

By the Committees on Rules; and 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.; creating an exception to the minimum
5 mandatory sentence for aggravated assault under
6 specified conditions; 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. Subsection (2) of section 775.087, Florida
75 Statutes, is amended to read:

76 775.087 Possession or use of weapon; aggravated battery;
77 felony reclassification; minimum sentence.—

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

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

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- 88 h. Kidnapping;
- 89 i. Escape;
- 90 j. Aircraft piracy;
- 91 k. Aggravated child abuse;
- 92 l. Aggravated abuse of an elderly person or disabled adult;
- 93 m. Unlawful throwing, placing, or discharging of a
- 94 destructive device or bomb;
- 95 n. Carjacking;
- 96 o. Home-invasion robbery;
- 97 p. Aggravated stalking;
- 98 q. Trafficking in cannabis, trafficking in cocaine, capital
- 99 importation of cocaine, trafficking in illegal drugs, capital
- 100 importation of illegal drugs, trafficking in phencyclidine,
- 101 capital importation of phencyclidine, trafficking in
- 102 methaqualone, capital importation of methaqualone, trafficking
- 103 in amphetamine, capital importation of amphetamine, trafficking
- 104 in flunitrazepam, trafficking in gamma-hydroxybutyric acid
- 105 (GHB), trafficking in 1,4-Butanediol, trafficking in
- 106 Phenethylamines, or other violation of s. 893.135(1); or
- 107 r. Possession of a firearm by a felon

108

109 and during the commission of the offense, such person actually

110 possessed a "firearm" or "destructive device" as those terms are

111 defined in s. 790.001, shall be sentenced to a minimum term of

112 imprisonment of 10 years, except that a person who is convicted

113 for aggravated assault, possession of a firearm by a felon, or

114 burglary of a conveyance shall be sentenced to a minimum term of

115 imprisonment of 3 years if such person possessed a "firearm" or

116 "destructive device" during the commission of the offense.

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

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

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

141 (b) Subparagraph (a)1., subparagraph (a)2., or subparagraph
142 (a)3. does not prevent a court from imposing a longer sentence
143 of incarceration as authorized by law in addition to the minimum
144 mandatory sentence, or from imposing a sentence of death
145 pursuant to other applicable law. Subparagraph (a)1.,

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146 subparagraph (a)2., or subparagraph (a)3. does not authorize a
147 court to impose a lesser sentence than otherwise required by
148 law.

149
150 Notwithstanding s. 948.01, adjudication of guilt or imposition
151 of sentence shall not be suspended, deferred, or withheld, and
152 the defendant is not eligible for statutory gain-time under s.
153 944.275 or any form of discretionary early release, other than
154 pardon or executive clemency, or conditional medical release
155 under s. 947.149, prior to serving the minimum sentence.

156 (c) If the minimum mandatory terms of imprisonment imposed
157 pursuant to this section exceed the maximum sentences authorized
158 by s. 775.082, s. 775.084, or the Criminal Punishment Code under
159 chapter 921, then the mandatory minimum sentence must be
160 imposed. If the mandatory minimum terms of imprisonment pursuant
161 to this section are less than the sentences that could be
162 imposed as authorized by s. 775.082, s. 775.084, or the Criminal
163 Punishment Code under chapter 921, then the sentence imposed by
164 the court must include the mandatory minimum term of
165 imprisonment as required in this section.

166 (d) It is the intent of the Legislature that offenders who
167 actually possess, carry, display, use, threaten to use, or
168 attempt to use firearms or destructive devices be punished to
169 the fullest extent of the law, and the minimum terms of
170 imprisonment imposed pursuant to this subsection shall be
171 imposed for each qualifying felony count for which the person is
172 convicted. The court shall impose any term of imprisonment
173 provided for in this subsection consecutively to any other term
174 of imprisonment imposed for any other felony offense.

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175 (e) The minimum mandatory sentence set forth in paragraph
176 (2)(a) for a conviction for aggravated assault under s. 784.021
177 shall not be imposed upon a person who uses force to defend
178 himself, herself, or another if the court finds in writing that:

179 1. The person had a good faith belief that such conduct was
180 necessary to defend himself, herself, or another against a
181 person's imminent use of unlawful force consistent with s.
182 776.012 and the act was not done in the course of the commission
183 of another crime; or

184 2.a. The person did not intend to cause harm and did not
185 cause physical harm to another; and

186 b. The aggravated assault was not committed in the course
187 of committing another crime.

