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1 A bill to be entitled
2 An act relating to state attorneys; amending s. 775.082,
3 F.S.; deleting provisions requiring each state attorney to
4 submit certain deviation memoranda to the president of the
5 association and requiring the association to maintain such
6 information for a specified period; repealing s.
7 775.08401, F.S., relating to criteria to be used when
8 state attorneys decide to pursue habitual felony
9 offenders, habitual violent felony offenders, or violent
10 career criminals; amending s. 775.087, F.S.; deleting
11 provisions requiring each state attorney to report why a
12 case-qualified defendant did not receive the mandatory
13 minimum prison sentence in cases involving certain
14 offenses; transferring, renumbering, and amending s.
15 27.366, F.S.; deleting a provision requiring each state
16 attorney to submit certain deviation memoranda to the
17 President of the Florida Prosecuting Attorneys
18 Association, Inc., and to report annually to the Governor
19 and Legislature; deleting a provision requiring the
20 association to maintain such information for a specified
21 period; transferring provisions relating to the intent of
22 s. 775.087, F.S., to that section; amending s. 938.27,
23 F.S.; providing that convicted persons are liable for
24 certain costs of prosecution; deleting provisions
25 regarding the burden of establishing financial resources
26 of the defendant and demonstrating other matters; amending
27 s. 985.557, F.S.; deleting provisions relating to direct-
28 file policies and guidelines for juveniles; amending s.

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29 | 775.0843, F.S.; conforming a cross-reference; providing an
 30 | effective date.

31 |

32 | Be It Enacted by the Legislature of the State of Florida:

33 |

34 | Section 1. Paragraph (d) of subsection (9) of section
 35 | 775.082, Florida Statutes, is amended to read:

36 | 775.082 Penalties; applicability of sentencing structures;
 37 | mandatory minimum sentences for certain reoffenders previously
 38 | released from prison.—

39 | (9)

40 | (d)1. It is the intent of the Legislature that offenders
 41 | previously released from prison who meet the criteria in
 42 | paragraph (a) be punished to the fullest extent of the law and
 43 | as provided in this subsection, unless the state attorney
 44 | determines that extenuating circumstances exist which preclude
 45 | the just prosecution of the offender, including whether the
 46 | victim recommends that the offender not be sentenced as provided
 47 | in this subsection.

48 | 2. For every case in which the offender meets the criteria
 49 | in paragraph (a) and does not receive the mandatory minimum
 50 | prison sentence, the state attorney must explain the sentencing
 51 | deviation in writing and place such explanation in the case file
 52 | maintained by the state attorney. ~~On an annual basis, each state~~
 53 | ~~attorney shall submit copies of deviation memoranda regarding~~
 54 | ~~offenses committed on or after the effective date of this~~
 55 | ~~subsection, to the president of the Florida Prosecuting~~
 56 | ~~Attorneys Association, Inc. The association must maintain such~~

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

59 Section 2. Section 775.08401, Florida Statutes, is
 60 repealed.

61 Section 3. Present subsections (5) and (6) of section
 62 775.087, Florida Statutes, are amended, and section 27.366,
 63 Florida Statutes, is transferred, renumbered as a new subsection
 64 (6) of that section and amended, to read:

65 775.087 Possession or use of weapon; aggravated battery;
 66 felony reclassification; minimum sentence.—

67 ~~(5) In every case in which a law enforcement agency based~~
 68 ~~a criminal charge on facts demonstrating that the defendant met~~
 69 ~~the criteria in subparagraph (2)(a)1., subparagraph (2)(a)2., or~~
 70 ~~subparagraph (2)(a)3. or subparagraph (3)(a)1., subparagraph~~
 71 ~~(3)(a)2., or subparagraph (3)(a)3. and in which the defendant~~
 72 ~~did not receive the mandatory penalty, the state attorney must~~
 73 ~~place in the court file a memorandum explaining why the minimum~~
 74 ~~mandatory penalty was not imposed.~~

75 (5)(6) This section does not apply to law enforcement
 76 officers or to United States military personnel who are
 77 performing their lawful duties or who are traveling to or from
 78 their places of employment or assignment to perform their lawful
 79 duties.

