

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 747 Sexual Battery Time Limitations
SPONSOR(S): Kallinger
TIED BILLS: **IDEN./SIM. BILLS:** SB 1743

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Criminal Justice (Sub)</u>	<u>6 Y, 0 N</u>	<u>Maynard</u>	<u>De La Paz</u>
2) <u>Public Safety & Crime Prevention</u>	<u>14 Y, 2 N</u>	<u>Maynard</u>	<u>De La Paz</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

All prosecutions for crimes must be commenced within the time limitations proscribed by statute. HB 771 would amend s. 775.15, F.S. to enable the commencement of prosecution at any time of all first degree felony violations of s. 794.011, F.S. regardless of whether the crime was reported within 72 hours of its commission. Although the effective date of the bill is October 1, 2003, the proposed legislation would apply to these offenses committed on or after October 1, 1999. This is because there is currently a four year time limitation on first degree felonies, and cases that fall within the four year window prior to effective date of the bill which have yet to be prosecuted would have their time limitations extended. It is important to note, however, that the bill would not apply to violations of s. 794.011, F.S. the time limitations of which would have expired by the effective date of the Act..

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | 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. EFFECT OF PROPOSED CHANGES:

All prosecutions for crimes must be commenced within the time limitations proscribed by statute. The length of the time periods increase with the severity of the offense, and for a capital felony, a life felony, or a felony that resulted in death, prosecution may commence at any time. First degree felonies are to be prosecuted within 4 years, and any other felony must be commenced with 3 years. If the victim of s. 794.011, F.S. (Sexual Battery), s. 800.04, F.S. (Lewd or Lascivious Offenses), or s. 826.04, F.S. (Incest) is under the age of 18, the period of limitation does not start to run until the victim has turned 18 or the violation is reported to a law enforcement agency, whichever occurs earlier. However, prosecutions for first or second degree violations of s. 794.011, F.S. (Sexual Battery) may be commenced at anytime if the crime was reported to law enforcement within 72 hours after the commission of the offense.¹

HB 771 would amend s. 775.15, F.S. to enable the commencement of prosecution at any time of all first degree felony violations of s. 794.011, F.S., regardless of whether the crime was reported within 72 hours of its commission. Although the effective date of the bill is October 1, 2003, the proposed legislation would apply to these offenses committed on or after October 1, 1999. This is because there is currently a four year time limitation on first degree felonies, and cases that fall within the four year window prior to effective date of the bill which have yet to be prosecuted would have their time limitations extended. It is important to note, however, that the bill would not apply to violations of 794.011, F.S. the time limitations of which would expire before the effective date of the Act.

The proposed legislation would extend the time limitations for prosecution for the following offenses:

- Sexual Battery upon a person 12 years of age or older without that person's consent and
 - 1.) the victim was physically helpless to resist
 - 2.) the defendant threatens to use violence against the victim or
 - 3.) the defendant threatens to use force against another person
 - 4.) the defendant administers an intoxicating substance which mentally or physically incapacitates the victim
 - 5.) the victim is mentally defective
 - 6.) the victim is physically incapacitated
 - 7.) the defendant is a correctional officer and the victim is a person under his control²

-Sexual Battery upon a person older than 12 but less than 18 and the Defendant is in a position of familial or custodial authority.

¹ s. 775.15, F.S.

² s. 794.011(4), F.S.

C. SECTION DIRECTORY:

Section 1. Amends s. 775.15, F.S.

Section 2. Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments

2. Expenditures:

See Fiscal Comments

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments

2. Expenditures:

See Fiscal Comments

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments

D. FISCAL COMMENTS:

The Criminal Justice Estimating Committee has not yet evaluated the fiscal impact of this bill or its Senate companion.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

2. Other:

Article 1, Section 10 bars passage an of ex post facto law. A law is ex post facto if it punishes as a crime an act which was not a crime when committed, makes the punishment for a crime more onerous than it was at commission, or deprives one charged with a crime of a defense available when the crime was committed; it must do more than merely alter the situation of a party to that party's disadvantage. [State v. A.C.](#), 714 So.2d 617 (Fla 4th DCA 1998), review denied 725 So.2d 1106. A court decision which applies the ex post facto clause of the Florida Constitution to the Legislature's right to enact statutes of limitations is [Andrews v. State](#), 392 So.2d 270 (Fla 2nd DCA, 1980). The Fourth District Court of Appeals ruled in that case that the Legislature can extend criminal limitations period without violating constitutional prohibition against ex post facto laws if it

does so "before prosecution is barred by the old statute and clearly indicates that [the] new statute is to apply to cases pending when it becomes effective."

HB 177 provides that the current subsection applies to any such offense except "any offense which would have been barred by subsection 2 on or before October 1, 2003." Although the effective date of the bill is October 1, 2003, the proposed legislation would apply to these offenses committed on or after October 1, 1999. This is because there is currently a four year time limitation on first degree felonies, and cases that fall within the four year window prior to effective date of the bill which have yet to be prosecuted would have their time limitations extended. It is important to note, however, that the bill would not apply to violations of s. 794.011, F.S. the time limitations of which would expire before the effective date of the Act. To the extent that the statute does not punish as a crime an act which was not a crime when committed, make the punishment for a crime more onerous than it was at commission, or deprive one charged with a crime of a defense available when the crime was committed, it would seem the bill complies with the ex post facto clause of Florida's Constitution.

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES