

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

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

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

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

(9)

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

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

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

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 Section 775.08401, Florida Statutes, is repealed.

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

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

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

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

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

(6)(1) It is the intent of the Legislature that convicted criminal offenders who meet the criteria in subsections ~~s.~~ 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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~~shall be reported in a subsequent annual report.~~

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

938.27 Judgment for costs on conviction.—

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

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

Section 5. Subsection (5) of section 985.557, Florida Statutes, is renumbered as subsection (4), and present 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.