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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.; prohibiting the court from imposing
5 certain mandatory minimum sentences if the court makes
6 specified written findings; 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 providing that a person who lawfully uses or threatens
10 to use nondeadly force does not have a duty to
11 retreat; providing that a person who lawfully uses or
12 threatens to use deadly force does not have a duty to
13 retreat if the person using or threatening the deadly
14 force is not engaged in a criminal activity and is in
15 a place where he or she has a right to be; amending s.
16 776.013, F.S.; applying presumption relating to the
17 use of deadly force to the threatened use of deadly
18 force in the defense of a residence and similar
19 circumstances; applying provisions relating to such
20 use of force to the threatened use of force; removing
21 provisions relating to one's duty to retreat prior to
22 using force; amending s. 776.031, F.S.; applying
23 provisions relating to the use of force in defense of
24 property to the threatened use of force; providing
25 that a person who lawfully uses or threatens to use
26 nondeadly force does not have a duty to retreat;
27 providing that a person who lawfully uses or threatens
28 to use deadly force does not have a duty to retreat if
29 the person using or threatening the deadly force is

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30 not engaged in a criminal activity and is in a place
31 where he or she has a right to be; amending s.
32 776.032, F.S.; applying immunity provisions that
33 relate to the use of force to the threatened use of
34 force; limiting immunity provisions to civil actions
35 by the person, personal representative, or heirs of
36 the person against whom force was used; amending s.
37 776.041, F.S.; applying provisions relating to the use
38 of force by an aggressor to the threatened use of
39 force; providing exceptions; amending s. 776.051,
40 F.S.; providing that a person is not justified in the
41 threatened use of force to resist an arrest by a law
42 enforcement officer; amending s. 776.06, F.S.,
43 clarifying that the statute relates to use of force by
44 a law enforcement or correctional officer; creating s.
45 776.09, F.S.; providing that a person is eligible to
46 apply for a certificate of eligibility for expunction,
47 notwithstanding the eligibility requirements, if the
48 charging document in the case is not filed or is
49 dismissed because it is found that the person acted in
50 lawful self-defense pursuant to the provisions related
51 to the justifiable use of force in ch. 776, F.S.;
52 requiring a prosecutor, statewide prosecutor, or court
53 to document and retain such findings; amending s.
54 943.0585, F.S.; requiring the Department of Law
55 Enforcement to provide a certificate of eligibility
56 for expunction, notwithstanding the eligibility
57 requirements, to a person who has a written, certified
58 statement from a prosecutor or statewide prosecutor

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59 indicating that the charging document in the case was
60 not filed or was dismissed because it was found that
61 the person acted in lawful self-defense pursuant to
62 the provisions related to the justifiable use of force
63 in ch. 776, F.S.; providing a penalty for knowingly
64 providing false information on a sworn statement;
65 providing applicability; requiring the department to
66 adopt rules; providing an effective date.

67
68 Be It Enacted by the Legislature of the State of Florida:

69
70 Section 1. (1) The Legislature finds that persons have been
71 criminally prosecuted and have been sentenced to mandatory
72 minimum terms of imprisonment pursuant to s. 775.087, Florida
73 Statutes, for threatening to use force in a manner and under
74 circumstances that would have been justifiable under chapter
75 776, Florida Statutes, had force actually been used.

76 (2) The Legislature intends to:

77 (a) Provide criminal and civil immunity to those who
78 threaten to use force if the threat was made in a manner and
79 under circumstances that would have been immune under chapter
80 776, Florida Statutes, had force actually been used.

81 (b) Clarify that those who threaten to use force may claim
82 self-defense if the threat was made in a manner and under
83 circumstances that would have been justifiable under chapter
84 776, Florida Statutes, had force actually been used.

85 (c) Ensure that those who threaten to use force in a manner
86 and under circumstances that are justifiable under chapter 776,
87 Florida Statutes, are not sentenced to a mandatory minimum term

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88 of imprisonment pursuant to s. 775.087, Florida Statutes.

