

HB 1831

2004

1                                   A bill to be entitled  
 2           An act relating to limitation of actions; amending s.  
 3           775.15, F.S.; authorizing the prosecution of specified  
 4           sexual offenses in certain circumstances within 1 year  
 5           after the identity of the accused is established through  
 6           analysis of DNA evidence, in addition to the time  
 7           limitations otherwise prescribed by law; providing for  
 8           application; providing an effective date.

9

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

11

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

14           775.15 Time limitations.--

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

25           (b) Except as otherwise provided in subsection (7), a  
 26 prosecution for a first or second degree felony violation of s.  
 27 794.011, if such crime is reported to a law enforcement agency  
 28 within 72 hours after commission of the crime, may be commenced

HB 1831

2004

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

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

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

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

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

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

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

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

50 (f) A prosecution for a felony violation of chapter 403  
 51 must be commenced within 5 years after the date of discovery of  
 52 the violation.

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

HB 1831

2004

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

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

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

68 (b) Any offense based upon misconduct in office by a  
69 public officer or employee at any time when the defendant is in  
70 public office or employment, within 2 years from the time he or  
71 she leaves public office or employment, or during any time  
72 permitted by any other part of this section, whichever time is  
73 greater.

74 (4) An offense is committed either when every element has  
75 occurred or, if a legislative purpose to prohibit a continuing  
76 course of conduct plainly appears, at the time when the course  
77 of conduct or the defendant's complicity therein is terminated.

78 Time starts to run on the day after the offense is committed.

79 (5)(a) Prosecution on a charge on which the defendant has  
80 previously been arrested or served with a summons is commenced  
81 by the filing of an indictment, information, or other charging  
82 document.

HB 1831

2004

83 (b) A prosecution on a charge on which the defendant has  
84 not previously been arrested or served with a summons is  
85 commenced when either an indictment or information is filed,  
86 provided the capias, summons, or other process issued on such  
87 indictment or information is executed without unreasonable  
88 delay. In determining what is reasonable, inability to locate  
89 the defendant after diligent search or the defendant's absence  
90 from the state shall be considered. The failure to execute  
91 process on or extradite a defendant in another state who has  
92 been charged by information or indictment with a crime in this  
93 state shall not constitute an unreasonable delay.

94 (c) If, however, an indictment or information has been  
95 filed within the time period prescribed in this section and the  
96 indictment or information is dismissed or set aside because of a  
97 defect in its content or form after the time period has elapsed,  
98 the period for commencing prosecution shall be extended 3 months  
99 from the time the indictment or information is dismissed or set  
100 aside.

101 (6) The period of limitation does not run during any time  
102 when the defendant is continuously absent from the state or has  
103 no reasonably ascertainable place of abode or work within the  
104 state. This provision shall not extend the period of limitation  
105 otherwise applicable by more than 3 years, but shall not be  
106 construed to limit the prosecution of a defendant who has been  
107 timely charged by indictment or information or other charging  
108 document and who has not been arrested due to his or her absence  
109 from this state or has not been extradited for prosecution from  
110 another state.

HB 1831

2004

111 (7)(a) If the victim of a violation of s. 794.011, former  
 112 s. 794.05, Florida Statutes 1995, s. 800.04, or s. 826.04 is  
 113 under the age of 18, the applicable period of limitation, if  
 114 any, does not begin to run until the victim has reached the age  
 115 of 18 or the violation is reported to a law enforcement agency  
 116 or other governmental agency, whichever occurs earlier. Such law  
 117 enforcement agency or other governmental agency shall promptly  
 118 report such allegation to the state attorney for the judicial  
 119 circuit in which the alleged violation occurred. If the offense  
 120 is a first or second degree felony violation of s. 794.011, and  
 121 the crime is reported within 72 hours after its commission,  
 122 paragraph (1)(b) applies. This paragraph applies to any such  
 123 offense except an offense the prosecution of which would have  
 124 been barred by subsection (2) on or before December 31, 1984.

125 (b) Notwithstanding the provisions of paragraph (1)(b) and  
 126 paragraph (a) of this subsection, if the offense is a first  
 127 degree felony violation of s. 794.011 and the victim was under  
 128 18 years of age at the time the offense was committed, a  
 129 prosecution of the offense may be commenced at any time. This  
 130 paragraph applies to any such offense except an offense the  
 131 prosecution of which would have been barred by subsection (2) on  
 132 or before October 1, 2003.

133 (8)(a) In addition to the time periods prescribed in this  
 134 section, a prosecution for any of the following offenses may be  
 135 commenced within 1 year after the date on which the identity of  
 136 the accused is established through the analysis of  
 137 deoxyribonucleic acid (DNA) evidence, if a sufficient portion of  
 138 the evidence collected at the time of the original investigation

HB 1831

2004

139 and tested for DNA is preserved and available for testing by the  
140 accused:

141 1. An offense of sexual battery under chapter 794.

142 2. A lewd or lascivious offense under s. 800.04 or s.  
143 825.1025.

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

146 Section 2. This act shall take effect July 1, 2004.