80 ~~27.366 Legislative intent and policy in cases meeting~~
 81 ~~criteria of s. 775.087(2) and (3); report.—~~

82 (6)(1) It is the intent of the Legislature that convicted
 83 criminal offenders who meet the criteria in subsections ~~s.~~
 84 ~~775.087(2) and (3)~~ be sentenced to the minimum mandatory prison

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85 terms provided in this section ~~herein~~. It is the intent of the
86 Legislature to establish zero tolerance of criminals who use,
87 threaten to use, or avail themselves of firearms in order to
88 commit crimes and thereby demonstrate their lack of value for
89 human life. It is also the intent of the Legislature that
90 prosecutors should appropriately exercise their discretion in
91 those cases in which the offenders' possession of the firearm is
92 incidental to the commission of a crime and not used in
93 furtherance of the crime, used in order to commit the crime, or
94 used in preparation to commit the crime. For every case in which
95 the offender meets the criteria in subsections (2) and (3) ~~this~~
96 ~~act~~ and does not receive the mandatory minimum prison sentence,
97 the state attorney must explain the sentencing deviation in
98 writing and place such explanation in the case file maintained
99 by the state attorney. ~~On a quarterly basis, each state attorney~~
100 ~~shall submit copies of deviation memoranda regarding offenses~~
101 ~~committed on or after the effective date of this act to the~~
102 ~~President of the Florida Prosecuting Attorneys Association, Inc.~~
103 ~~The association must maintain such information and make such~~
104 ~~information available to the public upon request for at least a~~
105 ~~10-year period.~~

106 ~~(2) Effective July 1, 2000, each state attorney shall~~
107 ~~annually report to the Speaker of the House of Representatives,~~
108 ~~the President of the Senate, and the Executive Office of the~~
109 ~~Governor regarding the prosecution and sentencing of offenders~~
110 ~~who met the criteria in s. 775.087(2) and (3). The report must~~
111 ~~categorize the defendants by age, gender, race, and ethnicity.~~
112 ~~Cases in which a final disposition has not yet been reached~~

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113 ~~shall be reported in a subsequent annual report.~~

114 Section 4. Subsections (1) and (4) of section 938.27,
115 Florida Statutes, are amended to read:

116 938.27 Judgment for costs on conviction.—

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

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

138 Section 5. Subsection (5) of section 985.557, Florida
139 Statutes, is renumbered as subsection (4), and present
140 subsection (4) of that section is amended to read:

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141 985.557 Direct filing of an information; discretionary and
 142 mandatory criteria.—

143 ~~(4) DIRECT-FILE POLICIES AND GUIDELINES.—Each state~~
 144 ~~attorney shall develop written policies and guidelines to govern~~
 145 ~~determinations for filing an information on a juvenile, to be~~
 146 ~~submitted to the Executive Office of the Governor, the President~~
 147 ~~of the Senate, and the Speaker of the House of Representatives~~
 148 ~~not later than January 1 of each year.~~

149 Section 6. Subsection (5) of section 775.0843, Florida
 150 Statutes, is amended to read:

151 775.0843 Policies to be adopted for career criminal
 152 cases.—

153 (5) Each career criminal apprehension program shall
 154 concentrate on the identification and arrest of career criminals
 155 and the support of subsequent prosecution. The determination of
 156 which suspected felony offenders shall be the subject of career
 157 criminal apprehension efforts shall be made in accordance with
 158 written target selection criteria selected by the individual law
 159 enforcement agency and state attorney consistent with the
 160 provisions of this section and s. ss. ~~775.08401 and 775.0842.~~

161 Section 7. This act shall take effect July 1, 2011.