

By Senator Wise

5-01169-11

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

31
32 Section 1. Section 27.366, Florida Statutes, is amended to
33 read:

34 27.366 Legislative intent and policy in cases meeting
35 criteria of s. 775.087(2) and (3); ~~report.~~

36 ~~(1)~~ It is the intent of the Legislature that convicted
37 criminal offenders who meet the criteria in s. 775.087(2) and
38 (3) be sentenced to the minimum mandatory prison terms provided
39 herein. It is the intent of the Legislature to establish zero
40 tolerance of criminals who use, threaten to use, or avail
41 themselves of firearms in order to commit crimes and thereby
42 demonstrate their lack of value for human life. It is also the
43 intent of the Legislature that prosecutors should appropriately
44 exercise their discretion in those cases in which the offenders'
45 possession of the firearm is incidental to the commission of a
46 crime and not used in furtherance of the crime, used in order to
47 commit the crime, or used in preparation to commit the crime.
48 For every case in which the offender meets the criteria in this
49 act and does not receive the mandatory minimum prison sentence,
50 the state attorney must explain the sentencing deviation in
51 writing and place such explanation in the case file maintained
52 by the state attorney. ~~On a quarterly basis, each state attorney~~
53 ~~shall submit copies of deviation memoranda regarding offenses~~
54 ~~committed on or after the effective date of this act to the~~
55 ~~President of the Florida Prosecuting Attorneys Association, Inc.~~
56 ~~The association must maintain such information and make such~~
57 ~~information available to the public upon request for at least a~~
58 ~~10-year period.~~

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

67 Section 2. Paragraph (d) of subsection (9) of section
68 775.082, Florida Statutes, is amended to read:

69 775.082 Penalties; applicability of sentencing structures;
70 mandatory minimum sentences for certain reoffenders previously
71 released from prison.—

72 (9)

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

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

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88 ~~subsection, to the president of the Florida Prosecuting~~
89 ~~Attorneys Association, Inc. The association must maintain such~~
90 ~~information, and make such information available to the public~~
91 ~~upon request, for at least a 10-year period.~~

92 Section 3. Section 775.08401, Florida Statutes, is
93 repealed.

94 Section 4. Subsection (5) of section 775.087, Florida
95 Statutes, is repealed.

96 Section 5. Section 938.27, Florida Statutes, is amended to
97 read:

98 938.27 Judgment for costs on conviction.—

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

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

116 (b) The end of such period or the last such installment may

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117 ~~shall~~ not be later than:

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

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

123 3. Five years after the date of sentencing in any other
124 case.

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

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

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

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

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

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

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

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

174 Section 6. Subsection (4) of section 985.557, Florida

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175 Statutes, is repealed.

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

178 775.0843 Policies to be adopted for career criminal cases.—

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

187 Section 8. This act shall take effect July 1, 2011.