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

94 Section 2. Subsection (6) is added to section 775.087,
95 Florida Statutes, to read:

96 775.087 Possession or use of weapon; aggravated battery;
97 felony reclassification; minimum sentence.—

98 (6) Notwithstanding s. 27.366, the sentencing court shall
99 not impose the mandatory minimum sentence required by
100 subsections (2) or (3) for a conviction for aggravated assault
101 if the court makes written findings that:

102 (a) The defendant had a good faith belief that the
103 aggravated assault was justifiable pursuant to ch. 776;

104 (b) The aggravated assault was not committed in the course
105 of committing another criminal offense;

106 (c) The defendant does not pose a threat to public safety;
107 and

108 (d) The totality of the circumstances involved in the
109 offense do not justify the imposition of such sentence.

110 Section 3. Section 776.012, Florida Statutes, is amended to
111 read:

112 776.012 Use or threatened use of force in defense of
113 person.—

114 (1) A person is justified in using or threatening to use
115 force, except deadly force, against another when and to the
116 extent that the person reasonably believes that such conduct is

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117 necessary to defend himself or herself or another against the
118 other's imminent use of unlawful force. A person who uses or
119 threatens to use force in accordance with this subsection does
120 not have a duty to retreat before using or threatening to use
121 such force. ~~However,~~

122 (2) A person is justified in using or threatening to use
123 ~~the use of deadly force and does not have a duty to retreat if:~~

124 (1) ~~he or she reasonably believes that~~ using or threatening
125 to use such force is necessary to prevent imminent death or
126 great bodily harm to himself or herself or another or to prevent
127 the imminent commission of a forcible felony; ~~or~~

128 (2) ~~Under those circumstances permitted pursuant to s.~~
129 776.013. A person who uses or threatens to use deadly force in
130 accordance with this subsection does not have a duty to retreat
131 and has the right to stand his or her ground if the person using
132 or threatening to use the deadly force is not engaged in a
133 criminal activity and is in a place where he or she has a right
134 to be.

135 Section 4. Subsections (1), (2), and (3) of section
136 776.013, Florida Statutes, are amended to read:

137 776.013 Home protection; use or threatened use of deadly
138 force; presumption of fear of death or great bodily harm.—

139 (1) A person is presumed to have held a reasonable fear of
140 imminent peril of death or great bodily harm to himself or
141 herself or another when using or threatening to use defensive
142 force that is intended or likely to cause death or great bodily
143 harm to another if:

144 (a) The person against whom the defensive force was used or
145 threatened was in the process of unlawfully and forcefully

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146 entering, or had unlawfully and forcibly entered, a dwelling,
147 residence, or occupied vehicle, or if that person had removed or
148 was attempting to remove another against that person's will from
149 the dwelling, residence, or occupied vehicle; and

150 (b) The person who uses or threatens to use defensive force
151 knew or had reason to believe that an unlawful and forcible
152 entry or unlawful and forcible act was occurring or had
153 occurred.

154 (2) The presumption set forth in subsection (1) does not
155 apply if:

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

162 (b) The person or persons sought to be removed is a child
163 or grandchild, or is otherwise in the lawful custody or under
164 the lawful guardianship of, the person against whom the
165 defensive force is used or threatened; or

166 (c) The person who uses or threatens to use defensive force
167 is engaged in a criminal ~~an unlawful~~ activity or is using the
168 dwelling, residence, or occupied vehicle to further a criminal
169 ~~an unlawful~~ activity; or

170 (d) The person against whom the defensive force is used or
171 threatened is a law enforcement officer, as defined in s.
172 943.10(14), who enters or attempts to enter a dwelling,
173 residence, or vehicle in the performance of his or her official
174 duties and the officer identified himself or herself in

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175 accordance with any applicable law or the person using or
176 threatening to use force knew or reasonably should have known
177 that the person entering or attempting to enter was a law
178 enforcement officer.

