

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
 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. On petition by any interested person
 59 or on the court's own motion, the court may waive the
 60 requirement of a credit history investigation or a level 2
 61 background screening, or both. If appointed, a nonprofessional
 62 guardian may petition the court for reimbursement of the
 63 reasonable expenses of the credit history investigation and
 64 background screening. If a credit or criminal history record
 65 ~~check is required,~~ The court must consider the results of any
 66 investigation before appointing a guardian. At any time, the
 67 court may require a guardian or the guardian's employees to
 68 submit to an investigation of the person's credit history and
 69 complete a level 1 or 2 background screening pursuant to ~~as set~~
 70 ~~forth in~~ s. 435.03. The court shall consider the results of any
 71 investigation in determining whether to reappoint ~~when~~
 72 ~~reappointing~~ a guardian. The clerk of the court shall maintain a
 73 file on each guardian appointed by the court and retain in the
 74 file documentation of the result of any investigation conducted
 75 under this section. A professional guardian shall ~~must~~ pay the
 76 clerk of the court a fee of up to \$7.50 for handling and
 77 processing professional guardian files.

78 Section 3. Subsections (5) through (7) are added to

79 section 744.368, Florida Statutes, to read:

80 744.368 Responsibilities of the clerk of the circuit
81 court.—

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

87 (6) If a guardian fails to produce records and documents
88 to the clerk upon request, the clerk may request the court to
89 enter an order pursuant to s. 744.3685(2) by filing an affidavit
90 that identifies the records and documents requested and shows
91 good cause as to why the documents and records requested are
92 needed to complete the audit.

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

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

103 1. State the time, place, and method for production of the
104 documents or items, and the name and address of the person who

105 is to produce the documents or items, if known, or if not known,
 106 a general description sufficient to identify the person or the
 107 particular class or group to which the person belongs;

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

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

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

115 (c) If the guardian or ward serves an objection to
 116 production under this subsection within 10 days after service of
 117 the notice, the documents or items may not be required to be
 118 produced until resolution of the objection. If an objection is
 119 not made within 10 days after service of the notice, the clerk
 120 may issue the subpoena to the nonparty. The court may shorten
 121 the period within which a guardian or ward is required to file
 122 an objection upon a showing by the clerk by affidavit that the
 123 ward's property is in imminent danger of being wasted,
 124 misappropriated, or lost unless immediate action is taken.

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

127 744.3685 Order requiring guardianship report; contempt.—

128 (1) If ~~when~~ a guardian fails to file the guardianship
 129 report, the court shall order the guardian to file the report
 130 within 15 days after the service of the order upon her or him or

131 show cause why she or he may ~~should~~ not be compelled to do so.

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

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

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

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

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

155 Section 6. Paragraph (a) of subsection (4) of section
 156 943.0585, Florida Statutes, is amended, and paragraph (c) of

157 that subsection is reenacted, to read:

158 943.0585 Court-ordered expunction of criminal history

159 records.—The courts of this state have jurisdiction over their

160 own procedures, including the maintenance, expunction, and

161 correction of judicial records containing criminal history

162 information to the extent such procedures are not inconsistent

163 with the conditions, responsibilities, and duties established by

164 this section. Any court of competent jurisdiction may order a

165 criminal justice agency to expunge the criminal history record

166 of a minor or an adult who complies with the requirements of

167 this section. The court shall not order a criminal justice

168 agency to expunge a criminal history record until the person

169 seeking to expunge a criminal history record has applied for and

170 received a certificate of eligibility for expunction pursuant to

171 subsection (2). A criminal history record that relates to a

172 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,

173 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.

174 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.

175 893.135, s. 916.1075, a violation enumerated in s. 907.041, or

176 any violation specified as a predicate offense for registration

177 as a sexual predator pursuant to s. 775.21, without regard to

178 whether that offense alone is sufficient to require such

179 registration, or for registration as a sexual offender pursuant

180 to s. 943.0435, may not be expunged, without regard to whether

181 adjudication was withheld, if the defendant was found guilty of

182 or pled guilty or nolo contendere to the offense, or if the

183 defendant, as a minor, was found to have committed, or pled
 184 guilty or nolo contendere to committing, the offense as a
 185 delinquent act. The court may only order expunction of a
 186 criminal history record pertaining to one arrest or one incident
 187 of alleged criminal activity, except as provided in this
 188 section. The court may, at its sole discretion, order the
 189 expunction of a criminal history record pertaining to more than
 190 one arrest if the additional arrests directly relate to the
 191 original arrest. If the court intends to order the expunction of
 192 records pertaining to such additional arrests, such intent must
 193 be specified in the order. A criminal justice agency may not
 194 expunge any record pertaining to such additional arrests if the
 195 order to expunge does not articulate the intention of the court
 196 to expunge a record pertaining to more than one arrest. This
 197 section does not prevent the court from ordering the expunction
 198 of only a portion of a criminal history record pertaining to one
 199 arrest or one incident of alleged criminal activity.
 200 Notwithstanding any law to the contrary, a criminal justice
 201 agency may comply with laws, court orders, and official requests
 202 of other jurisdictions relating to expunction, correction, or
 203 confidential handling of criminal history records or information
 204 derived therefrom. This section does not confer any right to the
 205 expunction of any criminal history record, and any request for
 206 expunction of a criminal history record may be denied at the
 207 sole discretion of the court.

