

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 761

State Attorneys

SPONSOR(S): Ray

TIED BILLS:

IDEN./SIM. BILLS: CS/SB 296

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Public Safety & Domestic Security Policy Committee		Billmeier	Cunningham
2)	Criminal & Civil Justice Appropriations Committee			
3)	Criminal & Civil Justice Policy Council			
4)				
5)				

SUMMARY ANALYSIS

HB 761 removes requirements that state attorneys document in the case file why a defendant did not receive the minimum mandatory sentence pursuant to various criminal statutes and report to the Legislature and Governor about such deviations. Specifically, the bill:

- Removes the requirement that state attorneys document in the case file why a defendant did not receive the minimum mandatory sentence pursuant to the "10-20-Life" statute and eliminates the requirement that state attorneys submit an annual report to the Speaker, the President of the Senate, and the Executive Office of the Governor regarding the prosecution and sentencing of defendants pursuant to that statute;
- Removes the requirement that state attorneys document in the case file why certain prison releasee reoffenders did not receive the minimum mandatory sentence and report such information to the Florida Prosecuting Attorneys Association;
- Repeals a statute requiring state attorneys to adopt uniform criteria when deciding to pursue habitual felony offender, habitual violent felony offender, or violent career criminal sanctions and to report such criteria to the Florida Prosecuting Attorneys Association; and
- Repeals a statute require state attorneys to develop written policies and guidelines to govern determinations for filing an information on a juvenile and submit those guidelines to the Speaker, Executive Office of the Governor, and the President of the Senate.

Current law requires the clerks of court to withhold sufficient funds to pay unpaid court fees, court costs, and criminal penalties from the return of a cash bond posted on behalf of a defendant. The bill requires clerks of the court to withhold costs of prosecution in addition to the other costs and penalties.

Current law provides that persons convicted of crimes or found to have violated probation or community control are liable for the costs of prosecution. This bill provides that persons whose cases are disposed of by diversionary alternatives are also liable for costs of prosecution. The bill requires that costs of prosecution be assessed in each case number before the court.

The bill requires a person seeking to have a criminal history record expunged or sealed to pay a \$75 processing fee to the state attorney.

This bill may have a positive fiscal impact and becomes effective on July 1, 2010. See "Fiscal Analysis."

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Changes in Requirements Relating to Reports Created by State Attorneys

Current law requires the state attorneys to create reports for the Legislature and the governor relating to deviations from minimum mandatory sentences in certain habitual offender, releasee reoffender, and firearm statutes. The state attorneys are also required to establish procedures when juveniles can be prosecuted as adults. This bill repeals or modifies some of these requirements.

Section 775.087, Florida Statutes, contains mandatory minimum sentences when a criminal possesses or uses a firearm during the commission of certain crimes.¹ Section 27.366, Florida Statutes, requires the state attorneys to explain in writing each case where an offender qualifies for enhanced sentencing under section 775.087 but does not receive the minimum mandatory sentence. A similar requirement that the state attorney create memoranda to explain why an offender did not receive the minimum mandatory sentence is also contained in subsection 775.087(5), Florida Statutes. The state attorney must supply copies of these memoranda to the Florida Prosecuting Attorneys Association ("Association"). This bill eliminates the requirement that the state attorney create the memoranda and file them with the Association.

Section 27.366, Florida Statutes, also requires the state attorneys to prepare a report relating to age, gender, race, and ethnicity of offenders who met the criteria in sections 775.087(2) and 775.087(3) and supply that report to the Speaker, the President of the Senate, and the Executive Office of the Governor. This bill eliminates the requirement that this report be prepared and filed. Representatives of the Association have stated that such information will continue to be available but the bill will eliminate the necessity of yearly reports.²

Subsection 775.082(9), Florida Statutes, provides for enhanced sentencing for prison releasee reoffenders³, including minimum mandatory sentences. Paragraph 775.082(9)(d) requires the state attorney to place memoranda in the files of cases where an offender meets the criteria to be sentenced as a prison releasee reoffender but does not receive the minimum mandatory sentence and provide copies of the memoranda to the Florida Prosecuting Attorneys Association. This bill eliminates the requirement that the state attorney create the memoranda and file them with the Association.

¹ This provision is commonly known as the "10-20-Life" law.

² Interview with staff of the Public Safety and Domestic Security Policy Committee, March 9, 2010.

³ Persons who commit specified crimes within 3 years of being released from prison.

Section 775.08401, Florida Statutes, requires the state attorneys to adopt criteria to determine when to pursue habitual felony offender sanctions, habitual violent felony offender sanctions, and violent career criminal sanctions and report these criteria to the Association. Deviations from the criteria must be documented by the state attorney. This bill repeals section 775.08401.

Subsection 985.557(4), Florida Statutes, requires a state attorney to develop written policies to govern determinations for filing an information on a juvenile and submit those policies to the Speaker, the President of the Senate, and the Executive Office of the Governor each year. This bill repeals subsection 985.557(4), Florida Statutes.

