SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 300

SPONSOR: Criminal Justice Committee and Senators Miller and Lawson

SUBJECT: Statute of Limitations

DATE: February 15, 2002 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Favorable/CS
2.	Forgas	Johnson	JU	Favorable
3.				
4.				
5.				
6.				

I. Summary:

This bill would essentially eliminate the statute of limitations (the time-limit within which a criminal action must commence) with respect to crimes wherein the perpetrator is identified through DNA collected during the investigation of a crime or otherwise made available to law enforcement.

This bill substantially amends section 775.15 of the Florida Statutes.

II. Present Situation:

Statute of Limitations

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

There was no statute of limitations at common law. *State v. McCloud*, 67 So.2d 242 (Fla. 1953). It is purely a statutory creation. In *State v. Hickman*, the court borrows a section from 22 C.J.S., Criminal Law s. 223 to explain 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." *State v. Hickman*, 189 So.2d 254, 262 (Fla. 2nd DCA 1966).

Section 775.15(4), 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.

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, s. 775.15(1)(a), F.S.;
- For a first or second degree felony violation of s. 794.011, F.S., which includes several different sexual battery offenses, if reported to a law enforcement agency within 72 hours after commission of the crime, there is no time limitation, s. 775.15(1)(b), F.S.;
- For any felony that resulted in injury to a person when the felony arises from the use of a "destructive device," there is a ten-year limitation, s. 775.15(1)(a), F.S.;
- For a first degree felony, there is a four-year limitation, s. 775.15(2)(a), F.S.; and
- For any other felony, there is a three-year limitation, s. 775.15(2)(b), F.S.

These general time limitation periods are extended for prosecutions involving securities transaction violations, insurance fraud, and Medicaid provider fraud under ch. 517, s. 409.920, F.S., s. 440.105, F.S., and s. 817.234, F.S. (five years); prosecutions involving environmental control felony violations under ch. 403 (five years); prosecutions involving felony elderly person or disabled adult abuse under s. 825.102, F.S. (four years); and prosecutions involving certain sexual offenses committed against children under 18 years of age (applicable time limitation does not begin to run until the crime is reported or until the child turns 18, whichever occurs first).

DNA (deoxyribonucleic acid) Database

Section 943.325, F.S., in part, requires a person to submit two blood specimens to a Florida Department of Law Enforcement (FDLE) designated testing facility as directed by the department, if that person is:

1. Convicted or was previously convicted and is still incarcerated in this state for any offense or attempted offense in:

    - chapter 794, F.S. (sexual battery);
    - chapter 800, F.S. (lewdness and indecent exposure);
    - s. 782.04, F.S. (murder);
    - s. 784.045, F.S. (aggravated battery);
    - s. 810.02, F.S. (burglary);
    - s. 812.133, F.S. (carjacking); or
    - s. 812.135, F.S. (home-invasion robbery); and who is either

2. Within the confines of the legal state boundaries, and is on court-ordered supervision or

3. Is incarcerated.

There is a gradual expansion of the DNA database provided for in s. 943.325(b) 2.-5., F.S. Contingent upon specific appropriation, on the following dates the enumerated crimes will be added to the list of those offenses for which FDLE will receive samples from the offender:

- On July 1, 2002, s. 812.13, F.S. (robbery) and 812.131, F.S. (robbery by sudden snatching);
- On July 1, 2003, s. 787, F.S. (kidnapping) and s. 782.07, F.S. (manslaughter);
- On July 1, 2004, any forcible felony as described in s. 776.08, F.S., aggravated child abuse as described in s. 827.03(2), F.S.; aggravated abuse of an elderly or disabled adult as described in s. 825.102(2); and any felony violation of chapter 790, F.S., involving the use of a firearm;
- On July 1, 2005, any felony offense.

DNA as an investigative tool
Florida's DNA database, and others throughout the country, provides opportunities for law enforcement agencies to solve crimes where they have physical evidence containing DNA by checking that evidence against information in the database. The practice of some agencies to sift through evidence in "cold cases" - cases where the investigative leads have long since been exhausted – has resulted in defendants being charged with crimes that were unsolved for many years.

One example of such a case occurred after DNA sample collections from people convicted of burglary offenses in Florida began in July 2000. In October 2000, a man in a Florida prison on a burglary conviction, who gave the required blood samples for inclusion in the FDLE database, became a suspect in a 1999 sexual assault on a 77 year old West Virginia woman. According to reports, when he was identified as a suspect, another man who had previously been charged with the West Virginia crime was likely to be exonerated.

Although most of the types of crimes where it would be more likely to have DNA left at the crime scene, because of the nature of the offense, currently have no time limitation for commencing prosecution of the perpetrator (murder; sexual battery, when reported within 72 hours after the commission of the crime), in some cases the time may have expired before the perpetrator is identified. For example, if a sexual battery offense goes unreported for more than 72 hours, the time limitation for commencing prosecution would be four years (first degree felony) or three years (any other felony).

III. Effect of Proposed Changes:

The bill amends s. 775.15(3), F.S., to allow a prosecution to commence against a suspect at any time for any offense, if the alleged perpetrator is identified through analysis of DNA collected during the investigation of a crime or otherwise made available to law enforcement, so long as the identity is confirmed after the normal statute of limitation has expired.

The act would become effective July 1, 2002.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Generally, the controlling criminal statute of limitations is the version that is in effect when a crime is committed. *See, Andrews v. State*, 392 So.2d 270,271 (Fla. 2d DCA 1980). 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. *Id.* Clearly, if the pre-existing statute of limitations had already expired prior to passage of the new statue of limitations, the retroactive application of the new statute of limitations would violate the ex post facto provisions of both the Unites States Constitution (Art. I, ss. 9, 10) and the Florida Constitution (Art. I, s. 10.) *See, United States v. Richardson*, 512 F.2d 105, 106 (3rd Cir. 1975); *Reino v. State*, 352 So.2d 853 (Fla. 1977).

The bill does not contain any express language that clearly indicates the bill's provision is intended to be applied retroactively to all pending cases. Accordingly, the bill arguably will not extend the statute of limitations for those offenses where the statute of limitations has already expired as of the effective date of the act. Likewise, the bill's provision may not apply to any pending cases (i.e. those cases where the statute of limitations has not expired as of the effective date of the act) due to the lack of any express language clearly stating that the bill applies to all pending cases. *Andrews; Richardson; Reino; supra.*

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

See the discussion in "Other Constitutional Issues."

C. Government Sector Impact:

This bill has not been discussed by the Criminal Justice Impact Conference.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.