

**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 Judiciary Committee

BILL: CS/CS/SB 296

INTRODUCER: Judiciary Committee, Criminal Justice Committee, and Senator Wise

SUBJECT: State Attorneys

DATE: March 11, 2010

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	<b>Fav/CS</b>
2.	Treadwell	Maclure	JU	<b>Fav/CS</b>
3.			JA	
4.				
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 eliminates the current reporting and record-keeping required of state attorneys and individual prosecutors in “10-20-Life” cases, prison releasee reoffender cases, habitual felony offender and habitual violent felony offender cases, and juvenile direct-file cases. The bill also eliminates the requirement that state attorneys develop certain criteria for the administration of habitual offender cases, as well as juvenile cases prosecuted in adult court.

Several changes to the collection of costs of prosecution and investigative costs provisions in current law are included in the bill. 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 eliminates the requirement that an investigating law enforcement agency must request authorized costs of investigation. The bill also eliminates the requirement that a defendant prove his or her financial need if a dispute over the assessment of these costs arises.

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

## **II. Present Situation:**

### **Explanation and Reporting Requirements for State Attorneys**

In certain criminal prosecutions, if mandatory or enhanced sentences are not pursued, the state attorney must document why that decision was made and, in some instances, report those decisions. For example, current law 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.<sup>1</sup> Current law also requires 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.<sup>2</sup> 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 Attorneys Association, Inc. (FPAA), and made available to the public upon request.<sup>3</sup>

The same statutory requirement of a sentencing deviation memoranda to the case file 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 to the FPAA on an annual basis.<sup>4</sup> The FPAA must also retain these records for 10 years and make these documents available to the public.

### **Habitual Offender Requirements**

Current law 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.”<sup>5</sup> 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.<sup>6</sup>

### **Juvenile Cases in Adult Court**

Current law requires the state attorneys to develop policies and guidelines for filing juvenile cases in adult court.<sup>7</sup> It further requires that the state attorneys submit these policies and guidelines to the Legislature and the Governor no later than January 1 of each year.<sup>8</sup>

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<sup>1</sup> Section 27.366, F.S.; *see also* s. 775.084(5), F.S.

<sup>2</sup> Section 775.084(5), F.S.

<sup>3</sup> Section 27.366, F.S.

<sup>4</sup> Section 775.082(9)(d)2., F.S.

<sup>5</sup> Section 775.08401, F.S. The criteria for designation as a “habitual felony offender” and a “habitual violent felony offender” are set forth in s. 775.084(1)(a) and (b), F.S.

<sup>6</sup> Section 775.08401(3), F.S.

<sup>7</sup> Section 985.557(4), F.S.

<sup>8</sup> *Id.*

## **Cash Bonds**

The clerk of the court is currently required to withhold unpaid court costs, court fees, and fines from returnable cash bonds.<sup>9</sup> 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. If sufficient funds are not available to pay all unpaid fees, costs, and fines, the clerk must obtain payment from the defendant or enroll the defendant in a payment plan.<sup>10</sup>

## **Costs of Prosecution and Investigative Costs**

Courts are authorized to assess other costs against convicted defendants.<sup>11</sup> In all criminal and violation-of-probation or community-control cases, convicted persons are liable for payment of the costs of prosecution, including any investigative costs incurred by the investigating law enforcement agency.<sup>12</sup> Costs of prosecution may be imposed 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.<sup>13</sup> Investigative costs must be separately and specifically requested by the investigating agency.<sup>14</sup> Ultimately the costs of prosecution and investigative costs are deposited into agency and state attorney trust funds.<sup>15</sup>

If a dispute arises as to the proper amount or type of the costs of prosecution or the investigative costs, the court must resolve the dispute by a preponderance of the evidence.<sup>16</sup> The burden of demonstrating the amount of costs incurred is on the state attorney. The defendant bears the burden of demonstrating his or her financial resources, as well as financial need.<sup>17</sup> The burden of demonstrating such other matters as the court deems appropriate is upon the party designated by the court as justice requires.<sup>18</sup>

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

### **Explanation and Reporting Requirements for State Attorneys**

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

The bill eliminates the requirement that prosecutors write an explanation 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 bill further eliminates the requirement that the prosecutor retain the memorandum in the defendant’s file, as well as the reporting requirement that the state attorney

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<sup>9</sup> Section 903.286, F.S.

<sup>10</sup> *Id.*

<sup>11</sup> Part IV of ch. 938, F.S.

<sup>12</sup> Section 938.27(1), F.S.