188
189 Nothing in this paragraph shall be construed to change or modify
190 any other provision related to the use of force in chapter 776.

191 Section 3. Section 776.012, Florida Statutes, is amended to
192 read:

193 776.012 Use or threatened use of force in defense of
194 person.—A person is justified in using force, except deadly
195 force, or threatening to use force against another when and to
196 the extent that the person reasonably believes that such conduct
197 is necessary to defend himself or herself or another against the
198 other's imminent use of unlawful force. However, a person is
199 justified in using or threatening to use ~~the use of~~ deadly force
200 and does not have a duty to retreat if:

201 (1) He or she reasonably believes that such force is
202 necessary to prevent imminent death or great bodily harm to
203 himself or herself or another or to prevent the imminent

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204 commission of a forcible felony; or

205 (2) Under those circumstances permitted pursuant to s.
206 776.013.

207 Section 4. Section 776.013, Florida Statutes, is amended to
208 read:

209 776.013 Home protection; use or threatened use of deadly
210 force; presumption of fear of death or great bodily harm.—

211 (1) A person is presumed to have held a reasonable fear of
212 imminent peril of death or great bodily harm to himself or
213 herself or another when using or threatening to use defensive
214 force that is intended or likely to cause death or great bodily
215 harm to another if:

216 (a) The person against whom the defensive force was used or
217 threatened was in the process of unlawfully and forcefully
218 entering, or had unlawfully and forcibly entered, a dwelling,
219 residence, or occupied vehicle, or if that person had removed or
220 was attempting to remove another against that person's will from
221 the dwelling, residence, or occupied vehicle; and

222 (b) The person who uses or threatens to use defensive force
223 knew or had reason to believe that an unlawful and forcible
224 entry or unlawful and forcible act was occurring or had
225 occurred.

226 (2) The presumption set forth in subsection (1) does not
227 apply if:

228 (a) The person against whom the defensive force is used or
229 threatened has the right to be in or is a lawful resident of the
230 dwelling, residence, or vehicle, such as an owner, lessee, or
231 titleholder, and there is not an injunction for protection from
232 domestic violence or a written pretrial supervision order of no

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233 contact against that person; or

234 (b) The person or persons sought to be removed is a child
235 or grandchild, or is otherwise in the lawful custody or under
236 the lawful guardianship of, the person against whom the
237 defensive force is used or threatened; or

238 (c) The person who uses or threatens to use defensive force
239 is engaged in an unlawful activity or is using the dwelling,
240 residence, or occupied vehicle to further an unlawful activity;
241 or

242 (d) The person against whom the defensive force is used or
243 threatened is a law enforcement officer, as defined in s.
244 943.10(14), who enters or attempts to enter a dwelling,
245 residence, or vehicle in the performance of his or her official
246 duties and the officer identified himself or herself in
247 accordance with any applicable law or the person using or
248 threatening to use force knew or reasonably should have known
249 that the person entering or attempting to enter was a law
250 enforcement officer.

251 (3) A person who is not engaged in an unlawful activity and
252 who is attacked in any other place where he or she has a right
253 to be has no duty to retreat and has the right to stand his or
254 her ground and use or threaten to use ~~meet force with~~ force,
255 including deadly force if he or she reasonably believes it is
256 necessary to do so to prevent death or great bodily harm to
257 himself or herself or another or to prevent the commission of a
258 forcible felony.

259 (4) A person who unlawfully and by force enters or attempts
260 to enter a person's dwelling, residence, or occupied vehicle is
261 presumed to be doing so with the intent to commit an unlawful

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262 act involving force or violence.

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

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

269 (b) "Residence" means a dwelling in which a person resides
270 either temporarily or permanently or is visiting as an invited
271 guest.

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

275 Section 5. Section 776.031, Florida Statutes, is amended to
276 read:

277 776.031 Use or threatened use of force in defense of
278 property ~~others.~~—A person is justified in using ~~the use of~~
279 force, except deadly force, or threatening to use force against
280 another when and to the extent that the person reasonably
281 believes that such conduct is necessary to prevent or terminate
282 the other's trespass on, or other tortious or criminal
283 interference with, either real property other than a dwelling or
284 personal property, lawfully in his or her possession or in the
285 possession of another who is a member of his or her immediate
286 family or household or of a person whose property he or she has
287 a legal duty to protect. However, a ~~the~~ person is justified in
288 using ~~the use of~~ deadly force only if he or she reasonably
289 believes that such conduct ~~force~~ is necessary to prevent the
290 imminent commission of a forcible felony. A person does not have

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291 a duty to retreat if the person is in a place where he or she
292 has a right to be.

293 Section 6. Section 776.032, Florida Statutes, is amended to
294 read:

295 776.032 Immunity from criminal prosecution and civil action
296 for justifiable use or threatened use of force.—

297 (1) A person who uses or threatens to use force as
298 permitted in s. 776.012, s. 776.013, or s. 776.031 is justified
299 in ~~using~~ such conduct ~~force~~ and is immune from criminal
300 prosecution and civil action for the use or threatened use of
301 such force, unless the person against whom force was used or
302 threatened is a law enforcement officer, as defined in s.
303 943.10(14), who was acting in the performance of his or her
304 official duties and the officer identified himself or herself in
305 accordance with any applicable law or the person using or
306 threatening to use force knew or reasonably should have known
307 that the person was a law enforcement officer. As used in this
308 subsection, the term "criminal prosecution" includes arresting,
309 detaining in custody, and charging or prosecuting the defendant.

310 (2) A law enforcement agency may use standard procedures
311 for investigating the use or threatened use of force as
312 described in subsection (1), but the agency may not arrest the
313 person for using or threatening to use force unless it
314 determines that there is probable cause that the force that was
315 used or threatened was unlawful.

316 (3) The court shall award reasonable attorney's fees, court
317 costs, compensation for loss of income, and all expenses
318 incurred by the defendant in defense of any civil action brought
319 by a plaintiff if the court finds that the defendant is immune

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320 from prosecution as provided in subsection (1).

321 Section 7. Section 776.041, Florida Statutes, is amended to
322 read:

323 776.041 Use or threatened use of force by aggressor.—The
324 justification described in the preceding sections of this
325 chapter is not available to a person who:

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

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

330 (a) Such force or threat of force is so great that the
331 person reasonably believes that he or she is in imminent danger
332 of death or great bodily harm and that he or she has exhausted
333 every reasonable means to escape such danger other than the use
334 or threatened use of force which is likely to cause death or
335 great bodily harm to the assailant; or

336 (b) In good faith, the person withdraws from physical
337 contact with the assailant and indicates clearly to the
338 assailant that he or she desires to withdraw and terminate the
339 use or threatened use of force, but the assailant continues or
340 resumes the use or threatened use of force.

341 Section 8. Section 776.051, Florida Statutes, is amended to
342 read:

343 776.051 Use or threatened use of force in resisting arrest
344 or making an arrest or in the execution of a legal duty;
345 prohibition.—

346 (1) A person is not justified in the use or threatened use
347 of force to resist an arrest by a law enforcement officer, or to
348 resist a law enforcement officer who is engaged in the execution

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349 of a legal duty, if the law enforcement officer was acting in
350 good faith and he or she is known, or reasonably appears, to be
351 a law enforcement officer.

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

356 Section 9. Section 776.09, Florida Statutes, is created to
357 read:

358 776.09 Retention of records pertaining to persons found to
359 be acting in lawful self-defense; expunction of related criminal
360 history records.-

361 (1) Whenever the state attorney or statewide prosecutor
362 dismisses an information, indictment, or other charging
363 document, or decides not to file an information, indictment, or
364 other charging document, because of a finding that the person
365 accused acted in lawful self-defense pursuant to the provisions
366 related to the justifiable use of force in chapter 776, that
367 finding shall be documented in writing and retained in the files
368 of the state attorney or statewide prosecutor.

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

375 (3) Under either of these conditions, the person accused
376 may apply for a certificate of eligibility to expunge the
377 associated criminal history record, pursuant to s. 943.0585(5),

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378 notwithstanding the eligibility requirements prescribed in s.
379 943.0585(1)(b) or (2).

380 Section 10. Section 943.0585, Florida Statutes, is amended
381 to read:

382 943.0585 Court-ordered expunction of criminal history
383 records.—The courts of this state have jurisdiction over their
384 own procedures, including the maintenance, expunction, and
385 correction of judicial records containing criminal history
386 information to the extent such procedures are not inconsistent
387 with the conditions, responsibilities, and duties established by
388 this section. Any court of competent jurisdiction may order a
389 criminal justice agency to expunge the criminal history record
390 of a minor or an adult who complies with the requirements of
391 this section. The court shall not order a criminal justice
392 agency to expunge a criminal history record until the person
393 seeking to expunge a criminal history record has applied for and
394 received a certificate of eligibility for expunction pursuant to
395 subsection (2) or subsection (5). A criminal history record that
396 relates to a violation of s. 393.135, s. 394.4593, s. 787.025,
397 chapter 794, s. 796.03, s. 800.04, s. 810.14, s. 817.034, s.
398 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s.
399 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s.
400 907.041, or any violation specified as a predicate offense for
401 registration as a sexual predator pursuant to s. 775.21, without
402 regard to whether that offense alone is sufficient to require
403 such registration, or for registration as a sexual offender
404 pursuant to s. 943.0435, may not be expunged, without regard to
405 whether adjudication was withheld, if the defendant was found
406 guilty of or pled guilty or nolo contendere to the offense, or

