

FINAL BILL ANALYSIS

BILL #: HB 4159

FINAL HOUSE FLOOR ACTION:

93 Y's 21 N's

SPONSOR: Rep. Ray

GOVERNOR'S ACTION: Approved

COMPANION BILLS: CS/SB 1092

SUMMARY ANALYSIS

HB 4159 passed the House on April 14, 2011. The bill was amended by the Senate on May 3, 2011, and subsequently passed the House on May 4, 2011. The bill was approved by the Governor on June 21, 2011, chapter 2011-200, Laws of Florida, and becomes effective July 1, 2011.

Current law requires state attorneys to document in the case file why a defendant did not receive the minimum mandatory sentence pursuant to various criminal statutes and, in some cases, report to the Legislature, Governor, and the Florida Prosecuting Attorneys Association about such deviations.

The bill:

- Removes the requirement that state attorneys submit a quarterly report to the Florida Prosecuting Attorneys Association regarding defendants who do not receive a minimum mandatory sentence pursuant to the "10-20-Life" statute;
- Removes the requirement that state attorneys submit an annual report to the Legislature and the Governor regarding the prosecution and sentencing of defendants pursuant to the "10-20-Life" statute;
- Removes the requirement that state attorneys report information to the Florida Prosecuting Attorneys Association regarding "prison releasee reoffenders" who do not receive a minimum mandatory sentence;
- 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 that requires state attorneys to develop written policies and guidelines to govern determinations for filing an information on a juvenile and submit those guidelines to the Legislature and the Governor.

Sentencing deviation information required by ss. 27.366 and 775.087, F.S., will still be documented in a defendant's case file and will still be available to the public.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

In certain criminal prosecutions, if mandatory or enhanced sentences are not pursued, the state attorney must document why that decision was made and report those decisions. For example, s. 27.366, F.S., sets forth the Legislature's intent that defendants eligible for enhanced minimum mandatory sentences receive them under subsections 775.087(2) and (3), F.S., commonly known as the "10-20-Life" law.¹ In each case in which a defendant qualified for the minimum mandatory sentences under the "10-20-Life" law but did not receive the sentence, prosecutors are required to write memoranda explaining the sentencing deviation.² Section 27.366, F.S., requires that the memorandum be kept in the defendant's file and requires the state attorney to submit the memorandum quarterly to the Florida Prosecuting Attorneys Association, Inc. (Association) with a copy being retained for 10 years by the Association, and made available to the public upon request.³ State attorneys are also required to report to the Legislature and the Governor regarding the prosecution and sentencing of defendants pursuant to the "10-20-Life" statute.⁴

The same statutory requirements to keep sentencing deviation memoranda in a defendant's case file and submit such memorandums to the Association exists in cases where the defendant meets the criteria for being sentenced as a "prison releasee reoffender"⁵ under s. 775.082(9), F.S. In those cases, the memoranda are forwarded from the prosecutors to the Association on an annual basis.⁶ The Association must also retain these records for 10 years and make these documents available to the public.⁷

Effect of the Bill

This bill amends ss. 27.366 and 775.087, F.S., to eliminate the requirements that state attorneys report sentencing deviations from minimum mandatory sentences related to the "10-20-Life" law on a quarterly basis to the Association and report on an annual basis to the Legislature and the Governor information regarding the prosecution and sentencing of defendants pursuant to "10-20-Life."

The bill also eliminates the annual reporting requirement to the Association regarding defendants who meet the criteria as a "prison releasee reoffender."

Sentencing deviation information required by ss. 27.366 and 775.087, F.S., will no longer be retained by the Association for 10 years; however, it will still be documented in a defendant's case file and available to the public.⁸

¹ See s. 775.087(5), F.S.

² Section 775.087(5), F.S.

³ Section 27.366(1), F.S.

⁴ Section 27.366(2), F.S.

⁵ Sections 775.082 (9)(a)1. and 2., F.S., defines "prison release reoffender" as "any defendant who commits or attempts to commit certain crimes, following incarceration for an offense for which the sentence is punishable by more than 1 year in this state, within 3 years after being released from prison or within 3 years after being released from a prison of another state; or while the defendant was serving a prison sentence or on escape status from prison in Florida or another state."

⁶ Section 775.082(9)(d)2., F.S.

⁷ *Id.*

⁸ Representatives of the Association state that such information will continue to be available to the public as the bill only eliminates the necessity of creating reports. E-mail from Bill Cervone, Florida Prosecuting Attorneys Association, March 16, 2010. On file with Criminal Justice Subcommittee staff.

Habitual Offender Requirements

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."⁹ 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.¹⁰

Effect of the Bill

This bill repeals s. 775.08401, F.S., and amends s. 775.0843, F.S., to remove a reference to this repealed statute.

Juvenile Cases in Adult Court

Subsection 985.557(4), F.S., requires the state attorneys to develop policies and guidelines for filing juvenile cases in adult court. 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.¹¹

Effect of the Bill

This bill repeals subsection 985.557(4), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

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.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

⁹ 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.

¹⁰ Section 775.08401(3), F.S.

¹¹ Section 985.557(4), F.S.

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.