

By the Committee on Criminal Justice

591-501A-05

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A bill to be entitled

An act relating to time limitations; amending s. 775.15, F.S.; reorganizing provisions establishing time limitations for prosecuting criminal offenses; clarifying certain provisions; amending s. 922.105, F.S., relating to execution of sentence; conforming a cross-reference; 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; general time limitations; exceptions.--

(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 commenced at any time. If such crime is not reported within 72~~

1 ~~hours after the commission of the crime, the prosecution must~~  
2 ~~be commenced within the time periods prescribed in subsection~~  
3 ~~(2).~~

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

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

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

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

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

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

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

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

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

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

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

22           (4)(5)(a) Prosecution on a charge on which the  
23 defendant has previously been arrested or served with a  
24 summons is commenced by the filing of an indictment,  
25 information, or 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 ~~(5)(6)~~ The period of limitation does not run during  
14 any time when the defendant is continuously absent from the  
15 state or has no reasonably ascertainable place of abode or  
16 work within the state. This provision shall not extend the  
17 period of limitation otherwise applicable by more than 3  
18 years, but shall not be construed to limit the prosecution of  
19 a defendant who has been timely charged by indictment or  
20 information or other charging document and who has not been  
21 arrested due to his or her absence from this state or has not  
22 been extradited for prosecution from another state.

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

26 (7) A prosecution for a felony that resulted in injury  
27 to any person, when such felony arises from the use of a  
28 "destructive device," as defined in s. 790.001, may be  
29 commenced within 10 years.

1           (8) A prosecution for a felony violation of chapter  
2 517 or s. 409.920 must be commenced within 5 years after the  
3 violation is committed.

4           (9) A prosecution for a felony violation of chapter  
5 403 must be commenced within 5 years after the date of  
6 discovery of the violation.

7           (10) A prosecution for a felony violation of s.  
8 825.102 or s. 825.103 must be commenced within 5 years after  
9 it is committed.

10           (11) A prosecution for a felony violation of ss.  
11 440.105 and 817.234 must be commenced within 5 years after the  
12 violation is committed.

13           (12) If the period prescribed in subsection (2),  
14 subsection (8), subsection (9), subsection (10), or subsection  
15 (11) has expired, a prosecution may nevertheless be commenced  
16 for:

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

24           (b) Any offense based upon misconduct in office by a  
25 public officer or employee at any time when the defendant is  
26 in public office or employment, within 2 years from the time  
27 he or she leaves public office or employment, or during any  
28 time permitted by any other part of this section, whichever  
29 time is greater.

30           (13)(7)(a) If the victim of a violation of s. 794.011,  
31 former s. 794.05, Florida Statutes 1995, s. 800.04, or s.

1 826.04 is under the age of 18, the applicable period of  
2 limitation, if any, does not begin to run until the victim has  
3 reached the age of 18 or the violation is reported to a law  
4 enforcement agency or other governmental agency, whichever  
5 occurs earlier. Such law enforcement agency or other  
6 governmental agency shall promptly report such allegation to  
7 the state attorney for the judicial circuit in which the  
8 alleged violation occurred. If the offense is a first or  
9 second degree felony violation of s. 794.011, and the offense  
10 ~~crime~~ is reported within 72 hours after its commission, the  
11 prosecution for such offense may be commenced at any time  
12 ~~paragraph (1)(b) applies~~. This paragraph applies to any such  
13 offense except an offense the prosecution of which would have  
14 been barred by subsection (2) on or before December 31, 1984.

15 (b) ~~Notwithstanding the provisions of paragraph (1)(b)~~  
16 ~~and paragraph (a) of this subsection~~, If the offense is a  
17 first degree felony violation of s. 794.011 and the victim was  
18 under 18 years of age at the time the offense was committed, a  
19 prosecution of the offense may be commenced at any time. This  
20 paragraph applies to any such offense except an offense the  
21 prosecution of which would have been barred by subsection (2)  
22 on or before October 1, 2003.

23 (14) A prosecution for a first or second degree felony  
24 violation of s. 794.011, if the victim is 18 years of age or  
25 older at the time of the offense and the offense is reported  
26 to a law enforcement agency within 72 hours after commission  
27 of the offense, may be commenced at any time. If the offense  
28 is not reported within 72 hours after the commission of the  
29 offense, the prosecution must be commenced within the time  
30 periods prescribed in subsection (2).

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1           ~~(15)~~(8)(a) In addition to the time periods prescribed  
2 in this section, a prosecution for any of the following  
3 offenses may be commenced within 1 year after the date on  
4 which the identity of the accused is established, or should  
5 have been established by the exercise of due diligence,  
6 through the analysis of deoxyribonucleic acid (DNA) evidence,  
7 if a sufficient portion of the evidence collected at the time  
8 of the original investigation and tested for DNA is preserved  
9 and available for testing by the accused:

- 10           1. An offense of sexual battery under chapter 794.
- 11           2. A lewd or lascivious offense under s. 800.04 or s.  
12 825.1025.

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

15           Section 2. Subsection (8) of section 922.105, Florida  
16 Statutes, is amended to read:

17           922.105 Execution of death sentence; prohibition  
18 against reduction of death sentence as a result of  
19 determination that a method of execution is  
20 unconstitutional.--

21           (8) Notwithstanding s. 775.082(2), s. 775.15(1)~~(a)~~, or  
22 s. 790.161(4), or any other provision to the contrary, no  
23 sentence of death shall be reduced as a result of a  
24 determination that a method of execution is declared  
25 unconstitutional under the State Constitution or the  
26 Constitution of the United States. In any case in which an  
27 execution method is declared unconstitutional, the death  
28 sentence shall remain in force until the sentence can be  
29 lawfully executed by any valid method of execution.

30           Section 3. This act shall take effect July 1, 2005.  
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SENATE SUMMARY

Reorganizes s. 775.15, F.S., which establishes time  
limitations for prosecuting criminal offenses, without  
making any substantive changes.