

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

604-05201-10

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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. 938.27, F.S.; deleting
20 provisions regarding the burden of establishing
21 financial resources of the defendant; repealing s.
22 985.557(4), F.S., relating to direct-file policies and
23 guidelines for juveniles; amending s. 775.0843, F.S.;
24 conforming a cross-reference; providing an effective
25 date.

26
27 Be It Enacted by the Legislature of the State of Florida:

28
29 Section 1. Section 27.366, Florida Statutes, is amended to

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30 read:

31 27.366 Legislative intent and policy in cases meeting
32 criteria of s. 775.087(2) and (3); ~~report.~~

33 ~~(1) It is the intent of the Legislature that convicted~~
34 ~~criminal offenders who meet the criteria in s. 775.087(2) and~~
35 ~~(3) be sentenced to the minimum mandatory prison terms provided~~
36 ~~herein. It is the intent of the Legislature to establish zero~~
37 ~~tolerance of criminals who use, threaten to use, or avail~~
38 ~~themselves of firearms in order to commit crimes and thereby~~
39 ~~demonstrate their lack of value for human life. It is also the~~
40 ~~intent of the Legislature that prosecutors should appropriately~~
41 ~~exercise their discretion in those cases in which the offenders'~~
42 ~~possession of the firearm is incidental to the commission of a~~
43 ~~crime and not used in furtherance of the crime, used in order to~~
44 ~~commit the crime, or used in preparation to commit the crime.~~
45 ~~For every case in which the offender meets the criteria in this~~
46 ~~act and does not receive the mandatory minimum prison sentence,~~
47 ~~the state attorney must explain the sentencing deviation in~~
48 ~~writing and place such explanation in the case file maintained~~
49 ~~by the state attorney. On a quarterly basis, each state attorney~~
50 ~~shall submit copies of deviation memoranda regarding offenses~~
51 ~~committed on or after the effective date of this act to the~~
52 ~~President of the Florida Prosecuting Attorneys Association, Inc.~~
53 ~~The association must maintain such information and make such~~
54 ~~information available to the public upon request for at least a~~
55 ~~10-year period.~~

56 ~~(2) Effective July 1, 2000, each state attorney shall~~
57 ~~annually report to the Speaker of the House of Representatives,~~
58 ~~the President of the Senate, and the Executive Office of the~~

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59 ~~Governor regarding the prosecution and sentencing of offenders~~
60 ~~who met the criteria in s. 775.087(2) and (3). The report must~~
61 ~~categorize the defendants by age, gender, race, and ethnicity.~~
62 ~~Cases in which a final disposition has not yet been reached~~
63 ~~shall be reported in a subsequent annual report.~~

64 Section 2. Paragraph (d) of subsection (9) of section
65 775.082, Florida Statutes, is amended to read:

66 775.082 Penalties; applicability of sentencing structures;
67 mandatory minimum sentences for certain reoffenders previously
68 released from prison.-

69 (9)

70 (d)~~1~~. It is the intent of the Legislature that offenders
71 previously released from prison who meet the criteria in
72 paragraph (a) be punished to the fullest extent of the law and
73 as provided in this subsection, unless the state attorney
74 determines that extenuating circumstances exist which preclude
75 the just prosecution of the offender, including whether the
76 victim recommends that the offender not be sentenced as provided
77 in this subsection.

78 ~~2. For every case in which the offender meets the criteria~~
79 ~~in paragraph (a) and does not receive the mandatory minimum~~
80 ~~prison sentence, the state attorney must explain the sentencing~~
81 ~~deviation in writing and place such explanation in the case file~~
82 ~~maintained by the state attorney. On an annual basis, each state~~
83 ~~attorney shall submit copies of deviation memoranda regarding~~
84 ~~offenses committed on or after the effective date of this~~
85 ~~subsection, to the president of the Florida Prosecuting~~
86 ~~Attorneys Association, Inc. The association must maintain such~~
87 ~~information, and make such information available to the public~~

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88 ~~upon request, for at least a 10-year period.~~

