

By the Committees on Judiciary; and 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 and documents relating to guardianship assets
13 and to issue subpoenas to nonparties upon application
14 to the court; providing requirements for affidavits,
15 notice, and subpoenas; providing for objection to a
16 subpoena; amending s. 744.3685, F.S.; authorizing the
17 court to require the production of records and
18 documents by a guardian who fails to submit them
19 during an audit; amending s. 744.474, F.S.; providing
20 for the removal of a guardian for a bad faith failure
21 to submit records during an audit; amending ss.
22 943.0585 and 943.059, F.S.; providing that a person
23 seeking an appointment as guardian may not lawfully
24 deny or fail to acknowledge the arrests covered by an
25 expunged or sealed record; reenacting s.
26 943.0585(4)(c), F.S., relating to court-ordered
27 expunction of criminal history records, to incorporate
28 the amendments made to s. 943.0585, F.S., in a
29 reference thereto; reenacting s. 943.059(4)(c), F.S.,

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

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

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

39 744.102 Definitions.—As used in this chapter, the term:
40 (2) "Audit" means a systematic review of financial and all other
41 documents to ensure compliance with s. 744.368, rules of court,
42 and local procedures using generally accepted accounting
43 principles. The term includes various practices that meet
44 professional audit standards, such as verifications, reviews of
45 substantiating papers and accounts, interviews, inspections, and
46 investigations.

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

49 744.3135 Credit and criminal investigation.—
50 (1) The court shall require all persons who are seeking
51 appointment by the court, other than a corporate guardian as
52 described in s. 744.309(4) ~~may require a nonprofessional~~
53 guardian and shall require a professional or public guardian,
54 and all employees of a professional guardian, other than a
55 corporate guardian as described in s. 744.309(4), who have a
56 fiduciary responsibility to a ward, to submit, at their own
57 expense, to a ~~an investigation of the guardian's~~ credit history
58 investigation and to undergo level 2 background screening as

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59 required under s. 435.04. If appointed, a nonprofessional
60 guardian may petition the court for reimbursement of the
61 reasonable expenses of the credit history investigation and
62 background screening. ~~If a credit or criminal history record~~
63 ~~check is required,~~ The court must consider the results of any
64 investigation before appointing a guardian. At any time, the
65 court may require a guardian or the guardian's employees to
66 submit to an investigation of the person's credit history and
67 complete a level 1 background screening pursuant to as set forth
68 ~~in~~ s. 435.03. The court shall consider the results of any
69 investigation in determining whether to reappoint when
70 ~~reappointing~~ a guardian. The clerk of the court shall maintain a
71 file on each guardian appointed by the court and retain in the
72 file documentation of the result of any investigation conducted
73 under this section. A professional guardian shall ~~must~~ pay the
74 clerk of the court a fee of up to \$7.50 for handling and
75 processing professional guardian files.

76 Section 3. Subsections (5) through (7) are added to section
77 744.368, Florida Statutes, to read:

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

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

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

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88 identifies the records or documents requested and shows good
89 cause as to why the records or documents requested should be
90 produced.

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

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

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

106 2. Include a designation of the records or documents to be
107 produced; and

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

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

114 (c) If the guardian or ward serves an objection to
115 production under this subsection within 10 days after service of
116 the notice, the records or documents may not be required to be

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117 produced until resolution of the objection. If an objection is
118 not made within 10 days after service of the notice, the clerk
119 may issue the subpoena to the nonparty. The court may shorten
120 the period within which a guardian or ward must file an
121 objection if the clerk's affidavit shows that the ward's
122 property is in danger of being wasted, misappropriated, or lost
123 unless immediate action is taken.

124 Section 4. Section 744.3685, Florida Statutes, is amended
125 to read:

126 744.3685 Order requiring guardianship report; contempt.—

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

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

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

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146 be paid out of the ward's property.

147 Section 5. Subsection (21) is added to section 744.474,
148 Florida Statutes, to read:

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

152 (21) The failure in bad faith to submit a guardianship
153 record during the audit pursuant to s. 744.368.