179 (3) A person ~~who is not engaged in an unlawful activity and~~
180 who is attacked in his or her dwelling, residence, or vehicle ~~in~~
181 ~~any other place where he or she has a right to be~~ has no duty to
182 retreat and has the right to stand his or her ground and use or
183 threaten to use force ~~meet force with force~~, including deadly
184 force, if he or she uses or threatens to use force in accordance
185 with s. 776.012(1) or (2) or s. 776.031(1) or (2) ~~reasonably~~
186 ~~believes it is necessary to do so to prevent death or great~~
187 ~~bodily harm to himself or herself or another or to prevent the~~
188 ~~commission of a forcible felony.~~

189 Section 5. Section 776.031, Florida Statutes, is amended to
190 read:

191 776.031 Use or threatened use of force in defense of
192 property ~~others.~~

193 (1) A person is justified in using or threatening to use
194 ~~the use of~~ force, except deadly force, against another when and
195 to the extent that the person reasonably believes that such
196 conduct is necessary to prevent or terminate the other's
197 trespass on, or other tortious or criminal interference with,
198 either real property other than a dwelling or personal property,
199 lawfully in his or her possession or in the possession of
200 another who is a member of his or her immediate family or
201 household or of a person whose property he or she has a legal
202 duty to protect. A person who uses or threatens to use force in
203 accordance with this subsection does not have a duty to retreat

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204 before using or threatening to use such force. ~~However, the~~

205 (2) A person is justified in using or threatening to use
206 ~~the use of~~ deadly force only if he or she reasonably believes
207 that such conduct ~~force~~ is necessary to prevent the imminent
208 commission of a forcible felony. ~~A person does not have a duty~~
209 ~~to retreat if the person is in a place where he or she has a~~
210 right to be. A person who uses or threatens to use deadly force
211 in accordance with this subsection does not have a duty to
212 retreat and has the right to stand his or her ground if the
213 person using or threatening to use the deadly force is not
214 engaged in a criminal activity and is in a place where he or she
215 has a right to be.

216 Section 6. Subsections (1) and (2) of section 776.032,
217 Florida Statutes, are amended to read:

218 776.032 Immunity from criminal prosecution and civil action
219 for justifiable use or threatened use of force.-

220 (1) A person who uses or threatens to use force as
221 permitted in s. 776.012, s. 776.013, or s. 776.031 is justified
222 in ~~using~~ such conduct ~~force~~ and is immune from criminal
223 prosecution and civil action for the use or threatened use of
224 such force by the person, personal representative, or heirs of
225 the person against whom the force was used or threatened, unless
226 the person against whom force was used or threatened is a law
227 enforcement officer, as defined in s. 943.10(14), who was acting
228 in the performance of his or her official duties and the officer
229 identified himself or herself in accordance with any applicable
230 law or the person using or threatening to use force knew or
231 reasonably should have known that the person was a law
232 enforcement officer. As used in this subsection, the term

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233 "criminal prosecution" includes arresting, detaining in custody,
234 and charging or prosecuting the defendant.

235 (2) A law enforcement agency may use standard procedures
236 for investigating the use or threatened use of force as
237 described in subsection (1), but the agency may not arrest the
238 person for using or threatening to use force unless it
239 determines that there is probable cause that the force that was
240 used or threatened was unlawful.

241 Section 7. Subsection (2) of section 776.041, Florida
242 Statutes, is amended to read:

243 776.041 Use or threatened use of force by aggressor.—The
244 justification described in the preceding sections of this
245 chapter is not available to a person who:

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

248 (a) Such force or threat of force is so great that the
249 person reasonably believes that he or she is in imminent danger
250 of death or great bodily harm and that he or she has exhausted
251 every reasonable means to escape such danger other than the use
252 or threatened use of force which is likely to cause death or
253 great bodily harm to the assailant; or

254 (b) In good faith, the person withdraws from physical
255 contact with the assailant and indicates clearly to the
256 assailant that he or she desires to withdraw and terminate the
257 use or threatened use of force, but the assailant continues or
258 resumes the use or threatened use of force.

