

STORAGE NAME: h0245.cp
DATE: February 17, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 245
RELATING TO: Time Limitations for Sexual Battery Prosecutions
SPONSOR(S): Representative Fasano
STATUTE(S) AFFECTED: s. 775.15, F.S.
COMPANION BILL(S): SB 532 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME AND PUNISHMENT
- (2)
- (3)
- (4)
- (5)

I. SUMMARY:

Current law provides time limitations for commencing criminal prosecutions, known as the "statute of limitations." The purpose of the statute of limitations is to protect a person from being indefinitely under the threat of possible criminal prosecution -- a prosecution "which otherwise might be indefinitely delayed until time when defense witnesses might die, disappear, or otherwise become unavailable, judges would change office, or innumerable other time hazards might develop, which could conceivably defeat, or at least hamper, an otherwise good defense" State v. Hickman, 189 So. 2d 254 (Fla. 2d DCA 1966).

Currently, unless the victim of a sexual battery offense is under the age of 16, a prosecution for a first degree felony sexual battery offense must be commenced within four years of the occurrence of the crime, and a prosecution for a second degree felony sexual battery offense must be commenced within three years of the occurrence of the crime. If the victim is under the age of 16, the periods described above do not begin to run until the victim reaches the age of 16 *or* reports the offense to a law enforcement agency or other governmental agency, whichever occurs earlier.

This bill provides that a prosecution for a first or second degree felony sexual battery offense may be commenced at any time if the crime is reported to a law enforcement agency, hospital, clinic, or governmental agency within 72 hours after the crime occurred. The unlimited period for the commencement of prosecution would also apply to victims less than 16 years of age if the crime was reported within 72 hours. However, if a first or second degree felony sexual battery offense is not reported within 72 hours, the prosecution must be commenced within the existing statutory time limitations.

To the extent that this bill results in more persons being arrested for, charged with, and convicted of, sexual battery offenses, the bill may have a fiscal impact on state and local governments. A precise fiscal impact is indeterminate.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

1. "Statute of Limitations":

Section 775.15, F.S., provides time limitations for commencing criminal prosecutions. The purpose of the "statute of limitations" is to protect a person from being indefinitely under the threat of possible criminal prosecution -- a prosecution "which otherwise might be indefinitely delayed until time when defense witnesses might die, disappear, or otherwise become unavailable, judges would change office, or innumerable other time hazards might develop, which could conceivably defeat, or at least hamper, an otherwise good defense" State v. Hickman, 189 So. 2d 254 (Fla. 2d DCA 1966).

A prosecution for a capital felony, life felony or a felony that resulted in a death may be commenced at any time. For those offenses, there is not a "statute of limitations." Generally, a prosecution for a first degree felony must be commenced within four years after the crime occurs, and for all other felonies, within three years. However, current law provides exceptions to the statute of limitations for certain victims and certain offenses.

Section 775.15(7), F.S., provides, in part, that the applicable period of limitation, if any, does not begin to run until the victim has reached the age of 16 or the violation is reported to a law enforcement agency or other governmental agency, whichever occurs earlier, for the following offenses:

- ▶ Sexual battery [s. 794.011, F.S.];
- ▶ The former "Statutory rape" offense [s. 794.05, F.S. (1995)];
- ▶ Lewd, lascivious, or indecent assaults upon or in the presence of a child under the age of 16 [s. 800.04, F.S.]; or
- ▶ Incest [s. 826.04, F.S.].

2. Sexual Battery:

Section 794.011, F.S., defines sexual battery as "the 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;" the definition excludes any act done for a bona fide medical purpose. Current law provides penalties ranging from a second degree felony to a capital felony for sexual battery offenses, with the felony designation based on factors including the age of the victim, the offender's age, and the nature of the offense. Sexual battery offenses not subject to the statute of limitations include cases where the offender uses or threatens to use a deadly weapon or uses actual physical force likely to cause serious personal injury (life felony), and cases involving victims less than 12 years of age (capital felony).

Section 794.011(4), F.S., provides that a person who commits sexual battery upon a person 12 years of age or older under any of the following circumstances commits a *first degree felony*:

- ▶ When the victim is physically helpless to resist.

