

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/SB 1092

INTRODUCER: Judiciary Committee and Senator Wise

SUBJECT: State Attorneys

DATE: April 14, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Favorable
2.	Boland	Maclure	JU	Fav/CS
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input 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 required of state attorneys 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.

This bill substantially amends the following sections of the Florida Statutes: 27.366, 775.082, 775.0843. The bill also repeals the following provisions 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.¹ Current law also requires that prosecutors write memoranda for each case in which a defendant qualified for the minimum mandatory sentence under the 10-20-Life law but did not receive the sentence. The memorandum must explain the sentencing deviation.² 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.³

The same statutory requirement for sentencing deviation memoranda to the case file and the FPAA exists in cases in which 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.⁴ 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.”⁵ 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.⁶

Juvenile Cases in Adult Court

Current law requires the state attorneys to develop policies and guidelines for filing juvenile cases in adult court.⁷ 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.⁸

III. Effect of Proposed Changes:

Explanation and Reporting Requirements for State Attorneys

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

¹ Section 27.366, F.S.; *see also* s. 775.087, F.S.

² Section 775.087(5), F.S.

³ Section 27.366, F.S.

⁴ Section 775.082(9)(d)2., F.S.

⁵ 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.

⁶ Section 775.08401(3), F.S.

⁷ Section 985.557(4), F.S.

⁸ *Id.*

The bill further eliminates the requirement that the state attorney 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 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 court 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.

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, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The public will no longer have access to certain reports by the offices of the state attorneys which are currently required by law and eliminated by the bill, because the reports will no longer be created. This action does not appear to be a deviation from the open records requirements of the Florida Constitution or statutes because the agency is not denying access to existing reports, but rather is no longer creating them. Additionally, a record will still be available to the public, upon request, in the form of the deviation memoranda that prosecutors are still required to create and place in the case file.

However, because the deviation memoranda will no longer be organized quarterly into one cohesive report, the bill may limit the ease of public access to such records (detailing why a prosecutor deviated from the minimum mandatory sentences).

C. Trust Funds Restrictions:

None.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

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 and 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.

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 April 12, 2011:

The committee substitute amends the original bill in the following ways:

- Deletes an amendment to a Florida Statute which would have eliminated the requirement that an investigating law enforcement agency must request authorized costs of investigation; and
- Deletes an amendment to a Florida Statute which would have eliminated the requirement that a defendant must prove his or her financial need if a dispute over the assessment of costs arises.

B. Amendments:

None.

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