259 Section 8. Subsection (1) of section 776.051, Florida
260 Statutes, is amended to read:

261 776.051 Use or threatened use of force in resisting arrest

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262 or making an arrest or in the execution of a legal duty;
263 prohibition.—

264 (1) A person is not justified in the use or threatened use
265 of force to resist an arrest by a law enforcement officer, or to
266 resist a law enforcement officer who is engaged in the execution
267 of a legal duty, if the law enforcement officer was acting in
268 good faith and he or she is known, or reasonably appears, to be
269 a law enforcement officer.

270 Section 9. Subsection (1) of section 776.06, Florida
271 Statutes, is amended to read:

272 776.06 Deadly force by a law enforcement or correctional
273 officer.—

274 (1) As applied to a law enforcement officer or correctional
275 officer acting in the performance of his or her official duties,
276 the term "deadly force" means force that is likely to cause
277 death or great bodily harm and includes, but is not limited to:

278 (a) The firing of a firearm in the direction of the person
279 to be arrested, even though no intent exists to kill or inflict
280 great bodily harm; and

281 (b) The firing of a firearm at a vehicle in which the
282 person to be arrested is riding.

283 Section 10. Section 776.09, Florida Statutes, is created to
284 read:

285 776.09 Retention of records pertaining to persons found to
286 be acting in lawful self-defense; expunction of related criminal
287 history records.—

288 (1) Whenever the state attorney or statewide prosecutor
289 dismisses an information, indictment, or other charging
290 document, or decides not to file an information, indictment, or

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291 other charging document, because of a finding that the person
292 accused acted in lawful self-defense pursuant to the provisions
293 related to the justifiable use of force in chapter 776, that
294 finding shall be documented in writing and retained in the files
295 of the state attorney or statewide prosecutor.

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

302 (3) Under either of these conditions, the person accused
303 may apply for a certificate of eligibility to expunge the
304 associated criminal history record, pursuant to s. 943.0585(5),
305 notwithstanding the eligibility requirements prescribed in s.
306 943.0585(1)(b) or (2).

307 Section 11. Section 943.0585, Florida Statutes, is amended
308 to read:

309 943.0585 Court-ordered expunction of criminal history
310 records.—The courts of this state have jurisdiction over their
311 own procedures, including the maintenance, expunction, and
312 correction of judicial records containing criminal history
313 information to the extent such procedures are not inconsistent
314 with the conditions, responsibilities, and duties established by
315 this section. Any court of competent jurisdiction may order a
316 criminal justice agency to expunge the criminal history record
317 of a minor or an adult who complies with the requirements of
318 this section. The court shall not order a criminal justice
319 agency to expunge a criminal history record until the person

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320 seeking to expunge a criminal history record has applied for and
321 received a certificate of eligibility for expunction pursuant to
322 subsection (2) or subsection (5). A criminal history record that
323 relates to a violation of s. 393.135, s. 394.4593, s. 787.025,
324 chapter 794, s. 796.03, s. 800.04, s. 810.14, s. 817.034, s.
325 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s.
326 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s.
327 907.041, or any violation specified as a predicate offense for
328 registration as a sexual predator pursuant to s. 775.21, without
329 regard to whether that offense alone is sufficient to require
330 such registration, or for registration as a sexual offender
331 pursuant to s. 943.0435, may not be expunged, without regard to
332 whether adjudication was withheld, if the defendant was found
333 guilty of or pled guilty or nolo contendere to the offense, or
334 if the defendant, as a minor, was found to have committed, or
335 pled guilty or nolo contendere to committing, the offense as a
336 delinquent act. The court may only order expunction of a
337 criminal history record pertaining to one arrest or one incident
338 of alleged criminal activity, except as provided in this
339 section. The court may, at its sole discretion, order the
340 expunction of a criminal history record pertaining to more than
341 one arrest if the additional arrests directly relate to the
342 original arrest. If the court intends to order the expunction of
343 records pertaining to such additional arrests, such intent must
344 be specified in the order. A criminal justice agency may not
345 expunge any record pertaining to such additional arrests if the
346 order to expunge does not articulate the intention of the court
347 to expunge a record pertaining to more than one arrest. This
348 section does not prevent the court from ordering the expunction

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349 of only a portion of a criminal history record pertaining to one
350 arrest or one incident of alleged criminal activity.

