

Section 775.15(4), F.S., provides that the 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.
- 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.
- 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.
- For a first degree felony, there is a four-year limitation.
- For any other felony, there is a three-year limitation.

These general time limitation periods are extended for prosecutions involving securities transaction violations, insurance fraud, Medicaid provider fraud and certain theft crimes under ch. 517, s. 409.920, F.S., s. 440.105, F.S., s. 817.234, F.S., and s. 812.035, 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 child turns 18, whichever occurs first).

Section 794.011, F.S. – Sexual Battery

As noted above, violations of s. 794.011, F.S., that are first or second degree felonies may be prosecuted *at any time*, so long as the violation was reported to law enforcement within 72 hours of its occurrence. The time limitation for commencing prosecution of a first degree felony sexual battery would be four years, *where the crime was not reported within 72 hours*; three years for a second degree felony sexual battery.

Further, if the victim is under the age of 18, the applicable time limitation does not begin to run until the victim reaches the age of 18 *or* the crime is reported to law enforcement, whichever occurs first.

Sexual battery is generally defined as "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; however, sexual battery does not include an act done for a bona fide medical purpose." s. 794.011(1)(h), F.S.

First degree felony violations of the sexual battery statute, s. 794.011, F.S., are found in subsections (4)(a)-(g), and (8)(b). Those violations include sexual battery upon a person 12 years of age or older without that person's consent under the following circumstances:

- the victim is helpless to resist
- the offender coerces the victim to submit by threatening force or violence likely to cause serious personal injury, and the victim reasonably believes that the offender has the present ability to execute the threat
- the offender coerces the victim to submit by threatening retaliation against the victim, or any other person, and the victim reasonably believes the offender has the ability to execute the threat in the future
- without the prior knowledge or consent of the victim, the offender either administers or knows of someone else administering any narcotic, anesthetic, or intoxicating substance which incapacitates the victim, physically or mentally
- the victim is mentally defective and the offender knows or has reason to believe it
- the victim is physically incapacitated
- the offender is a law enforcement officer, correctional officer, or correctional probation officer, or other person in control or authority in a custodial or similar setting, acting in such a manner as to lead the victim to reasonably believe the offender is in a position of control or authority as an agent or employee of government
- without regard to the willingness or consent of the victim, a person who is in a position of familial or custodial authority to a person 12 years of age or older but less than 18 years engages in an act which constitutes sexual battery.

It should be noted that where more than one person commits an act of sexual battery upon a victim during the same criminal episode, and such violation of s. 794.011, F.S., is a second degree felony, it shall be reclassified to a felony of the first degree. s. 794.023(2)(a), F.S

III. Effect of Proposed Changes:

Senate Bill 1734 amends s. 775.15(1) and (7), F.S., so that first degree felony violations of s. 794.011, F.S. (sexual battery), may be prosecuted at any time.

Under current law, a first degree felony violation of the sexual battery statute could only be commenced at any time if the victim reported the crime within 72 hours, otherwise prosecution must be commenced within 4 years. Current law also provides that the limitation period does not begin to run in the case of a minor victim until either the victim reaches the age of 18 or the crime is reported, whichever occurs earlier.

The extended time limitation on prosecuting a first degree felony sexual battery applies in cases except those where the time limitation has run on or before the effective date of the bill.

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:

The statute of limitations in effect at the time the crime is committed controls. *State v. Wadsworth*, 293 So.2d 345 (Fla. 1974). The legislature can extend the limitations period without violating the 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. *U.S. v. Richardson*, 512 F2d 105 (3rd Cir. 1975). The bill appears to meet the criteria.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill has not been analyzed by the Criminal Justice Impact Conference as of the date of this writing, therefore the fiscal impact, if any, has not been projected.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.