

By Senator Wise

5-00407-10

2010296

1                   A bill to be entitled  
2           An act relating to state attorneys; amending s.  
3           27.366, F.S.; deleting a provision that requires each  
4           state attorney to report why a case-qualified  
5           defendant did not receive the mandatory minimum prison  
6           sentence in cases involving the possession or use of a  
7           weapon; amending s. 775.082, F.S.; deleting a  
8           provision that requires each state attorney to report  
9           why a case-qualified defendant did not receive the  
10          mandatory minimum prison sentence in cases involving  
11          certain specified offenses; repealing s. 775.08401,  
12          F.S., relating to criteria to be used when state  
13          attorneys decide to pursue habitual felony offenders  
14          or habitual violent felony offenders; repealing s.  
15          775.087(5), relating to a provision that requires each  
16          state attorney to report why a case-qualified  
17          defendant did not receive the mandatory minimum prison  
18          sentence in cases involving certain specified  
19          offenses; amending s. 903.286, F.S.; requiring the  
20          clerk of the court to withhold sufficient funds to pay  
21          any unpaid costs of prosecution from the return of a  
22          cash bond posted on behalf of a criminal defendant by  
23          a person other than a bail bond agent; amending s.  
24          938.27, F.S.; providing that persons whose cases are  
25          disposed of under any diversionary alternative are  
26          liable for payment of the costs of prosecution;  
27          deleting provisions regarding the burden of  
28          establishing financial resources of the defendant;  
29          requiring the clerk of court to separately record each

5-00407-10

2010296

30 assessment and payment of costs of prosecution;  
31 requiring the clerk to prepare a monthly report to the  
32 state attorney's office of the recorded assessments  
33 and payments; amending s. 943.0585, F.S.; requiring a  
34 person to remit a processing fee to the state  
35 attorney's office in order to receive a certificate of  
36 eligibility for expunction of a criminal history  
37 record; amending s. 943.059, F.S.; requiring a person  
38 to remit a processing fee to the state attorney's  
39 office in order to receive a certificate of  
40 eligibility for sealing a criminal history record;  
41 repealing s. 985.557(4), F.S., relating to direct-file  
42 policies and guidelines for juveniles; amending s.  
43 775.0843, F.S.; conforming a cross-reference;  
44 providing an effective date.

45

46 Be It Enacted by the Legislature of the State of Florida:

47

48 Section 1. Section 27.366, Florida Statutes, is amended to  
49 read:

50 27.366 Legislative intent and policy in cases meeting  
51 criteria of s. 775.087(2) and (3); report.-

52 ~~(1)~~ It is the intent of the Legislature that convicted  
53 criminal offenders who meet the criteria in s. 775.087(2) and  
54 (3) be sentenced to the minimum mandatory prison terms provided  
55 herein. It is the intent of the Legislature to establish zero  
56 tolerance of criminals who use, threaten to use, or avail  
57 themselves of firearms in order to commit crimes and thereby  
58 demonstrate their lack of value for human life. It is also the

5-00407-10

2010296

59 intent of the Legislature that prosecutors should appropriately  
60 exercise their discretion in those cases in which the offenders'  
61 possession of the firearm is incidental to the commission of a  
62 crime and not used in furtherance of the crime, used in order to  
63 commit the crime, or used in preparation to commit the crime.  
64 ~~For every case in which the offender meets the criteria in this~~  
65 ~~act and does not receive the mandatory minimum prison sentence,~~  
66 ~~the state attorney must explain the sentencing deviation in~~  
67 ~~writing and place such explanation in the case file maintained~~  
68 ~~by the state attorney. On a quarterly basis, each state attorney~~  
69 ~~shall submit copies of deviation memoranda regarding offenses~~  
70 ~~committed on or after the effective date of this act to the~~  
71 ~~President of the Florida Prosecuting Attorneys Association, Inc.~~  
72 ~~The association must maintain such information and make such~~  
73 ~~information available to the public upon request for at least a~~  
74 ~~10-year period.~~

