

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 133 Sexual Battery Time Limitations  
**SPONSOR(S):** Safety & Security Council; Porth and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 528

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Courts</u>	<u>6 Y, 0 N</u>	<u>Webb</u>	<u>Bond</u>
2) <u>Safety &amp; Security Council</u>	<u>15 Y, 0 N, As CS</u>	<u>Webb/Davis</u>	<u>Havlicak</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

A statute of limitations is an absolute bar to the filing of a legal case after a date set by law. All prosecutions for crimes must be commenced within the time limitations proscribed by statute. Under current law, there is no statute of limitations for most sexual battery crimes where the victim was a minor. This bill eliminates the statute of limitations for the offense of uncoerced sex with a minor between 12 and 17 years of age where the offender committed the offense on two or more diverse occasions and corroborating evidence beyond the testimony of a single victim is presented.

The Criminal Justice Impact Conference met on February 26, 2008 and determined that this bill as originally filed would have an insignificant prison bed impact on the Department of Corrections.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

Personal responsibility -- This bill eliminates a procedural bar to prosecution of a certain sex crime.

### B. EFFECT OF PROPOSED CHANGES:

#### Background

A statute of limitations is an absolute bar to the filing of a legal case after a date set by law. The date is commonly based on the time that has elapsed since the action giving rise to the case occurred. Such laws creating statutes of limitation specify when the time period begins, how long the limitations period runs, and circumstances by which the running of the statutes may be tolled (suspended). Alternatively, some laws creating statutes of limitations set the limitations period based in part on the age of the victim. Combinations of these two approaches exist.

State and federal constitutions prohibit ex post facto laws.<sup>1</sup> If the limitations period on an offense has already expired, a change to the law cannot retroactively allow a prosecution for the offense.<sup>2</sup>

#### Criminal Statutes of Limitation Applicable to Sexual Battery

Section 794.011, F.S., lists numerous crimes related to sexual battery, commonly referred to as rape.<sup>3</sup> Section 775.15, F.S., sets forth the statutes of limitation applicable to criminal prosecutions. Section 775.15(4), F.S., provides that the time for prosecution of a criminal case starts to run on the day after the offense is committed. An offense is deemed to have been committed either when every element of the offense has occurred, or, if the legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's duplicity therein is terminated.

In general, the length of a statute of limitations increases with the severity of the offense. Prosecution may commence at any time for a capital felony, life felony, or felony which results in death. Most first degree felonies must be prosecuted within 4 years and other felonies within 3 years.<sup>4</sup> However, if a victim of a first degree felony of s. 794.011, F. S. (Sexual Battery) is under the age of 18 at the time of the offense, there is no statute of limitations.<sup>5</sup>

Under current law, there is no statute of limitations for most sexual battery crimes where the victim is a minor. Only two sexual battery offenses where the victim is a minor have an applicable statute of limitations under current law. As to these two offenses, the applicable statute of limitations does not commence until the earlier of the date that the minor reaches 18 years of age or the crime is reported to law enforcement.<sup>6</sup> Those two offenses are as follows:

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<sup>1</sup> Article I, s. 10, U.S.Const.; Article I, s. 10, Fla.Const.

<sup>2</sup> In *Stogner v. California*, 539 U.S. 607 (2003), the United States Supreme Court held that a law enacted after the expiration of a previously applicable statute of limitations had expired could not, under the ex post facto clause of the United States Constitution, revive the time-barred prosecution.

<sup>3</sup> Section 794.011(1)(h), F.S., defines sexual battery as "oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose."

<sup>4</sup> Section 775.15(2)(a), F. S.

<sup>5</sup> Section 775.15(13)(b), F.S.

<sup>6</sup> Section 775.15(13)(a), F.S.

- Section 794.011(5), F.S., provides that a person who commits sexual battery upon a person 12 years of age or older, without that person's consent, and in the process thereof does not use physical force and violence likely to cause serious personal injury commits a felony of the second degree.<sup>7</sup> There is no statute of limitations for this crime if the sexual battery was reported to law enforcement within 72 hours after the commission of the crime<sup>8</sup> or if there were multiple perpetrators.<sup>9</sup> Otherwise, the statute of limitations is 3 years. Because the statute of limitations must commence on or before the victim's 18th birthday, the limitations period would not extend beyond the victim's 21st birthday.
- Section 794.011(8), F.S., provides that without regard to the willingness or consent of the victim, a person who is in a position of familial or custodial authority to a person less than 18 years of age and who solicits that person to engage in any act which would constitute sexual battery commits a felony of the third degree.<sup>10</sup> The statute of limitations is 3 years. Because the statute of limitations must commence on or before the victim's 18th birthday, the limitations period would not extend beyond the victim's 21st birthday.

In addition to the time periods stated above, an offender may be prosecuted within 1 year after the date on which the identity of the offender is established, or should have been established by the exercise of due diligence, through the analysis of deoxyribonucleic acid (DNA) evidence, if a sufficient portion of the evidence collected at the time of the original investigation and tested for DNA is preserved and available for testing by the accused.<sup>11</sup>

### **Effect of Bill**

This bill amends the current three-year statute of limitations applicable to criminal cases, s. 775.15, F.S., to provide that there is no statute of limitations for the offense of second-degree sexual battery, as defined in s. 794.011(5), F.S., where the victim of the sexual battery was 12 years of age or older (but less than 18 years of age), the sexual battery was committed without that person's consent, the offender committed the offense on two or more diverse occasions, and the perpetrator did not use physical force or violence likely to cause serious bodily injury. This bill provides that if the alleged offense occurred more than three years prior to the date the offense is charged, then corroborating evidence is required beyond the testimony of a single victim for there to be no statute of limitations.

This bill does not extend the statute of limitations for an offense already time-barred on or before October 1, 2008.

### **C. SECTION DIRECTORY:**

Section 1 amends s. 775.15, F.S., regarding the statute of limitations in criminal sexual battery cases.

Section 2 provides an effective date of October 1, 2008.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

<sup>7</sup> Section 794.011(5), F.S.

<sup>8</sup> Section 775.15(14), F.S.

<sup>9</sup> If there were multiple perpetrators, this crime is reclassified as a first degree felony, s. 794.023(2)(a), F.S., and accordingly there would be no statute of limitations.

<sup>10</sup> Section 794.011(8)(a), F.S.

<sup>11</sup> Section 775.15(8), F.S.

2. Expenditures:

Insignificant. See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

This bill appears to have an insignificant negative fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference met on February 26, 2008, and determined that this bill as originally filed would have an insignificant prison bed impact on the Department of Corrections.

### 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.

D. STATEMENT OF THE SPONSOR

No statement submitted.

### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On February 20, 2008, the Committee on Courts adopted one amendment to this bill. The amendment added that the offense must have been committed on two or more diverse occasions in order to extend the statute of

limitations for a second-degree sexual battery of a minor between 12 and 17 years of age. The bill was then reported favorably with an amendment.

On March 5, 2008, the Safety & Security Council adopted one substitute amendment. The amendment provides that the offender must have committed the offense on two or more diverse occasions and that if the alleged offense occurred more than 3 years prior to the date the offense is charged, then corroborating evidence is required beyond the testimony of a single victim. The bill was then reported favorably with a council substitute.