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1
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 to use the
14 deadly force is not engaged in a criminal activity and
15 is in a place where he or she has a right to be;
16 amending s. 776.013, F.S.; applying presumption
17 relating to the use of deadly force to the threatened
18 use of deadly force in the defense of a residence and
19 similar circumstances; applying provisions relating to
20 such use of force to the threatened use of force;
21 removing provisions relating to one's duty to retreat
22 before using force; amending s. 776.031, F.S.;
23 applying provisions relating to the use of force in
24 defense of property to the threatened use of force;
25 providing that a person who lawfully uses or threatens



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26 | to use nondeadly force does not have a duty to
27 | retreat; providing that a person who lawfully uses or
28 | threatens to use deadly force does not have a duty to
29 | retreat if the person using or threatening to use the
30 | deadly force is not engaged in a criminal activity and
31 | is in a place where he or she has a right to be;
32 | amending s. 776.032, F.S.; applying immunity
33 | provisions that relate to the use of force to the
34 | threatened use of force; limiting immunity provisions
35 | to civil actions by the person, personal
36 | representative, or heirs of the person against whom
37 | force was used; amending s. 776.041, F.S.; applying
38 | provisions relating to the use of force by an
39 | aggressor to the threatened use of force; providing
40 | exceptions; amending s. 776.051, F.S.; providing that
41 | a person is not justified in the threatened use of
42 | force to resist an arrest by a law enforcement
43 | officer; amending s. 776.06, F.S.; clarifying that the
44 | provision relates to use of force by a law enforcement
45 | officer or correctional officer; creating s. 776.09,
46 | F.S.; providing that a person is eligible to apply for
47 | a certificate of eligibility for expunction,
48 | notwithstanding specified eligibility requirements, if
49 | the charging document in the case is not filed or is
50 | dismissed because it is found that the person acted in



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51 | lawful self-defense pursuant to the provisions related
52 | to the justifiable use of force in chapter 776, F.S.;
53 | requiring a prosecutor, statewide prosecutor, or court
54 | to document and retain such findings; amending s.
55 | 943.0585, F.S.; requiring the Department of Law
56 | Enforcement to provide a certificate of eligibility
57 | for expunction, notwithstanding the eligibility
58 | requirements, to a person who has a written, certified
59 | statement from a prosecutor or statewide prosecutor
60 | indicating that the charging document in the case was
61 | not filed or was dismissed because it was found that
62 | the person acted in lawful self-defense pursuant to
63 | the provisions related to the justifiable use of force
64 | in chapter 776, F.S.; providing a penalty for
65 | knowingly providing false information on a sworn
66 | statement; providing applicability; requiring the
67 | department to adopt rules; providing an effective
68 | date.

69

70 | Be It Enacted by the Legislature of the State of Florida:

71

72 | Section 1. (1) The Legislature finds that persons have
73 | been criminally prosecuted and have been sentenced to mandatory
74 | minimum terms of imprisonment pursuant to s. 775.087, Florida
75 | Statutes, for threatening to use force in a manner and under



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76 circumstances that would have been justifiable under chapter
77 776, Florida Statutes, had force actually been used.

78 (2) The Legislature intends to:

79 (a) Provide criminal and civil immunity to those who
80 threaten to use force if the threat was made in a manner and
81 under circumstances that would have been immune under chapter
82 776, Florida Statutes, had force actually been used.

83 (b) Clarify that those who threaten to use force may claim
84 self-defense if the threat was made in a manner and under
85 circumstances that would have been justifiable under chapter
86 776, Florida Statutes, had force actually been used.

87 (c) Ensure that those who threaten to use force in a
88 manner and under circumstances that are justifiable under
89 chapter 776, Florida Statutes, are not sentenced to a mandatory
90 minimum term of imprisonment pursuant to s. 775.087, Florida
91 Statutes.

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

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

99 775.087 Possession or use of weapon; aggravated battery;
100 felony reclassification; minimum sentence.—



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

105 (a) The defendant had a good faith belief that the
106 aggravated assault was justifiable pursuant to chapter 776.

107 (b) The aggravated assault was not committed in the course
108 of committing another criminal offense.

109 (c) The defendant does not pose a threat to public safety.

