

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 761 State Attorneys  
**SPONSOR(S):** Public Safety and Domestic Security Policy Committee and Ray  
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/CS/SB 296

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	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1)	<u>Public Safety &amp; Domestic Security Policy Committee</u>	<u>13 Y, 0 N, As CS</u>	<u>Billmeier</u>	<u>Cunningham</u>
2)	<u>Criminal &amp; Civil Justice Appropriations Committee</u>	<u></u>	<u></u>	<u></u>
3)	<u>Criminal &amp; Civil Justice Policy Council</u>	<u></u>	<u></u>	<u></u>
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**SUMMARY ANALYSIS**

CS/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. The bill requires that costs of prosecution be assessed in each case number before the court.

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.<sup>1</sup> 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 attorneys 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.<sup>2</sup>

Subsection 775.082(9), Florida Statutes, provides for enhanced sentencing for prison releasee reoffenders<sup>3</sup>, 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.

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<sup>1</sup> This provision is commonly known as the "10-20-Life" law.

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

<sup>3</sup> 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. The bill maintains current law requiring the state attorney to demonstrate the costs incurred and removes the requirement that the defendant demonstrate financial resources and financial needs.

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.<sup>4</sup> It requires the clerk of the court to assess costs in all cases before the court.

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

#### **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); report.

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

Section 8: Amends s. 775.0843, F.S., relating to policies to be adopted for career criminal cases.

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<sup>4</sup> See § 928.27(1), Florida Statutes.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### 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**

On March 16, 2010, the Public Safety and Domestic Security Policy Committee considered one amendment to the bill. The amendment removes the provisions that required persons seeking to have criminal histories sealed or expunged pay a \$75 processing fee to the state attorney. The amendment also removed a provision making persons whose criminal cases are disposed of by diversionary alternatives liable for costs of prosecution.

The committee adopted the amendment and the bill was reported favorably as a committee substitute. This analysis reflects the committee substitute.