

By the Committee on Judiciary; and Senator Evers

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1 A bill to be entitled
2 An act relating to the threatened use of force;
3 providing legislative findings and intent; amending s.
4 775.087, F.S.; removing aggravated assault from the
5 list of offenses that qualify for certain minimum
6 mandatory sentences; amending s. 776.012, F.S.;
7 applying provisions relating to the use of force in
8 defense of persons to the threatened use of force;
9 amending s. 776.013, F.S.; applying presumption
10 relating to the use of deadly force to the threatened
11 use of deadly force in the defense of a residence and
12 similar circumstances; applying provisions relating to
13 such use of force to the threatened use of force;
14 amending s. 776.031, F.S.; applying provisions
15 relating to the use of force in defense of property to
16 the threatened use of force; amending s. 776.032,
17 F.S.; applying immunity provisions that relate to the
18 use of force to the threatened use of force; amending
19 s. 776.041, F.S.; applying provisions relating to the
20 use of force by an aggressor to the threatened use of
21 force; providing exceptions; amending s. 776.051,
22 F.S.; providing that a person is not justified in the
23 threatened use of force to resist an arrest by a law
24 enforcement officer; creating s. 776.09, F.S.;
25 providing that a person is eligible to apply for a
26 certificate of eligibility for expunction,
27 notwithstanding the eligibility requirements, if the
28 charging document in the case is not filed or is
29 dismissed because it is found that the person acted in

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30 lawful self-defense pursuant to the provisions related
31 to the justifiable use of force in ch. 776, F.S.;
32 requiring a prosecutor, statewide prosecutor, or court
33 to document and retain such findings; amending s.
34 943.0585, F.S.; requiring the Department of Law
35 Enforcement to provide a certificate of eligibility
36 for expunction, notwithstanding the eligibility
37 requirements, to a person who has a written, certified
38 statement from a prosecutor or statewide prosecutor
39 indicating that the charging document in the case was
40 not filed or was dismissed because it was found that
41 the person acted in lawful self-defense pursuant to
42 the provisions related to the justifiable use of force
43 in ch. 776, F.S.; providing a penalty for knowingly
44 providing false information on a sworn statement;
45 providing applicability; requiring the department to
46 adopt rules; providing an effective date.

47
48 Be It Enacted by the Legislature of the State of Florida:

49
50 Section 1. (1) The Legislature finds that persons have been
51 criminally prosecuted and have been sentenced to mandatory
52 minimum terms of imprisonment pursuant to s. 775.087, Florida
53 Statutes, for threatening to use force in a manner and under
54 circumstances that would have been justifiable under chapter
55 776, Florida Statutes, had force actually been used.

56 (2) The Legislature intends to:

57 (a) Provide criminal and civil immunity to those who
58 threaten to use force if the threat was made in a manner and

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59 under circumstances that would have been immune under chapter
60 776, Florida Statutes, had force actually been used.

61 (b) Clarify that those who threaten to use force may claim
62 self-defense if the threat was made in a manner and under
63 circumstances that would have been justifiable under chapter
64 776, Florida Statutes, had force actually been used.

65 (c) Ensure that those who threaten to use force in a manner
66 and under circumstances that are justifiable under chapter 776,
67 Florida Statutes, are not sentenced to a mandatory minimum term
68 of imprisonment pursuant to s. 775.087, Florida Statutes.

69 (d) Encourage those who have been sentenced to a mandatory
70 minimum term of imprisonment pursuant to s. 775.087, Florida
71 Statutes, for threatening to use force in a manner and under
72 circumstances that are justifiable under chapter 776, Florida
73 Statutes, to apply for executive clemency.

74 Section 2. Paragraph (a) of subsection (2) and paragraph
75 (a) of subsection (3) of section 775.087, Florida Statutes, are
76 amended to read:

77 775.087 Possession or use of weapon; aggravated battery;
78 felony reclassification; minimum sentence.—

79 (2) (a) 1. Any person who is convicted of a felony or an
80 attempt to commit a felony, regardless of whether the use of a
81 weapon is an element of the felony, and the conviction was for:

- 82 a. Murder;
- 83 b. Sexual battery;
- 84 c. Robbery;
- 85 d. Burglary;
- 86 e. Arson;
- 87 ~~f. Aggravated assault;~~