154 Section 6. Paragraph (a) of subsection (4) of section
155 943.0585, Florida Statutes, is amended, and paragraph (c) of
156 that subsection is reenacted, to read:

157 943.0585 Court-ordered expunction of criminal history
158 records.—The courts of this state have jurisdiction over their
159 own procedures, including the maintenance, expunction, and
160 correction of judicial records containing criminal history
161 information to the extent such procedures are not inconsistent
162 with the conditions, responsibilities, and duties established by
163 this section. Any court of competent jurisdiction may order a
164 criminal justice agency to expunge the criminal history record
165 of a minor or an adult who complies with the requirements of
166 this section. The court shall not order a criminal justice
167 agency to expunge a criminal history record until the person
168 seeking to expunge a criminal history record has applied for and
169 received a certificate of eligibility for expunction pursuant to
170 subsection (2). A criminal history record that relates to a
171 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
172 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
173 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
174 893.135, s. 916.1075, a violation enumerated in s. 907.041, or

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175 any violation specified as a predicate offense for registration
176 as a sexual predator pursuant to s. 775.21, without regard to
177 whether that offense alone is sufficient to require such
178 registration, or for registration as a sexual offender pursuant
179 to s. 943.0435, may not be expunged, without regard to whether
180 adjudication was withheld, if the defendant was found guilty of
181 or pled guilty or nolo contendere to the offense, or if the
182 defendant, as a minor, was found to have committed, or pled
183 guilty or nolo contendere to committing, the offense as a
184 delinquent act. The court may only order expunction of a
185 criminal history record pertaining to one arrest or one incident
186 of alleged criminal activity, except as provided in this
187 section. The court may, at its sole discretion, order the
188 expunction of a criminal history record pertaining to more than
189 one arrest if the additional arrests directly relate to the
190 original arrest. If the court intends to order the expunction of
191 records pertaining to such additional arrests, such intent must
192 be specified in the order. A criminal justice agency may not
193 expunge any record pertaining to such additional arrests if the
194 order to expunge does not articulate the intention of the court
195 to expunge a record pertaining to more than one arrest. This
196 section does not prevent the court from ordering the expunction
197 of only a portion of a criminal history record pertaining to one
198 arrest or one incident of alleged criminal activity.
199 Notwithstanding any law to the contrary, a criminal justice
200 agency may comply with laws, court orders, and official requests
201 of other jurisdictions relating to expunction, correction, or
202 confidential handling of criminal history records or information
203 derived therefrom. This section does not confer any right to the

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204 expunction of any criminal history record, and any request for
205 expunction of a criminal history record may be denied at the
206 sole discretion of the court.

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

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

- 226 1. Is a candidate for employment with a criminal justice
227 agency;
- 228 2. Is a defendant in a criminal prosecution;
- 229 3. Concurrently or subsequently petitions for relief under
230 this section, s. 943.0583, or s. 943.059;
- 231 4. Is a candidate for admission to The Florida Bar;
- 232 5. Is seeking to be employed or licensed by or to contract

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

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

246 7. Is seeking to be appointed as a guardian pursuant to s.
247 744.3125.

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

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262 authorization, or licensure with such entity or contractor,
263 except to the person to whom the criminal history record relates
264 or to persons having direct responsibility for employment,
265 access authorization, or licensure decisions. Any person who
266 violates this paragraph commits a misdemeanor of the first
267 degree, punishable as provided in s. 775.082 or s. 775.083.

268 Section 7. Paragraph (a) of subsection (4) of section
269 943.059, Florida Statutes, is amended, and paragraph (c) of that
270 subsection is reenacted, to read:

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

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

319 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal

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

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

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

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349 Persons with Disabilities, the Department of Health, the
350 Department of Elderly Affairs, or the Department of Juvenile
351 Justice or to be employed or used by such contractor or licensee
352 in a sensitive position having direct contact with children, the
353 disabled, or the elderly;

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

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

363 8. Is seeking to be appointed as a guardian pursuant to s.
364 744.3125.

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

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378 entity or contractor, except to the person to whom the criminal
379 history record relates or to persons having direct
380 responsibility for employment, access authorization, or
381 licensure decisions. Any person who violates the provisions of
382 this paragraph commits a misdemeanor of the first degree,
383 punishable as provided in s. 775.082 or s. 775.083.

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