351 Notwithstanding any law to the contrary, a criminal justice
352 agency may comply with laws, court orders, and official requests
353 of other jurisdictions relating to expunction, correction, or
354 confidential handling of criminal history records or information
355 derived therefrom. This section does not confer any right to the
356 expunction of any criminal history record, and any request for
357 expunction of a criminal history record may be denied at the
358 sole discretion of the court.

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

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

364 (b) The petitioner's sworn statement attesting that the
365 petitioner:

366 1. Has never, prior to the date on which the petition is
367 filed, been adjudicated guilty of a criminal offense or
368 comparable ordinance violation, or been adjudicated delinquent
369 for committing any felony or a misdemeanor specified in s.
370 943.051(3)(b).

371 2. Has not been adjudicated guilty of, or adjudicated
372 delinquent for committing, any of the acts stemming from the
373 arrest or alleged criminal activity to which the petition
374 pertains.

375 3. Has never secured a prior sealing or expunction of a
376 criminal history record under this section, s. 943.059, former
377 s. 893.14, former s. 901.33, or former s. 943.058, unless

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378 expunction is sought of a criminal history record previously
379 sealed for 10 years pursuant to paragraph (2) (h) and the record
380 is otherwise eligible for expunction.

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

384

385 Any person who knowingly provides false information on such
386 sworn statement to the court commits a felony of the third
387 degree, punishable as provided in s. 775.082, s. 775.083, or s.
388 775.084.

389 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to
390 petitioning the court to expunge a criminal history record, a
391 person seeking to expunge a criminal history record shall apply
392 to the department for a certificate of eligibility for
393 expunction. The department shall, by rule adopted pursuant to
394 chapter 120, establish procedures pertaining to the application
395 for and issuance of certificates of eligibility for expunction.
396 A certificate of eligibility for expunction is valid for 12
397 months after the date stamped on the certificate when issued by
398 the department. After that time, the petitioner must reapply to
399 the department for a new certificate of eligibility. Eligibility
400 for a renewed certification of eligibility must be based on the
401 status of the applicant and the law in effect at the time of the
402 renewal application. The department shall issue a certificate of
403 eligibility for expunction to a person who is the subject of a
404 criminal history record if that person:

405 (a) Has obtained, and submitted to the department, a
406 written, certified statement from the appropriate state attorney

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407 or statewide prosecutor which indicates:

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

410 2. That an indictment, information, or other charging
411 document, if filed or issued in the case, was dismissed or nolle
412 prosequi by the state attorney or statewide prosecutor, or was
413 dismissed by a court of competent jurisdiction, and that none of
414 the charges related to the arrest or alleged criminal activity
415 to which the petition to expunge pertains resulted in a trial,
416 without regard to whether the outcome of the trial was other
417 than an adjudication of guilt.

418 3. That the criminal history record does not relate to a
419 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
420 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
421 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
422 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
423 any violation specified as a predicate offense for registration
424 as a sexual predator pursuant to s. 775.21, without regard to
425 whether that offense alone is sufficient to require such
426 registration, or for registration as a sexual offender pursuant
427 to s. 943.0435, where the defendant was found guilty of, or pled
428 guilty or nolo contendere to any such offense, or that the
429 defendant, as a minor, was found to have committed, or pled
430 guilty or nolo contendere to committing, such an offense as a
431 delinquent act, without regard to whether adjudication was
432 withheld.

