

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 793 Statute of Limitations for Criminal Offenses Against Minors  
**SPONSOR(S):** Fant  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 998

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 0 N	Fields	White
2) Judiciary Committee			

### SUMMARY ANALYSIS

Section 775.15, F.S., sets forth statutes of limitation for commencing criminal prosecutions. A statute of limitation is an absolute bar to the filing of a legal case after a date set by law. Generally, the statute of limitation for the criminal prosecution of kidnapping under s. 787.01, F.S., is four years, unless the victim is under 13 years of age and an aggravating offense was committed, in which case there is no statute of limitation. The statute of limitation for false imprisonment under s. 787.02, F.S., is generally three years, unless the victim is under 13 years of age and an aggravating offense was committed, in which case it is four years.

The bill amends s. 775.15, F.S., to eliminate the statutes of limitation for violations of ss. 787.01 and 787.02, F.S., if the victim was under 13 years of age at the time of the initial confinement, abduction, restraint, or imprisonment. If the victim was between 13 and 17 years of age at the time of the initial confinement, abduction, restraint, or imprisonment, the applicable statute of limitation does not begin to run until the victim's liberty has been restored or until the victim has reached the age of 18, whichever occurs later.

The bill also specifies that it applies to any offense that is not otherwise barred from prosecution on or before the effective date of the bill.

The bill may increase the need for prison beds as a result of increasing or eliminating the statutes of limitation. The Criminal Justice Impact Conference has not yet met to consider the bill.

The bill is effective upon becoming law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Statutes of Limitation**

###### Background

Statutes of limitation set forth time limitations for commencing criminal prosecutions and civil actions. In *State v. Hickman*, the Second District Court of Appeal explained that:

Statutes of limitation are construed as being acts of grace, and as a surrendering by the sovereign of its right to prosecute or of its right to prosecute at its discretion, and they are considered as equivalent to acts of amnesty. Such statutes are founded on the liberal theory that prosecutions should not be allowed to ferment endlessly in the files of the government to explode only after witnesses and proofs necessary to the protection of accused have by sheer lapse of time passed beyond availability. They serve, not only to bar prosecutions on aged and untrustworthy evidence, but also to cut off prosecution for crimes a reasonable time after completion, when no further danger to society is contemplated from the criminal activity.<sup>1</sup>

Similarly in *State v. Garofalo*, the court found that “[t]he sole purpose of a statute of limitation in a criminal context is to prevent the State from hampering defense preparation by delaying prosecution until a point in time when its evidence is stale and defense witnesses have died, disappeared or otherwise become unavailable.”<sup>2</sup>

###### Statutes of Limitation in Criminal Cases

Section 775.15, F.S., sets forth statutes of limitation for criminal prosecutions. In general, for:

- A capital felony, a life felony, or a felony resulting in death, there is no time limitation;
- A first degree felony, the prosecution must be commenced within four years after the offense is committed; and
- Any other felony, the prosecution must be commenced within three years after the offense is committed.<sup>3</sup>

In some cases, the statute establishes specific statutes of limitation for certain types of crimes. For example, a prosecution must be commenced within:

- Ten years after a felony that arises from the use of a destructive device<sup>4</sup> and results in injury to a person.<sup>5</sup>
- Five years after the commission of a felony violation of: Medicaid provider fraud offenses; elderly person or disabled adult abuse, neglect, or exploitation offenses; certain insurance-related offenses; or offenses proscribed in ch. 517, entitled “Securities Transactions.”<sup>6</sup>
- Five years after the discovery of a felony violation of ch. 403, F.S., entitled “Environmental Control.”<sup>7</sup>

In other cases, the statute of limitation depends upon the age of the victim and the nature of the offense. For example, for:

- A sexual battery,<sup>8</sup> a lewd or lascivious offense committed upon or in the presence of persons less than 16 years of age,<sup>9</sup> incest,<sup>10</sup> or computer pornography,<sup>11</sup> the statutes of limitation do not

<sup>1</sup> 189 So. 2d 254, 262 (Fla. 2d DCA 1966).

<sup>2</sup> 453 So. 2d 905, 906 (Fla. 4th DCA 1984) (citing *State v. Hickman*, 189 So. 2d 254 (Fla. 2d DCA 1966)).

<sup>3</sup> s. 775.215(1) and (2), F.S.

