

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 525 Statutes of Limitation for Sexual Battery

SPONSOR(S): Dorworth and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 870

| | REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|----|--|---------------|----------------|-----------------------|
| 1) | Public Safety & Domestic Security Policy Committee | 12 Y, 0 N | Padgett | Cunningham |
| 2) | Criminal & Civil Justice Appropriations Committee | 11 Y, 0 N | Darity | Davis |
| 3) | Criminal & Civil Justice Policy Council | | | |
| 4) | | | | |
| 5) | | | | |

SUMMARY ANALYSIS

Section 775.15, F.S., sets forth time limitations for commencing criminal prosecutions, or “statute of limitations.” 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.

Section 95.11, F.S., sets forth time limitations for commencing civil actions in Florida. The time limitations range from 20 years to 30 days. A civil claim for a violation of Chapter 794 must commence within four years from the date when the cause of action accrues.

The bill amends s. 95.11, F.S., and s. 775.15, F.S., to provide that there is no time limitation for a civil cause of action or a criminal prosecution for a violation of s. 794.011, F.S., when the victim was under the age of 16 at the time of the offense. The bill applies to all actions except those which would have been time barred on or before July 1, 2010.

The fiscal impact associated with workload on the courts or additional filing fee revenue from bringing these actions was indeterminate, but likely minimal. The Criminal Justice Impact Conference met March 17, 2010, and determined this bill will have an insignificant impact on state prison beds.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Criminal Prosecution

Section 775.15, F.S., sets forth time limitations for commencing criminal prosecutions, or "statute of limitations."

Section 775.15(3), F.S., provides that 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.¹

Section 775.15, F.S., controls the time limitations for initiating a criminal prosecution for any felony offense in the following manner:

- For a capital felony, a life felony, or a felony resulting in death, there is no time limitation;
- For a first degree felony, there is a four-year limitation; and
- For any other felony, there is a three-year limitation.

Generally, the controlling criminal statute of limitations is the version that is in effect when a crime is committed.² The legislature can extend the limitations period without violating the 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.³ If the pre-existing statute of limitations had already expired prior to passage of the new statute of limitations, the retroactive application of the new statute of limitations would violate the ex post facto provisions of both the United States Constitution (Art. I, ss. 9, 10) and the Florida Constitution (Art. I, s. 10).⁴

Section 794.011, F.S., prohibits sexual battery. "Sexual battery" is defined to mean oral, anal, or vaginal penetration 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

¹ Section 775.15, F.S.

² See *Andrews v. State*, 392 So.2d 270,271 (Fla. 2d DCA 1980).

³ *Id.*

⁴ See *United States v. Richardson*, 512 F.2d 105, 106 (3rd Cir. 1975); *Reino v. State*, 352 So.2d 853 (Fla. 1977).

medical purpose.⁵ The felony degree for the offense of sexual battery varies depending on the age of the defendant and the age of the victim. There is no time limit for commencing a criminal prosecution for the life felonies in Chapter 794, F.S. A criminal prosecution for a first degree felony in Chapter 794, F.S., must commence within four years. A criminal prosecution for the second and third degree felonies in Chapter 794, F.S., must commence within three years.

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.⁶ Those two offenses are as follows:

- 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.⁷ 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 crime⁸ or if there were multiple perpetrators.⁹ 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.¹⁰ 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, for offenses committed between July 1, 2004 and June 30, 2006, 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.¹¹

For offenses that are not barred from prosecution on or after July 1, 2006, an offender may be prosecuted at any time 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.¹²

Civil Action

Section 95.11, F.S., sets forth time limitations for commencing civil actions in Florida. The time limitations range from 20 years to 30 days.

Section 95.031, F.S., provides that time for commencing civil actions starts to run from the time the cause of action accrues. A cause of action accrues when the last element constituting the cause of action occurs.¹³ Time limitations may be tolled under certain circumstances.¹⁴

⁵ Section 794.011(1)(h), F.S.

⁶ Section 775.15(13)(a), F.S.

⁷ Section 794.011(5), F.S.

⁸ Section 775.15(14), F.S.

⁹ 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.

¹⁰ Section 794.011(8)(a), F.S.

¹¹ Section 775.15(15), F.S.

¹² Section 775.15(16), F.S.

¹³ Section 95.031(1), F.S.

A civil claim for a violation of Chapter 794, F.S., must commence within four years from the date when the cause of action accrues.¹⁵

Proposed Changes

Criminal Prosecution

The bill amends s. 775.15, F.S., to provide there is no time limitation for the criminal prosecution of a violation of s. 794.011, F.S., when the victim was under the age of 16 at the time of the offense. The bill applies to all offenses except those offense barred by prosecution on or before July 1, 2010.

Civil Action

The bill amends s. 95.11, F.S., to provide that there is no time limitation for a civil cause of action of a violation of s. 794.011, F.S., when the victim was under the age of 16 at the time of the offense. The bill applies to all actions except those which would have been time barred on or before July 1, 2010.

B. SECTION DIRECTORY:

Section 1: Amends s. 95.11, F.S., relating to limitations other than for the recovery of real property.

Section 2: Amends s. 775.15, F.S., relating to time limitations; general time limitations; exceptions.

Section 3: Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate. See fiscal comments.

2. Expenditures:

Indeterminate. See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference met March 17, 2010, and determined this bill will have an insignificant impact on state prison beds.

¹⁴ Section 95.051, F.S.

¹⁵ Section 95.11(3)(o), F.S.

The State Courts reported that both the potential workload and additional filing fee revenues are indeterminate, but the fiscal impact is likely to be minimal.

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/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES