

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 913 Statutes of Limitation for Offenses Relating to Sexual Performance by a Child

**SPONSOR(S):** Criminal Justice & Public Safety Subcommittee, Davis

**TIED BILLS:** IDEN./SIM. **BILLS:** CS/SB 1244

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice & Public Safety Subcommittee	17 Y, 0 N, As CS	Frost	Hall
2) Judiciary Committee	21 Y, 0 N	Frost	Kramer

### SUMMARY ANALYSIS

The statute of limitations (SOL) determines the timeframe in which a criminal prosecution must be initiated. In general, time is calculated from the day after a person commits an offense, and the filing of an indictment or information initiates the prosecution for purposes of satisfying the time limitations. Section 775.15, F.S., provides the SOL for crimes in Florida. Capital felonies, life felonies, and felonies resulting in a death are not subject to time limitations. Standard time limitations for all other crimes are:

- Four years for a first degree felony.
- Three years for a second or third degree felony.
- Two years for a first degree misdemeanor.
- One year for a second degree misdemeanor.

Exceptions to the standard SOL apply to certain crimes and circumstances. In particular, Florida law changes the date on which calculation of the SOL begins and extends or removes the SOL for certain sexually motivated crimes, including sexual battery, lewd or lascivious offenses, and human trafficking. For example:

- A prosecution for lewd or lascivious battery or molestation, which both require a victim to be younger than 16, may be commenced at any time, unless at the time of an offense, the offender was:
  - Less than 18 years old; and
  - No more than four years older than the victim.
- A prosecution for human trafficking may be commenced at any time.
- A prosecution for any sexual battery offense committed after July 1, 2020, involving a victim younger than 18 at the time the offense was committed, may be commenced at any time.

Current law does not provide an exception to the standard time limitations for an offense under s. 827.071, F.S., of using a child in a sexual performance or an offense of promoting a sexual performance by a child. Both offenses are punishable as a second degree felony, and are therefore subject to a three year SOL.

CS/HB 913 amends s. 775.15, F.S., to remove the SOL and allow a prosecution to be commenced at any time if an offender is 18 years of age or older at the time he or she commits an offense of using a child in a sexual performance or an offense of promoting a sexual performance by a child. The bill applies only to a qualifying offense that is not otherwise barred from prosecution on or before July 1, 2022.

The bill may have a positive insignificant impact on the number of prison beds by removing any time limitations for the prosecution of an offense of using a child in a sexual performance or an offense of promoting a sexual performance by a child, if the offender was an adult at the time he or she committed the offense.

The bill provides an effective date of July 1, 2022.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Statute of Limitations

The statute of limitations (SOL) determines the timeframe in which a criminal prosecution must be initiated.<sup>1</sup> The SOL in effect at the time a crime is committed controls.<sup>2</sup> In general, time is calculated from the day after a person commits an offense, and the filing of a charging document such as an indictment or information initiates the prosecution for the purpose of satisfying the time limitations.<sup>3</sup> Regardless of whether a charging document is filed, the time limitation does not run during any time an offender is continuously absent from the state or otherwise undiscoverable because he or she lacks a reasonably ascertainable home address or place of employment; however, an extension under this scenario may not exceed the normal time limitation by more than three years.<sup>4</sup>

Capital felonies,<sup>5</sup> life felonies,<sup>6</sup> and felonies resulting in a death are not subject to time constraints, and the state may bring charges at any time.<sup>7</sup> The standard time limitations for other crimes are:<sup>8</sup>

- Four years for a first degree felony.
- Three years for a second or third degree felony.
- Two years for a first degree misdemeanor.
- One year for a second degree misdemeanor.

##### Exceptions to Standard SOL for Certain Sexually Motivated Crimes

Exceptions to the standard SOL apply to certain crimes and circumstances. In particular, Florida extends or removes time limitations or changes the date on which calculation of the SOL begins<sup>9</sup> for sex crimes, including sexual battery, lewd or lascivious offenses, and human trafficking.<sup>10</sup> For example:

- A prosecution for any sexual battery offense committed after July 1, 2020, involving a victim younger than 18 at the time the offense is committed may be commenced at any time.
- A prosecution for lewd or lascivious battery<sup>11</sup> or molestation,<sup>12</sup> may be commenced at any time, unless at the time of an offense, the offender was:
  - Less than 18 years old; and
  - No more than four years older than the victim.<sup>13</sup>
- A prosecution for human trafficking<sup>14</sup> may be commenced at any time.<sup>15</sup>

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<sup>1</sup> S. 775.15, F.S.

<sup>2</sup> *Beyer v. State*, 76 So.3d 1132, 1135 (Fla. 4th DCA 2012).

<sup>3</sup> Ss. 775.15(3)–(4), F.S.

<sup>4</sup> S. 775.15(5), F.S.

<sup>5</sup> S. 775.082, F.S.

<sup>6</sup> *Id.*

<sup>7</sup> S. 775.15(1), F.S.

<sup>8</sup> S. 775.15(2), F.S.

<sup>9</sup> See s. 775.15, F.S.