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

112 Section 3. Section 776.012, Florida Statutes, is amended
113 to read:

114 776.012 Use or threatened use of force in defense of
115 person.—

116 (1) A person is justified in using or threatening to use
117 force, except deadly force, against another when and to the
118 extent that the person reasonably believes that such conduct is
119 necessary to defend himself or herself or another against the
120 other's imminent use of unlawful force. A person who uses or
121 threatens to use force in accordance with this subsection does
122 not have a duty to retreat before using or threatening to use
123 such force. However,

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



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

130 ~~(2)~~ A person who uses or threatens to use deadly force in
131 accordance with this subsection does not have a duty to retreat
132 and has the right to stand his or her ground if the person using
133 or threatening to use the deadly force is not engaged in a
134 criminal activity and is in a place where he or she has a right
135 to be ~~Under those circumstances permitted pursuant to s.~~
136 ~~776.013.~~

137 Section 4. Subsections (1), (2), and (3) of section
138 776.013, Florida Statutes, are amended to read:

139 776.013 Home protection; use or threatened use of deadly
140 force; presumption of fear of death or great bodily harm.—

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

146 (a) The person against whom the defensive force was used
147 or threatened was in the process of unlawfully and forcefully
148 entering, or had unlawfully and forcibly entered, a dwelling,
149 residence, or occupied vehicle, or if that person had removed or
150 was attempting to remove another against that person's will from



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151 the dwelling, residence, or occupied vehicle; and

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

156 (2) The presumption set forth in subsection (1) does not
157 apply if:

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

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

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

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



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176 duties and the officer identified himself or herself in
177 accordance with any applicable law or the person using or
178 threatening to use force knew or reasonably should have known
179 that the person entering or attempting to enter was a law
180 enforcement officer.

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

191 Section 5. Section 776.031, Florida Statutes, is amended
192 to read:

193 776.031 Use or threatened use of force in defense of
194 property ~~others.~~

195 (1) A person is justified in using or threatening to use
196 ~~the use of~~ force, except deadly force, against another when and
197 to the extent that the person reasonably believes that such
198 conduct is necessary to prevent or terminate the other's
199 trespass on, or other tortious or criminal interference with,
200 either real property other than a dwelling or personal property,



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201 lawfully in his or her possession or in the possession of
202 another who is a member of his or her immediate family or
203 household or of a person whose property he or she has a legal
204 duty to protect. A person who uses or threatens to use force in
205 accordance with this subsection does not have a duty to retreat
206 before using or threatening to use such force. ~~However,~~

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

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

220 776.032 Immunity from criminal prosecution and civil
221 action for justifiable use or threatened use of force.—

222 (1) A person who uses or threatens to use force as
223 permitted in s. 776.012, s. 776.013, or s. 776.031 is justified
224 in ~~using~~ such conduct ~~force~~ and is immune from criminal
225 prosecution and civil action for the use or threatened use of



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226 such force by the person, personal representative, or heirs of
227 the person against whom the force was used or threatened, unless
228 the person against whom force was used or threatened is a law
229 enforcement officer, as defined in s. 943.10(14), who was acting
230 in the performance of his or her official duties and the officer
231 identified himself or herself in accordance with any applicable
232 law or the person using or threatening to use force knew or
233 reasonably should have known that the person was a law
234 enforcement officer. As used in this subsection, the term
235 "criminal prosecution" includes arresting, detaining in custody,
236 and charging or prosecuting the defendant.

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

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

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

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

250 (a) Such force or threat of force is so great that the



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251 person reasonably believes that he or she is in imminent danger
252 of death or great bodily harm and that he or she has exhausted
253 every reasonable means to escape such danger other than the use
254 or threatened use of force which is likely to cause death or
255 great bodily harm to the assailant; or

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

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

263 776.051 Use or threatened use of force in resisting arrest
264 or making an arrest or in the execution of a legal duty;
265 prohibition.—

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

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

274 776.06 Deadly force by a law enforcement or correctional
275 officer.—



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

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

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

286 Section 10. Section 776.09, Florida Statutes, is created
287 to read:

288 776.09 Retention of records pertaining to persons found to
289 be acting in lawful self-defense; expunction of criminal history
290 records.—

291 (1) Whenever the state attorney or statewide prosecutor
292 dismisses an information, indictment, or other charging
293 document, or decides not to file an information, indictment, or
294 other charging document because of a finding that the person
295 accused acted in lawful self-defense pursuant to the provisions
296 related to the justifiable use of force in this chapter, that
297 finding shall be documented in writing and retained in the files
298 of the state attorney or statewide prosecutor.

