

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 offenders
13 or habitual violent felony offenders; repealing s.
14 775.087(5), F.S., relating to a provision that requires
15 each state attorney to report why a case-qualified
16 defendant did not receive the mandatory minimum prison
17 sentence in cases involving certain specified offenses;
18 amending s. 903.286, F.S.; requiring the clerk of the
19 court to withhold sufficient funds to pay any unpaid costs
20 of prosecution from the return of a cash bond posted on
21 behalf of a criminal defendant by a person other than a
22 bail bond agent; amending s. 938.27, F.S.; deleting
23 provisions regarding the burden of establishing financial
24 resources of the defendant; requiring the clerk of court
25 to separately record each assessment and payment of costs
26 of prosecution; requiring the clerk to prepare a monthly
27 report to the state attorney's office of the recorded
28 assessments and payments; repealing s. 985.557(4), F.S.,

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29 relating to direct-file policies and guidelines for
 30 juveniles; amending s. 775.0843, F.S.; conforming a cross-
 31 reference; providing an effective date.

32

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

34

35 Section 1. Section 27.366, Florida Statutes, is amended to
 36 read:

37 27.366 Legislative intent and policy in cases meeting
 38 criteria of s. 775.087(2) and (3); ~~report.~~

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

57 ~~committed on or after the effective date of this act to the~~
 58 ~~President of the Florida Prosecuting Attorneys Association, Inc.~~
 59 ~~The association must maintain such information and make such~~
 60 ~~information available to the public upon request for at least a~~
 61 ~~10-year period.~~

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

70 Section 2. Paragraph (d) of subsection (9) of section
 71 775.082, Florida Statutes, is amended to read:

72 775.082 Penalties; applicability of sentencing structures;
 73 mandatory minimum sentences for certain reoffenders previously
 74 released from prison.—

75 (9)

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

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

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

95 Section 3. Section 775.08401, Florida Statutes, is
 96 repealed.

97 Section 4. Subsection (5) of section 775.087, Florida
 98 Statutes, is repealed.

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

101 903.286 Return of cash bond; requirement to withhold
 102 unpaid fines, fees, court costs; cash bond forms.—

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

113 Section 6. Section 938.27, Florida Statutes, is amended to
 114 read:

115 938.27 Judgment for costs on conviction.—

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

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

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

- 135 1. The end of the period of probation or community
 136 control, if probation or community control is ordered;
- 137 2. Five years after the end of the term of imprisonment
 138 imposed, if the court does not order probation or community
 139 control; or
- 140 3. Five years after the date of sentencing in any other

141 case.

142

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

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

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

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

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

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

169 office of the assessments and payments recorded.

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

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

196 Section 7. Subsection (4) of section 985.557, Florida

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197 Statutes, is repealed.

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

200 775.0843 Policies to be adopted for career criminal
201 cases.—

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

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