

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 1734

SPONSOR: Committee on Judiciary and Senators Webster and Fasano

SUBJECT: Limitation of Actions

DATE: April 1, 2003

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
2.	<u>Matthews</u>	<u>Roberts</u>	<u>JU</u>	<u>Fav/CS</u>
3.	_____	_____	<u>ACJ</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill revises the statute of limitations period for first degree felony offenses of sexual battery.

This bill substantially amends section 775.15 of the Florida Statutes.

II. Present Situation:

Florida's Statutes of Limitation

Section 775.15, F.S., sets forth time limitations (i.e., statutes of limitations) for prosecuting crimes. Statutes of limitations for crimes are statutory creations and do not exist at common law. *State v. McCloud*, 67 So.2d 242 (Fla. 1953). Statutes of limitations 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.

See State v. Hickman, 189 So.2d 254, 262 (Fla. 2nd DCA 1966), citing excerpt from 22 C.J.S., Criminal Law s. 223.

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, there is no time limitation *if* the offense is reported to a law enforcement agency within 72 hours after its occurrence. Otherwise, if not reported, the statute of limitations period is four years for prosecuting a first degree felony of sexual battery, and three years for prosecuting a second degree felony of sexual battery. If the victim is under the age of 18 and the offense is not reported within 72 hours of its occurrence, the applicable statute of limitations period does not begin to run until the victim reaches the age of 18.
- 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

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."¹ Offenses of sexual battery are punishable as capital, life, first degree or second degree felonies depending on the underlying elements as follows:

- A *capital felony offense of sexual battery* involves an offender: 1) Who is 18 years or older and commits such offense on someone less than 12 years old or injures such person's sexual organs in an attempt to commit the offense,² or 2) Who is any age, is in a position or custodial authority to a person who is less than 12 years old, commits such offense against such person, or injures the person's sexual organs in such attempt.³

¹ See s. 794.011(1)(h), F.S.

² See s. 794.011(2)(a), F.S.

³ See s. 794.011(8)(c), F.S.

- *A life felony offense of sexual battery* involves an offender: 1) Who is less than 18 years old commits such offense against a person less than 12 years old, or injures such person's sexual organs in attempt to commit the offense,⁴ or 2) Who is any age, commits such offense against a person age 12 or older, and threatens or uses force or a weapon to cause serious personal injury.⁵
- *A first degree felony offense of sexual battery* involves an offender: 1) Who is any age, is in a position of familial or custodial authority to a victim who is more than 11 years old but less than 18 years old, and engaged in an act of sexual battery with such victim,⁶ or 2) Who is any age, commits such offense against a person who is age 12 or older without his or her consent and:
 - The victim is helpless to resist.
 - The victim is coerced by the offender through threats of 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 victim is coerced by the offender through threats of 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.
 - The victim is given (by the offender or by someone else and the offender knows) a narcotic, anesthetic, or intoxicating substance which incapacitates the victim, physically or mentally without the victim's prior knowledge or consent.
 - The victim is mentally defective and the offender knows or has reason to believe it.
 - The victim is physically incapacitated.
 - The victim is victimized by an offender who 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.⁷
- *A second degree felony offense of sexual battery*⁸ involves an offender who is any age, commits, without consent, such offense against a person 12 years old or older but does not use force or violence likely to cause serious personal injury during the offense.
- *A third degree felony offense of sexual battery*⁹ involves an offender who is in a position of familial or custodial authority to the victim who is less than 18 years old and solicits such person to engage in any act constituting sexual battery.

When 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 is reclassified as a first degree felony offense. *See* s. 794.023(2)(a), F.S

⁴ *See* s. 794.011(2)(b), F.S.

⁵ *See* s. 794.011(3), F.S.

⁶ *See* s. 794.011(8)(b), F.S.

⁷ *See* s. 794.011(4)(a)-(g), F.S.

⁸ *See* s. 794.011(5), F.S.

⁹ *See* s. 794.011(8)(a), F.S.

III. Effect of Proposed Changes:

This bill removes the time periods for prosecuting first-degree felony offenses of sexual battery. If the victim of a first-degree felony offense of sexual battery is under the age of 18 at the time of the first degree felony offense, there is no longer any time limit imposed to prosecute. This provision would affect the prosecution of offenses involving victims aged 12 or older but less than 18 years of age. This means that regardless of whether the offense is reported within 72 hours or not, such offense can be prosecuted at any time. This represents a change from current law which allows prosecution at any time of this offense against such victim at any time, but only if the offense was reported within 72 hours, or which otherwise allows prosecution no later than 4 years after its occurrence or no later than 4 years after the victim turns 18 if the victim is a minor at the time of the offense.

As a result of an amendment adopted to clarify subsection (7) of section 775.15, F.S., without an attendant change to subsection (1), the bill also has the effect of imposing a 4-year statute of limitations period for prosecution of a first-degree felony offense of sexual battery against a victim who is 18 years or older at the time of the offense, even if the offense was reported within 72 hours. This represents a change in current law which allows prosecution *at any time* for such offenses if reported within 72 hours after its occurrence.

The bill also provides that 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). There is no ex post facto violation for extending a limitations period provided the extension does not apply to a prosecution that is time barred and clearly states that it is applicable 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.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