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

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436 (c) Has submitted to the department a certified copy of the
437 disposition of the charge to which the petition to expunge
438 pertains.

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

444 (e) 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 to
447 expunge pertains.

448 (f) 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 (h) and the record is
453 otherwise eligible for expunction.

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

457 (h) Has previously obtained a court order sealing the
458 record under this section, former s. 893.14, former s. 901.33,
459 or former s. 943.058 for a minimum of 10 years because
460 adjudication was withheld or because all charges related to the
461 arrest or alleged criminal activity to which the petition to
462 expunge pertains were not dismissed prior to trial, without
463 regard to whether the outcome of the trial was other than an
464 adjudication of guilt. The requirement for the record to have

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465 previously been sealed for a minimum of 10 years does not apply
466 when a plea was not entered or all charges related to the arrest
467 or alleged criminal activity to which the petition to expunge
468 pertains were dismissed prior to trial.

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

470 (a) In judicial proceedings under this section, a copy of
471 the completed petition to expunge shall be served upon the
472 appropriate state attorney or the statewide prosecutor and upon
473 the arresting agency; however, it is not necessary to make any
474 agency other than the state a party. The appropriate state
475 attorney or the statewide prosecutor and the arresting agency
476 may respond to the court regarding the completed petition to
477 expunge.

478 (b) If relief is granted by the court, the clerk of the
479 court shall certify copies of the order to the appropriate state
480 attorney or the statewide prosecutor and the arresting agency.
481 The arresting agency is responsible for forwarding the order to
482 any other agency to which the arresting agency disseminated the
483 criminal history record information to which the order pertains.
484 The department shall forward the order to expunge to the Federal
485 Bureau of Investigation. The clerk of the court shall certify a
486 copy of the order to any other agency which the records of the
487 court reflect has received the criminal history record from the
488 court.

489 (c) For an order to expunge entered by a court prior to
490 July 1, 1992, the department shall notify the appropriate state
491 attorney or statewide prosecutor of an order to expunge which is
492 contrary to law because the person who is the subject of the
493 record has previously been convicted of a crime or comparable

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494 ordinance violation or has had a prior criminal history record
495 sealed or expunged. Upon receipt of such notice, the appropriate
496 state attorney or statewide prosecutor shall take action, within
497 60 days, to correct the record and petition the court to void
498 the order to expunge. The department shall seal the record until
499 such time as the order is voided by the court.

500 (d) On or after July 1, 1992, the department or any other
501 criminal justice agency is not required to act on an order to
502 expunge entered by a court when such order does not comply with
503 the requirements of this section. Upon receipt of such an order,
504 the department must notify the issuing court, the appropriate
505 state attorney or statewide prosecutor, the petitioner or the
506 petitioner's attorney, and the arresting agency of the reason
507 for noncompliance. The appropriate state attorney or statewide
508 prosecutor shall take action within 60 days to correct the
509 record and petition the court to void the order. No cause of
510 action, including contempt of court, shall arise against any
511 criminal justice agency for failure to comply with an order to
512 expunge when the petitioner for such order failed to obtain the
513 certificate of eligibility as required by this section or such
514 order does not otherwise comply with the requirements of this
515 section.

516 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any
517 criminal history record of a minor or an adult which is ordered
518 expunged by a court of competent jurisdiction pursuant to this
519 section must be physically destroyed or obliterated by any
520 criminal justice agency having custody of such record; except
521 that any criminal history record in the custody of the
522 department must be retained in all cases. A criminal history

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523 record ordered expunged that is retained by the department is
524 confidential and exempt from the provisions of s. 119.07(1) and
525 s. 24(a), Art. I of the State Constitution and not available to
526 any person or entity except upon order of a court of competent
527 jurisdiction. A criminal justice agency may retain a notation
528 indicating compliance with an order to expunge.

