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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/05/2014	.	
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The Committee on Judiciary (Bradley) recommended the following:

Senate Amendment (with title amendment)

Between lines 187 and 188
insert:

Section 8. Section 776.09, Florida Statutes, is created to
read:

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

(1) Whenever the state attorney or statewide prosecutor
dismisses an information, indictment, or other charging



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12 document, or decides not to file an information, indictment, or
13 other charging document, because of a finding that the person
14 accused acted in lawful self-defense pursuant to the provisions
15 related to the justifiable use of force in ch. 776, that finding
16 shall be documented in writing and retained in the files of
17 the state attorney or statewide prosecutor.

18 (2) Whenever a court dismisses an information, indictment,
19 or other charging document because of a finding that the person
20 accused acted in lawful self-defense pursuant to the provisions
21 related to the justifiable use of force in ch. 776, that finding
22 shall be recorded in an order or memorandum, which shall be
23 retained in the court's records.

24 (3) Under either of these conditions, the person accused
25 may apply for a certificate of eligibility to expunge the
26 associated criminal history record, pursuant to s. 943.0585(5),
27 notwithstanding the eligibility requirements prescribed in
28 subsections (1)(b) and (2) of s. 943.0585.

29 Section 9. Subsection (5) of section 943.0585, Florida
30 Statutes, is renumbered as subsection (6), respectively, and
31 subsection (5) is added to that section, to read:

32 943.0585 Court-ordered expunction of criminal history
33 records.—The courts of this state have jurisdiction over their
34 own procedures, including the maintenance, expunction, and
35 correction of judicial records containing criminal history
36 information to the extent such procedures are not inconsistent
37 with the conditions, responsibilities, and duties established by
38 this section. Any court of competent jurisdiction may order a
39 criminal justice agency to expunge the criminal history record
40 of a minor or an adult who complies with the requirements of



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41 this section. The court shall not order a criminal justice
42 agency to expunge a criminal history record until the person
43 seeking to expunge a criminal history record has applied for and
44 received a certificate of eligibility for expunction pursuant to
45 subsection (2) or subsection(5). A criminal history record that
46 relates to a violation of s. 393.135, s. 394.4593, s. 787.025,
47 chapter 794, s. 796.03, s. 800.04, s. 810.14, s. 817.034, s.
48 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s.
49 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s.
50 907.041, or any violation specified as a predicate offense for
51 registration as a sexual predator pursuant to s. 775.21, without
52 regard to whether that offense alone is sufficient to require
53 such registration, or for registration as a sexual offender
54 pursuant to s. 943.0435, may not be expunged, without regard to
55 whether adjudication was withheld, if the defendant was found
56 guilty of or pled guilty or nolo contendere to the offense, or
57 if the defendant, as a minor, was found to have committed, or
58 pled guilty or nolo contendere to committing, the offense as a
59 delinquent act. The court may only order expunction of a
60 criminal history record pertaining to one arrest or one incident
61 of alleged criminal activity, except as provided in this
62 section. The court may, at its sole discretion, order the
63 expunction of a criminal history record pertaining to more than
64 one arrest if the additional arrests directly relate to the
65 original arrest. If the court intends to order the expunction of
66 records pertaining to such additional arrests, such intent must
67 be specified in the order. A criminal justice agency may not
68 expunge any record pertaining to such additional arrests if the
69 order to expunge does not articulate the intention of the court



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70 to expunge a record pertaining to more than one arrest. This
71 section does not prevent the court from ordering the expunction
72 of only a portion of a criminal history record pertaining to one
73 arrest or one incident of alleged criminal activity.

74 Notwithstanding any law to the contrary, a criminal justice
75 agency may comply with laws, court orders, and official requests
76 of other jurisdictions relating to expunction, correction, or
77 confidential handling of criminal history records or information
78 derived therefrom. This section does not confer any right to the
79 expunction of any criminal history record, and any request for
80 expunction of a criminal history record may be denied at the
81 sole discretion of the court.

82 (5) EXCEPTION PROVIDED.—Notwithstanding the eligibility
83 requirements prescribed in subsections (1)(b) and (2), the
84 department shall issue a certificate of eligibility for
85 expunction under this subsection to a person who is the subject
86 of a criminal history record if that person:

87 (a) Has obtained, and submitted to the department, on a
88 form provided by the department, a written, certified statement
89 from the appropriate state attorney or statewide prosecutor
90 which indicates: that an information, indictment, or other
91 charging document was not filed or was dismissed by the state
92 attorney, or dismissed by the court, because it was found that
93 the person acted in lawful self-defense pursuant to the
94 provisions related to justifiable use of force in ch. 776.

95 (b) Each petition to a court to expunge a criminal history
96 record pursuant to subsection (5) is complete only when
97 accompanied by:

98 1. A valid certificate of eligibility for expunction issued



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99 by the department pursuant to subsection (5).

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

103
104 Any person who knowingly provides false information on such
105 sworn statement to the court commits a felony of the third
106 degree, punishable as provided in s. 775.082, s. 775.083, or s.
107 775.084.

108 (c) This subsection does not confer any right to the
109 expunction of a criminal history record, and any request for
110 expunction of a criminal history record may be denied at the
111 discretion of the court.

112 (d) Subsections (3) and (4) shall apply to expunction
113 ordered under subsection (5).

114 (e) The department shall, by rule adopted pursuant to
115 chapter 120, establish procedures pertaining to the application
116 for and issuance of certificates of eligibility for expunction
117 under subsection (5).

118
119 ===== T I T L E A M E N D M E N T =====

120 And the title is amended as follows:

121 Delete line 22

122 and insert:

123 officer; creating s. 776.09, F.S.; providing that a
124 person is eligible to apply for a certificate of
125 eligibility for expunction, notwithstanding the
126 eligibility requirements, if the charging document in
127 the case is not filed or is dismissed because it is



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128 found that the person acted in lawful self-defense
129 pursuant to the provisions related to the justifiable
130 use of force in ch. 776; requiring a prosecutor,
131 statewide prosecutor, or court to document and retain
132 such findings; amending s. 943.0585, F.S.; requiring
133 FDLE to provide a certificate of eligibility for
134 expunction, notwithstanding the eligibility
135 requirements, to a person who has a written, certified
136 statement from a prosecutor or statewide prosecutor
137 indicating that the charging document in the case was
138 not filed or was dismissed because it was found that
139 the person acted in lawful self-defense pursuant to
140 the provisions related to the justifiable use of force
141 in ch. 776; providing a penalty for knowingly
142 providing false information on a sworn statement;
143 providing an effective date.