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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 submit on a quarterly basis
5 deviation memoranda relating to offenders who are not
6 sentenced to the mandatory minimum prison sentence in
7 cases involving the possession or use of a weapon;
8 amending s. 775.082, F.S.; deleting a provision that
9 requires each state attorney to submit on a quarterly
10 basis a deviation memoranda relating to why a
11 defendant did not receive the mandatory minimum prison
12 sentence in cases involving certain specified
13 offenses; repealing s. 775.08401, F.S., relating to
14 criteria to be used when state attorneys decide to
15 pursue habitual felony offenders or habitual violent
16 felony offenders; repealing s. 775.087(5), F.S.,
17 relating to a provision that requires each state
18 attorney to report why a case-qualified defendant did
19 not receive the mandatory minimum prison sentence in
20 cases involving certain specified offenses; amending
21 s. 938.27, F.S.; deleting provisions regarding the
22 burden of establishing financial resources of the
23 defendant; repealing s. 985.557(4), F.S., relating to
24 direct-file policies and guidelines for juveniles;
25 amending s. 775.0843, F.S.; conforming a cross-
26 reference; providing an effective date.

27
28 Be It Enacted by the Legislature of the State of Florida:
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30 Section 1. Section 27.366, Florida Statutes, is amended to
31 read:

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

34 ~~(1)~~ It is the intent of the Legislature that convicted
35 criminal offenders who meet the criteria in s. 775.087(2) and
36 (3) be sentenced to the minimum mandatory prison terms provided
37 herein. It is the intent of the Legislature to establish zero
38 tolerance of criminals who use, threaten to use, or avail
39 themselves of firearms in order to commit crimes and thereby
40 demonstrate their lack of value for human life. It is also the
41 intent of the Legislature that prosecutors should appropriately
42 exercise their discretion in those cases in which the offenders'
43 possession of the firearm is incidental to the commission of a
44 crime and not used in furtherance of the crime, used in order to
45 commit the crime, or used in preparation to commit the crime.
46 For every case in which the offender meets the criteria in this
47 act and does not receive the mandatory minimum prison sentence,
48 the state attorney must explain the sentencing deviation in
49 writing and place such explanation in the case file maintained
50 by the state attorney. ~~On a quarterly basis, each state attorney~~
51 ~~shall submit copies of deviation memoranda regarding offenses~~
52 ~~committed on or after the effective date of this act to the~~
53 ~~President of the Florida Prosecuting Attorneys Association, Inc.~~
54 ~~The association must maintain such information and make such~~
55 ~~information available to the public upon request for at least a~~
56 ~~10-year period.~~

57 ~~(2) Effective July 1, 2000, each state attorney shall~~
58 ~~annually report to the Speaker of the House of Representatives,~~

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

65 Section 2. Paragraph (d) of subsection (9) of section
66 775.082, Florida Statutes, is amended to read:

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

70 (9)

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

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

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88 ~~information, and make such information available to the public~~
89 ~~upon request, for at least a 10-year period.~~

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

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

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

96 938.27 Judgment for costs on conviction.—

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

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

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

116 1. The end of the period of probation or community control,

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117 if probation or community control is ordered;

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

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

123

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

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

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

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

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

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

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

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

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

174 Section 7. Subsection (5) of section 775.0843, Florida

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175 Statutes, is amended to read:

176 775.0843 Policies to be adopted for career criminal cases.-

177 (5) Each career criminal apprehension program shall
178 concentrate on the identification and arrest of career criminals
179 and the support of subsequent prosecution. The determination of
180 which suspected felony offenders shall be the subject of career
181 criminal apprehension efforts shall be made in accordance with
182 written target selection criteria selected by the individual law
183 enforcement agency and state attorney consistent with the
184 provisions of this section and s. ss. 775.08401 and 775.0842.

185 Section 8. This act shall take effect July 1, 2010.