208 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any

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

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

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

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

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

247 7. Is seeking to be appointed as a guardian pursuant to s.
 248 744.3125.

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

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

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

272 943.059 Court-ordered sealing of criminal history
 273 records.—The courts of this state shall continue to have
 274 jurisdiction over their own procedures, including the
 275 maintenance, sealing, and correction of judicial records
 276 containing criminal history information to the extent such
 277 procedures are not inconsistent with the conditions,
 278 responsibilities, and duties established by this section. Any
 279 court of competent jurisdiction may order a criminal justice
 280 agency to seal the criminal history record of a minor or an
 281 adult who complies with the requirements of this section. The
 282 court shall not order a criminal justice agency to seal a
 283 criminal history record until the person seeking to seal a
 284 criminal history record has applied for and received a
 285 certificate of eligibility for sealing pursuant to subsection
 286 (2). A criminal history record that relates to a violation of s.

287 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
 288 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter
 289 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.
 290 916.1075, a violation enumerated in s. 907.041, or any violation
 291 specified as a predicate offense for registration as a sexual
 292 predator pursuant to s. 775.21, without regard to whether that
 293 offense alone is sufficient to require such registration, or for
 294 registration as a sexual offender pursuant to s. 943.0435, may
 295 not be sealed, without regard to whether adjudication was
 296 withheld, if the defendant was found guilty of or pled guilty or
 297 nolo contendere to the offense, or if the defendant, as a minor,
 298 was found to have committed or pled guilty or nolo contendere to
 299 committing the offense as a delinquent act. The court may only
 300 order sealing of a criminal history record pertaining to one
 301 arrest or one incident of alleged criminal activity, except as
 302 provided in this section. The court may, at its sole discretion,
 303 order the sealing of a criminal history record pertaining to
 304 more than one arrest if the additional arrests directly relate
 305 to the original arrest. If the court intends to order the
 306 sealing of records pertaining to such additional arrests, such
 307 intent must be specified in the order. A criminal justice agency
 308 may not seal any record pertaining to such additional arrests if
 309 the order to seal does not articulate the intention of the court
 310 to seal records pertaining to more than one arrest. This section
 311 does not prevent the court from ordering the sealing of only a
 312 portion of a criminal history record pertaining to one arrest or

313 one incident of alleged criminal activity. Notwithstanding any
 314 law to the contrary, a criminal justice agency may comply with
 315 laws, court orders, and official requests of other jurisdictions
 316 relating to sealing, correction, or confidential handling of
 317 criminal history records or information derived therefrom. This
 318 section does not confer any right to the sealing of any criminal
 319 history record, and any request for sealing a criminal history
 320 record may be denied at the sole discretion of the court.

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

336 (a) The subject of a criminal history record sealed under
 337 this section or under other provisions of law, including former
 338 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully

339 deny or fail to acknowledge the arrests covered by the sealed
 340 record, except when the subject of the record:
 341 1. Is a candidate for employment with a criminal justice
 342 agency;
 343 2. Is a defendant in a criminal prosecution;
 344 3. Concurrently or subsequently petitions for relief under
 345 this section, s. 943.0583, or s. 943.0585;
 346 4. Is a candidate for admission to The Florida Bar;
 347 5. Is seeking to be employed or licensed by or to contract
 348 with the Department of Children and Families, the Division of
 349 Vocational Rehabilitation within the Department of Education,
 350 the Agency for Health Care Administration, the Agency for
 351 Persons with Disabilities, the Department of Health, the
 352 Department of Elderly Affairs, or the Department of Juvenile
 353 Justice or to be employed or used by such contractor or licensee
 354 in a sensitive position having direct contact with children, the
 355 disabled, or the elderly;
 356 6. Is seeking to be employed or licensed by the Department
 357 of Education, any district school board, any university
 358 laboratory school, any charter school, any private or parochial
 359 school, or any local governmental entity that licenses child
 360 care facilities; ~~or~~
 361 7. Is attempting to purchase a firearm from a licensed
 362 importer, licensed manufacturer, or licensed dealer and is
 363 subject to a criminal history check under state or federal law;
 364 or-

365 8. Is seeking to be appointed as a guardian pursuant to s.
366 744.3125.

367 (c) Information relating to the existence of a sealed
368 criminal record provided in accordance with the provisions of
369 paragraph (a) is confidential and exempt from the provisions of
370 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
371 except that the department shall disclose the sealed criminal
372 history record to the entities set forth in subparagraphs (a)1.,
373 4., 5., 6., and 8. for their respective licensing, access
374 authorization, and employment purposes. It is unlawful for any
375 employee of an entity set forth in subparagraph (a)1.,
376 subparagraph (a)4., subparagraph (a)5., subparagraph (a)6., or
377 subparagraph (a)8. to disclose information relating to the
378 existence of a sealed criminal history record of a person
379 seeking employment, access authorization, or licensure with such
380 entity or contractor, except to the person to whom the criminal
381 history record relates or to persons having direct
382 responsibility for employment, access authorization, or
383 licensure decisions. Any person who violates the provisions of
384 this paragraph commits a misdemeanor of the first degree,
385 punishable as provided in s. 775.082 or s. 775.083.

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