

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.