

By the Committee on Criminal Justice; and Senator Wise

591-01250-10

2010296c1

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), F.S., relating to a provision that
16 requires each state attorney to report why a case-
17 qualified defendant did not receive the mandatory
18 minimum prison sentence in cases involving certain
19 specified offenses; amending s. 903.286, F.S.;
20 requiring the clerk of the court to withhold
21 sufficient funds to pay any unpaid costs of
22 prosecution from the return of a cash bond posted on
23 behalf of a criminal defendant by a person other than
24 a bail bond agent; amending s. 938.27, F.S.; providing
25 that persons whose cases are disposed of under any
26 diversionary alternative are liable for payment of the
27 costs of prosecution; deleting provisions regarding
28 the burden of establishing financial resources of the
29 defendant; requiring the clerk of court to separately

591-01250-10

2010296c1

30 record each assessment and payment of costs of
31 prosecution; requiring the clerk to prepare a monthly
32 report to the state attorney's office of the recorded
33 assessments and payments; repealing s. 985.557(4),
34 F.S., relating to direct-file policies and guidelines
35 for juveniles; amending s. 775.0843, F.S.; conforming
36 a cross-reference; providing an effective date.

37
38 Be It Enacted by the Legislature of the State of Florida:

39
40 Section 1. Section 27.366, Florida Statutes, is amended to
41 read:

42 27.366 Legislative intent and policy in cases meeting
43 criteria of s. 775.087(2) and (3); report.-

44 ~~(1)~~ It is the intent of the Legislature that convicted
45 criminal offenders who meet the criteria in s. 775.087(2) and
46 (3) be sentenced to the minimum mandatory prison terms provided
47 herein. It is the intent of the Legislature to establish zero
48 tolerance of criminals who use, threaten to use, or avail
49 themselves of firearms in order to commit crimes and thereby
50 demonstrate their lack of value for human life. It is also the
51 intent of the Legislature that prosecutors should appropriately
52 exercise their discretion in those cases in which the offenders'
53 possession of the firearm is incidental to the commission of a
54 crime and not used in furtherance of the crime, used in order to
55 commit the crime, or used in preparation to commit the crime.
56 ~~For every case in which the offender meets the criteria in this~~
57 ~~act and does not receive the mandatory minimum prison sentence,~~
58 ~~the state attorney must explain the sentencing deviation in~~

591-01250-10

2010296c1

59 ~~writing and place such explanation in the case file maintained~~
60 ~~by the state attorney. On a quarterly basis, each state attorney~~
61 ~~shall submit copies of deviation memoranda regarding offenses~~
62 ~~committed on or after the effective date of this act to the~~
63 ~~President of the Florida Prosecuting Attorneys Association, Inc.~~
64 ~~The association must maintain such information and make such~~
65 ~~information available to the public upon request for at least a~~
66 ~~10-year period.~~

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

75 Section 2. Paragraph (d) of subsection (9) of section
76 775.082, Florida Statutes, is amended to read:

77 775.082 Penalties; applicability of sentencing structures;
78 mandatory minimum sentences for certain reoffenders previously
79 released from prison.-

80 (9)

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

591-01250-10

2010296c1

88 in this subsection.

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

100 Section 3. Section 775.08401, Florida Statutes, is
101 repealed.

102 Section 4. Subsection (5) of section 775.087, Florida
103 Statutes, is repealed.

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

106 903.286 Return of cash bond; requirement to withhold unpaid
107 fines, fees, court costs; cash bond forms.-

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

591-01250-10

2010296c1

117 payment plan pursuant to s. 28.246.

118 Section 6. Section 938.27, Florida Statutes, is amended to
119 read:

120 938.27 Judgment for costs on conviction and disposition.—

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

135 (2) (a) The court shall impose the costs of prosecution and
136 investigation notwithstanding the defendant's present ability to
137 pay. The court shall require the defendant to pay the costs
138 within a specified period or in specified installments.

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

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

143 2. Five years after the end of the term of imprisonment
144 imposed, if the court does not order probation or community
145 control; or

591-01250-10

2010296c1

146 3. Five years after the date of sentencing in any other
147 case.

148
149 However, in no event shall the obligation to pay any unpaid
150 amounts expire if not paid in full within the period specified
151 in this paragraph.

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

154 (3) If a defendant is placed on probation or community
155 control, payment of any costs under this section shall be a
156 condition of such probation or community control. The court may
157 revoke probation or community control if the defendant fails to
158 pay these costs.

159 (4) Any dispute as to the proper amount or type of costs
160 shall be resolved by the court by the preponderance of the
161 evidence. The burden of demonstrating the amount of costs
162 incurred is on the state attorney. ~~The burden of demonstrating~~
163 ~~the financial resources of the defendant and the financial needs~~
164 ~~of the defendant is on the defendant. The burden of~~
165 ~~demonstrating such other matters as the court deems appropriate~~
166 ~~is upon the party designated by the court as justice requires.~~

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

169 (6) The clerk of the court shall collect and dispense cost
170 payments in any case. The clerk of court shall separately record
171 each assessment and the payment of costs of prosecution. Costs
172 of prosecution must be assessed by the court with respect to
173 each case number in which the court orders costs of prosecution.
174 The clerk shall provide a monthly report to the state attorney's

591-01250-10

2010296c1

175 office of the assessments and payments recorded.

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

188 (8) Costs for the state attorney shall be set in all cases
189 at no less than \$50 per case when a misdemeanor or criminal
190 traffic offense is charged and no less than \$100 per case when a
191 felony offense is charged, including a proceeding in which the
192 underlying offense is a violation of probation or community
193 control. The court may set a higher amount upon a showing of
194 sufficient proof of higher costs incurred. Costs recovered on
195 behalf of the state attorney under this section shall be
196 deposited into the state attorney's grants and donations trust
197 fund to be used during the fiscal year in which the funds are
198 collected, or in any subsequent fiscal year, for actual expenses
199 incurred in investigating and prosecuting criminal cases, which
200 may include the salaries of permanent employees, or for any
201 other purpose authorized by the Legislature.

202 Section 7. Subsection (4) of section 985.557, Florida
203 Statutes, is repealed.

591-01250-10

2010296c1

204 Section 8. Subsection (5) of section 775.0843, Florida
205 Statutes, is amended to read:

206 775.0843 Policies to be adopted for career criminal cases.—

207 (5) Each career criminal apprehension program shall
208 concentrate on the identification and arrest of career criminals
209 and the support of subsequent prosecution. The determination of
210 which suspected felony offenders shall be the subject of career
211 criminal apprehension efforts shall be made in accordance with
212 written target selection criteria selected by the individual law
213 enforcement agency and state attorney consistent with the
214 provisions of this section and s. ss. 775.08401 and 775.0842.

215 Section 9. This act shall take effect July 1, 2010.