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407 if the defendant, as a minor, was found to have committed, or
408 pled guilty or nolo contendere to committing, the offense as a
409 delinquent act. The court may only order expunction of a
410 criminal history record pertaining to one arrest or one incident
411 of alleged criminal activity, except as provided in this
412 section. The court may, at its sole discretion, order the
413 expunction of a criminal history record pertaining to more than
414 one arrest if the additional arrests directly relate to the
415 original arrest. If the court intends to order the expunction of
416 records pertaining to such additional arrests, such intent must
417 be specified in the order. A criminal justice agency may not
418 expunge any record pertaining to such additional arrests if the
419 order to expunge does not articulate the intention of the court
420 to expunge a record pertaining to more than one arrest. This
421 section does not prevent the court from ordering the expunction
422 of only a portion of a criminal history record pertaining to one
423 arrest or one incident of alleged criminal activity.

424 Notwithstanding any law to the contrary, a criminal justice
425 agency may comply with laws, court orders, and official requests
426 of other jurisdictions relating to expunction, correction, or
427 confidential handling of criminal history records or information
428 derived therefrom. This section does not confer any right to the
429 expunction of any criminal history record, and any request for
430 expunction of a criminal history record may be denied at the
431 sole discretion of the court.

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

435 (a) A valid certificate of eligibility for expunction

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436 issued by the department pursuant to subsection (2).

437 (b) The petitioner's sworn statement attesting that the
438 petitioner:

439 1. Has never, prior to the date on which the petition is
440 filed, been adjudicated guilty of a criminal offense or
441 comparable ordinance violation, or been adjudicated delinquent
442 for committing any felony or a misdemeanor specified in s.
443 943.051(3)(b).

444 2. Has not been adjudicated guilty of, or adjudicated
445 delinquent for committing, any of the acts stemming from the
446 arrest or alleged criminal activity to which the petition
447 pertains.

448 3. Has never secured a prior sealing or expunction of a
449 criminal history record under this section, s. 943.059, former
450 s. 893.14, former s. 901.33, or former s. 943.058, unless
451 expunction is sought of a criminal history record previously
452 sealed for 10 years pursuant to paragraph (2)(h) and the record
453 is otherwise eligible for expunction.

454 4. Is eligible for such an expunction to the best of his or
455 her knowledge or belief and does not have any other petition to
456 expunge or any petition to seal pending before any court.

457

458 Any person who knowingly provides false information on such
459 sworn statement to the court commits a felony of the third
460 degree, punishable as provided in s. 775.082, s. 775.083, or s.
461 775.084.

462 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to
463 petitioning the court to expunge a criminal history record, a
464 person seeking to expunge a criminal history record shall apply

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465 to the department for a certificate of eligibility for
466 expunction. The department shall, by rule adopted pursuant to
467 chapter 120, establish procedures pertaining to the application
468 for and issuance of certificates of eligibility for expunction.
469 A certificate of eligibility for expunction is valid for 12
470 months after the date stamped on the certificate when issued by
471 the department. After that time, the petitioner must reapply to
472 the department for a new certificate of eligibility. Eligibility
473 for a renewed certification of eligibility must be based on the
474 status of the applicant and the law in effect at the time of the
475 renewal application. The department shall issue a certificate of
476 eligibility for expunction to a person who is the subject of a
477 criminal history record if that person:

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

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

483 2. That an indictment, information, or other charging
484 document, if filed or issued in the case, was dismissed or nolle
485 prosequi by the state attorney or statewide prosecutor, or was
486 dismissed by a court of competent jurisdiction, and that none of
487 the charges related to the arrest or alleged criminal activity
488 to which the petition to expunge pertains resulted in a trial,
489 without regard to whether the outcome of the trial was other
490 than an adjudication of guilt.

491 3. That the criminal history record does not relate to a
492 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
493 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.