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88 ~~f.g.~~ Aggravated battery;
 89 ~~g.h.~~ Kidnapping;
 90 ~~h.i.~~ Escape;
 91 ~~i.j.~~ Aircraft piracy;
 92 ~~j.k.~~ Aggravated child abuse;
 93 ~~k.l.~~ Aggravated abuse of an elderly person or disabled
 94 adult;
 95 ~~l.m.~~ Unlawful throwing, placing, or discharging of a
 96 destructive device or bomb;
 97 ~~m.n.~~ Carjacking;
 98 ~~n.o.~~ Home-invasion robbery;
 99 ~~o.p.~~ Aggravated stalking;
 100 ~~p.q.~~ Trafficking in cannabis, trafficking in cocaine,
 101 capital importation of cocaine, trafficking in illegal drugs,
 102 capital importation of illegal drugs, trafficking in
 103 phencyclidine, capital importation of phencyclidine, trafficking
 104 in methaqualone, capital importation of methaqualone,
 105 trafficking in amphetamine, capital importation of amphetamine,
 106 trafficking in flunitrazepam, trafficking in gamma-
 107 hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol,
 108 trafficking in Phenethylamines, or other violation of s.
 109 893.135(1); or
 110 ~~q.r.~~ Possession of a firearm by a felon
 111
 112 and during the commission of the offense, such person actually
 113 possessed a "firearm" or "destructive device" as those terms are
 114 defined in s. 790.001, shall be sentenced to a minimum term of
 115 imprisonment of 10 years, except that a person who is convicted
 116 for ~~aggravated assault~~, possession of a firearm by a felon, or

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117 burglary of a conveyance shall be sentenced to a minimum term of
118 imprisonment of 3 years if such person possessed a "firearm" or
119 "destructive device" during the commission of the offense.
120 However, if an offender who is convicted of the offense of
121 possession of a firearm by a felon has a previous conviction of
122 committing or attempting to commit a felony listed in s.
123 775.084(1)(b)1. and actually possessed a firearm or destructive
124 device during the commission of the prior felony, the offender
125 shall be sentenced to a minimum term of imprisonment of 10
126 years.

127 2. Any person who is convicted of a felony or an attempt to
128 commit a felony listed in sub-subparagraphs (a)1.a.-~~p.4.~~,
129 regardless of whether the use of a weapon is an element of the
130 felony, and during the course of the commission of the felony
131 such person discharged a "firearm" or "destructive device" as
132 defined in s. 790.001 shall be sentenced to a minimum term of
133 imprisonment of 20 years.

134 3. Any person who is convicted of a felony or an attempt to
135 commit a felony listed in sub-subparagraphs (a)1.a.-~~p.4.~~,
136 regardless of whether the use of a weapon is an element of the
137 felony, and during the course of the commission of the felony
138 such person discharged a "firearm" or "destructive device" as
139 defined in s. 790.001 and, as the result of the discharge, death
140 or great bodily harm was inflicted upon any person, the
141 convicted person shall be sentenced to a minimum term of
142 imprisonment of not less than 25 years and not more than a term
143 of imprisonment of life in prison.

144 (3)(a)1. Any person who is convicted of a felony or an
145 attempt to commit a felony, regardless of whether the use of a

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146 firearm is an element of the felony, and the conviction was for:

147 a. Murder;

148 b. Sexual battery;

149 c. Robbery;

150 d. Burglary;

151 e. Arson;

152 ~~f. Aggravated assault;~~

153 f.g. Aggravated battery;

154 g.h. Kidnapping;

155 h.i. Escape;

156 i.j. Sale, manufacture, delivery, or intent to sell,

157 manufacture, or deliver any controlled substance;

158 j.k. Aircraft piracy;

159 k.l. Aggravated child abuse;

160 l.m. Aggravated abuse of an elderly person or disabled

161 adult;

162 m.n. Unlawful throwing, placing, or discharging of a

163 destructive device or bomb;

164 n.o. Carjacking;

165 o.p. Home-invasion robbery;

166 p.q. Aggravated stalking; or

167 q.r. Trafficking in cannabis, trafficking in cocaine,

168 capital importation of cocaine, trafficking in illegal drugs,

169 capital importation of illegal drugs, trafficking in

170 phencyclidine, capital importation of phencyclidine, trafficking

171 in methaqualone, capital importation of methaqualone,

172 trafficking in amphetamine, capital importation of amphetamine,

173 trafficking in flunitrazepam, trafficking in gamma-

174 hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol,

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175 trafficking in Phenethylamines, or other violation of s.
176 893.135(1);

177
178 and during the commission of the offense, such person possessed
179 a semiautomatic firearm and its high-capacity detachable box
180 magazine or a machine gun as defined in s. 790.001, shall be
181 sentenced to a minimum term of imprisonment of 15 years.

