

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: CS/SB 296

INTRODUCER: Criminal Justice Committee and Senator Wise

SUBJECT: State Attorneys

DATE: January 13, 2010

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Cellon	Cannon	CJ	<b>Fav/CS</b>
2. _____	_____	JU	_____
3. _____	_____	FT	_____
4. _____	_____	JA	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

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|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="checked" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>                   | Technical amendments were recommended   |
|                              | <input type="checkbox"/>                   | Amendments were recommended             |
|                              | <input type="checkbox"/>                   | Significant amendments were recommended |

**I. Summary:**

The bill deletes and repeals current statutory reporting of prosecutors' decisions not to seek certain minimum mandatory sentences to the Legislature and Governor. The bill further eliminates the record-keeping of those decisions by the Florida Prosecuting Attorneys Association.

The bill repeals annual state attorney reporting of direct file policies and guidelines for juvenile offenders to the Legislature and Governor.

The bill requires the clerks of court to withhold the return of cash bond money in order to pay costs of prosecution and to report the assessments and payments of costs of prosecution to the state attorney monthly.

The bill holds defendants whose cases are diverted liable for the cost of prosecution.

It eliminates the requirement of requesting the statutorily authorized costs of investigation at sentencing by the investigating agency.

This bill substantially amends or repeals the following sections of the Florida Statutes: 27.366, 775.082, 775.08401, 775.0843, 775.087(5), 903.286, 938.27, and 985.557(4).

## **II. Present Situation:**

Section 27.366, F.S., sets forth the legislative intent that defendants who are eligible for enhanced minimum mandatory sentences under subsections 775.087(2) and (3), F.S., commonly known as the “10-20-Life” law, receive those sentences. The Legislature also required that prosecutors write memoranda for each case in which a defendant qualified for the minimum mandatory sentences under the 10-20-Life law but did not receive the sentence. The memorandum must explain the sentencing deviation. This particular requirement also appears in subsection (5) of s. 775.087, F.S.

In addition to keeping the memorandum in the defendant’s file, it is to be submitted quarterly to the Legislature and the Governor with a copy being retained for 10 years by the Florida Prosecuting Attorney’s Association (FPAA) and made available to the public upon request.

The same statutory requirement of a sentencing deviation memoranda to the case file, the Legislature, the Governor and the FPAA exists in cases where the defendant meets the criteria for being sentenced as a “prison releasee reoffender” under s. 775.082(9), F.S. In those cases the memoranda are forwarded from the prosecutors on an annual basis.

Section 775.08401, F.S., requires state attorneys to adopt criteria to be used by the state attorney’s office when deciding whether to pursue the enhanced sanctions provided in s. 775.084(4), F.S., for defendants who meet the statutory criteria for sentencing as “habitual felony offenders” and “habitual violent felony offenders.” (see s. 775.084(1) (a) and (b), and (4) (a) and (b), F.S.) The statute specifies that the criteria be designed to ensure fair and impartial application of those sentencing enhancements. Deviations from the criteria are to be memorialized for the case files pursuant to the requirements of s. 775.08401(3), F.S.

The clerk of the court is currently required to withhold unpaid court costs, court fees and fines from returnable cash bonds by s. 903.286, F.S. The costs, fees, and fines are to be withheld regardless of who (other than a licensed bail bond agent) posted the cash bond on behalf of the defendant.

Part IV of ch. 938, F.S., provides for courts to assess other costs against convicted defendants. The specific provision that requires the imposition of costs of prosecution and investigation does not currently provide that those costs be assessed in cases that are disposed of by means other than a plea, violation of community sanctions hearing, or trial. Alternate means of case disposal include deferred prosecution agreements and pre-trial intervention programs.

Section 938.27, F.S., currently allows for the imposition of costs of prosecution at the rate of \$50 in misdemeanor cases and \$100 in felony cases unless the prosecutor proves that costs are higher in the particular case before the court. Investigative costs must be separately and specifically requested by the investigating agency.

The clerk of the court is required to collect and dispense costs of prosecution and investigation as provided by subsections (6), (7), and (8) of s. 938.27, F.S. Ultimately the funds are deposited into agency and state attorney trust funds.

Subsection (4) of s. 985, F.S., requires the state attorneys to develop policies and guidelines for filing juvenile cases in adult court. It further requires that these policies and guidelines be submitted to the Legislature and the Governor no later than January 1 of each year.

### **III. Effect of Proposed Changes:**

The bill eliminates the current reporting and record-keeping required of the state attorneys and individual prosecutors in “10-20-Life,” prison releasee reoffender, habitual felony offender, habitual violent felony offender, and juvenile direct-file cases.

The bill requires a monthly accounting report from the clerks to the state attorneys reflecting cost of prosecution assessments and collections.

Investigative costs need no longer be requested by the investigating agency. The bill eliminates that requirement. It should be noted, however, that current law does not provide a “default” amount of investigative costs as it does with costs of prosecution in s. 938.27(8), F.S., so it is unclear how a court would know the proper amount of investigative costs to assess without a request from the agency.

Persons whose cases are disposed of by a diversionary alternative are specifically included for payment of costs of prosecution and investigative costs by the bill. The bill eliminates the requirement that the defendant prove his or her financial needs and resources if costs become a disputed issue.

Clerks of the court are required by the bill to withhold outstanding costs of prosecution from returnable cash bonds, in addition to court costs, court fees, and fines.

The bill deletes a cross-reference that is made obsolete by the bill repealing s. 775.08401, F.S.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

The public will no longer have access to the records and reports by the offices of the state attorneys that are currently required by law and eliminated by the bill because the records will no longer necessarily be created. This does not appear to be a deviation from the Open Records requirements of the Florida Constitution or statute because the agency is not denying access to existing records, merely no longer creating them.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The automatic assessment of costs of prosecution (no less than \$100 per felony case, and \$50 per misdemeanor case) against individuals whose cases are diverted from the court system is a newly-created financial burden on those individuals.

Individuals who post a cash bond, be they the arrestee or someone acting on their behalf, will lose returnable bond money due to the bill's requirement that the clerk of court withhold costs of prosecution from that returnable cash bond.

C. Government Sector Impact:

The operating budgets (grants and donations trust funds) of the state attorney's offices will likely see an increase due to the new costs authorized by the bill.

Subsection (8) of s. 938.27, F.S., authorizes no less than \$50 per misdemeanor case and no less than \$100 per felony case unless greater costs are shown by the prosecutor. These costs will be assessed in diversion cases under the provisions of the bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Criminal Justice on January 13, 2010:**

- The language which could have been interpreted as an improper delegation of power to the Clerks of the Court has been eliminated from the bill.
- Sections 6 and 7 of the bill which authorized the Offices of the State Attorney to collect processing fees from individuals seeking to have their criminal histories sealed

or expunged have been deleted. This change seems to have eliminated any objection to the bill (in its current form) by the Public Defender's Association.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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