

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4159 State Attorneys
SPONSOR(S): Ray
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1092

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Krol	Cunningham
2) Judiciary Committee			

SUMMARY ANALYSIS

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.

HB 4159:

- 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 Legislature and 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 "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 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.

Current law also authorizes courts to assess prosecution and investigative costs against convicted defendants.

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 may have a positive fiscal impact on state attorneys and is effective on July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

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 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 Legislature, Governor, and 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

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"⁴ under s. 775.082(9), F.S. In those cases, the memoranda are forwarded from the prosecutors to the Association on an annual basis.⁵ The Association must also retain these records for 10 years and make these documents available to the public.⁶

Effect of the Bill

This bill amends ss. 27.366 and 775.087, F.S., to eliminate the requirement that state attorneys report sentencing deviations from minimum mandatory sentences related to the "10-20-Life" law on a quarterly basis to the Legislature and Governor and file them with the Association regarding deviations.

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 still be documented in a defendant's case file and will still be available to the public.⁷

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."⁸ 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.⁹

¹ See s. 775.087(5), F.S.

² Section 775.087(5), F.S.

³ Section 27.366, F.S.

⁴ Sections 775.082 (9)(a)1. and 2., F.S., define a "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.

⁵ Section 775.082(9)(d)2., F.S.

⁶ *Id.*

⁷ 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.)

⁸ 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.

⁹ Section 775.08401(3), F.S.

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.¹⁰

Effect of the Bill

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

Collection of Prosecution and Investigative Costs

Courts are authorized to assess costs against convicted defendants.¹¹ 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 a law enforcement agency, fire department, or the Department of Financial Services and the Office of Financial Regulation of the Financial Services Commission.¹² 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.¹³ However, investigative costs must be separately and specifically requested by the investigating agency.¹⁴ Ultimately the costs of prosecution and investigative costs are deposited into state attorney and agency trust funds, respectively.¹⁵

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.¹⁶ 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.¹⁷ The burden of demonstrating such other matters as the court deems appropriate is upon the party designated by the court as justice requires.¹⁸

Effect of the Bill

The bill eliminates the requirement that the investigating agency 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 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.

B. SECTION DIRECTORY:

Section 1. Amends s. 775.082, F.S., relating to penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.

Section 2. Repeals s. 775.08401, F.S., relating to habitual offenders and habitual violent felony offenders; violent career criminals; eligibility criteria.

¹⁰ Section 985.557(4), F.S.

¹¹ Part IV of ch. 938, F.S.

¹² Section 938.27(1), F.S.

¹³ Section 938.27(8), F.S.

¹⁴ Section 938.27(1), F.S.

¹⁵ Section 938.27(7) and (8), F.S.

¹⁶ Section 938.27(4), F.S.

¹⁷ *Id.*

¹⁸ *Id.*

Section 3. Amends s. 775.087, F.S., relating to possession or use of weapon; aggravated battery; felony reclassification; minimum sentence.

Section 4. Amends s. 938.27, F.S., relating to judgment for costs on conviction.

Section 5. Amends s. 985.557, F.S., relating to direct filing of an information; discretionary and mandatory criteria.

Section 6. Amends s. 775.0843, F.S., relating to policies to be adopted for career criminal cases.

Section 7. Provides effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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.

In addition, the operating budgets (grants and donations trust funds) of the state attorneys offices may see an increase due to increased collection of investigative costs.

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:

None.

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/ COMMITTEE SUBSTITUTE CHANGES