89 Section 3. Section 775.08401, Florida Statutes, is
90 repealed.

91 Section 4. Subsection (5) of section 775.087, Florida
92 Statutes, is repealed.

93 Section 5. Section 938.27, Florida Statutes, is amended to
94 read:

95 938.27 Judgment for costs on conviction.—

96 (1) In all criminal and violation-of-probation or
97 community-control cases, convicted persons are liable for
98 payment of the costs of prosecution, including investigative
99 costs incurred by law enforcement agencies, by fire departments
100 for arson investigations, and by investigations of the
101 Department of Financial Services or the Office of Financial
102 Regulation of the Financial Services Commission, ~~if requested by~~
103 ~~such agencies.~~ The court shall include these costs in every
104 judgment rendered against the convicted person. For purposes of
105 this section, "convicted" means a determination of guilt, or of
106 violation of probation or community control, which is a result
107 of a plea, trial, or violation proceeding, regardless of whether
108 adjudication is withheld.

109 (2) (a) The court shall impose the costs of prosecution and
110 investigation notwithstanding the defendant's present ability to
111 pay. The court shall require the defendant to pay the costs
112 within a specified period or in specified installments.

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

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

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117 2. Five years after the end of the term of imprisonment
118 imposed, if the court does not order probation or community
119 control; or

120 3. Five years after the date of sentencing in any other
121 case.

122
123 However, in no event shall the obligation to pay any unpaid
124 amounts expire if not paid in full within the period specified
125 in this paragraph.

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

128 (3) If a defendant is placed on probation or community
129 control, payment of any costs under this section shall be a
130 condition of such probation or community control. The court may
131 revoke probation or community control if the defendant fails to
132 pay these costs.

133 (4) Any dispute as to the proper amount or type of costs
134 shall be resolved by the court by the preponderance of the
135 evidence. The burden of demonstrating the amount of costs
136 incurred is on the state attorney. ~~The burden of demonstrating~~
137 ~~the financial resources of the defendant and the financial needs~~
138 ~~of the defendant is on the defendant. The burden of~~
139 ~~demonstrating such other matters as the court deems appropriate~~
140 ~~is upon the party designated by the court as justice requires.~~

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

143 (6) The clerk of the court shall collect and dispense cost
144 payments in any case.

145 (7) Investigative costs that are recovered shall be

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146 returned to the appropriate investigative agency that incurred
147 the expense. Such costs include actual expenses incurred in
148 conducting the investigation and prosecution of the criminal
149 case; however, costs may also include the salaries of permanent
150 employees. Any investigative costs recovered on behalf of a
151 state agency must be remitted to the Department of Revenue for
152 deposit in the agency operating trust fund, and a report of the
153 payment must be sent to the agency, except that any
154 investigative costs recovered on behalf of the Department of Law
155 Enforcement shall be deposited in the department's Forfeiture
156 and Investigative Support Trust Fund under s. 943.362.

157 (8) Costs for the state attorney shall be set in all cases
158 at no less than \$50 per case when a misdemeanor or criminal
159 traffic offense is charged and no less than \$100 per case when a
160 felony offense is charged, including a proceeding in which the
161 underlying offense is a violation of probation or community
162 control. The court may set a higher amount upon a showing of
163 sufficient proof of higher costs incurred. Costs recovered on
164 behalf of the state attorney under this section shall be
165 deposited into the state attorney's grants and donations trust
166 fund to be used during the fiscal year in which the funds are
167 collected, or in any subsequent fiscal year, for actual expenses
168 incurred in investigating and prosecuting criminal cases, which
169 may include the salaries of permanent employees, or for any
170 other purpose authorized by the Legislature.

171 Section 6. Subsection (4) of section 985.557, Florida
172 Statutes, is repealed.

173 Section 7. Subsection (5) of section 775.0843, Florida
174 Statutes, is amended to read:

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175 775.0843 Policies to be adopted for career criminal cases.-
176 (5) Each career criminal apprehension program shall
177 concentrate on the identification and arrest of career criminals
178 and the support of subsequent prosecution. The determination of
179 which suspected felony offenders shall be the subject of career
180 criminal apprehension efforts shall be made in accordance with
181 written target selection criteria selected by the individual law
182 enforcement agency and state attorney consistent with the
183 provisions of this section and s. ss. 775.08401 and 775.0842.
184 Section 8. This act shall take effect July 1, 2010.