299 (2) Whenever a court dismisses an information, indictment,
300 or other charging document because of a finding that the person



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301 | accused acted in lawful self-defense pursuant to the provisions
302 | related to the justifiable use of force in this chapter, that
303 | finding shall be recorded in an order or memorandum, which shall
304 | be retained in the court's records.

305 | (3) Under either condition described in subsection (1) or
306 | subsection (2), the person accused may apply for a certificate
307 | of eligibility to expunge the associated criminal history
308 | record, pursuant to s. 943.0585(5), notwithstanding the
309 | eligibility requirements prescribed in s. 943.0585(1)(b) or (2).

310 | Section 11. Section 943.0585, Florida Statutes, is amended
311 | to read:

312 | 943.0585 Court-ordered expunction of criminal history
313 | records.—The courts of this state have jurisdiction over their
314 | own procedures, including the maintenance, expunction, and
315 | correction of judicial records containing criminal history
316 | information to the extent such procedures are not inconsistent
317 | with the conditions, responsibilities, and duties established by
318 | this section. Any court of competent jurisdiction may order a
319 | criminal justice agency to expunge the criminal history record
320 | of a minor or an adult who complies with the requirements of
321 | this section. The court shall not order a criminal justice
322 | agency to expunge a criminal history record until the person
323 | seeking to expunge a criminal history record has applied for and
324 | received a certificate of eligibility for expunction pursuant to
325 | subsection (2) or subsection (5). A criminal history record that



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



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351 section does not prevent the court from ordering the expunction
352 of only a portion of a criminal history record pertaining to one
353 arrest or one incident of alleged criminal activity.

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

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

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

367 (b) The petitioner's sworn statement attesting that the
368 petitioner:

369 1. Has never, prior to the date on which the petition is
370 filed, been adjudicated guilty of a criminal offense or
371 comparable ordinance violation, or been adjudicated delinquent
372 for committing any felony or a misdemeanor specified in s.
373 943.051(3)(b).

374 2. Has not been adjudicated guilty of, or adjudicated
375 delinquent for committing, any of the acts stemming from the



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376 | arrest or alleged criminal activity to which the petition
377 | pertains.

378 | 3. Has never secured a prior sealing or expunction of a
379 | criminal history record under this section, s. 943.059, former
380 | s. 893.14, former s. 901.33, or former s. 943.058, unless
381 | expunction is sought of a criminal history record previously
382 | sealed for 10 years pursuant to paragraph (2) (h) and the record
383 | is otherwise eligible for expunction.

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

387 |
388 | Any person who knowingly provides false information on such
389 | sworn statement to the court commits a felony of the third
390 | degree, punishable as provided in s. 775.082, s. 775.083, or s.
391 | 775.084.

392 | (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to
393 | petitioning the court to expunge a criminal history record, a
394 | person seeking to expunge a criminal history record shall apply
395 | to the department for a certificate of eligibility for
396 | expunction. The department shall, by rule adopted pursuant to
397 | chapter 120, establish procedures pertaining to the application
398 | for and issuance of certificates of eligibility for expunction.
399 | A certificate of eligibility for expunction is valid for 12
400 | months after the date stamped on the certificate when issued by



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401 the department. After that time, the petitioner must reapply to
402 the department for a new certificate of eligibility. Eligibility
403 for a renewed certification of eligibility must be based on the
404 status of the applicant and the law in effect at the time of the
405 renewal application. The department shall issue a certificate of
406 eligibility for expunction to a person who is the subject of a
407 criminal history record if that person:

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

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

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

421 3. That the criminal history record does not relate to a
422 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
423 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
424 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
425 893.135, s. 916.1075, a violation enumerated in s. 907.041, or



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426 any violation specified as a predicate offense for registration
427 as a sexual predator pursuant to s. 775.21, without regard to
428 whether that offense alone is sufficient to require such
429 registration, or for registration as a sexual offender pursuant
430 to s. 943.0435, where the defendant was found guilty of, or pled
431 guilty or nolo contendere to any such offense, or that the
432 defendant, as a minor, was found to have committed, or pled
433 guilty or nolo contendere to committing, such an offense as a
434 delinquent act, without regard to whether adjudication was
435 withheld.