182 2. Any person who is convicted of a felony or an attempt to
183 commit a felony listed in subparagraph (a)1., regardless of
184 whether the use of a weapon is an element of the felony, and
185 during the course of the commission of the felony such person
186 discharged a semiautomatic firearm and its high-capacity box
187 magazine or a "machine gun" as defined in s. 790.001 shall be
188 sentenced to a minimum term of imprisonment of 20 years.

189 3. Any person who is convicted of a felony or an attempt to
190 commit a felony listed in subparagraph (a)1., regardless of
191 whether the use of a weapon is an element of the felony, and
192 during the course of the commission of the felony such person
193 discharged a semiautomatic firearm and its high-capacity box
194 magazine or a "machine gun" as defined in s. 790.001 and, as the
195 result of the discharge, death or great bodily harm was
196 inflicted upon any person, the convicted person shall be
197 sentenced to a minimum term of imprisonment of not less than 25
198 years and not more than a term of imprisonment of life in
199 prison.

200 Section 3. Section 776.012, Florida Statutes, is amended to
201 read:

202 776.012 Use or threatened use of force in defense of
203 person.—A person is justified in using force, except deadly

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204 force, or threatening to use force against another when and to
205 the extent that the person reasonably believes that such conduct
206 is necessary to defend himself or herself or another against the
207 other's imminent use of unlawful force. However, a person is
208 justified in using or threatening to use ~~the use of~~ deadly force
209 and does not have a duty to retreat if:

210 (1) He or she reasonably believes that such force is
211 necessary to prevent imminent death or great bodily harm to
212 himself or herself or another or to prevent the imminent
213 commission of a forcible felony; or

214 (2) Under those circumstances permitted pursuant to s.
215 776.013.

216 Section 4. Section 776.013, Florida Statutes, is amended to
217 read:

218 776.013 Home protection; use or threatened use of deadly
219 force; presumption of fear of death or great bodily harm.—

220 (1) A person is presumed to have held a reasonable fear of
221 imminent peril of death or great bodily harm to himself or
222 herself or another when using or threatening to use defensive
223 force that is intended or likely to cause death or great bodily
224 harm to another if:

225 (a) The person against whom the defensive force was used or
226 threatened was in the process of unlawfully and forcefully
227 entering, or had unlawfully and forcibly entered, a dwelling,
228 residence, or occupied vehicle, or if that person had removed or
229 was attempting to remove another against that person's will from
230 the dwelling, residence, or occupied vehicle; and

231 (b) The person who uses or threatens to use defensive force
232 knew or had reason to believe that an unlawful and forcible

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233 entry or unlawful and forcible act was occurring or had
234 occurred.

235 (2) The presumption set forth in subsection (1) does not
236 apply if:

237 (a) The person against whom the defensive force is used or
238 threatened has the right to be in or is a lawful resident of the
239 dwelling, residence, or vehicle, such as an owner, lessee, or
240 titleholder, and there is not an injunction for protection from
241 domestic violence or a written pretrial supervision order of no
242 contact against that person; or

243 (b) The person or persons sought to be removed is a child
244 or grandchild, or is otherwise in the lawful custody or under
245 the lawful guardianship of, the person against whom the
246 defensive force is used or threatened; or

247 (c) The person who uses or threatens to use defensive force
248 is engaged in an unlawful activity or is using the dwelling,
249 residence, or occupied vehicle to further an unlawful activity;
250 or

251 (d) The person against whom the defensive force is used or
252 threatened is a law enforcement officer, as defined in s.
253 943.10(14), who enters or attempts to enter a dwelling,
254 residence, or vehicle in the performance of his or her official
255 duties and the officer identified himself or herself in
256 accordance with any applicable law or the person using or
257 threatening to use force knew or reasonably should have known
258 that the person entering or attempting to enter was a law
259 enforcement officer.

