

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.)

Prepared By: Criminal Justice Committee

BILL: SB 188

SPONSOR: Senator Campbell

SUBJECT: Sexual Battery on Minor

DATE: February 1, 2005

REVISED: 04/20/05

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Fav/2 amendments
2.			JU	
3.			HE	
4.				
5.				
6.				

Please see last section for Summary of Amendments

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

Senate Bill 188 tolls the civil statutes of limitation in cases involving acts which constitute sexual battery on a minor during the time when the victim is under the age of 18 or under certain other specified circumstances where:

- 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.

The bill further provides that with regard to the statutes of limitation applicable in criminal cases of sexual battery upon a victim under the age of 18, the limitation periods do not run during the same circumstances listed above.

This bill substantially amends sections 95.11 and 775.15, Florida Statutes.

II. Present Situation:

Florida's Statutes of Limitation in Criminal Cases

Section 775.15, F.S., sets forth time limitations for commencing criminal prosecutions, commonly known as “statutes of limitation.”

There were no statutes of limitation at common law. *State v. McCloud*, 67 So.2d 242 (Fla. 1953). It is purely a statutory creation. In *State v. Hickman*, the court borrows a section from 22 C.J.S., Criminal Law s. 223 to explain that:

Statutes of Limitation are construed as being acts of grace, and as a surrendering by the sovereign of its right to prosecute or of its right to prosecute at its discretion, and they are considered as equivalent to acts of amnesty. Such statutes are founded on the liberal theory that prosecutions should not be allowed to ferment endlessly in the files of the government to explode only after witnesses and proofs necessary to the protection of accused have by sheer lapse of time passed beyond availability. They serve, not only to bar prosecutions on aged and untrustworthy evidence, but also to cut off prosecution for crimes a reasonable time after completion, when no further danger to society is contemplated from the criminal activity. *State v. Hickman*, 189 So.2d 254, 262 (Fla. 2nd DCA 1966).

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

Section 775.15, F.S., controls the time limitations for initiating a criminal prosecution for any felony offense in the following manner:

- For a capital felony, a life felony, a felony resulting in death, or a first degree felony sexual battery on a victim under 18, 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 any felony that resulted in injury to a person when the felony arises from the use of a “destructive device,” there is a ten-year limitation.
- For a first degree felony, there is a four-year limitation.
- For any other felony, there is a three-year limitation.

In addition to these general time periods, an offender may be prosecuted within one year after the date on which his or her identity is established – or should have been established through the exercise of due diligence – through the analysis of DNA evidence. s. 775.15(8), F.S.

These general time limitation periods are extended for prosecutions involving securities transaction violations, insurance fraud, Medicaid provider fraud, and certain theft crimes under ch. 517, F.S., s. 409.920, F.S., s. 440.105, F.S., s. 817.234, F.S., and s. 812.035, F.S. (five years); prosecutions involving environmental control felony violations under ch. 403, F.S. (five years); prosecutions involving felony elderly person or disabled adult abuse under s. 825.102, F.S. (four years); and prosecutions involving certain sexual offenses committed against children under 18 years of age (generally, the applicable time limitation does not begin to run until the crime is reported or until the child turns 18, whichever occurs first, although there are exceptions).

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 s. 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:

Senate Bill 188 tolls the civil statutes of limitation in cases involving acts which constitute sexual battery on a minor. The bill provides that the limitation period for bringing a criminal prosecution for sexual battery on a minor will not run under certain circumstances. The circumstances under which both civil and criminal actions are effected by the bill are:

- the time during which the victim is a minor *or*
- during any period of time in which it is determined by certain medical practitioners or mental health practitioners that
 - it is medically inadvisable or the victim is unable to disclose information concerning the incident outside a clinical setting,
 - it is medically inadvisable for the victim to confront the perpetrator, *or*
 - it is medically inadvisable for the victim to publicly disclose the incident.

The bill would become effective July 1, 2005.

Because the criminal statutes of limitation currently provide for the prosecution of any capital, life, or first degree felony sexual battery on a minor victim to be commenced at any time, this bill essentially effects the potential prosecution of second degree felony violations of the sexual battery statute. These are cases where the victim is 12 years of age or older (but less than 18, for purposes of this bill), and the perpetrator does not use physical force or violence likely to cause serious personal injury.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The statute of limitations in effect at the time the crime is committed controls. *State v. Wadsworth*, 293 So.2d 345 (Fla. 1974). The Legislature can extend the limitations period without violating the ex post facto laws if it does so before prosecution is barred by the old statute and clearly indicates that the new statute is to apply to cases pending when it becomes effective. *U.S. v. Richardson*, 512 F2d 105 (3rd Cir. 1975). The bill states the intent of the Legislature in this regard, as offenses the prosecution of which are barred on or before the effective date of the bill are exempted from its application.

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:

Although the bill does not provide a statutory method by which a defendant can challenge the application of the limitations periods controlled by the bill, the Rules of Procedure, both civil and criminal do provide opportunities for challenge.

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

VIII. Summary of Amendments:

Barcode 935674 by Criminal Justice:

Sets forth with particularity the mental health professionals who may give opinions as to the effects testifying or confronting the perpetrator would have upon the victim of the child sexual abuse cases addressed by the bill.

Barcode 413048 by Criminal Justice:

Limits the applicability of the tolling of the civil statutes of limitation to cases brought against the perpetrator only. (WITH TITLE AMENDMENT)

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