Collection of Costs of Prosecution

Section 903.286, Florida Statutes, requires the clerk of the court to withhold funds to cover unpaid court fees, court costs, and criminal penalties from the return of a cash bond posted on behalf of a criminal defendant by persons other than bail bond agents. This bill requires the clerk to withhold costs of prosecution in addition to the other costs and fees.

This bill requires the clerk of the court to separately record each assessment and each payment of the costs of prosecution. The clerk of the court must provide monthly reports to the state attorney's office of the assessments and payments recorded.

Persons convicted of crimes or found to have violated probation or community control are liable for payment of the costs of prosecution pursuant to section 938.27, Florida Statutes. Costs include investigative costs incurred by law enforcement agencies, by fire departments, and by investigations by the Department of Financial Services and the Office of Financial Regulation.⁴ This bill makes persons whose cases are disposed of through diversionary alternatives to prosecution liable for costs as well. It requires the clerk of the court to assess costs in all cases before the court.

Sealing and Expunging Criminal History Records

Sections 943.0585 and 943.059, Florida Statutes, set forth procedures for sealing and expunging criminal history records. When a record is expunged, it is physically destroyed and no longer exists if it is in the custody of a criminal justice agency other than the Florida Department of Law Enforcement ("FDLE").⁵ When a record is sealed it is not destroyed, but access is limited to the subject of the record, his or her attorney, law enforcement agencies for their respective criminal justice purposes, and certain other specified agencies for their respective licensing and employment purposes.⁶ Records that have been sealed or expunged are confidential and exempt from the public records law in many circumstances.⁷

Persons who have had their criminal history records sealed or expunged may lawfully deny or fail to acknowledge the arrests covered by their record, except when they are applying for certain types of employment, petitioning the court for a record sealing or expunction, or are a defendant in a criminal prosecution.⁸

In order to obtain seal or expunge criminal history records, a person must obtain a certificate of eligibility from the FDLE and file a petition with the court. It currently costs \$75 to obtain a certificate of eligibility from the FDLE. This bill would require persons seeking to seal or expunge criminal history records to pay an additional \$75 to the state attorney's grants and donations trust fund unless the fee is waived by the state attorney.

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

⁴ See § 928.27(1), Florida Statutes.

⁵ See § 943.0585(4), Florida Statutes.

⁶ See § 943.059(4), Florida Statutes.

⁷ See §§ 943.0585(4)(c) and 943.059(4)(c), Florida Statutes.

⁸ See §§ 943.0585(4) and 943.059(4), Florida Statutes.

B. SECTION DIRECTORY:

Section 1: Amends s. 27.366, F.S., relating to legislative intent and policy in cases meeting criteria of s. 775.087(2) and (3).

Section 2: Amends s. 775.082, F.S., relating to penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.

Section 3: Repeals s. 775.08401, F.S., relating to habitual offenders and habitual violent felony offenders; violent career criminals; eligibility criteria.

Section 4: Repeals s. 775.087(5), F.S., relating to a provision that requires each state attorney to report why a case-qualified defendant did not receive the mandatory minimum prison sentence in cases involving certain specified offenses.

Section 5: Amends s. 903.286, F.S., relating to return of cash bond; requirement to withhold unpaid fines, fees, court costs; cash bond forms.

Section 6: Amends s. 938.27, F.S., relating to judgment for costs on conviction and disposition.

Section 7: Amends s. 943.0585, F.S., relating to court-ordered expunction of criminal history records.

Section 8: Amends s. 943.059, F.S., relating to court-ordered sealing of criminal history records.

Section 9: Repeals subsection (4) of s. 985.557, F.S., relating to direct filing of an information; discretionary and mandatory criteria.

Section 10: Amends s. 775.0843, F.S., relating to policies to be adopted for career criminal cases.

Section 11: Provides effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill provides that each person filing to have a criminal history record sealed or expunged pay a \$75 fee to the state attorney for deposit in the state attorney's grants and donations fund unless the fee is waived by the state attorney. In FY 2008-2009, the court processed 14,851 petitions to seal or expunge criminal history records.⁹ If a \$75 fee were imposed, this would have generated \$1,113,825 for the grants and donations trust fund.

The bill provides that persons whose cases are disposed of under diversionary alternatives would be assessed costs of prosecution. The amount of revenue generated by this change is not known.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

⁹ Information provided by the FDLE (on file with the Committee on Public Safety and Domestic Security).

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Persons seeking to have criminal records sealed or expunged will have to pay an additional \$75 fee unless the fee is waived by the state attorney.

D. FISCAL COMMENTS:

The bill would relieve the state attorneys of duties relating to preparing reports and documenting some charging and sentencing information in the file. The fiscal impact, if any, of this change is not known.

The bill requires that costs of prosecution be assessed in all cases before the court. It is not known how much revenue this provision would generate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES