

By the Committee on Judiciary; and Senator Campbell

590-2313-05

1 A bill to be entitled
2 An act relating to the offense of sexual
3 battery on a minor; amending s. 95.11, F.S.;
4 providing for the time period for commencing a
5 civil action based upon an act that constitutes
6 sexual battery upon a minor to be tolled under
7 certain circumstances; limiting the application
8 of the tolling; amending s. 775.15, F.S.;
9 providing that the time period for commencing a
10 prosecution for sexual battery upon a minor
11 does not run during certain specified time
12 periods; providing an effective date.

14 Be It Enacted by the Legislature of the State of Florida:

16 Section 1. Present subsection (8) of section 95.11,
17 Florida Statutes, is redesignated as subsection (9), and a new
18 subsection (8) is added to that section, to read:

19 95.11 Limitations other than for the recovery of real
20 property.--Actions other than for recovery of real property
21 shall be commenced as follows:

22 (8) FOR ACTIONS BASED UPON AN ACT THAT CONSTITUTES
23 SEXUAL BATTERY UPON A MINOR.--The time period for commencing
24 an action based on an act upon a victim younger than 18 years
25 of age which constitutes what is described as sexual battery
26 in s. 794.011 shall be tolled until the victim becomes 18
27 years of age or during any period of time in which it is
28 determined by a medical practitioner licensed under chapter
29 458 or chapter 459, a psychotherapist licensed under chapter
30 491, or a psychologist licensed under chapter 490, that the
31 victim should not yet:

- 1 (a) Disclose information concerning the incident from
2 which the action arises outside a clinical setting;
3 (b) Confront the alleged perpetrator of the act; or
4 (c) Publicly disclose the incident from which the
5 action arises.

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7 The provisions of this subsection shall only apply to actions
8 brought against an individual tortfeasor who is alleged to
9 have been the actual perpetrator, and shall not apply to
10 actions based on negligence, respondeat superior, or any other
11 attempted action against a third party who is not alleged to
12 have been the actual perpetrator of the alleged abuse, incest,
13 or sexual battery.

14 Section 2. Subsections (1) and (7) of section 775.15,
15 Florida Statutes, are amended to read:

16 775.15 Time limitations.--

17 (1)(a) A prosecution for a capital felony, a life
18 felony, or a felony that resulted in a death may be commenced
19 at any time. A prosecution for a felony that resulted in
20 injury to any person, when such felony arises from the use of
21 a "destructive device," as defined in s. 790.001, may be
22 commenced within 10 years. If the death penalty is held to be
23 unconstitutional by the Florida Supreme Court or the United
24 States Supreme Court, all crimes designated as capital
25 felonies shall be considered life felonies for the purposes of
26 this section, and prosecution for such crimes may be commenced
27 at any time.

28 (b) Except as otherwise expressly provided in
29 subsection (7), a prosecution for a first or second degree
30 felony violation of s. 794.011, if such crime is reported to a
31 law enforcement agency within 72 hours after commission of the

1 | crime, may be commenced at any time. If such crime is not
2 | reported within 72 hours after the commission of the crime,
3 | the prosecution must be commenced within the time periods
4 | prescribed in subsection (2).

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

8 | (7)(a) If the victim of a violation of s. 794.011,
9 | former s. 794.05, Florida Statutes 1995, s. 800.04, or s.
10 | 826.04 is under the age of 18, the applicable period of
11 | limitation, if any, does not begin to run until the victim has
12 | reached the age of 18 or the violation is reported to a law
13 | enforcement agency or other governmental agency, whichever
14 | occurs earlier. Such law enforcement agency or other
15 | governmental agency shall promptly report such allegation to
16 | the state attorney for the judicial circuit in which the
17 | alleged violation occurred. If the offense is a first or
18 | second degree felony violation of s. 794.011, and the crime is
19 | reported within 72 hours after its commission, paragraph
20 | (1)(b) applies. This paragraph applies to any such offense
21 | except an offense the prosecution of which would have been
22 | barred by subsection (2) on or before December 31, 1984.

23 | (b) Notwithstanding the provisions of paragraph (1)(b)
24 | and paragraph (a) of this subsection, if the offense is a
25 | first degree felony violation of s. 794.011 and the victim was
26 | under 18 years of age at the time the offense was committed, a
27 | prosecution of the offense may be commenced at any time. This
28 | paragraph applies to any such offense except an offense the
29 | prosecution of which would have been barred by subsection (2)
30 | on or before October 1, 2003.

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1 (c) Notwithstanding paragraph (1)(b) and paragraphs
2 (a) and (b) of this subsection, if the offense is a violation
3 of s. 794.011 and the victim was younger than 18 years of age
4 at the time the offense was committed, the period of
5 limitation does not run during the time the victim is younger
6 than 18 years of age or during any period of time in which it
7 is determined by a medical practitioner licensed under chapter
8 458 or chapter 459, a psychotherapist licensed under chapter
9 491, or a psychologist licensed under chapter 490, that the
10 victim should not yet:

- 11 1. Disclose information concerning the incident from
12 which the action arises outside a clinical setting;
13 2. Confront the alleged perpetrator of the act; or
14 3. Publicly disclose the incident from which the
15 action arises.

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17 This paragraph applies to any such offense except an offense
18 the prosecution of which would have been barred on or before
19 July 1, 2005.

20 Section 3. This act shall take effect July 1, 2005.
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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 188

4 This committee substitute:

- 5 -- Regarding civil actions based on sexual battery against a
6 minor, limits application of tolling of statute of
7 limitations to actions brought against an individual
8 tortfeasor who is alleged to have been the actual
9 perpetrator, and excludes actions based on negligence,
10 respondeat superior, or any other third party action.
11 -- Specifies definition of mental health professional to
12 include a licensed psychotherapist and a licensed
13 psychologist.
14 -- Removes language requiring the medical professional to
15 determine that it is "medically inadvisable" for the
16 victim to proceed using certain criteria as the basis for
17 tolling, and leaves intact that the standard for tolling
18 be based on the medical professional's determination of
19 those criteria.
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