- ▶ When the offender coerces the victim to submit by threatening to use force or violence likely to cause serious personal injury to the victim, and the victim reasonably believes that the offender is able to execute the threat.
- ▶ When the offender coerces the victim to submit by threatening to retaliate against the victim, or any other person, and the victim reasonably believes that the offender is able to execute the threat in the future.
- ▶ When the offender administers or has knowledge of someone else administering to the victim, without the prior knowledge or consent of the victim, any narcotic, anesthetic, or other intoxicating substance which mentally or physically incapacitates the victim.
- ▶ When the victim is mentally defective and the offender has reason to believe this or has actual knowledge of this fact.
- ▶ When the victim is physically incapacitated.
- ▶ When the offender is a law enforcement officer, correctional officer, or correctional probation officer, or any other person in a position of control or authority in a probation, community control, controlled release, detention, custodial, or similar setting, and the offender acts in a manner that leads the victim to reasonably believe that the offender is in a position of control or authority as an agent or employee of government.

Additionally, it is a *first degree felony* for a person in a position of familial or custodial authority to a person 12 years of age or older (but less than 18 years of age) to engage in any act which constitutes sexual battery. A prosecution for a first degree felony sexual battery offense must be commenced within four years after the offense is committed (unless the victim is under the age of 16, as described above).

A person who commits sexual battery upon a person 12 years of age or older and does not use physical force and violence likely to cause serious personal injury commits a *second degree felony* [s. 794.011(5), F.S.]. A prosecution for a second degree felony sexual battery offense must be commenced within three years after the offense is committed (unless the victim is under the age of 16, as described above).

B. EFFECT OF PROPOSED CHANGES:

This bill amends s. 775.15, F.S., to provide that a prosecution for a first or second degree felony sexual battery [violation of s. 794.011, F.S.], may be commenced at any time if the crime is reported to a law enforcement agency, hospital, clinic, or governmental agency within 72 hours after the crime occurred. The unlimited period for the commencement of a sexual battery prosecution would also apply to victims less than 16 years of age if the crime was reported within 72 hours. However, if a first or second degree felony sexual battery offense is not reported within 72 hours, the prosecution must be commenced within the existing statutory time limitations.

To illustrate, if a victim of a second degree felony sexual battery offense is 20 years old, and went to a hospital within 72 hours after the sexual battery occurred and reported the offense, the state would have an unlimited period of time within which to commence a prosecution for that offense. Currently, the state must commence the prosecution for such an offense within three years after the occurrence of the crime.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable.

(2) what is the cost of such responsibility at the new level/agency?

Not applicable.

(3) how is the new agency accountable to the people governed?

Not applicable.

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Not applicable.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Not applicable.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Not applicable.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

Not applicable.

(2) Who makes the decisions?

Not applicable.

(3) Are private alternatives permitted?

Not applicable.

(4) Are families required to participate in a program?

Not applicable.

(5) Are families penalized for not participating in a program?

Not applicable.

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

Not applicable.

(2) service providers?

Not applicable.

(3) government employees/agencies?

Not applicable.

D. SECTION-BY-SECTION ANALYSIS:

1. Section One:

Amends subsections (1) and (7) of s. 775.15, F.S., relating to time limitations, as described above.

2. Section Two:

Provides that the act takes effect on October 1, 1997, and applies to pending cases when the offense was reported within 72 hours of its commission and with respect to which the prosecution has not been barred prior to this date.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Indeterminate. See Fiscal Comments, below.

2. Recurring Effects:

Indeterminate. See Fiscal Comments, below.

3. Long Run Effects Other Than Normal Growth:

None anticipated.

4. Total Revenues and Expenditures:

Indeterminate. See Fiscal Comments, below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Indeterminate. See Fiscal Comments, below.

2. Recurring Effects:

Indeterminate. See Fiscal Comments, below.

3. Long Run Effects Other Than Normal Growth:

None anticipated.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None anticipated.

2. Direct Private Sector Benefits:

None anticipated.

3. Effects on Competition, Private Enterprise and Employment Markets:

None anticipated.

D. FISCAL COMMENTS:

To the extent that providing an unlimited time period for commencing prosecutions of first and second degree felony sexual battery offenses results in more persons being arrested for, charged with, and convicted of, those sexual battery offenses, the bill may have a fiscal impact on state and local governments. A precise fiscal impact is indeterminate.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill may require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. See Fiscal Comments, above. However, the bill is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

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V. COMMENTS:

A bill identical to this bill passed the House last session as CS/HB 313. However, CS/HB 313 died in Senate messages.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

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