529 (a) The person who is the subject of a criminal history
530 record that is expunged under this section or under other
531 provisions of law, including former s. 893.14, former s. 901.33,
532 and former s. 943.058, may lawfully deny or fail to acknowledge
533 the arrests covered by the expunged record, except when the
534 subject of the record:

- 535 1. Is a candidate for employment with a criminal justice
536 agency;
- 537 2. Is a defendant in a criminal prosecution;
- 538 3. Concurrently or subsequently petitions for relief under
539 this section, s. 943.0583, or s. 943.059;
- 540 4. Is a candidate for admission to The Florida Bar;
- 541 5. Is seeking to be employed or licensed by or to contract
542 with the Department of Children and Families, the Division of
543 Vocational Rehabilitation within the Department of Education,
544 the Agency for Health Care Administration, the Agency for
545 Persons with Disabilities, the Department of Health, the
546 Department of Elderly Affairs, or the Department of Juvenile
547 Justice or to be employed or used by such contractor or licensee
548 in a sensitive position having direct contact with children, the
549 disabled, or the elderly; or
- 550 6. Is seeking to be employed or licensed by the Department
551 of Education, any district school board, any university

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552 laboratory school, any charter school, any private or parochial
553 school, or any local governmental entity that licenses child
554 care facilities.

555 (b) Subject to the exceptions in paragraph (a), a person
556 who has been granted an expunction under this section, former s.
557 893.14, former s. 901.33, or former s. 943.058 may not be held
558 under any provision of law of this state to commit perjury or to
559 be otherwise liable for giving a false statement by reason of
560 such person's failure to recite or acknowledge an expunged
561 criminal history record.

562 (c) Information relating to the existence of an expunged
563 criminal history record which is provided in accordance with
564 paragraph (a) is confidential and exempt from the provisions of
565 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
566 except that the department shall disclose the existence of a
567 criminal history record ordered expunged to the entities set
568 forth in subparagraphs (a)1., 4., 5., 6., and 7. for their
569 respective licensing, access authorization, and employment
570 purposes, and to criminal justice agencies for their respective
571 criminal justice purposes. It is unlawful for any employee of an
572 entity set forth in subparagraph (a)1., subparagraph (a)4.,
573 subparagraph (a)5., subparagraph (a)6., or subparagraph (a)7. to
574 disclose information relating to the existence of an expunged
575 criminal history record of a person seeking employment, access
576 authorization, or licensure with such entity or contractor,
577 except to the person to whom the criminal history record relates
578 or to persons having direct responsibility for employment,
579 access authorization, or licensure decisions. Any person who
580 violates this paragraph commits a misdemeanor of the first

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581 degree, punishable as provided in s. 775.082 or s. 775.083.

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

587 (a) Has obtained, and submitted to the department, on a
588 form provided by the department, a written, certified statement
589 from the appropriate state attorney or statewide prosecutor
590 which states whether an information, indictment, or other
591 charging document was not filed or was dismissed by the state
592 attorney, or dismissed by the court, because it was found that
593 the person acted in lawful self-defense pursuant to the
594 provisions related to justifiable use of force in chapter 776.

595 (b) Each petition to a court to expunge a criminal history
596 record pursuant to this subsection is complete only when
597 accompanied by:

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

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

603
604 Any person who knowingly provides false information on such
605 sworn statement to the court commits a felony of the third
606 degree, punishable as provided in s. 775.082, s. 775.083, or s.
607 775.084.

608 (c) This subsection does not confer any right to the
609 expunction of a criminal history record, and any request for

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610 expunction of a criminal history record may be denied at the
611 discretion of the court.

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

614 (e) The department shall, by rule adopted pursuant to
615 chapter 120, establish procedures pertaining to the application
616 for and issuance of certificates of eligibility for expunction
617 under this subsection.

618 (6)~~(5)~~ STATUTORY REFERENCES.—Any reference to any other
619 chapter, section, or subdivision of the Florida Statutes in this
620 section constitutes a general reference under the doctrine of
621 incorporation by reference.

622 Section 12. This act shall take effect upon becoming a law.