

# 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.)

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Prepared By: Judiciary Committee

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BILL: SB 1440

SPONSOR: Criminal Justice Committee

SUBJECT: Time Limitations/Criminal Offenses

DATE: March 21, 2005

REVISED: \_\_\_\_\_

|    | ANALYST       | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|---------------|----------------|-----------|------------------|
| 1. | <u>Dugger</u> | <u>Cannon</u>  | <u>CJ</u> | <b>Favorable</b> |
| 2. | <u>Brown</u>  | <u>Maclure</u> | <u>JU</u> | <b>Favorable</b> |
| 3. | _____         | _____          | _____     | _____            |
| 4. | _____         | _____          | _____     | _____            |
| 5. | _____         | _____          | _____     | _____            |
| 6. | _____         | _____          | _____     | _____            |

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## I. Summary:

The language in this bill was the subject of Interim Project Report 2005-124, which found that over time, the criminal statute of limitations has become somewhat disorganized and confusing because it has been amended “piecemeal.” Consequently, the general time limitation periods are interspersed with various exceptions, extensions, and “administrative” provisions that are not necessarily in any given order.

The statute of limitations, s. 775.15, F.S., would be easier to understand and more “user friendly” to prosecutors and ordinary citizens if it were reorganized into a more logical and understandable format. The bill provides such reorganization. The bill’s restructuring is technical and clarifying, not substantive.

The bill substantially amends section 775.15, Florida Statutes. The bill conforms a cross-reference in section 922.105, Florida Statutes.

## II. Present Situation:

Section 775.15, F.S., sets forth time limitations for commencing criminal prosecutions, commonly known as the “statute of limitations.” The purpose of the statute of limitations for a criminal prosecution is to protect people from being indefinitely threatened by possible criminal prosecution, which might otherwise be delayed until such a time when defense witnesses become unavailable, judges change office, or other time hazards develop which could impede an otherwise good defense. *State v. Hickman*, 189 So.2d 254, 261 (Fla. 2d DCA 1966), *cert. denied*, 194 So.2d 618 (Fla. 1966).

Florida's statute of limitations contains general time limitation periods, as well as various exceptions and extensions to the general limitation periods. It also contains "administrative" provisions that lay the groundwork for determining when an offense is committed and when a prosecution is commenced.

Subsections (1) and (2) of s. 775.15, F.S., control the time limitations for initiating a criminal prosecution for most offenses. Generally, the length of the time periods under the statute increase with the severity of the offense as follows:

- 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, if reported to a law enforcement agency within 72 hours after commission of the crime, there is no time limitation.
- For a first degree felony sexual battery violation upon a victim less than 18 years of age (regardless of whether a victim reports it to law enforcement), there is no time limitation.
- For the crime of perjury in an official proceeding that relates to the prosecution of a capital felony, there is no time limitation.
- For a felony resulting in injury to a person when the felony arises from the use of a "destructive device," there is a 10-year time limitation.
- For prosecutions involving felony securities transaction violations, Medicaid provider fraud, workers' compensation fraud, and insurance fraud under ch. 517, F.S., s. 409.920, F.S., s. 440.105, F.S., and s. 817.234, F.S., there is a five-year time limitation.
- For prosecutions involving environmental control felony violations under ch. 403, F.S., there is a five-year time limitation from the date of the violation discovery.
- For prosecutions involving felony elderly person abuse or disabled adult abuse under s. 825.102, F.S., or s. 825.103, F.S., there is a five-year time limitation.
- For a first degree felony, there is a four-year time limitation.
- For any other felony, there is a three-year time limitation.
- For a first degree misdemeanor, there is a two-year time limitation.
- For a second degree misdemeanor or a noncriminal violation, there is a one-year time limitation.

Subsection (3) of s. 775.15, F.S., extends these otherwise applicable time limitation periods up to three years for any offense involving a material element of fraud or breach of fiduciary duty, within one year after discovery of the offense by an aggrieved party or his or her legal representative.