260 (3) A person who is not engaged in an unlawful activity and
261 who is attacked in any other place where he or she has a right

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262 to be has no duty to retreat and has the right to stand his or
263 her ground and use or threaten to use ~~meet force with~~ force,
264 including deadly force if he or she reasonably believes it is
265 necessary to do so to prevent death or great bodily harm to
266 himself or herself or another or to prevent the commission of a
267 forcible felony.

268 (4) A person who unlawfully and by force enters or attempts
269 to enter a person's dwelling, residence, or occupied vehicle is
270 presumed to be doing so with the intent to commit an unlawful
271 act involving force or violence.

272 (5) As used in this section, the term:

273 (a) "Dwelling" means a building or conveyance of any kind,
274 including any attached porch, whether the building or conveyance
275 is temporary or permanent, mobile or immobile, which has a roof
276 over it, including a tent, and is designed to be occupied by
277 people lodging therein at night.

278 (b) "Residence" means a dwelling in which a person resides
279 either temporarily or permanently or is visiting as an invited
280 guest.

281 (c) "Vehicle" means a conveyance of any kind, whether or
282 not motorized, which is designed to transport people or
283 property.

284 Section 5. Section 776.031, Florida Statutes, is amended to
285 read:

286 776.031 Use or threatened use of force in defense of
287 property ~~others~~.—A person is justified in using ~~the use of~~
288 force, except deadly force, or threatening to use force against
289 another when and to the extent that the person reasonably
290 believes that such conduct is necessary to prevent or terminate

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291 the other's trespass on, or other tortious or criminal
292 interference with, either real property other than a dwelling or
293 personal property, lawfully in his or her possession or in the
294 possession of another who is a member of his or her immediate
295 family or household or of a person whose property he or she has
296 a legal duty to protect. However, a ~~the~~ person is justified in
297 using ~~the use of~~ deadly force only if he or she reasonably
298 believes that such conduct ~~force~~ is necessary to prevent the
299 imminent commission of a forcible felony. A person does not have
300 a duty to retreat if the person is in a place where he or she
301 has a right to be.

302 Section 6. Section 776.032, Florida Statutes, is amended to
303 read:

304 776.032 Immunity from criminal prosecution and civil action
305 for justifiable use or threatened use of force.-

306 (1) A person who uses or threatens to use force as
307 permitted in s. 776.012, s. 776.013, or s. 776.031 is justified
308 in using such conduct ~~force~~ and is immune from criminal
309 prosecution and civil action for the use or threatened use of
310 such force, unless the person against whom force was used or
311 threatened is a law enforcement officer, as defined in s.
312 943.10(14), who was acting in the performance of his or her
313 official duties and the officer identified himself or herself in
314 accordance with any applicable law or the person using or
315 threatening to use force knew or reasonably should have known
316 that the person was a law enforcement officer. As used in this
317 subsection, the term "criminal prosecution" includes arresting,
318 detaining in custody, and charging or prosecuting the defendant.

319 (2) A law enforcement agency may use standard procedures

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320 for investigating the use or threatened use of force as
321 described in subsection (1), but the agency may not arrest the
322 person for using or threatening to use force unless it
323 determines that there is probable cause that the force that was
324 used or threatened was unlawful.

325 (3) The court shall award reasonable attorney's fees, court
326 costs, compensation for loss of income, and all expenses
327 incurred by the defendant in defense of any civil action brought
328 by a plaintiff if the court finds that the defendant is immune
329 from prosecution as provided in subsection (1).

330 Section 7. Section 776.041, Florida Statutes, is amended to
331 read:

332 776.041 Use or threatened use of force by aggressor.—The
333 justification described in the preceding sections of this
334 chapter is not available to a person who:

335 (1) Is attempting to commit, committing, or escaping after
336 the commission of, a forcible felony; or

337 (2) Initially provokes the use or threatened use of force
338 against himself or herself, unless:

339 (a) Such force or threat of force is so great that the
340 person reasonably believes that he or she is in imminent danger
341 of death or great bodily harm and that he or she has exhausted
342 every reasonable means to escape such danger other than the use
343 or threatened use of force which is likely to cause death or
344 great bodily harm to the assailant; or

345 (b) In good faith, the person withdraws from physical
346 contact with the assailant and indicates clearly to the
347 assailant that he or she desires to withdraw and terminate the
348 use or threatened use of force, but the assailant continues or

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349 resumes the use or threatened use of force.