<sup>13</sup> Section 938.27(8), F.S.

<sup>14</sup> Section 938.27(1), F.S.

<sup>15</sup> Section 938.27(7) and (8), F.S.

<sup>16</sup> Section 938.27(4), F.S.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

submit quarterly reports to the Legislature and the Governor regarding the prosecution and sentencing of offenders under the 10-20-Life law, with a copy being retained for 10 years by the Florida Prosecuting Attorneys Association, Inc. (FPAA), and made available to the public upon request.

For those cases in which the defendant meets the criteria for being sentenced as a “prison releasee reoffender,” but does not receive the mandatory minimum sentence, the bill eliminates the requirement for the state attorney to include a sentencing deviation memorandum in the case file and to transmit these memoranda to the FPAA.

### **Habitual Offender Requirements**

The bill repeals the statute requiring the state attorney in each judicial circuit to adopt uniform criteria for determining when to pursue habitual felony offender and habitual violent felony offender sanctions. The requirement that any deviation from the criteria must be explained in writing and placed in the case file is also eliminated in the repeal.

### **Juvenile Cases in Adult Court**

The bill repeals the requirement that the state attorneys in each judicial circuit develop policies and guidelines for filing juvenile cases in adult court, as well as the requirement that these policies and guidelines be submitted to the Legislature and the Governor no later than January 1 of each year.

### **Costs of Prosecution and Investigative Costs**

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

The bill eliminates the requirement that law enforcement agencies, fire departments, or the Department of Financial Services and the Office of Financial Regulation of the Financial Services Commission must specifically request the recovery of investigative costs. However, current law does not provide a “default” amount of investigative costs to be recovered as it does with costs of prosecutions. Therefore, it is unclear what amount a court would assess as investigative costs without a request from an agency for a specific amount.

The bill eliminates the requirement that the defendant prove his or her financial need and resources if costs become a disputed issue. The bill also eliminates the language in current law providing that the burden of proving other matters related to the assessment of these costs is upon the party designated by the court.

The clerk of court is required under the bill to separately record each assessment and the payment of costs of prosecution. The bill specifies that costs of prosecution must be assessed by the court with respect to each case number in which the court orders costs of prosecution. Thereafter, the clerk must provide a monthly report to the state attorney’s office regarding the assessments and payments recorded.

**Cross-Reference to Repealed Statute**

The bill deletes a cross-reference to s. 775.08401, F.S., relating to the establishment of criteria for prosecution of habitual offenders and habitual violent felony offenders, which is repealed under the bill.

**Effective Date**

The bill provides an effective date of July 1, 2010.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

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

The public will no longer have access to certain records and reports by the offices of the state attorneys which are currently required by law and eliminated by the bill, because the records will no longer 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, but rather is no longer creating them.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Individuals who post a cash bond – whether they are the arrestee or someone acting on the arrestee’s 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 attorneys offices may see an increase due to the collection of costs of prosecution from returnable cash bonds as authorized by the bill. Current law authorizes no less than \$50 per misdemeanor case and no less than \$100 per felony case as costs of prosecution, unless greater costs are shown by the prosecutor.

Clerks of the court may experience an increase in workload related to the requirement that the clerk report the assessments and payments to the state attorney on a monthly basis.

State attorneys may experience a decrease in workload as a result of the elimination of the requirement to document certain information related to sentence deviations, as well as the elimination of the requirement to report this information to the Florida Prosecuting Attorneys Association, Inc, as well as, in some instances, to the Legislature and the Governor.

The Office of the State Courts Administrator reports that the bill will have a minimal, if any, judicial impact, although it does note that disputes may arise regarding an offender's inability to pay assessed costs and whether the issuance of a judgment lien is appropriate.<sup>19</sup>

**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 Judiciary on March 9, 2010:**

The committee substitute:

- Makes a technical change to the catch line of s. 27.366, F.S., to eliminate the reference to the term “report,” and
- Removes the provision in the bill which holds defendants whose cases are diverted liable for the costs of prosecution.

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

The committee substitute:

- Specifies that the cost-of-prosecution assessments and payments recorded by the clerk of court relate to costs that are *assessed by the court*, thereby clarifying language that may have raised concerns about improper delegation of power to the clerk of court; and
- Removes language from the bill (sections 7 and 8 of the original filed bill) which authorized the state attorneys' offices to collect processing fees from individuals seeking to have their criminal histories sealed or expunged.

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<sup>19</sup> Office of the State Courts Administrator, *Judicial Impact Statement: HB 761* (Feb. 5, 2010).

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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