

By the Committees on Judiciary; and Criminal Justice; and  
Senator Wise

590-02747-10

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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.; deleting  
25      provisions regarding the burden of establishing  
26      financial resources of the defendant; requiring the  
27      clerk of court to separately record each assessment  
28      and payment of costs of prosecution; requiring the  
29      clerk to prepare a monthly report to the state

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30 attorney's office of the recorded assessments and  
31 payments; repealing s. 985.557(4), F.S., relating to  
32 direct-file policies and guidelines for juveniles;  
33 amending s. 775.0843, F.S.; conforming a cross-  
34 reference; providing an effective date.

35  
36 Be It Enacted by the Legislature of the State of Florida:

37  
38 Section 1. Section 27.366, Florida Statutes, is amended to  
39 read:

40 27.366 Legislative intent and policy in cases meeting  
41 criteria of s. 775.087(2) and (3); ~~report.~~

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

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59 ~~shall submit copies of deviation memoranda regarding offenses~~  
60 ~~committed on or after the effective date of this act to the~~  
61 ~~President of the Florida Prosecuting Attorneys Association, Inc.~~  
62 ~~The association must maintain such information and make such~~  
63 ~~information available to the public upon request for at least a~~  
64 ~~10-year period.~~

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

73 Section 2. Paragraph (d) of subsection (9) of section  
74 775.082, Florida Statutes, is amended to read:

75 775.082 Penalties; applicability of sentencing structures;  
76 mandatory minimum sentences for certain reoffenders previously  
77 released from prison.—

78 (9)

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

87 ~~2. For every case in which the offender meets the criteria~~

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

98 Section 3. Section 775.08401, Florida Statutes, is  
99 repealed.

100 Section 4. Subsection (5) of section 775.087, Florida  
101 Statutes, is repealed.

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

104 903.286 Return of cash bond; requirement to withhold unpaid  
105 fines, fees, court costs; cash bond forms.-

106 (1) Notwithstanding s. 903.31(2), the clerk of the court  
107 shall withhold from the return of a cash bond posted on behalf  
108 of a criminal defendant by a person other than a bail bond agent  
109 licensed pursuant to chapter 648 sufficient funds to pay any  
110 unpaid court fees, court costs, costs of prosecution, and  
111 criminal penalties. If sufficient funds are not available to pay  
112 all unpaid court fees, court costs, costs of prosecution, and  
113 criminal penalties, the clerk of the court shall immediately  
114 obtain payment from the defendant or enroll the defendant in a  
115 payment plan pursuant to s. 28.246.

116 Section 6. Section 938.27, Florida Statutes, is amended to

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117 read:

118 938.27 Judgment for costs on conviction.—

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

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

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

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

140 2. Five years after the end of the term of imprisonment  
141 imposed, if the court does not order probation or community  
142 control; or

143 3. Five years after the date of sentencing in any other  
144 case.

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

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

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

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

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

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

173 (7) Investigative costs that are recovered shall be  
174 returned to the appropriate investigative agency that incurred

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

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

199 Section 7. Subsection (4) of section 985.557, Florida  
200 Statutes, is repealed.

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

203 775.0843 Policies to be adopted for career criminal cases.-

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

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