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

439 (c) Has submitted to the department a certified copy of
440 the disposition of the charge to which the petition to expunge
441 pertains.

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

447 (e) Has not been adjudicated guilty of, or adjudicated
448 delinquent for committing, any of the acts stemming from the
449 arrest or alleged criminal activity to which the petition to
450 expunge pertains.



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

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

460 (h) Has previously obtained a court order sealing the
461 record under this section, former s. 893.14, former s. 901.33,
462 or former s. 943.058 for a minimum of 10 years because
463 adjudication was withheld or because all charges related to the
464 arrest or alleged criminal activity to which the petition to
465 expunge pertains were not dismissed prior to trial, without
466 regard to whether the outcome of the trial was other than an
467 adjudication of guilt. The requirement for the record to have
468 previously been sealed for a minimum of 10 years does not apply
469 when a plea was not entered or all charges related to the arrest
470 or alleged criminal activity to which the petition to expunge
471 pertains were dismissed prior to trial.

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

473 (a) In judicial proceedings under this section, a copy of
474 the completed petition to expunge shall be served upon the
475 appropriate state attorney or the statewide prosecutor and upon



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476 the arresting agency; however, it is not necessary to make any
477 agency other than the state a party. The appropriate state
478 attorney or the statewide prosecutor and the arresting agency
479 may respond to the court regarding the completed petition to
480 expunge.

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

492 (c) For an order to expunge entered by a court prior to
493 July 1, 1992, the department shall notify the appropriate state
494 attorney or statewide prosecutor of an order to expunge which is
495 contrary to law because the person who is the subject of the
496 record has previously been convicted of a crime or comparable
497 ordinance violation or has had a prior criminal history record
498 sealed or expunged. Upon receipt of such notice, the appropriate
499 state attorney or statewide prosecutor shall take action, within
500 60 days, to correct the record and petition the court to void



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501 | the order to expunge. The department shall seal the record until
502 | such time as the order is voided by the court.

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

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



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

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

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



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551 | in a sensitive position having direct contact with children, the
552 | disabled, or the elderly; or

553 | 6. Is seeking to be employed or licensed by the Department
554 | of Education, any district school board, any university
555 | laboratory school, any charter school, any private or parochial
556 | school, or any local governmental entity that licenses child
557 | care facilities.

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

565 | (c) Information relating to the existence of an expunged
566 | criminal history record which is provided in accordance with
567 | paragraph (a) is confidential and exempt from the provisions of
568 | s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
569 | except that the department shall disclose the existence of a
570 | criminal history record ordered expunged to the entities set
571 | forth in subparagraphs (a)1., 4., 5., 6., and 7. for their
572 | respective licensing, access authorization, and employment
573 | purposes, and to criminal justice agencies for their respective
574 | criminal justice purposes. It is unlawful for any employee of an
575 | entity set forth in subparagraph (a)1., subparagraph (a)4.,



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576 | subparagraph (a)5., subparagraph (a)6., or subparagraph (a)7. to
577 | disclose information relating to the existence of an expunged
578 | criminal history record of a person seeking employment, access
579 | authorization, or licensure with such entity or contractor,
580 | except to the person to whom the criminal history record relates
581 | or to persons having direct responsibility for employment,
582 | access authorization, or licensure decisions. Any person who
583 | violates this paragraph commits a misdemeanor of the first
584 | degree, punishable as provided in s. 775.082 or s. 775.083.

585 | (5) EXCEPTION FOR LAWFUL SELF-DEFENSE.—Notwithstanding the
586 | eligibility requirements prescribed in paragraph (1)(b) and
587 | subsection (2), the department shall issue a certificate of
588 | eligibility for expunction under this subsection to a person who
589 | is the subject of a criminal history record if that person:

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

598 | (b) Each petition to a court to expunge a criminal history
599 | record pursuant to this subsection is complete only when
600 | accompanied by:



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

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

606
607 Any person who knowingly provides false information on such
608 sworn statement to the court commits a felony of the third
609 degree, punishable as provided in s. 775.082, s. 775.083, or s.
610 775.084.

611 (c) This subsection does not confer any right to the
612 expunction of a criminal history record, and any request for
613 expunction of a criminal history record may be denied at the
614 discretion of the court.

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

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

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

625 Section 12. This act shall take effect upon becoming a



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626 | law.