350 Section 8. Section 776.051, Florida Statutes, is amended to
351 read:

352 776.051 Use or threatened use of force in resisting arrest
353 or making an arrest or in the execution of a legal duty;
354 prohibition.—

355 (1) A person is not justified in the use or threatened use
356 of force to resist an arrest by a law enforcement officer, or to
357 resist a law enforcement officer who is engaged in the execution
358 of a legal duty, if the law enforcement officer was acting in
359 good faith and he or she is known, or reasonably appears, to be
360 a law enforcement officer.

361 (2) A law enforcement officer, or any person whom the
362 officer has summoned or directed to assist him or her, is not
363 justified in the use of force if the arrest or execution of a
364 legal duty is unlawful and known by him or her to be unlawful.

365 Section 9. Section 776.09, Florida Statutes, is created to
366 read:

367 776.09 Retention of records pertaining to persons found to
368 be acting in lawful self-defense; expunction of related criminal
369 history records.—

370 (1) Whenever the state attorney or statewide prosecutor
371 dismisses an information, indictment, or other charging
372 document, or decides not to file an information, indictment, or
373 other charging document, because of a finding that the person
374 accused acted in lawful self-defense pursuant to the provisions
375 related to the justifiable use of force in chapter 776, that
376 finding shall be documented in writing and retained in the files
377 of the state attorney or statewide prosecutor.

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378 (2) Whenever a court dismisses an information, indictment,
379 or other charging document because of a finding that the person
380 accused acted in lawful self-defense pursuant to the provisions
381 related to the justifiable use of force in chapter 776, that
382 finding shall be recorded in an order or memorandum, which shall
383 be retained in the court's records.

384 (3) Under either of these conditions, the person accused
385 may apply for a certificate of eligibility to expunge the
386 associated criminal history record, pursuant to s. 943.0585(5),
387 notwithstanding the eligibility requirements prescribed in s.
388 943.0585(1)(b) or (2).

389 Section 10. Section 943.0585, Florida Statutes, is amended
390 to read:

391 943.0585 Court-ordered expunction of criminal history
392 records.—The courts of this state have jurisdiction over their
393 own procedures, including the maintenance, expunction, and
394 correction of judicial records containing criminal history
395 information to the extent such procedures are not inconsistent
396 with the conditions, responsibilities, and duties established by
397 this section. Any court of competent jurisdiction may order a
398 criminal justice agency to expunge the criminal history record
399 of a minor or an adult who complies with the requirements of
400 this section. The court shall not order a criminal justice
401 agency to expunge a criminal history record until the person
402 seeking to expunge a criminal history record has applied for and
403 received a certificate of eligibility for expunction pursuant to
404 subsection (2) or subsection (5). A criminal history record that
405 relates to a violation of s. 393.135, s. 394.4593, s. 787.025,
406 chapter 794, s. 796.03, s. 800.04, s. 810.14, s. 817.034, s.

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407 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s.
408 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s.
409 907.041, or any violation specified as a predicate offense for
410 registration as a sexual predator pursuant to s. 775.21, without
411 regard to whether that offense alone is sufficient to require
412 such registration, or for registration as a sexual offender
413 pursuant to s. 943.0435, may not be expunged, without regard to
414 whether adjudication was withheld, if the defendant was found
415 guilty of or pled guilty or nolo contendere to the offense, or
416 if the defendant, as a minor, was found to have committed, or
417 pled guilty or nolo contendere to committing, the offense as a
418 delinquent act. The court may only order expunction of a
419 criminal history record pertaining to one arrest or one incident
420 of alleged criminal activity, except as provided in this
421 section. The court may, at its sole discretion, order the
422 expunction of a criminal history record pertaining to more than
423 one arrest if the additional arrests directly relate to the
424 original arrest. If the court intends to order the expunction of
425 records pertaining to such additional arrests, such intent must
426 be specified in the order. A criminal justice agency may not
427 expunge any record pertaining to such additional arrests if the
428 order to expunge does not articulate the intention of the court
429 to expunge a record pertaining to more than one arrest. This
430 section does not prevent the court from ordering the expunction
431 of only a portion of a criminal history record pertaining to one
432 arrest or one incident of alleged criminal activity.
433 Notwithstanding any law to the contrary, a criminal justice
434 agency may comply with laws, court orders, and official requests
435 of other jurisdictions relating to expunction, correction, or

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436 confidential handling of criminal history records or information
437 derived therefrom. This section does not confer any right to the
438 expunction of any criminal history record, and any request for
439 expunction of a criminal history record may be denied at the
440 sole discretion of the court.

441 (1) PETITION TO EXPUNGE A CRIMINAL HISTORY RECORD.—Each
442 petition to a court to expunge a criminal history record is
443 complete only when accompanied by:

444 (a) A valid certificate of eligibility for expunction
445 issued by the department pursuant to subsection (2).

446 (b) The petitioner's sworn statement attesting that the
447 petitioner:

448 1. Has never, prior to the date on which the petition is
449 filed, been adjudicated guilty of a criminal offense or
450 comparable ordinance violation, or been adjudicated delinquent
451 for committing any felony or a misdemeanor specified in s.
452 943.051(3)(b).

453 2. Has not been adjudicated guilty of, or adjudicated
454 delinquent for committing, any of the acts stemming from the
455 arrest or alleged criminal activity to which the petition
456 pertains.

457 3. Has never secured a prior sealing or expunction of a
458 criminal history record under this section, s. 943.059, former
459 s. 893.14, former s. 901.33, or former s. 943.058, unless
460 expunction is sought of a criminal history record previously
461 sealed for 10 years pursuant to paragraph (2)(h) and the record
462 is otherwise eligible for expunction.

463 4. Is eligible for such an expunction to the best of his or
464 her knowledge or belief and does not have any other petition to

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465 expunge or any petition to seal pending before any court.

466
467 Any person who knowingly provides false information on such
468 sworn statement to the court commits a felony of the third
469 degree, punishable as provided in s. 775.082, s. 775.083, or s.
470 775.084.

471 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to
472 petitioning the court to expunge a criminal history record, a
473 person seeking to expunge a criminal history record shall apply
474 to the department for a certificate of eligibility for
475 expunction. The department shall, by rule adopted pursuant to
476 chapter 120, establish procedures pertaining to the application
477 for and issuance of certificates of eligibility for expunction.
478 A certificate of eligibility for expunction is valid for 12
479 months after the date stamped on the certificate when issued by
480 the department. After that time, the petitioner must reapply to
481 the department for a new certificate of eligibility. Eligibility
482 for a renewed certification of eligibility must be based on the
483 status of the applicant and the law in effect at the time of the
484 renewal application. The department shall issue a certificate of
485 eligibility for expunction to a person who is the subject of a
486 criminal history record if that person:

487 (a) Has obtained, and submitted to the department, a
488 written, certified statement from the appropriate state attorney
489 or statewide prosecutor which indicates:

490 1. That an indictment, information, or other charging
491 document was not filed or issued in the case.

492 2. That an indictment, information, or other charging
493 document, if filed or issued in the case, was dismissed or nolle

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494 prosecute by the state attorney or statewide prosecutor, or was
495 dismissed by a court of competent jurisdiction, and that none of
496 the charges related to the arrest or alleged criminal activity
497 to which the petition to expunge pertains resulted in a trial,
498 without regard to whether the outcome of the trial was other
499 than an adjudication of guilt.

500 3. That the criminal history record does not relate to a
501 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
502 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
503 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
504 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
505 any violation specified as a predicate offense for registration
506 as a sexual predator pursuant to s. 775.21, without regard to
507 whether that offense alone is sufficient to require such
508 registration, or for registration as a sexual offender pursuant
509 to s. 943.0435, where the defendant was found guilty of, or pled
510 guilty or nolo contendere to any such offense, or that the
511 defendant, as a minor, was found to have committed, or pled
512 guilty or nolo contendere to committing, such an offense as a
513 delinquent act, without regard to whether adjudication was
514 withheld.

515 (b) Remits a \$75 processing fee to the department for
516 placement in the Department of Law Enforcement Operating Trust
517 Fund, unless such fee is waived by the executive director.

518 (c) Has submitted to the department a certified copy of the
519 disposition of the charge to which the petition to expunge
520 pertains.

521 (d) Has never, prior to the date on which the application
522 for a certificate of eligibility is filed, been adjudicated

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523 guilty of a criminal offense or comparable ordinance violation,
524 or been adjudicated delinquent for committing any felony or a
525 misdemeanor specified in s. 943.051(3)(b).

526 (e) Has not been adjudicated guilty of, or adjudicated
527 delinquent for committing, any of the acts stemming from the
528 arrest or alleged criminal activity to which the petition to
529 expunge pertains.