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494 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
495 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
496 any violation specified as a predicate offense for registration
497 as a sexual predator pursuant to s. 775.21, without regard to
498 whether that offense alone is sufficient to require such
499 registration, or for registration as a sexual offender pursuant
500 to s. 943.0435, where the defendant was found guilty of, or pled
501 guilty or nolo contendere to any such offense, or that the
502 defendant, as a minor, was found to have committed, or pled
503 guilty or nolo contendere to committing, such an offense as a
504 delinquent act, without regard to whether adjudication was
505 withheld.

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

509 (c) Has submitted to the department a certified copy of the
510 disposition of the charge to which the petition to expunge
511 pertains.

512 (d) Has never, prior to the date on which the application
513 for a certificate of eligibility is filed, been adjudicated
514 guilty of a criminal offense or comparable ordinance violation,
515 or been adjudicated delinquent for committing any felony or a
516 misdemeanor specified in s. 943.051(3)(b).

517 (e) Has not been adjudicated guilty of, or adjudicated
518 delinquent for committing, any of the acts stemming from the
519 arrest or alleged criminal activity to which the petition to
520 expunge pertains.

521 (f) Has never secured a prior sealing or expunction of a
522 criminal history record under this section, s. 943.059, former

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523 s. 893.14, former s. 901.33, or former s. 943.058, unless
524 expunction is sought of a criminal history record previously
525 sealed for 10 years pursuant to paragraph (h) and the record is
526 otherwise eligible for expunction.

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

530 (h) Has previously obtained a court order sealing the
531 record under this section, former s. 893.14, former s. 901.33,
532 or former s. 943.058 for a minimum of 10 years because
533 adjudication was withheld or because all charges related to the
534 arrest or alleged criminal activity to which the petition to
535 expunge pertains were not dismissed prior to trial, without
536 regard to whether the outcome of the trial was other than an
537 adjudication of guilt. The requirement for the record to have
538 previously been sealed for a minimum of 10 years does not apply
539 when a plea was not entered or all charges related to the arrest
540 or alleged criminal activity to which the petition to expunge
541 pertains were dismissed prior to trial.

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

543 (a) In judicial proceedings under this section, a copy of
544 the completed petition to expunge shall be served upon the
545 appropriate state attorney or the statewide prosecutor and upon
546 the arresting agency; however, it is not necessary to make any
547 agency other than the state a party. The appropriate state
548 attorney or the statewide prosecutor and the arresting agency
549 may respond to the court regarding the completed petition to
550 expunge.

551 (b) If relief is granted by the court, the clerk of the

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552 court shall certify copies of the order to the appropriate state
553 attorney or the statewide prosecutor and the arresting agency.
554 The arresting agency is responsible for forwarding the order to
555 any other agency to which the arresting agency disseminated the
556 criminal history record information to which the order pertains.
557 The department shall forward the order to expunge to the Federal
558 Bureau of Investigation. The clerk of the court shall certify a
559 copy of the order to any other agency which the records of the
560 court reflect has received the criminal history record from the
561 court.

562 (c) For an order to expunge entered by a court prior to
563 July 1, 1992, the department shall notify the appropriate state
564 attorney or statewide prosecutor of an order to expunge which is
565 contrary to law because the person who is the subject of the
566 record has previously been convicted of a crime or comparable
567 ordinance violation or has had a prior criminal history record
568 sealed or expunged. Upon receipt of such notice, the appropriate
569 state attorney or statewide prosecutor shall take action, within
570 60 days, to correct the record and petition the court to void
571 the order to expunge. The department shall seal the record until
572 such time as the order is voided by the court.

573 (d) On or after July 1, 1992, the department or any other
574 criminal justice agency is not required to act on an order to
575 expunge entered by a court when such order does not comply with
576 the requirements of this section. Upon receipt of such an order,
577 the department must notify the issuing court, the appropriate
578 state attorney or statewide prosecutor, the petitioner or the
579 petitioner's attorney, and the arresting agency of the reason
580 for noncompliance. The appropriate state attorney or statewide

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581 prosecutor shall take action within 60 days to correct the
582 record and petition the court to void the order. No cause of
583 action, including contempt of court, shall arise against any
584 criminal justice agency for failure to comply with an order to
585 expunge when the petitioner for such order failed to obtain the
586 certificate of eligibility as required by this section or such
587 order does not otherwise comply with the requirements of this
588 section.

