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

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

43

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

45

46 Section 1. Section 27.366, Florida Statutes, is amended to  
 47 read:

48 27.366 Legislative intent and policy in cases meeting  
 49 criteria of s. 775.087(2) and (3); ~~report.~~

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

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

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

81 |       Section 2. Paragraph (d) of subsection (9) of section  
82 | 775.082, Florida Statutes, is amended to read:

83 |       775.082 Penalties; applicability of sentencing structures;  
84 | mandatory minimum sentences for certain reoffenders previously

85 released from prison.-

86 (9)

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

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

106 Section 3. Section 775.08401, Florida Statutes, is  
 107 repealed.

108 Section 4. Subsection (5) of section 775.087, Florida  
 109 Statutes, is repealed.

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

112 903.286 Return of cash bond; requirement to withhold

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113 unpaid fines, fees, court costs; cash bond forms.—

114 (1) Notwithstanding s. 903.31(2), the clerk of the court  
 115 shall withhold from the return of a cash bond posted on behalf  
 116 of a criminal defendant by a person other than a bail bond agent  
 117 licensed pursuant to chapter 648 sufficient funds to pay any  
 118 unpaid court fees, court costs, costs of prosecution, and  
 119 criminal penalties. If sufficient funds are not available to pay  
 120 all unpaid court fees, court costs, costs of prosecution, and  
 121 criminal penalties, the clerk of the court shall immediately  
 122 obtain payment from the defendant or enroll the defendant in a  
 123 payment plan pursuant to s. 28.246.

124 Section 6. Section 938.27, Florida Statutes, is amended to  
 125 read:

126 938.27 Judgment for costs on conviction and disposition.—

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

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141 (2) (a) The court shall impose the costs of prosecution and  
 142 investigation notwithstanding the defendant's present ability to  
 143 pay. The court shall require the defendant to pay the costs  
 144 within a specified period or in specified installments.

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

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

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

152 3. Five years after the date of sentencing in any other  
 153 case.

154  
 155 However, in no event shall the obligation to pay any unpaid  
 156 amounts expire if not paid in full within the period specified  
 157 in this paragraph.

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

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

165 (4) Any dispute as to the proper amount or type of costs  
 166 shall be resolved by the court by the preponderance of the  
 167 evidence. The burden of demonstrating the amount of costs  
 168 incurred is on the state attorney. ~~The burden of demonstrating~~

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169 ~~the financial resources of the defendant and the financial needs~~  
170 ~~of the defendant is on the defendant. The burden of~~  
171 ~~demonstrating such other matters as the court deems appropriate~~  
172 ~~is upon the party designated by the court as justice requires.~~

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

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

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

194 (8) Costs for the state attorney shall be set in all cases  
195 at no less than \$50 per case when a misdemeanor or criminal  
196 traffic offense is charged and no less than \$100 per case when a

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197 felony offense is charged, including a proceeding in which the  
198 underlying offense is a violation of probation or community  
199 control. The court may set a higher amount upon a showing of  
200 sufficient proof of higher costs incurred. Costs recovered on  
201 behalf of the state attorney under this section shall be  
202 deposited into the state attorney's grants and donations trust  
203 fund to be used during the fiscal year in which the funds are  
204 collected, or in any subsequent fiscal year, for actual expenses  
205 incurred in investigating and prosecuting criminal cases, which  
206 may include the salaries of permanent employees, or for any  
207 other purpose authorized by the Legislature.

208 Section 7. Paragraph (b) of subsection (1) of section  
209 943.0585, Florida Statutes, is amended, present paragraphs (c)  
210 through (h) of subsection (2) of that section are redesignated  
211 as paragraphs (d) through (i), respectively, a new paragraph (c)  
212 is added to that subsection, and present paragraph (f) of that  
213 subsection is amended, 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



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

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

267 (b) The petitioner's sworn statement attesting that the  
 268 petitioner:

269 1. Has never, prior to the date on which the petition is  
 270 filed, been adjudicated guilty of a criminal offense or  
 271 comparable ordinance violation, or been adjudicated delinquent  
 272 for committing any felony or a misdemeanor specified in s.  
 273 943.051(3)(b).

274 2. Has not been adjudicated guilty of, or adjudicated  
 275 delinquent for committing, any of the acts stemming from the  
 276 arrest or alleged criminal activity to which the petition  
 277 pertains.

278 3. Has never secured a prior sealing or expunction of a  
 279 criminal history record under this section, former s. 893.14,  
 280 former s. 901.33, or former s. 943.058, or from any jurisdiction

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281 outside the state, unless expunction is sought of a criminal  
282 history record previously sealed for 10 years pursuant to  
283 paragraph (2) (i) ~~(h)~~ and the record is otherwise eligible for  
284 expunction.

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

288  
289 Any person who knowingly provides false information on such  
290 sworn statement to the court commits a felony of the third  
291 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
292 775.084.

293 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to  
294 petitioning the court to expunge a criminal history record, a  
295 person seeking to expunge a criminal history record shall apply  
296 to the department for a certificate of eligibility for  
297 expunction. The department shall, by rule adopted pursuant to  
298 chapter 120, establish procedures pertaining to the application  
299 for and issuance of certificates of eligibility for expunction.  
300 A certificate of eligibility for expunction is valid for 12  
301 months after the date stamped on the certificate when issued by  
302 the department. After that time, the petitioner must reapply to  
303 the department for a new certificate of eligibility. Eligibility  
304 for a renewed certification of eligibility must be based on the  
305 status of the applicant and the law in effect at the time of the  
306 renewal application. The department shall issue a certificate of  
307 eligibility for expunction to a person who is the subject of a  
308 criminal history record if that person:

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309        (c) Remits a \$75 processing fee to the state attorney's  
310 office to be deposited into the state attorney's grants and  
311 donations trust fund unless the fee is waived by the state  
312 attorney.

313        (g)~~(f)~~ Has never secured a prior sealing or expunction of  
314 a criminal history record under this section, former s. 893.14,  
315 former s. 901.33, or former s. 943.058, unless expunction is  
316 sought of a criminal history record previously sealed for 10  
317 years pursuant to paragraph (i) ~~(h)~~ and the record is otherwise  
318 eligible for expunction.

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

323        943.059 Court-ordered sealing of criminal history  
324 records.—The courts of this state shall continue to have  
325 jurisdiction over their own procedures, including the  
326 maintenance, sealing, and correction of judicial records  
327 containing criminal history information to the extent such  
328 procedures are not inconsistent with the conditions,  
329 responsibilities, and duties established by this section. Any  
330 court of competent jurisdiction may order a criminal justice  
331 agency to seal the criminal history record of a minor or an  
332 adult who complies with the requirements of this section. The  
333 court shall not order a criminal justice agency to seal a  
334 criminal history record until the person seeking to seal a  
335 criminal history record has applied for and received a  
336 certificate of eligibility for sealing pursuant to subsection

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337 (2). A criminal history record that relates to a violation of s.  
338 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.  
339 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter  
340 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.  
341 916.1075, a violation enumerated in s. 907.041, or any violation  
342 specified as a predicate offense for registration as a sexual  
343 predator pursuant to s. 775.21, without regard to whether that  
344 offense alone is sufficient to require such registration, or for  
345 registration as a sexual offender pursuant to s. 943.0435, may  
346 not be sealed, without regard to whether adjudication was  
347 withheld, if the defendant was found guilty of or pled guilty or  
348 nolo contendere to the offense, or if the defendant, as a minor,  
349 was found to have committed or pled guilty or nolo contendere to  
350 committing the offense as a delinquent act. The court may only  
351 order sealing of a criminal history record pertaining to one  
352 arrest or one incident of alleged criminal activity, except as  
353 provided in this section. The court may, at its sole discretion,  
354 order the sealing of a criminal history record pertaining to  
355 more than one arrest if the additional arrests directly relate  
356 to the original arrest. If the court intends to order the  
357 sealing of records pertaining to such additional arrests, such  
358 intent must be specified in the order. A criminal justice agency  
359 may not seal any record pertaining to such additional arrests if  
360 the order to seal does not articulate the intention of the court  
361 to seal records pertaining to more than one arrest. This section  
362 does not prevent the court from ordering the sealing of only a  
363 portion of a criminal history record pertaining to one arrest or  
364 one incident of alleged criminal activity. Notwithstanding any

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365 law to the contrary, a criminal justice agency may comply with  
366 laws, court orders, and official requests of other jurisdictions  
367 relating to sealing, correction, or confidential handling of  
368 criminal history records or information derived therefrom. This  
369 section does not confer any right to the sealing of any criminal  
370 history record, and any request for sealing a criminal history  
371 record may be denied at the sole discretion of the court.

372 (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.—Prior to  
373 petitioning the court to seal a criminal history record, a  
374 person seeking to seal a criminal history record shall apply to  
375 the department for a certificate of eligibility for sealing. The  
376 department shall, by rule adopted pursuant to chapter 120,  
377 establish procedures pertaining to the application for and  
378 issuance of certificates of eligibility for sealing. A  
379 certificate of eligibility for sealing is valid for 12 months  
380 after the date stamped on the certificate when issued by the  
381 department. After that time, the petitioner must reapply to the  
382 department for a new certificate of eligibility. Eligibility for  
383 a renewed certification of eligibility must be based on the  
384 status of the applicant and the law in effect at the time of the  
385 renewal application. The department shall issue a certificate of  
386 eligibility for sealing to a person who is the subject of a  
387 criminal history record provided that such person:

388 (c) Remits a \$75 processing fee to the state attorney's  
389 office to be deposited into the state attorney's grants and  
390 donations trust fund unless the fee is waived by the state  
391 attorney.

392 Section 9. Subsection (4) of section 985.557, Florida

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393 Statutes, is repealed.

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

396 775.0843 Policies to be adopted for career criminal  
397 cases.—

398 (5) Each career criminal apprehension program shall  
399 concentrate on the identification and arrest of career criminals  
400 and the support of subsequent prosecution. The determination of  
401 which suspected felony offenders shall be the subject of career  
402 criminal apprehension efforts shall be made in accordance with  
403 written target selection criteria selected by the individual law  
404 enforcement agency and state attorney consistent with the  
405 provisions of this section and s. ~~ss. 775.08401 and~~ 775.0842.

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