These general time limitation periods are also extended in subsections (7) and (8) of s. 775.15, F.S., for prosecutions involving certain sexual offenses when committed against children or when DNA evidence is gathered in those cases. Specifically, subsection (7) provides that the applicable time limitation for prosecutions involving certain sexual crimes (sexual battery, “statutory rape” under former s. 794.05, F.S., lewd or lascivious offenses, or incest) against children under 18 years of age does not begin to run until the crime is reported to a law enforcement agency or to another governmental agency or until the child turns 18, whichever occurs first.

Thus under subsection (7), if someone commits a second degree felony sexual battery on a person under the age of 18, the normal three-year time limitation period does not begin to run until that child turns 18 years of age, or until he or she reports the crime, whichever occurs earlier. s. 775.15(7), F.S.; *but see, Constantine v. State*, 566 So.2d 321, 322 (Fla. 2d DCA 1990).

As a result of recent legislation, subsection (8) of s. 775.15, F.S., allows prosecution for sexual battery under ch. 794, F.S., or lewd or lascivious offenses under s. 800.04, F.S., or s. 825.1025, F.S., to begin one year after the date on which the identity of the accused is or should have been established through DNA evidence. This one year period is in addition to any other authorized time limitation period. The delayed prosecution is authorized only if due diligence is used in the identification of a defendant through the analysis of DNA evidence and if a sufficient portion of the evidence collected during the original investigation and then tested is preserved and available for testing by the accused.

Section 775.15(4), F.S., provides that 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.

Subsection (5) of this section provides that prosecution on a criminal charge on which the defendant has already been arrested or served with a summons is commenced when the indictment, information, or other charging document is filed. This is also true when the defendant has not previously been arrested or served with a summons, except the *capias*, summons, or other process issued on the indictment or information must be executed without unreasonable delay.

If an indictment or information is filed within the appropriate time period and it is dismissed or set aside because of a defect in its content or form after the applicable time period has elapsed, the time period for commencing prosecution will be extended three months from when the indictment or information was dismissed or set aside.

The statute of limitations is tolled, or does not run, under s. 775.15(6), F.S., when the defendant is continuously absent from the state or has no reasonably ascertainable place of abode or work within the state. This provision does not extend the otherwise applicable period of limitation beyond three years. It is also not intended to limit the prosecution of a defendant unless the defendant has been timely charged by indictment, information, or other charging document and

has not been arrested due to a voluntary absence from the state or has not been extradited for prosecution from another state.

Over time, the statute of limitations has become somewhat disorganized and confusing because it has been amended “piecemeal,” with no real attempt to restructure the statute to logically group these amendments with existing provisions. The general time limitation periods are interspersed with various exceptions, extensions, and “administrative” provisions that are not necessarily in any given order. The statute would be easier to understand and more “user friendly” to prosecutors and ordinary citizens if it were reorganized into a more logical and understandable format.<sup>1</sup>

### **III. Effect of Proposed Changes:**

Senate Bill 1440 would make the criminal statute of limitations, s. 775.15, F.S., easier to understand and more “user friendly” to practitioners and ordinary citizens by reorganizing it into a more logical and understandable format.

The bill would group the general time limitation periods together, followed by the “administrative” provisions such as when an offense is committed and when a prosecution is commenced. The various exceptions and extensions to the general time limitation periods would become the final subsections in the statute under the bill. This reorganization would be technical and clarifying in nature; there would be no substantive law changes made to s. 775.15, F.S.

The bill would also amend s. 922.105, F.S., to conform a cross-reference to reflect changes made by the bill to s. 775.15, F.S.

### **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.

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<sup>1</sup> The Florida Senate, Committee on Criminal Justice, Interim Project Report 2005-124, *Time Limitations for Initiating Criminal Prosecutions*, p. 1 (November 2004).

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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

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## **VIII. Summary of Amendments:**

None.

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