

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: SB 2680

SPONSOR: Senator Aronberg

SUBJECT: Child Abuse/Vulnerable Adults

DATE: April 6, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Clodfelter</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>CF</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill amends s. 95.11, F.S., to affect the statute of limitations for civil actions involving abuse of a vulnerable adult, child abuse other than childhood sexual abuse, childhood sexual abuse, or a civil action against a person or entity that is collateral to an action based upon childhood sexual abuse.

This bill substantially amends section 95.11 of the Florida Statutes.

II. Present Situation:

Limitations of Actions in Civil Cases

Section 95.031, F.S., states that “the time within which an action shall be begun under any statute of limitations runs from the time the cause of action accrues.” In an action for recovery of damages based upon a theory of intentional tort, the action must commence within four years. In a case where the action is specifically based upon abuse or incest, the action must commence within seven years of the victim reaching age eighteen, or within four years after the child leaves the dependency of the abuser, or within four years of the discovery by the injured party of both the injury and the causal relationship between the injury and the abuse whichever occurs later. ss. 95.11(3) and (7), F.S. Incest is defined in s. 826.04, F.S. For purposes of this statute, abuse is defined as follows:

- In ss. 39.01 and 984.03, F.S., any willful act or threatened act that results in any physical, mental, or sexual injury or harm that causes or is likely to cause the child’s physical, mental, or emotional health to be significantly impaired.

- In s. 415.102, F.S., any willful act or threatened act by a caregiver that causes or is likely to cause significant impairment to a vulnerable adult's physical, mental, or emotional health.

Florida Case Law

The Supreme Court of Florida, in *Hearndon v. Graham*, 767 So.2d 1179 (Fla. 2000), held that the **delayed discovery doctrine** applies in childhood sexual abuse cases. This doctrine is applied in other types of tort actions as well. The delayed discovery doctrine provides that *a cause of action does not accrue until the plaintiff either knows or reasonably should know of the tortious act giving rise to the cause of action. Id. at 1184, (emphasis added)*. As the court noted, it is both the majority rule and the modern trend to apply the doctrine in cases of childhood sexual abuse followed by a temporary loss of memory. The Legislature's enactment of s. 95.11(7), F.S., in 1992 provides for the delayed discovery doctrine to be applied in tort actions based on abuse.

The court explained in *Hearndon* that there is a difference between "tolling" a statute of limitation and the delayed discovery doctrine. Simply, the statute of limitation (the time within which an action must be commenced) begins to run from the time when the cause of action accrues. The tolling of the limitation period "interrupts" the running of the time limitation after the action has accrued. The application of the delayed discovery doctrine recognizes a delay in the accrual of the cause of action.

Sexual Battery Defined

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:

Section 1: Amendment of s. 95.11(3), F.S.

The bill amends s. 95.11(3)(a), F.S., to provide an exception to the 4 year statute of limitation for civil actions founded on negligence. Essentially, the exception would apply to lawsuits against an employer or caregiver for negligent hiring or supervision of a person who commits childhood sexual abuse, or for failing to stop or report such abuse. The suit must allege that the defendant owed a duty of care to the injured person, and the exception only applies if the civil action is collateral to another civil action alleging the commission of childhood sexual abuse by the third person. The applicable definition of “childhood sexual abuse” is created in the bill by amendment of s. 95.11(7), F.S., which is discussed below.

The exception extends the 4 year statute of limitations to the later of:

- Fifteen years after the injured person attains the age of majority (18 years old).
- Four years after the injured person leaves the dependency or care of the defendant.
- Four years after the date that the injured person, after reaching the age of majority, discovers or reasonably should have discovered the causal relationship between the abuse and significant impairment to his or her physical, mental, or emotional health.

In any case, the bill requires that commencement of such an action after the injured person’s 33rd birthday be supported by a good faith allegation that the defendant knew or had reasonable cause to suspect childhood sexual abuse by an employee, volunteer, representative, or agent of the defendant, and that the defendant failed to notify law enforcement or the statewide central abuse hotline as required by law.

Amendment of s. 95.11(7), F.S.

The bill also amends s. 95.11(7), F.S., which currently provides an extended statute of limitations for actions founded upon the intentional torts of abuse or incest. The amended subsection includes definitions, some of which are not consistent with the meaning of terms in the current subsection (7). In addition, the bill differentiates between the limitations period for actions alleging abuse of a vulnerable adult, abuse of a child other than childhood sexual abuse, and childhood sexual abuse.