<sup>4</sup> The term “destructive device” is defined in s. 790.001(4), F.S.

<sup>5</sup> s. 775.15(7), F.S.

<sup>6</sup> s. 775.15(8), (10), and (11), F.S.

<sup>7</sup> s. 775.15(9), F.S.

begin to run until the victim has reached the age of 18 or the violation is reported to a law enforcement agency, whichever occurs earlier.<sup>12</sup> A prosecution may commence at any time for a first degree felony violation of sexual battery upon a victim under 18 at the time the offense was committed.<sup>13</sup>

- A first or second degree felony violation of sexual battery, and the offense is reported within 72 hours after its commission, a prosecution may commence at any time.<sup>14</sup> If the offense is not reported within 72 hours, and the victim is 16 or older, a prosecution must commence within 8 years after the violation is committed.<sup>15</sup>
- Lewd or lascivious battery or molestation upon a victim under 16 years of age, a prosecution may commence at any time, unless, at the time of the offense, the offender is less than 18 and no more than 4 years older than the victim.<sup>16</sup>

### Kidnapping

Currently, s. 787.01, F.S., makes it a first degree felony to kidnap a person. Kidnapping means forcibly, secretly, or by threat confining, abducting, or imprisoning another person against his or her will and without lawful authority, with intent to:

- Hold for ransom or reward as a shield or hostage.
- Commit or facilitate commission of any felony.
- Inflict bodily harm upon or to terrorize the victim or another person.
- Interfere with the performance of any governmental or political function.<sup>17</sup>

Confinement of a child under the age of 13 is against his or her will if such confinement is without the consent of his or her parent or legal guardian.<sup>18</sup> A person commits a life felony if he or she kidnaps a child under the age of 13 and, in the course of committing the offense, commits one or more of the following offenses:

- Aggravated child abuse;
- Sexual battery;
- Lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition;
- A violation of former ss. 796.03 or 796.04, F.S., relating to prostitution, upon the child;
- Exploitation of the child or allowing the child to be exploited; or
- A violation of s. 787.06(3)(g), F.S., relating to human trafficking.<sup>19</sup>

*Statute of Limitation:* There is a four-year statute of limitation for the first degree felony offense of kidnapping a person in violation of s. 787.01(2), F.S.<sup>20</sup> There is no statute of limitation for the life felony offense of kidnapping a child under 13 years of age while also committing one of the above-referenced offenses.<sup>21</sup>

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<sup>8</sup> s. 794.011, F.S.

<sup>9</sup> s. 800.04, F.S.

<sup>10</sup> s. 826.04, F.S.

<sup>11</sup> s. 847.0135(5), F.S.

<sup>12</sup> s. 775.15(13)(a), F.S.

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

<sup>14</sup> *Id.*

<sup>15</sup> s. 775.15(14)(b), F.S.

<sup>16</sup> s. 775.15(18), F.S.

<sup>17</sup> s. 787.01(1)(a), F.S.

<sup>18</sup> s. 787.01(1)(b), F.S.

<sup>19</sup> s. 787.01(3)(a), F.S.

<sup>20</sup> s. 775.15(2)(a), F.S.

<sup>21</sup> s. 775.15(1), F.S.

## False Imprisonment

Currently, s. 787.02, F.S., makes it a third degree felony to falsely imprison a person. False imprisonment means forcibly, by threat, or secretly confining, abducting, imprisoning, or restraining another person without lawful authority and against her or his will.<sup>22</sup>

A person commits a first degree felony if he or she falsely imprisons a child under the age of 13 and, in the course of committing the offense, commits any of the following offenses:

- Aggravated child abuse;
- Sexual battery;
- Lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition;
- A violation of former ss. 796.03 or 796.04, F.S., relating to prostitution, upon the child;
- Exploitation of the child or allowing the child to be exploited; or
- A violation of s. 787.06(3)(g), F.S., relating to human trafficking.<sup>23</sup>

*Statute of Limitation:* The statute of limitation for falsely imprisoning a person in violation of s. 787.02(b)(2), F.S., a third degree felony, is three years.<sup>24</sup> The statute of limitation for falsely imprisoning a child under the age of 13 while also committing one of the above-referenced offenses is four years because it is a first degree felony.