530 (f) Has never secured a prior sealing or expunction of a
531 criminal history record under this section, s. 943.059, former
532 s. 893.14, former s. 901.33, or former s. 943.058, unless
533 expunction is sought of a criminal history record previously
534 sealed for 10 years pursuant to paragraph (h) and the record is
535 otherwise eligible for expunction.

536 (g) Is no longer under court supervision applicable to the
537 disposition of the arrest or alleged criminal activity to which
538 the petition to expunge pertains.

539 (h) Has previously obtained a court order sealing the
540 record under this section, former s. 893.14, former s. 901.33,
541 or former s. 943.058 for a minimum of 10 years because
542 adjudication was withheld or because all charges related to the
543 arrest or alleged criminal activity to which the petition to
544 expunge pertains were not dismissed prior to trial, without
545 regard to whether the outcome of the trial was other than an
546 adjudication of guilt. The requirement for the record to have
547 previously been sealed for a minimum of 10 years does not apply
548 when a plea was not entered or all charges related to the arrest
549 or alleged criminal activity to which the petition to expunge
550 pertains were dismissed prior to trial.

551 (3) PROCESSING OF A PETITION OR ORDER TO EXPUNGE.—

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552 (a) In judicial proceedings under this section, a copy of
553 the completed petition to expunge shall be served upon the
554 appropriate state attorney or the statewide prosecutor and upon
555 the arresting agency; however, it is not necessary to make any
556 agency other than the state a party. The appropriate state
557 attorney or the statewide prosecutor and the arresting agency
558 may respond to the court regarding the completed petition to
559 expunge.

560 (b) If relief is granted by the court, the clerk of the
561 court shall certify copies of the order to the appropriate state
562 attorney or the statewide prosecutor and the arresting agency.
563 The arresting agency is responsible for forwarding the order to
564 any other agency to which the arresting agency disseminated the
565 criminal history record information to which the order pertains.
566 The department shall forward the order to expunge to the Federal
567 Bureau of Investigation. The clerk of the court shall certify a
568 copy of the order to any other agency which the records of the
569 court reflect has received the criminal history record from the
570 court.

571 (c) For an order to expunge entered by a court prior to
572 July 1, 1992, the department shall notify the appropriate state
573 attorney or statewide prosecutor of an order to expunge which is
574 contrary to law because the person who is the subject of the
575 record has previously been convicted of a crime or comparable
576 ordinance violation or has had a prior criminal history record
577 sealed or expunged. Upon receipt of such notice, the appropriate
578 state attorney or statewide prosecutor shall take action, within
579 60 days, to correct the record and petition the court to void
580 the order to expunge. The department shall seal the record until

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581 such time as the order is voided by the court.

582 (d) On or after July 1, 1992, the department or any other
583 criminal justice agency is not required to act on an order to
584 expunge entered by a court when such order does not comply with
585 the requirements of this section. Upon receipt of such an order,
586 the department must notify the issuing court, the appropriate
587 state attorney or statewide prosecutor, the petitioner or the
588 petitioner's attorney, and the arresting agency of the reason
589 for noncompliance. The appropriate state attorney or statewide
590 prosecutor shall take action within 60 days to correct the
591 record and petition the court to void the order. No cause of
592 action, including contempt of court, shall arise against any
593 criminal justice agency for failure to comply with an order to
594 expunge when the petitioner for such order failed to obtain the
595 certificate of eligibility as required by this section or such
596 order does not otherwise comply with the requirements of this
597 section.

598 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any
599 criminal history record of a minor or an adult which is ordered
600 expunged by a court of competent jurisdiction pursuant to this
601 section must be physically destroyed or obliterated by any
602 criminal justice agency having custody of such record; except
603 that any criminal history record in the custody of the
604 department must be retained in all cases. A criminal history
605 record ordered expunged that is retained by the department is
606 confidential and exempt from the provisions of s. 119.07(1) and
607 s. 24(a), Art. I of the State Constitution and not available to
608 any person or entity except upon order of a court of competent
609 jurisdiction. A criminal justice agency may retain a notation

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610 indicating compliance with an order to expunge.

