

By the Committee on Judiciary; and Senator Fasano

308-2647-04

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A bill to be entitled

An act relating to limitation of actions;
amending s. 775.15, F.S.; authorizing the
prosecution of specified sexual offenses within
1 year after the identity of the accused is or
should have been established through analysis
of DNA evidence, notwithstanding time
limitations otherwise prescribed by law;
providing for application; providing an
effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 775.15, Florida Statutes, is
amended to read:

775.15 Time limitations.--

(1)(a) A prosecution for a capital felony, a life
felony, or a felony that resulted in a death may be commenced
at any time. A prosecution for a felony that resulted in
injury to any person, when such felony arises from the use of
a "destructive device," as defined in s. 790.001, may be
commenced within 10 years. If the death penalty is held to be
unconstitutional by the Florida Supreme Court or the United
States Supreme Court, all crimes designated as capital
felonies shall be considered life felonies for the purposes of
this section, and prosecution for such crimes may be commenced
at any time.

(b) Except as otherwise provided in subsection (7), a
prosecution for a first or second degree felony violation of
s. 794.011, if such crime is reported to a law enforcement
agency within 72 hours after commission of the crime, may be

1 commenced at any time. If such crime is not reported within 72
2 hours after the commission of the crime, the prosecution must
3 be commenced within the time periods prescribed in subsection
4 (2).

5 (c) A prosecution for perjury in an official
6 proceeding that relates to the prosecution of a capital felony
7 may be commenced at any time.

8 (2) Except as otherwise provided in this section,
9 prosecutions for other offenses are subject to the following
10 periods of limitation:

11 (a) A prosecution for a felony of the first degree
12 must be commenced within 4 years after it is committed.

13 (b) A prosecution for any other felony must be
14 commenced within 3 years after it is committed.

15 (c) A prosecution for a misdemeanor of the first
16 degree must be commenced within 2 years after it is committed.

17 (d) A prosecution for a misdemeanor of the second
18 degree or a noncriminal violation must be commenced within 1
19 year after it is committed.

20 (e) A prosecution for a felony violation of chapter
21 517 or s. 409.920 must be commenced within 5 years after the
22 violation is committed.

23 (f) A prosecution for a felony violation of chapter
24 403 must be commenced within 5 years after the date of
25 discovery of the violation.

26 (g) A prosecution for a felony violation of s. 825.102
27 or s. 825.103 must be commenced within 5 years after it is
28 committed.

29 (h) A prosecution for a felony violation of ss.
30 440.105 and 817.234 must be commenced within 5 years after the
31 violation is committed.

1 (3) If the period prescribed in subsection (2) has
2 expired, a prosecution may nevertheless be commenced for:

3 (a) Any offense, a material element of which is either
4 fraud or a breach of fiduciary obligation, within 1 year after
5 discovery of the offense by an aggrieved party or by a person
6 who has a legal duty to represent an aggrieved party and who
7 is himself or herself not a party to the offense, but in no
8 case shall this provision extend the period of limitation
9 otherwise applicable by more than 3 years.

10 (b) Any offense based upon misconduct in office by a
11 public officer or employee at any time when the defendant is
12 in public office or employment, within 2 years from the time
13 he or she leaves public office or employment, or during any
14 time permitted by any other part of this section, whichever
15 time is greater.

16 (4) An offense is committed either when every element
17 has occurred or, if a legislative purpose to prohibit a
18 continuing course of conduct plainly appears, at the time when
19 the course of conduct or the defendant's complicity therein is
20 terminated. Time starts to run on the day after the offense
21 is committed.

22 (5)(a) Prosecution on a charge on which the defendant
23 has previously been arrested or served with a summons is
24 commenced by the filing of an indictment, information, or
25 other charging document.

26 (b) A prosecution on a charge on which the defendant
27 has not previously been arrested or served with a summons is
28 commenced when either an indictment or information is filed,
29 provided the capias, summons, or other process issued on such
30 indictment or information is executed without unreasonable
31 delay. In determining what is reasonable, inability to locate

1 | the defendant after diligent search or the defendant's absence
2 | from the state shall be considered. The failure to execute
3 | process on or extradite a defendant in another state who has
4 | been charged by information or indictment with a crime in this
5 | state shall not constitute an unreasonable delay.

6 | (c) If, however, an indictment or information has been
7 | filed within the time period prescribed in this section and
8 | the indictment or information is dismissed or set aside
9 | because of a defect in its content or form after the time
10 | period has elapsed, the period for commencing prosecution
11 | shall be extended 3 months from the time the indictment or
12 | information is dismissed or set aside.

13 | (6) The period of limitation does not run during any
14 | time when the defendant is continuously absent from the state
15 | or has no reasonably ascertainable place of abode or work
16 | within the state. This provision shall not extend the period
17 | of limitation otherwise applicable by more than 3 years, but
18 | shall not be construed to limit the prosecution of a defendant
19 | who has been timely charged by indictment or information or
20 | other charging document and who has not been arrested due to
21 | his or her absence from this state or has not been extradited
22 | for prosecution from another state.

23 | (7)(a) If the victim of a violation of s. 794.011,
24 | former s. 794.05, Florida Statutes 1995, s. 800.04, or s.
25 | 826.04 is under the age of 18, the applicable period of
26 | limitation, if any, does not begin to run until the victim has
27 | reached the age of 18 or the violation is reported to a law
28 | enforcement agency or other governmental agency, whichever
29 | occurs earlier. Such law enforcement agency or other
30 | governmental agency shall promptly report such allegation to
31 | the state attorney for the judicial circuit in which the

1 | alleged violation occurred. If the offense is a first or
2 | second degree felony violation of s. 794.011, and the crime is
3 | reported within 72 hours after its commission, paragraph
4 | (1)(b) applies. This paragraph applies to any such offense
5 | except an offense the prosecution of which would have been
6 | barred by subsection (2) on or before December 31, 1984.

7 | (b) Notwithstanding the provisions of paragraph (1)(b)
8 | and paragraph (a) of this subsection, if the offense is a
9 | first degree felony violation of s. 794.011 and the victim was
10 | under 18 years of age at the time the offense was committed, a
11 | prosecution of the offense may be commenced at any time. This
12 | paragraph applies to any such offense except an offense the
13 | prosecution of which would have been barred by subsection (2)
14 | on or before October 1, 2003.

15 | (8)(a) In addition to the time periods prescribed in
16 | this section, a prosecution for any of the following offenses
17 | may be commenced within 1 year after the date on which the
18 | identity of the accused is established, or should have been
19 | established by the exercise of due diligence, through the
20 | analysis of deoxyribonucleic acid (DNA) evidence, if a
21 | sufficient portion of the evidence collected at the time of
22 | the original investigation and tested for DNA is preserved and
23 | available for testing by the accused:

- 24 | 1. An offense of sexual battery under chapter 794; or
25 | 2. A lewd or lascivious offense under s. 800.04 or s.
26 | 825.1025.

27 | (b) This subsection applies to any offense that is not
28 | otherwise barred from prosecution on or after July 1, 2004.

29 | Section 2. This act shall take effect July 1, 2004.
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 1074

This CS makes the following changes:

- Clarifies that the one year time period in the bill is in addition to existing time limitations;
- Clarifies that the DNA evidence is to be collected at the time of the original investigation.