Abuse of a Vulnerable Adult

As in current law, the acts which comprise abuse of a vulnerable adult are those acts defined as “abuse” in s. 415.102, F.S., part of the Adult Protective Services Act. The definition of incest

also remains the same. Both current law and the bill provide that the statute of limitations period ends upon the occurrence of the later of several alternative events, but the bill amends these events in the following ways:

- Current law provides that an action may be commenced within 7 years after the injured person reaches the age of majority. The bill deletes this provision and establishes 7 years as the outside limit for bringing an action. The new limit requires that any such action must be brought within 7 years after the date of the act, incident, or occurrence out of which the cause of action arose. This is an express prohibition against application of the delayed discovery doctrine.
- Current law provides that an action may be commenced within 4 years after the injured person leaves the “dependency of the abuser,” while the bill refers to leaving the “care or dependency of the alleged abuser.”
- Current law provides that an action may be commenced within 4 years after the injured party discovers both the injury and the causal relationship between the injury and the abuse. The bill also includes such discovery by a person other than the alleged abuser who is in a position of trust and confidence with the injured party.

Abuse of a Child Other than Childhood Sexual Abuse

Like current law, the bill includes acts defined as “abuse” in ss. 39.01 and 948.03, F.S., within the meaning of the term “abuse” as applied to children. However, the bill expands the scope of the term to include acts that are described in and prohibited by s. 827.03, F.S. It appears that many of the acts specifically included in the new statutory reference may already be embraced within the more general definitions in current law. However, unlike current law, s. 827.03, F.S., also clearly includes neglect of a child and failure to stop abusive acts by another person. In addition, some of the acts prohibited by s. 827.03, F.S., do not require that the child have suffered an injury.

As in the case of actions based upon abuse of a vulnerable adult, the bill provides that an action may be commenced within 4 years after the injured person leaves the “care or dependency of the alleged abuser.” In all other respects, the limitations period is the same as in current law.

Childhood Sexual Abuse

The bill’s new definition of “childhood sexual abuse” tracks the general definition of “abuse” found in s. 39.01(2), F.S., which is referred to in the current law. The bill’s definition departs from the language of s. 39.01(2), F.S., by referring only to sexual injury or harm and deleting the exclusion of corporal discipline by a parent or guardian that does not result in harm to the child. Presumably, such lawful corporal discipline could not result in sexual injury.

The bill specifically includes the prohibited acts described in ss. 794.011 (sexual battery), 800.04 (lewd and lascivious acts committed upon or in the presence of a person under 16 years of age), and 826.04, (incest), F.S., within the definition of childhood sexual abuse.

In both the bill and current law, the limitations period for civil actions alleging childhood sexual abuse terminates at the latest of several possible dates. The bill amends the limitations period as follows:

- Current law provides that an action may be commenced within 7 years after the injured person reaches the age of majority. The bill expands this to 15 years.
- As in the actions described above, the bill provides that an action may be commenced within 4 years after the injured person leaves the “care or dependency of the alleged abuser.”
- Current law provides that an action may be commenced within 4 years after the injured person discovers both the injury and the causal relationship between the injury and the abuse. The bill makes this more restrictive by providing that the action must be commenced within 4 years after the injured person discovers, or reasonably should have discovered, the causal relationship between the abuse and significant impairment to his or her physical, mental, or emotional health.

The bill specifies that nothing in the paragraph relating to childhood sexual abuse is to be construed to limit the availability of any cause of action for abuse of a child other than childhood sexual abuse or negligence, including actions against persons or entities other than the perpetrator of the abuse.

Incest

The bill amends s. 95.11, F.S., to apply the expanded statute of limitations for actions based on incest only when the incest involves a vulnerable adult or a child. However, to the extent that an adult who is not vulnerable is the victim of incest and is not aware of the relationship between the injury and such abuse, the courts may apply the delayed discovery doctrine.

Section 2: Application to Settlement Agreements

Section 2 of the bill provides that its provisions do not apply to a written settlement agreement entered into between a plaintiff and a defendant if the plaintiff signed the settlement agreement and was represented by a Florida lawyer at the time of the settlement.

Section 3: Reenactment to Incorporate Amendments

The bill reenacts s. 63.182, F.S., which includes a reference to s. 94.11, F.S.

Section 4: Effective Date

The bill provides an effective date of October 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

CS/SB 1814 deals with the same subject matter as this bill in relation to the statute of limitations for civil actions based upon childhood sexual abuse. CS/SB 1814 provides that the limitations period for an action based upon sexual battery of a person under 18 years of age is tolled at least until the victim reaches the age of 18. Commencement of the running of the statute of limitations is also tolled under certain other specified circumstances if:

- It is medically inadvisable or the victim is unable to disclose the incident outside a clinical setting;
- It is medically inadvisable for the victim to confront the perpetrator; or
- It is medically inadvisable to disclose the incident publicly.

Because CS/SB 1814 would toll the statute of limitations, rather than codifying a variation of the delayed discovery doctrine, there does not appear to be an irresolvable conflict between this bill and the CS. The bill's provision that the action must be commenced within 15 years of the age of majority would render CS/SB 1814's tolling of the statute until the age of majority obsolete. Otherwise, the tolling of the statute under the circumstances set forth in the CS would apply to actions based upon childhood sexual abuse by means of commission of an act of sexual battery.

VIII. Amendments:

None.