

STORAGE NAME: h0861a.cpcs.doc

DATE: February 7, 2002

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME PREVENTION, CORRECTIONS & SAFETY
ANALYSIS**

BILL #: HB 861

RELATING TO: State Attorneys/Reports

SPONSOR(S): Representative Flanagan

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME PREVENTION, CORRECTIONS & SAFETY YEAS 7 NAYS 0
 - (2) HEALTHY COMMUNITIES
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

This bill repeals several statutes that currently require state attorneys to maintain records and make reports to the legislature. This bill is a measure that would assist in streamlining the duties and responsibilities of state attorneys.

Please note that there is a strike-all amendment traveling with the bill. See amendment section for details.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Each state attorney is required to annually report the amounts recovered from RICO proceedings for the fiscal year to the Executive Office of the Governor, pursuant to § 27.345(3).

Section 775.082(9)(d)(1) states that the legislature intends for prison releasee reoffenders, as defined in § 775.082(9)(a), to be punished to the fullest extent of the law unless the state attorney determines that extenuating circumstances exist. When an offender meets the criteria described in § 775.082(9)(a), and does not receive the mandatory minimum prison sentence, the state attorney must explain the sentencing deviation in writing and place the explanation in the case file.

Quarterly, each state attorney must submit copies of deviation memoranda regarding offenses to the president of the Florida Prosecuting Attorneys Association, Inc. (FPAA). This information must be maintained and available to the public for at least a 10-year period.

Under § 27.365, the FPAA is required to annually report prosecutions for specified offenses when the victim of the offense was less than 18 years of age to the President and Minority Leader of the Senate, the Speaker and Minority Leader of the House of Representatives, and to the appropriate substantive committees of each chamber.¹ Section 27.365 further stipulates that the reports must be organized by judicial circuit. Each report must include the initial charge for each case, the age of the victim and the offender, the charge ultimately prosecuted, whether the case went to trial or was resolved by plea agreement, and either the sentence imposed in each case or the status of each case on December 31st of the previous year.

Section § 39.205(7) requires that each state attorney establish and publish written procedures to facilitate the prosecution of individuals relating to reporting child abuse, abandonment, and neglect. Each state attorney is required to annually report the number of complaints that have resulted in the filing of an information or indictment, and the disposition of these complaints to the Legislature.

Section § 415.111 provides for criminal penalties relating to the abuse, neglect, or exploitation of a vulnerable adult.² Section 415.11(6) requires that each state attorney establish and publish

¹ The offenses include sexual battery pursuant to § 794.011, sexual activity as defined by § 794.05, lewd or lascivious offenses committed upon, or in the presence of, persons less than 16 years of age pursuant to § 800.04, and contributing to the delinquency or dependency of a child when a person over 21 years of age or older impregnates a child under 16 years of age pursuant to § 827.04(3).

procedures to facilitate the prosecution of persons under § 415.11, and annually report the number of complaints that resulted in the filing of an information or indictment to the Legislature annually.

Section 775.08401 provides penalties for habitual offenders, habitual violent felony offenders, and violent career criminals. Pursuant to § 775.08401(3), each state attorney is required to submit copies of deviation memoranda to the president of the FPAA when an imposed sentence deviates from the judicial circuit's uniform criteria. These reports must be submitted quarterly, and the information must be maintained for at least a 10-year period.

C. EFFECT OF PROPOSED CHANGES:

This bill eliminates the requirement that State Attorneys file several reports as follows:

- State attorneys will no longer be required to file an annual report with the Executive Office of the Governor if a State Attorney RICO Trust Fund has not established. The change in the statute does not affect state attorneys that have already established a State Attorney RICO trust fund.
- Section 775.082(9)(d)(2) will be eliminated, and state attorneys will no longer be required to provide a written explanation of prison releasee reoffender sentencing deviations. Consequently, state attorneys will not be required to submit copies of the deviation memoranda to the president of the FPAA on a quarterly basis. The FPAA will also no longer be required to archive and maintain the files for the requisite 10-year period.
- State attorneys will not have to provide an annual report to the President and Minority Leader of the Senate, the Speaker and Minority Leader of the House of Representatives, and to substantive committees regarding prosecutions for offenses when the victim of the offense was less than 18 years of age.
- State attorneys will no longer be required to establish and publish written procedure for the prosecution of individuals relating to reporting child abuse, abandonment, and neglect. Further, state attorneys will no longer report the number of complaints that have resulted in the filing of information or an indictment, and the disposition of the complaints to the Legislature.
- State attorneys will no longer be required to establish and publish procedures regarding the prosecution and criminal penalties relating to child abuse, neglect, or exploitation of a vulnerable adult. State attorneys will also no longer be required to annually report the number of complaints that resulted in the filing of an information or indictment under § 415.111 to the Legislature.
- State attorneys will no longer be required to submit copies of habitual offender, habitual violent felony offender, and violent career criminal deviation memoranda to the president of the FPAA on a quarterly basis. The FPAA will no longer be required to archive and maintain the files for the requisite 10-year period.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

² Unlawful acts addressed in the act include: knowingly and willfully failing to report, or preventing someone else from reporting, a case of known or suspected abuse, neglect, or exploitation of a vulnerable adult; knowingly and willfully disclosing confidential information regarding any case of abuse, neglect, or exploitation except as provided in § 415.101-415.113; refusal to grant access to records and documents; filing, or advising another to file, a false report of abuse, neglect, or exploitation of a vulnerable adult.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

This bill would reduce copying expenses and the administrative costs of compiling, recording, and archiving the information.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

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B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

Jerry Blair, the current president of FPAA and State Attorney for the Third Circuit, spoke in support of this bill in a phone conversation with committee staff on January 22, 2002. Mr. Blair was unable to quantify a positive fiscal impact, but did state that passage of this bill would result in less expense for bookkeeping, shipping costs for archiving and public records requests, and administrative costs in organizing, recording, and responding to public records requests.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Crime Prevention, Corrections & Safety adopted a strike-everything amendment which is traveling with the bill. The amendment changes the reporting requirements that are contained in sections 775.082(9)(d)(2) and 775.08401(3) but does not eliminate them. State Attorneys will be required to place a written memorandum containing an explanation of prison releasee reoffender and violent career criminal deviations in the case file maintained by the state attorney. Copies of the deviation memorandum will no longer be submitted to the president of the FPAA. The other provisions of the bill remain the same.

VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

Staff Director:

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