

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: Judiciary Committee

BILL: CS/SB 188

SPONSOR: Judiciary Committee and Senator Campbell

SUBJECT: Sexual Battery on Minor

DATE: April 28, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/2 amendments</u>
2.	<u>Brown</u>	<u>Maclure</u>	<u>JU</u>	<u>Fav/CS</u>
3.	_____	_____	<u>HE</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This committee substitute 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 determined by certain medical practitioners or mental health practitioners that the victim should not yet:

- Disclose information concerning the incident outside a clinical setting;
- Confront the perpetrator; or
- Publicly disclose the incident.

The definition of a mental health professional is clarified to include a licensed psychotherapist and a licensed psychologist.

Regarding 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 committee substitute 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, 243 (Fla. 1953). Rather, statutes of limitation are a statutory creation. *Id.*

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., provides the following time limitations for initiating a criminal prosecution for any felony offense:

- 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, a ten-year limitation applies;
- For a first degree felony, a four-year limitation applies;
- For any other felony, a three-year limitation applies.

For the offenses of sexual battery and lewd or lascivious acts, 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 to five years for prosecutions involving securities transaction violations (ch. 517, F.S.), Medicaid provider fraud (s. 409.920, F.S.), insurance fraud by an employer (s. 440.105, F.S.), filing a false insurance claim (s. 817.234, F.S.), felony abuse against elderly persons or disabled adults (s. 825.102, F.S.), and prosecutions

involving environmental control felony violations (ch. 403, F.S.). Additionally, prosecutions involving certain sexual offenses committed against children under 18 years of age are extended in that the applicable time limitation does not begin to run until the crime is reported or until the child turns 18, whichever occurs first, with exceptions.

Limitations of Actions in Civil Cases

Section 95.031, F.S., provides that the time within which an action commences under any statute of limitations runs from the time that 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, pursuant to s. 95.11(3), F.S. 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 18, or within four years after the child leaves the dependency of the abuser, or of the discovery by the injured party of both the injury and the causal relationship between the injury and the abuse, whichever occurs later. s. 95.11(7), F.S. Incest is defined in s. 826.04, F.S. Abuse is defined in the statutes as follows:

- In s. 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 Florida Supreme Court, 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. 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. *Id.* at 1186. 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. *Id.* at 1184-1185.

Sexual Battery

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 described in subsections (4)(a)-(g), and (8)(a) and (b), F.S. 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 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 the government; or
- 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 old engages in an act which constitutes sexual battery.

It should be noted that where more than one person commits an act of sexual battery chargeable under s. 794.011, F.S. as a second degree felony, upon a victim during the same criminal episode, the offense shall be reclassified to a felony of the first degree. s. 794.023(2)(a), F.S.

III. Effect of Proposed Changes:

This committee substitute 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 determined by certain medical practitioners or mental health practitioners that the victim should not yet:

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The tolling of the statute of limitation in civil cases only applies to actions brought against an individual tortfeasor who is alleged to have been the actual perpetrator, and does not apply to any actions based on negligence, respondeat superior, or otherwise against a third party to the action.

The committee substitute takes effect 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 committee substitute essentially affects 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 committee substitute), 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 ex rel Manucy v. Wadsworth, in and for St. Johns County*, 293 So.2d 345, 347 (Fla. 1974). The Legislature can extend the limitations period without violating 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 F.2d 105, 106 (3rd Cir. 1975). The committee substitute 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 committee substitute 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 committee substitute does not provide a statutory method by which a defendant can challenge the application of the limitations periods controlled by the committee substitute, 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:

None.

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