611 (a) The person who is the subject of a criminal history
612 record that is expunged under this section or under other
613 provisions of law, including former s. 893.14, former s. 901.33,
614 and former s. 943.058, may lawfully deny or fail to acknowledge
615 the arrests covered by the expunged record, except when the
616 subject of the record:

617 1. Is a candidate for employment with a criminal justice
618 agency;

619 2. Is a defendant in a criminal prosecution;

620 3. Concurrently or subsequently petitions for relief under
621 this section, s. 943.0583, or s. 943.059;

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

623 5. Is seeking to be employed or licensed by or to contract
624 with the Department of Children and Families, the Division of
625 Vocational Rehabilitation within the Department of Education,
626 the Agency for Health Care Administration, the Agency for
627 Persons with Disabilities, the Department of Health, the
628 Department of Elderly Affairs, or the Department of Juvenile
629 Justice or to be employed or used by such contractor or licensee
630 in a sensitive position having direct contact with children, the
631 disabled, or the elderly; or

632 6. Is seeking to be employed or licensed by the Department
633 of Education, any district school board, any university
634 laboratory school, any charter school, any private or parochial
635 school, or any local governmental entity that licenses child
636 care facilities.

637 (b) Subject to the exceptions in paragraph (a), a person
638 who has been granted an expunction under this section, former s.

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639 893.14, former s. 901.33, or former s. 943.058 may not be held
640 under any provision of law of this state to commit perjury or to
641 be otherwise liable for giving a false statement by reason of
642 such person's failure to recite or acknowledge an expunged
643 criminal history record.

644 (c) Information relating to the existence of an expunged
645 criminal history record which is provided in accordance with
646 paragraph (a) is confidential and exempt from the provisions of
647 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
648 except that the department shall disclose the existence of a
649 criminal history record ordered expunged to the entities set
650 forth in subparagraphs (a)1., 4., 5., 6., and 7. for their
651 respective licensing, access authorization, and employment
652 purposes, and to criminal justice agencies for their respective
653 criminal justice purposes. It is unlawful for any employee of an
654 entity set forth in subparagraph (a)1., subparagraph (a)4.,
655 subparagraph (a)5., subparagraph (a)6., or subparagraph (a)7. to
656 disclose information relating to the existence of an expunged
657 criminal history record of a person seeking employment, access
658 authorization, or licensure with such entity or contractor,
659 except to the person to whom the criminal history record relates
660 or to persons having direct responsibility for employment,
661 access authorization, or licensure decisions. Any person who
662 violates this paragraph commits a misdemeanor of the first
663 degree, punishable as provided in s. 775.082 or s. 775.083.

664 (5) EXCEPTION PROVIDED.—Notwithstanding the eligibility
665 requirements prescribed in paragraph (1) (b) and subsection (2),
666 the department shall issue a certificate of eligibility for
667 expunction under this subsection to a person who is the subject

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668 of a criminal history record if that person:

669 (a) Has obtained, and submitted to the department, on a
670 form provided by the department, a written, certified statement
671 from the appropriate state attorney or statewide prosecutor
672 which states whether an information, indictment, or other
673 charging document was not filed or was dismissed by the state
674 attorney, or dismissed by the court, because it was found that
675 the person acted in lawful self-defense pursuant to the
676 provisions related to justifiable use of force in chapter 776.

677 (b) Each petition to a court to expunge a criminal history
678 record pursuant to this subsection is complete only when
679 accompanied by:

680 1. A valid certificate of eligibility for expunction issued
681 by the department pursuant to this subsection.

682 2. The petitioner's sworn statement attesting that the
683 petitioner is eligible for such an expunction to the best of his
684 or her knowledge or belief.

685
686 Any person who knowingly provides false information on such
687 sworn statement to the court commits a felony of the third
688 degree, punishable as provided in s. 775.082, s. 775.083, or s.
689 775.084.

690 (c) This subsection does not confer any right to the
691 expunction of a criminal history record, and any request for
692 expunction of a criminal history record may be denied at the
693 discretion of the court.

694 (d) Subsections (3) and (4) shall apply to expunction
695 ordered under this subsection.

696 (e) The department shall, by rule adopted pursuant to

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697 chapter 120, establish procedures pertaining to the application
698 for and issuance of certificates of eligibility for expunction
699 under this subsection.

700 (6)~~(5)~~ STATUTORY REFERENCES.—Any reference to any other
701 chapter, section, or subdivision of the Florida Statutes in this
702 section constitutes a general reference under the doctrine of
703 incorporation by reference.

704 Section 11. This act shall take effect upon becoming a law.