

CHAMBER ACTION

1 The Committee on Judiciary recommends the following:

2
3 **Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to limitation of actions; amending s.
7 775.15, F.S.; authorizing the prosecution of specified
8 sexual offenses in certain circumstances within 1 year
9 after the identity of the accused is established through
10 analysis of DNA evidence, in addition to the time
11 limitations otherwise prescribed by law; providing for
12 applicability; providing an effective date.

13
14 Be It Enacted by the Legislature of the State of Florida:

15
16 Section 1. Section 775.15, Florida Statutes, is amended to
17 read:

18 775.15 Time limitations.--

19 (1)(a) A prosecution for a capital felony, a life felony,
20 or a felony that resulted in a death may be commenced at any
21 time. A prosecution for a felony that resulted in injury to any
22 person, when such felony arises from the use of a "destructive
23 device," as defined in s. 790.001, may be commenced within 10

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24 | years. If the death penalty is held to be unconstitutional by
25 | the Florida Supreme Court or the United States Supreme Court,
26 | all crimes designated as capital felonies shall be considered
27 | life felonies for the purposes of this section, and prosecution
28 | for such crimes may be commenced at any time.

29 | (b) Except as otherwise provided in subsection (7), a
30 | prosecution for a first or second degree felony violation of s.
31 | 794.011, if such crime is reported to a law enforcement agency
32 | within 72 hours after commission of the crime, may be commenced
33 | at any time. If such crime is not reported within 72 hours after
34 | the commission of the crime, the prosecution must be commenced
35 | within the time periods prescribed in subsection (2).

36 | (c) A prosecution for perjury in an official proceeding
37 | that relates to the prosecution of a capital felony may be
38 | commenced at any time.

39 | (2) Except as otherwise provided in this section,
40 | prosecutions for other offenses are subject to the following
41 | periods of limitation:

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

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

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

48 | (d) A prosecution for a misdemeanor of the second degree
49 | or a noncriminal violation must be commenced within 1 year after
50 | it is committed.

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

54 (f) A prosecution for a felony violation of chapter 403
55 must be commenced within 5 years after the date of discovery of
56 the violation.

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

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

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

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

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

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78 (4) An offense is committed either when every element has
79 occurred or, if a legislative purpose to prohibit a continuing
80 course of conduct plainly appears, at the time when the course
81 of conduct or the defendant's complicity therein is terminated.
82 Time starts to run on the day after the offense is committed.

83 (5)(a) Prosecution on a charge on which the defendant has
84 previously been arrested or served with a summons is commenced
85 by the filing of an indictment, information, or other charging
86 document.

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

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

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

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

129 (b) Notwithstanding the provisions of paragraph (1)(b) and
130 paragraph (a) of this subsection, if the offense is a first
131 degree felony violation of s. 794.011 and the victim was under
132 18 years of age at the time the offense was committed, a

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133 prosecution of the offense may be commenced at any time. This
 134 paragraph applies to any such offense except an offense the
 135 prosecution of which would have been barred by subsection (2) on
 136 or before October 1, 2003.

137 (8)(a) In addition to the time periods prescribed in this
 138 section, a prosecution for any of the following offenses may be
 139 commenced within 1 year after the date on which the identity of
 140 the accused is established, or should have been established by
 141 the exercise of due diligence, through the analysis of
 142 deoxyribonucleic acid (DNA) evidence, if a sufficient portion of
 143 the evidence collected at the time of the original investigation
 144 and tested for DNA is preserved and available for testing by the
 145 accused:

- 146 1. An offense of sexual battery under chapter 794.
- 147 2. A lewd or lascivious offense under s. 800.04 or s.
 148 825.1025.

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

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