attempting to purchase a firearm from a licensed
358 importer, licensed manufacturer, or licensed dealer and is
359 subject to a criminal history check under state or federal law;
360 or-

361 8. Is seeking to be appointed as a guardian pursuant to s.
362 744.3125.

363 (c) Information relating to the existence of a sealed
364 criminal record provided in accordance with the provisions of
365 paragraph (a) is confidential and exempt from the provisions of
366 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
367 except that the department shall disclose the sealed criminal
368 history record to the entities set forth in subparagraphs (a)1.,
369 4., 5., 6., and 8. for their respective licensing, access
370 authorization, and employment purposes. It is unlawful for any
371 employee of an entity set forth in subparagraph (a)1.,
372 subparagraph (a)4., subparagraph (a)5., subparagraph (a)6., or
373 subparagraph (a)8. to disclose information relating to the
374 existence of a sealed criminal history record of a person
375 seeking employment, access authorization, or licensure with such
376 entity or contractor, except to the person to whom the criminal
377 history record relates or to persons having direct

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378 responsibility for employment, access authorization, or
379 licensure decisions. Any person who violates the provisions of
380 this paragraph commits a misdemeanor of the first degree,
381 punishable as provided in s. 775.082 or s. 775.083.

382 Section 8. This act shall take effect July 1, 2014.