## **Effect of the Bill**

The bill amends s. 775.15, F.S., to eliminate the statutes of limitation for violations of ss. 787.01 and 787.02, F.S., and allow prosecution at any time, if the victim was under 13 years of age when the initial confinement, abduction, restraint, or imprisonment occurred. If the victim was between 13 and 17 years of age when the initial confinement, abduction, restraint, or imprisonment occurred, the bill changes the applicable statute of limitation so that it begins to run when the victim's liberty has been restored or the victim reaches the age of 18, whichever occurs later. Figure 1 below details the bill's effect on current statutes of limitation.

**Figure 1**

<b>Offense</b>	<b>Age</b>	<b>Current Statute of Limitation (from the date the offense is committed)</b>	<b>Statute of Limitation under bill</b>
<b>Kidnapping</b> (s. 787.01(2), F.S.)	Under 13	4 years	None – prosecution may be commenced at any time.
<b>Kidnapping</b> (s. 787.01(3)(a), F.S.)	Under 13 with aggravating offense	None – prosecution may be commenced at any time.	None – prosecution may be commenced at any time.
<b>Kidnapping</b> (s. 787.01(2), F.S.)	13-17	4 years	4 years from the: (a) date that the victim's liberty is restored; or (b) date that the victim turns 18, whichever is later.
<b>False Imprisonment</b> (s. 787.02(2), F.S.)	Under 13	3 years	None – prosecution may be commenced at any time.
<b>False Imprisonment</b> (s. 787.02(3)(a), F.S.)	Under 13 with aggravating offense	4 years	None – prosecution may be commenced at any time.
<b>False Imprisonment</b> (s. 787.02(2), F.S.)	13-17	3 years	3 years from the: (a) date that the victim's

<sup>22</sup> s. 787.02(1)(a), F.S.

<sup>23</sup> s. 787.02(3)(a), F.S.

<sup>24</sup> s. 775.15(2)(b), F.S.

			liberty is restored; or (b) date that the victim turns 18, whichever is later.
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The bill also specifies that it applies to any offense that is not otherwise barred from prosecution on or before the effective date of the bill.

The bill is effective upon becoming law.

**B. SECTION DIRECTORY:**

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

Section 2. Directs the Division of Law Revision and Information to replace the phrase “the effective date of this act” wherever it occurs in this act with the date the act becomes law.

Section 3. Provides that the act is effective upon becoming law.

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

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

1. Revenues: The bill does not appear to have any impact on state revenues.
2. Expenditures: The bill may increase the need for prison beds as a result of increasing or eliminating the statutes of limitation. However, the Criminal Justice Impact Conference has not yet met to consider the bill.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues: The bill does not appear to have any impact on local government revenues.
2. Expenditures: The bill does not appear to have any impact on local government expenditures.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:** The bill does not appear to have a direct economic impact on the private sector.

**D. FISCAL COMMENTS:** None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision: The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.
2. Other:

The bill expresses an intent that it apply retroactively to any offense that is not otherwise barred from prosecution on or before the effective date of the bill. The statute of limitation in effect at the time the crime is committed controls.<sup>25</sup> However, the Legislature may amend statutes of limitation to apply retroactively without running afoul of the constitutional ex post facto<sup>26</sup> prohibition if it does so before prosecution is barred by the old statute and clearly indicates that the new statute is to apply retroactively to cases pending when it becomes effective.<sup>27</sup>

B. RULE-MAKING AUTHORITY: The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

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<sup>25</sup> *State v. Wadsworth*, 293 So. 2d 345, 347 (Fla. 1974).

<sup>26</sup> U.S. Const. art I, § 9, cl. 3.

<sup>27</sup> E.g., *United State v. Grimes*, 142 F.3d 1342, 1351 (11th Cir. 1998) (“[A]pplication of a statute of limitations extended before the original limitations period has expired does not violate the Ex Post Facto Clause.”); *Reino v. State*, 352 So. 2d 853 (Fla. 1977) receded from on other grounds, *Perez v. State*, 545 So. 2d 1357 (Fla. 1989); *State v. Calderon*, 951 So. 2d 1031, 1035 (Fla. 3d DCA 2007); *Scharfschwerdt v. Kanarek*, 553 So. 2d 218, 220 (Fla. 4th DCA 1989) (recognizing extended statute of limitations regarding lewd and lascivious assault upon a child and sexual battery).