75 ~~(2) Effective July 1, 2000, each state attorney shall~~  
76 ~~annually report to the Speaker of the House of Representatives,~~  
77 ~~the President of the Senate, and the Executive Office of the~~  
78 ~~Governor regarding the prosecution and sentencing of offenders~~  
79 ~~who met the criteria in s. 775.087(2) and (3). The report must~~  
80 ~~categorize the defendants by age, gender, race, and ethnicity.~~  
81 ~~Cases in which a final disposition has not yet been reached~~  
82 ~~shall be reported in a subsequent annual report.~~

83 Section 2. Paragraph (d) of subsection (9) of section  
84 775.082, Florida Statutes, is amended to read:

85 775.082 Penalties; applicability of sentencing structures;  
86 mandatory minimum sentences for certain reoffenders previously  
87 released from prison.-

5-00407-10

2010296

88 (9)

89 (d)~~1~~. It is the intent of the Legislature that offenders  
90 previously released from prison who meet the criteria in  
91 paragraph (a) be punished to the fullest extent of the law and  
92 as provided in this subsection, unless the state attorney  
93 determines that extenuating circumstances exist which preclude  
94 the just prosecution of the offender, including whether the  
95 victim recommends that the offender not be sentenced as provided  
96 in this subsection.

97 ~~2. For every case in which the offender meets the criteria~~  
98 ~~in paragraph (a) and does not receive the mandatory minimum~~  
99 ~~prison sentence, the state attorney must explain the sentencing~~  
100 ~~deviation in writing and place such explanation in the case file~~  
101 ~~maintained by the state attorney. On an annual basis, each state~~  
102 ~~attorney shall submit copies of deviation memoranda regarding~~  
103 ~~offenses committed on or after the effective date of this~~  
104 ~~subsection, to the president of the Florida Prosecuting~~  
105 ~~Attorneys Association, Inc. The association must maintain such~~  
106 ~~information, and make such information available to the public~~  
107 ~~upon request, for at least a 10-year period.~~

108 Section 3. Section 775.08401, Florida Statutes, is  
109 repealed.

110 Section 4. Subsection (5) of section 775.087, Florida  
111 Statutes, is repealed.

112 Section 5. Subsection (1) of section 903.286, Florida  
113 Statutes, is amended to read:

114 903.286 Return of cash bond; requirement to withhold unpaid  
115 fines, fees, court costs; cash bond forms.-

116 (1) Notwithstanding s. 903.31(2), the clerk of the court

5-00407-10

2010296\_\_

117 shall withhold from the return of a cash bond posted on behalf  
118 of a criminal defendant by a person other than a bail bond agent  
119 licensed pursuant to chapter 648 sufficient funds to pay any  
120 unpaid court fees, court costs, costs of prosecution, and  
121 criminal penalties. If sufficient funds are not available to pay  
122 all unpaid court fees, court costs, costs of prosecution, and  
123 criminal penalties, the clerk of the court shall immediately  
124 obtain payment from the defendant or enroll the defendant in a  
125 payment plan pursuant to s. 28.246.

126 Section 6. Section 938.27, Florida Statutes, is amended to  
127 read:

128 938.27 Judgment for costs on conviction and disposition.—

129 (1) In all criminal and violation-of-probation or  
130 community-control cases, convicted persons and persons whose  
131 cases are disposed of under any diversionary alternative are  
132 liable for payment of the costs of prosecution, including  
133 investigative costs incurred by law enforcement agencies, by  
134 fire departments for arson investigations, and by investigations  
135 of the Department of Financial Services or the Office of  
136 Financial Regulation of the Financial Services Commission, ~~if~~  
137 ~~requested by such agencies~~. The court shall include these costs  
138 in every judgment rendered against the convicted person. For  
139 purposes of this section, "convicted" means a determination of  
140 guilt, or of violation of probation or community control, which  
141 is a result of a plea, trial, or violation proceeding,  
142 regardless of whether adjudication is withheld.

143 (2) (a) The court shall impose the costs of prosecution and  
144 investigation notwithstanding the defendant's present ability to  
145 pay. The court shall require the defendant to pay the costs

5-00407-10

2010296\_\_

146 within a specified period or in specified installments.

147 (b) The end of such period or the last such installment  
148 shall not be later than:

149 1. The end of the period of probation or community control,  
150 if probation or community control is ordered;

151 2. Five years after the end of the term of imprisonment  
152 imposed, if the court does not order probation or community  
153 control; or

154 3. Five years after the date of sentencing in any other  
155 case.

156  
157 However, in no event shall the obligation to pay any unpaid  
158 amounts expire if not paid in full within the period specified  
159 in this paragraph.

160 (c) If not otherwise provided by the court under this  
161 section, costs shall be paid immediately.

162 (3) If a defendant is placed on probation or community  
163 control, payment of any costs under this section shall be a  
164 condition of such probation or community control. The court may  
165 revoke probation or community control if the defendant fails to  
166 pay these costs.

167 (4) Any dispute as to the proper amount or type of costs  
168 shall be resolved by the court by the preponderance of the  
169 evidence. The burden of demonstrating the amount of costs  
170 incurred is on the state attorney. ~~The burden of demonstrating~~  
171 ~~the financial resources of the defendant and the financial needs~~  
172 ~~of the defendant is on the defendant. The burden of~~  
173 ~~demonstrating such other matters as the court deems appropriate~~  
174 ~~is upon the party designated by the court as justice requires.~~

5-00407-10

2010296\_\_

175 (5) Any default in payment of costs may be collected by any  
176 means authorized by law for enforcement of a judgment.

177 (6) The clerk of the court shall collect and dispense cost  
178 payments in any case. The clerk of court shall separately record  
179 each assessment and the payment of costs of prosecution. Costs  
180 of prosecution must be assessed with respect to each case number  
181 before the court. The clerk shall provide a monthly report to  
182 the state attorney's office of the assessments and payments  
183 recorded.

184 (7) Investigative costs that are recovered shall be  
185 returned to the appropriate investigative agency that incurred  
186 the expense. Such costs include actual expenses incurred in  
187 conducting the investigation and prosecution of the criminal  
188 case; however, costs may also include the salaries of permanent  
189 employees. Any investigative costs recovered on behalf of a  
190 state agency must be remitted to the Department of Revenue for  
191 deposit in the agency operating trust fund, and a report of the  
192 payment must be sent to the agency, except that any  
193 investigative costs recovered on behalf of the Department of Law  
194 Enforcement shall be deposited in the department's Forfeiture  
195 and Investigative Support Trust Fund under s. 943.362.

196 (8) Costs for the state attorney shall be set in all cases  
197 at no less than \$50 per case when a misdemeanor or criminal  
198 traffic offense is charged and no less than \$100 per case when a  
199 felony offense is charged, including a proceeding in which the  
200 underlying offense is a violation of probation or community  
201 control. The court may set a higher amount upon a showing of  
202 sufficient proof of higher costs incurred. Costs recovered on  
203 behalf of the state attorney under this section shall be

5-00407-10

2010296

204 deposited into the state attorney's grants and donations trust  
205 fund to be used during the fiscal year in which the funds are  
206 collected, or in any subsequent fiscal year, for actual expenses  
207 incurred in investigating and prosecuting criminal cases, which  
208 may include the salaries of permanent employees, or for any  
209 other purpose authorized by the Legislature.

