

STORAGE NAME: h0823.jo.doc
DATE: March 5, 2002

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIAL OVERSIGHT
ANALYSIS**

BILL #: HB 823
RELATING TO: Sexual Battery
SPONSOR(S): Representatives Heyman and Kosmas
TIED BILL(S): none

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

- (1) JUDICIAL OVERSIGHT (W/D)
 - (2) CRIME PREVENTION, CORRECTIONS & SAFETY
 - (3) COUNCIL FOR SMARTER GOVERNMENT
 - (4)
 - (5)
-

I. SUMMARY:

In general, the statute of limitations is 4 years for a first degree felony, and is 3 years on any other felony. However, Chapter 97-36, L.O.F., amended the criminal law to provide that there is no statute of limitations regarding a first or second degree felony sexual battery if the sexual battery is reported to law enforcement within 72 hours after the commission of the crime.

This bill provides that there is no statute of limitations for sexual battery if the perpetrator can be identified using DNA evidence, whether the evidence is collected by law enforcement or is otherwise made available to law enforcement.

The fiscal effect of this bill on state government is unknown. This bill does not appear to have a fiscal impact on local governments.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

Any expansion of the criminal laws may be seen as more government.

B. 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).

C. EFFECT OF PROPOSED CHANGES:

This bill amends s. 775.15(1), F.S., to provide that a prosecution for sexual battery under s. 794.011, F.S., may be commenced at any time if there is a DNA record available and maintained by the Florida Department of Law Enforcement. This bill also defines DNA and DNA record.

The effective date is July 1, 2002.

D. SECTION-BY-SECTION ANALYSIS:

See “Present Situation” and “Effect of Proposed Changes”.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities 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.

V. COMMENTS:

A. 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 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.) 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.*

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

Staff Director:

Nathan L. Bond, J.D.

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