589 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any
590 criminal history record of a minor or an adult which is ordered
591 expunged by a court of competent jurisdiction pursuant to this
592 section must be physically destroyed or obliterated by any
593 criminal justice agency having custody of such record; except
594 that any criminal history record in the custody of the
595 department must be retained in all cases. A criminal history
596 record ordered expunged that is retained by the department is
597 confidential and exempt from the provisions of s. 119.07(1) and
598 s. 24(a), Art. I of the State Constitution and not available to
599 any person or entity except upon order of a court of competent
600 jurisdiction. A criminal justice agency may retain a notation
601 indicating compliance with an order to expunge.

602 (a) The person who is the subject of a criminal history
603 record that is expunged under this section or under other
604 provisions of law, including former s. 893.14, former s. 901.33,
605 and former s. 943.058, may lawfully deny or fail to acknowledge
606 the arrests covered by the expunged record, except when the
607 subject of the record:

608 1. Is a candidate for employment with a criminal justice
609 agency;

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610 2. Is a defendant in a criminal prosecution;

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

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

614 5. Is seeking to be employed or licensed by or to contract
615 with the Department of Children and Families, the Division of
616 Vocational Rehabilitation within the Department of Education,
617 the Agency for Health Care Administration, the Agency for
618 Persons with Disabilities, the Department of Health, the
619 Department of Elderly Affairs, or the Department of Juvenile
620 Justice or to be employed or used by such contractor or licensee
621 in a sensitive position having direct contact with children, the
622 disabled, or the elderly; or

623 6. Is seeking to be employed or licensed by the Department
624 of Education, any district school board, any university
625 laboratory school, any charter school, any private or parochial
626 school, or any local governmental entity that licenses child
627 care facilities.

628 (b) Subject to the exceptions in paragraph (a), a person
629 who has been granted an expunction under this section, former s.
630 893.14, former s. 901.33, or former s. 943.058 may not be held
631 under any provision of law of this state to commit perjury or to
632 be otherwise liable for giving a false statement by reason of
633 such person's failure to recite or acknowledge an expunged
634 criminal history record.

635 (c) Information relating to the existence of an expunged
636 criminal history record which is provided in accordance with
637 paragraph (a) is confidential and exempt from the provisions of
638 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,

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639 except that the department shall disclose the existence of a
640 criminal history record ordered expunged to the entities set
641 forth in subparagraphs (a)1., 4., 5., 6., and 7. for their
642 respective licensing, access authorization, and employment
643 purposes, and to criminal justice agencies for their respective
644 criminal justice purposes. It is unlawful for any employee of an
645 entity set forth in subparagraph (a)1., subparagraph (a)4.,
646 subparagraph (a)5., subparagraph (a)6., or subparagraph (a)7. to
647 disclose information relating to the existence of an expunged
648 criminal history record of a person seeking employment, access
649 authorization, or licensure with such entity or contractor,
650 except to the person to whom the criminal history record relates
651 or to persons having direct responsibility for employment,
652 access authorization, or licensure decisions. Any person who
653 violates this paragraph commits a misdemeanor of the first
654 degree, punishable as provided in s. 775.082 or s. 775.083.

655 (5) EXCEPTION PROVIDED.—Notwithstanding the eligibility
656 requirements prescribed in paragraph (1)(b) and subsection (2),
657 the department shall issue a certificate of eligibility for
658 expunction under this subsection to a person who is the subject
659 of a criminal history record if that person:

660 (a) Has obtained, and submitted to the department, on a
661 form provided by the department, a written, certified statement
662 from the appropriate state attorney or statewide prosecutor
663 which states whether an information, indictment, or other
664 charging document was not filed or was dismissed by the state
665 attorney, or dismissed by the court, because it was found that
666 the person acted in lawful self-defense pursuant to the
667 provisions related to justifiable use of force in chapter 776.

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668 (b) Each petition to a court to expunge a criminal history
669 record pursuant to this subsection is complete only when
670 accompanied by:

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

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

676
677 Any person who knowingly provides false information on such
678 sworn statement to the court commits a felony of the third
679 degree, punishable as provided in s. 775.082, s. 775.083, or s.
680 775.084.

681 (c) This subsection does not confer any right to the
682 expunction of a criminal history record, and any request for
683 expunction of a criminal history record may be denied at the
684 discretion of the court.

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

687 (e) The department shall, by rule adopted pursuant to
688 chapter 120, establish procedures pertaining to the application
689 for and issuance of certificates of eligibility for expunction
690 under this subsection.

691 (6)-(5) STATUTORY REFERENCES.—Any reference to any other
692 chapter, section, or subdivision of the Florida Statutes in this
693 section constitutes a general reference under the doctrine of
694 incorporation by reference.

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