210 Section 7. Present paragraphs (c) through (h) of subsection  
211 (2) of section 943.0585, Florida Statutes, are redesignated as  
212 paragraphs (d) through (i), respectively, and a new paragraph  
213 (c) is added to that subsection, to read:

214 943.0585 Court-ordered expunction of criminal history  
215 records.—The courts of this state have jurisdiction over their  
216 own procedures, including the maintenance, expunction, and  
217 correction of judicial records containing criminal history  
218 information to the extent such procedures are not inconsistent  
219 with the conditions, responsibilities, and duties established by  
220 this section. Any court of competent jurisdiction may order a  
221 criminal justice agency to expunge the criminal history record  
222 of a minor or an adult who complies with the requirements of  
223 this section. The court shall not order a criminal justice  
224 agency to expunge a criminal history record until the person  
225 seeking to expunge a criminal history record has applied for and  
226 received a certificate of eligibility for expunction pursuant to  
227 subsection (2). A criminal history record that relates to a  
228 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,  
229 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.  
230 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.  
231 893.135, s. 916.1075, a violation enumerated in s. 907.041, or  
232 any violation specified as a predicate offense for registration



5-00407-10

2010296

233 as a sexual predator pursuant to s. 775.21, without regard to  
234 whether that offense alone is sufficient to require such  
235 registration, or for registration as a sexual offender pursuant  
236 to s. 943.0435, may not be expunged, without regard to whether  
237 adjudication was withheld, if the defendant was found guilty of  
238 or pled guilty or nolo contendere to the offense, or if the  
239 defendant, as a minor, was found to have committed, or pled  
240 guilty or nolo contendere to committing, the offense as a  
241 delinquent act. The court may only order expunction of a  
242 criminal history record pertaining to one arrest or one incident  
243 of alleged criminal activity, except as provided in this  
244 section. The court may, at its sole discretion, order the  
245 expunction of a criminal history record pertaining to more than  
246 one arrest if the additional arrests directly relate to the  
247 original arrest. If the court intends to order the expunction of  
248 records pertaining to such additional arrests, such intent must  
249 be specified in the order. A criminal justice agency may not  
250 expunge any record pertaining to such additional arrests if the  
251 order to expunge does not articulate the intention of the court  
252 to expunge a record pertaining to more than one arrest. This  
253 section does not prevent the court from ordering the expunction  
254 of only a portion of a criminal history record pertaining to one  
255 arrest or one incident of alleged criminal activity.  
256 Notwithstanding any law to the contrary, a criminal justice  
257 agency may comply with laws, court orders, and official requests  
258 of other jurisdictions relating to expunction, correction, or  
259 confidential handling of criminal history records or information  
260 derived therefrom. This section does not confer any right to the  
261 expunction of any criminal history record, and any request for

5-00407-10

2010296

262 expunction of a criminal history record may be denied at the  
263 sole discretion of the court.

264 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to  
265 petitioning the court to expunge a criminal history record, a  
266 person seeking to expunge a criminal history record shall apply  
267 to the department for a certificate of eligibility for  
268 expunction. The department shall, by rule adopted pursuant to  
269 chapter 120, establish procedures pertaining to the application  
270 for and issuance of certificates of eligibility for expunction.  
271 A certificate of eligibility for expunction is valid for 12  
272 months after the date stamped on the certificate when issued by  
273 the department. After that time, the petitioner must reapply to  
274 the department for a new certificate of eligibility. Eligibility  
275 for a renewed certification of eligibility must be based on the  
276 status of the applicant and the law in effect at the time of the  
277 renewal application. The department shall issue a certificate of  
278 eligibility for expunction to a person who is the subject of a  
279 criminal history record if that person:

280 (c) Remits a \$75 processing fee to the state attorney's  
281 office to be deposited into the state attorney's grants and  
282 donations trust fund unless the fee is waived by the state  
283 attorney.

284 Section 8. Present paragraphs (c) through (f) of subsection  
285 (2) of section 943.059, Florida Statutes, are redesignated as  
286 paragraphs (d) through (g), respectively, and a new paragraph  
287 (c) is added to that subsection, to read:

288 943.059 Court-ordered sealing of criminal history records.—  
289 The courts of this state shall continue to have jurisdiction  
290 over their own procedures, including the maintenance, sealing,

5-00407-10

2010296

291 and correction of judicial records containing criminal history  
292 information to the extent such procedures are not inconsistent  
293 with the conditions, responsibilities, and duties established by  
294 this section. Any court of competent jurisdiction may order a  
295 criminal justice agency to seal the criminal history record of a  
296 minor or an adult who complies with the requirements of this  
297 section. The court shall not order a criminal justice agency to  
298 seal a criminal history record until the person seeking to seal  
299 a criminal history record has applied for and received a  
300 certificate of eligibility for sealing pursuant to subsection  
301 (2). A criminal history record that relates to a violation of s.  
302 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.  
303 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter  
304 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.  
305 916.1075, a violation enumerated in s. 907.041, or any violation  
306 specified as a predicate offense for registration as a sexual  
307 predator pursuant to s. 775.21, without regard to whether that  
308 offense alone is sufficient to require such registration, or for  
309 registration as a sexual offender pursuant to s. 943.0435, may  
310 not be sealed, without regard to whether adjudication was  
311 withheld, if the defendant was found guilty of or pled guilty or  
312 nolo contendere to the offense, or if the defendant, as a minor,  
313 was found to have committed or pled guilty or nolo contendere to  
314 committing the offense as a delinquent act. The court may only  
315 order sealing of a criminal history record pertaining to one  
316 arrest or one incident of alleged criminal activity, except as  
317 provided in this section. The court may, at its sole discretion,  
318 order the sealing of a criminal history record pertaining to  
319 more than one arrest if the additional arrests directly relate

5-00407-10

2010296\_\_

320 to the original arrest. If the court intends to order the  
321 sealing of records pertaining to such additional arrests, such  
322 intent must be specified in the order. A criminal justice agency  
323 may not seal any record pertaining to such additional arrests if  
324 the order to seal does not articulate the intention of the court  
325 to seal records pertaining to more than one arrest. This section  
326 does not prevent the court from ordering the sealing of only a  
327 portion of a criminal history record pertaining to one arrest or  
328 one incident of alleged criminal activity. Notwithstanding any  
329 law to the contrary, a criminal justice agency may comply with  
330 laws, court orders, and official requests of other jurisdictions  
331 relating to sealing, correction, or confidential handling of  
332 criminal history records or information derived therefrom. This  
333 section does not confer any right to the sealing of any criminal  
334 history record, and any request for sealing a criminal history  
335 record may be denied at the sole discretion of the court.

336 (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.—Prior to  
337 petitioning the court to seal a criminal history record, a  
338 person seeking to seal a criminal history record shall apply to  
339 the department for a certificate of eligibility for sealing. The  
340 department shall, by rule adopted pursuant to chapter 120,  
341 establish procedures pertaining to the application for and  
342 issuance of certificates of eligibility for sealing. A  
343 certificate of eligibility for sealing is valid for 12 months  
344 after the date stamped on the certificate when issued by the  
345 department. After that time, the petitioner must reapply to the  
346 department for a new certificate of eligibility. Eligibility for  
347 a renewed certification of eligibility must be based on the  
348 status of the applicant and the law in effect at the time of the

5-00407-10

2010296\_\_

349 renewal application. The department shall issue a certificate of  
350 eligibility for sealing to a person who is the subject of a  
351 criminal history record provided that such person:

352 (c) Remits a \$75 processing fee to the state attorney's  
353 office to be deposited into the state attorney's grants and  
354 donations trust fund unless the fee is waived by the state  
355 attorney.

356 Section 9. Subsection (4) of section 985.557, Florida  
357 Statutes, is repealed.

358 Section 10. Subsection (5) of section 775.0843, Florida  
359 Statutes, is amended to read:

360 775.0843 Policies to be adopted for career criminal cases.—

361 (5) Each career criminal apprehension program shall  
362 concentrate on the identification and arrest of career criminals  
363 and the support of subsequent prosecution. The determination of  
364 which suspected felony offenders shall be the subject of career  
365 criminal apprehension efforts shall be made in accordance with  
366 written target selection criteria selected by the individual law  
367 enforcement agency and state attorney consistent with the  
368 provisions of this section and s. ss. ~~775.08401~~ and 775.0842.

369 Section 11. This act shall take effect July 1, 2010.