<sup>10</sup> An extension of a particular crime's SOL does not violate the ex post facto clause of the Florida Constitution if the extension takes effect before prosecution of an offense is barred by the old SOL and the new SOL clearly indicates it applies to cases pending upon its effective date. Art. I, s. 10, Fla. Const.; *Andrews v. State*, 392 So. 2d 270, 271 (Fla. 2d DCA 1980).

<sup>11</sup> Lewd or lascivious battery is committed by engaging in sexual activity with a person 12 years of age or older but less than 16 years of age; or encouraging, forcing, or enticing any person less than 16 years of age to engage in sadomasochistic abuse; sexual bestiality; prostitution; or any other act involving sexual activity. S. 800.04(4), F.S.

<sup>12</sup> Lewd or lascivious molestation is committed by intentionally touching in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person under 16; or forcing or enticing a person under 16 to so touch the perpetrator. S. 800.04(5), F.S.

<sup>13</sup> Except for an offense which would have been barred by s. 775.15(2), F.S., on or before October 1, 2014.

<sup>14</sup> Human trafficking is modern-day slavery involving exploitation of an adult by using fraud, force, or coercion, or exploitation of a minor. A person commits human trafficking by transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploiting that person. S. 787.06, F.S.

## Sexual Performance by a Child

Section 827.071, F.S., prohibits certain acts relating to sexual performance by a child, and defines the following terms when used within the section:

- “Child” means any person under the age of 18 years.
- “Performance” means any play, motion picture, photograph, or dance or any other visual representation exhibited before an audience.
- “Promote” means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit, or advertise or to offer or agree to do the same.
- “Sexual conduct” means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality,<sup>16</sup> masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person’s clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast, with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed.
- “Sexual performance” means any performance or part thereof which includes sexual conduct by a child of less than 18 years of age.
- “Simulated” means the explicit depiction of sexual conduct which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.

Section 827.071(2), F.S., provides that a person commits the offense of using a child in a sexual performance if:

- Knowing the character and content thereof, he or she employs, authorizes, or induces a child younger than 18 years of age to engage in a sexual performance; or
- Being a parent, legal guardian, or custodian of such child, consents to such child’s participation in a sexual performance.

Section 827.071(3), F.S., provides that a person commits the offense of promoting a sexual performance by a child when, knowing the character and content thereof, he or she produces, directs, or promotes any performance which includes sexual conduct by a child less than 18 years of age.

Using a child in a sexual performance and promoting a sexual performance are both punishable as a second degree felony and are ranked as a level 6 offense on the Criminal Punishment Code offense severity ranking chart.<sup>17</sup>

Current law does not provide an exception to the standard time limitations for an offense of using a child in a sexual performance or an offense of promoting a sexual performance by a child. As such, because both offenses are punishable as a second degree felony, they are subject to a three year SOL.

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<sup>15</sup> Except for an offense which would have been barred by s. 775.15(2), F.S., on or before October 1, 2014.

<sup>16</sup> “Sexual bestiality” means any sexual act between a person and an animal involving the sex organ of the one and the mouth, anus, or vagina of the other. S. 827.017(1)(g), F.S.

<sup>17</sup> Felony offenses which are subject to the Criminal Punishment Code are listed in a single offense severity ranking chart (OSRC), which uses 10 offense levels to rank felonies from least severe to most severe. Each felony offense listed in the OSRC is assigned a level according to the severity of the offense. A person’s primary offense, any other current offenses, and prior convictions are scored using the points designated for the offense severity level of each offense. The final score calculation, following the scoresheet formula, determines the lowest permissible sentence that a trial court may impose, absent a valid reason for departure. Ss. 921.0022 and 921.0024, F.S.

## Effect of Proposed Changes

CS/HB 913 amends s. 775.15, F.S., to remove the SOL and allow a prosecution to be commenced at any time for an offense of using a child in a sexual performance or an offense of promoting a sexual performance by a child, if the offender is 18 years of age or older at the time he or she commits the offense.

The bill applies only to a qualifying offense that is not otherwise barred from prosecution on or before July 1, 2022.

The bill provides an effective date of July 1, 2022.

### B. SECTION DIRECTORY:

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

**Section 2:** Provides an effective date of July 1, 2022.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

The bill may have a positive insignificant impact on the number of prison beds by removing any time limitations for the prosecution of an offense of using a child in a sexual performance or an offense of promoting a sexual performance by a child, if the offender was an adult at the time he or she committed the offense.

The bill may also result in increased investigative expenditures for state attorneys and public defenders assigned to prosecute and defend a crime which may have occurred years in advance of being reported to law enforcement.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On February 15, 2022, the Criminal Justice & Public Safety Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differed from the original bill as it:

- Removed provisions repealing the SOL for offenses under ch. 794 and s. 800.04, F.S., from the bill; and
- Limited the removal of the SOL for violations of s. 827.071(2) or (3), F.S., to those committed by an offender who is 18 years of age or older at the time of the offense.

This analysis is drafted to the committee substitute as passed by the Criminal Justice & Public Safety Subcommittee.