

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1831 w/CS Relating to Limitations of Actions
SPONSOR(S): Committee on Public Safety & Crime Prevention
TIED BILLS: **IDEN./SIM. BILLS:** SB 1074

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Public Safety & Crime Prevention</u>	<u>19 Y, 0 N</u>	<u>Maynard</u>	<u>De La Paz</u>
2) <u>Judiciary</u>	<u>16 Y, 0 N w/CS</u>	<u>Havlicak</u>	<u>Havlicak</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Current law provides for statutes of limitations for criminal offenses which provide the time period in which a prosecution must be commenced. The length of the periods under the statute increased with the severity of the offense. Under s. 775.15, F.S., prosecutions for capital felonies and life felonies may be commenced at any time after their commission. First degree felonies must be prosecuted within four years, and generally any other felony must be prosecuted within three years. There are some exceptions to these rules with regard to sexual offenses.

Currently, DNA (deoxyribonucleic acid) testing of forensic evidence has become a common tool for law enforcement investigations. Such evidence can be obtained from hair or body fluid samples left at a crime scene and, if the adequate amount for testing is present, can identify the perpetrator of a crime with a high level of statistical certainty. This type of evidence is often left at crime scenes involving violent sexual offenses. Law enforcement is able, once identifying a suspect, to obtain a DNA sample from the suspect to compare with samples from the crime scene.

In addition to testing samples obtained from crime scenes and suspects, the Florida Department of Law Enforcement (FDLE) also tests DNA samples from individuals convicted of certain serious offenses including burglary, sexual battery and aggravated child abuse. FDLE maintains a record of all of these samples in a computerized database.

A problem may arise, however, when FDLE is able to identify an offender for a past offense, but the statutes of limitations has already run. In those cases, no prosecution is possible absent very limited circumstances.

This bill permits the prosecution of a person identified by DNA evidence one year after the identity of the accused is established. The bill requires due diligence to be used in the identifying of a defendant through the analysis of DNA evidence in order to obtain the one year window in which to prosecute the offenses identified in the bill. This new limitations period would run even if the original period had already elapsed. Under the bill, a sufficient portion of the evidence must be preserved and available for testing by the accused. The bill only applies to offenses of sexual battery under chapter 794, F.S. or lewd or lascivious offenses under ss. 800.04 or 825.1025, F.S. The bill does not apply retroactively, so only new cases arising under the statute would be covered.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1831b.ju.doc
DATE: April 15, 2004

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:

Current law provides for statutes of limitations for criminal offenses which provide the time period in which a prosecution must be commenced. The length of the periods under the statute increased with the severity of the offense. Under s. 775.15, F.S., prosecutions for capital felonies and life felonies may be commenced at any time after their commission. First degree felonies must be prosecuted within four years, and generally any other felony must be prosecuted within three years.

There are some exceptions to these rules with regard to sexual offenses. Prosecution may commence at any time for any first or second degree felony violation of sexual battery under s. 794.011, F.S. which is reported to law enforcement within 72 hours of its commission.¹ For such cases involving minors, s. 775.15(7)(a), F.S. provides that the time limitations do not begin to run until the minor reaches the age of 18 or the offense is reported to law enforcement, whichever occurs earlier. In addition, a first degree felony violation of s. 794.011, F.S. may be prosecuted at any time.

Currently, DNA testing of forensic evidence has become a common tool for law enforcement investigations. Such evidence can be obtained from hair or body fluid samples left at a crime scene and, if the adequate amount for testing is present, can identify the perpetrator of a crime with a high level of statistical certainty. This type of evidence is often left at crime scenes involving violent sexual offenses. Once a suspect is identified, law enforcement is able to obtain a DNA sample from the suspect to compare with samples from the crime scene.

In addition to testing samples obtained from crime scenes and suspects, the Florida Department of Law Enforcement (FDLE) also tests DNA samples from individuals convicted of certain serious offenses including burglary, sexual battery, and aggravated child abuse.² FDLE maintains a record of all blood samples in a computerized database. According to the FDLE website, "[t]his allows the comparison of DNA results from unresolved cases to the DNA of both known offenders and other unresolved or resolved cases in an attempt to identify the perpetrator."³ FDLE has had great success in aiding investigations. "The FDLE DNA Database has experienced vast changes over the last thirteen years. By implementing robotic techniques, incorporating a sample tracking and control system, and continually increasing the number of searchable DNA offender profiles, the Database has grown into a valuable tool for law enforcement and also become one of the nation's premier DNA laboratories. As of March 2003, the DNA Database has had over 946 hits and provided assistance in over 1,305

¹ See s. 775.015(1)(b), F.S.

² Under s. 943.325(1)(b)5., F.S. by July 1, 2005, a person convicted or pleading to any felony offense will be required to submit a blood sample to FDLE.

³ http://www.fdle.state.fl.us/CJResCtr/DNA_Brochure/index.asp

investigations. These hits have resolved investigations not only in Florida, but across the United States. In fact, FDLE Florida leads the nation in investigations aided.”⁴

A problem may arise, however, when FDLE is able to identify an offender for a past offense, but the statutes of limitations has already run. In those cases, no prosecution is possible absent very limited circumstances such as when the defendant is continuously absent from the state.⁵ According to a publication by the Florida Council Against Sexual Violence, sixteen states currently have exceptions to statutes of limitations in cases of sexual violence where DNA evidence is available including: Arkansas, California, Connecticut, Delaware, Idaho, Indiana, Kansas, Massachusetts, Michigan, Minnesota, New Jersey, New York, Oregon, Texas, Washington and Wisconsin.⁶

This bill permits the prosecution of a person identified by DNA evidence one year after the identity of the accused is established. The bill requires due diligence to be used in the identifying of a defendant through the analysis of DNA evidence in order to obtain the one year window in which to prosecute the offenses identified in the bill. This new limitations period would run even if the previous period had already elapsed. Under the bill, a sufficient portion of the evidence must be preserved and available for testing by the accused. The bill would only apply to any offense of sexual battery under ch.794, F.S. or lewd or lascivious offenses under s. 800.04 or s. 825.1025., F.S. The bill does not apply retroactively, so only new cases arising under this bill are covered.

C. SECTION DIRECTORY:

Section 1. Amends s. 775.15, F.S., relating to time limitations.

Section 2. Provides an effective date of July 1, 2004.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

⁴ http://www.fdle.state.fl.us/CJResCtr/dna_brochure/goals.asp

⁵ See s. 775.15(6), F.S.

⁶ Florida Council Against Sexual Violence “Florida’s DNA Database and the DNA Backlog” June 2003, p. 5

D. FISCAL COMMENTS:

Because the bill does not require any more DNA testing than allowed by current law, the only potential expenses would be related to the prosecution of serious sexual offenses which would otherwise not be charged under current law because the limitations period had run.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

Because the bill contains a provision that permits its application for cases not otherwise barred from prosecution on or after July 1, 2004, there should be no constitutional issues related to due process or retroactivity.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On April 15, 2004, the Committee on Judiciary adopted one amendment to the bill. The amendment requires due diligence to be used in the identifying of a defendant through the analysis of DNA evidence in order to obtain the one year window in which to prosecute the offenses identified in the bill.

This analysis is drafted to the bill as amended.