

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7177 (PCB CRJU 06-09)

Statute of Limitations in Criminal Cases

SPONSOR(S): Criminal Justice Committee

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Criminal Justice Committee	7 Y, 0 N	Cunningham	Kramer
1) Justice Council	11 Y, 0 N	Cunningham	De La Paz
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

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, or a felony resulting in death, there is no time limitation;
- For a first degree felony, there is a four-year limitation; and
- For any other felony, there is a three-year limitation.

Florida's DNA database, and others throughout the country, provides opportunities for law enforcement agencies to solve crimes where they have physical evidence containing DNA by checking that evidence against information in the database. The practice of some agencies to sift through evidence in "cold cases" - cases where the investigative leads have long since been exhausted - has resulted in defendants being identified with crimes that were unsolved for many years.

Section 775.15(15), F.S., seeks to address the situation in which the general time limitations for commencing prosecution have expired before the perpetrator is identified. The statute provides that a prosecution for sexual battery and lewd and lascivious offenses may be commenced within 1 year after the date on which the identity of the accused is established, or should have been established by the exercise of due diligence, through the analysis of deoxyribonucleic acid (DNA) evidence.

This bill provides that a prosecution for any of the below-listed offenses that are not otherwise barred from prosecution on or after July 1, 2006, may be commenced at any time after the date on which the identity of the accused is established, or should have been established by the exercise of due diligence, through the analysis of DNA evidence. The following offenses are specified:

- An offense of sexual battery under chapter 794;
- A lewd or lascivious offense under s. 800.04 or s. 825.1025;
- Aggravated battery or any felony battery offense under chapter 784;
- Kidnapping under s. 787.01 or false imprisonment under s. 787.02;
- A burglary offense under s. 810.02;
- A robbery offense under s. 812.13, s. 812.131, or s. 812.135;
- Carjacking under s. 812.133; and
- Aggravated child abuse under s. 827.03.

This act takes effect July 1, 2006.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h7177a.JC.doc

DATE: 4/10/2006

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government → This bill provides that a prosecution for certain specified offenses, unless otherwise barred by law, may be commenced at any time after the date on which the identity of the accused is established, or should have been established using due diligence, through the analysis of DNA evidence.

B. EFFECT OF PROPOSED CHANGES:

Statute of Limitations

Section 775.15, F.S., sets forth time limitations for commencing criminal prosecutions, or “statute of limitations.”

There was no statute of limitations at common law.¹ It is purely a statutory creation. In *State v. Hickman*, the court borrowed a section from 22 C.J.S., Criminal Law s. 223 and explained 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(3), 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.²

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, or a felony resulting in death, there is no time limitation;
- For a first degree felony, there is a four-year limitation; and
- For any other felony, there is a three-year limitation.

Generally, the controlling criminal statute of limitations is the version that is in effect when a crime is committed.³ The legislature can extend the limitations period without violating the constitutional prohibition against 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.⁴ If the pre-existing statute of limitations had already expired prior to passage of the new statute of limitations,

¹ *State v. McCloud*, 67 So.2d 242 (Fla. 1953).

² s. 775.15, F.S.

³ See *Andrews v. State*, 392 So.2d 270,271 (Fla. 2d DCA 1980).

⁴ *Id.*

the retroactive application of the new statute of limitations would violate the ex post facto provisions of both the United States Constitution (Art. I, ss. 9, 10) and the Florida Constitution (Art. I, s. 10.).⁵

DNA – An Investigative Tool

Florida's DNA database, and others throughout the country, provides opportunities for law enforcement agencies to solve crimes where they have physical evidence containing DNA by checking that evidence against information in the database. The practice of some agencies to sift through evidence in "cold cases" - cases where the investigative leads have long since been exhausted – has resulted in defendants being charged with crimes that were unsolved for many years.

One example of such a case occurred after DNA sample collections from people convicted of burglary offenses in Florida began in July 2000. In October 2000, a man in a Florida prison on a burglary conviction, who gave the required blood samples for inclusion in the FDLE database, became a suspect in a 1999 sexual assault on a 77-year old West Virginia woman. According to reports, when he was identified as a suspect, another man who had previously been charged with the West Virginia crime was likely to be exonerated.⁶

Most of the crimes where it would be more likely to have DNA left at the crime scene, due to the nature of the offense, currently have no time limitation for commencing prosecution of the perpetrator (e.g. murder; sexual battery, when reported within 72 hours after the commission of the crime). However, in some cases the time may have expired before the perpetrator is identified. For example, if a sexual battery offense goes unreported for more than 72 hours, the time limitation for commencing prosecution would be four years (first degree felony) or three years (any other felony).

Exception to the General Statute of Limitations – Section 775.15(15), F.S.

Section 775.15(15), F.S., seeks to address the situation in which the general time limitations for commencing prosecution have expired before the perpetrator is identified. Currently, the statute provides:

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

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

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

Effect of the Bill

This bill provides that a prosecution for any of the below-listed offenses that are not otherwise barred from prosecution on or after July 1, 2006, may be commenced at any time after the date on which the identity of the accused is established, or should have been established by the exercise of due diligence, through the analysis of DNA evidence. The following offenses are specified:

- An offense of sexual battery under chapter 794;
- A lewd or lascivious offense under s. 800.04 or s. 825.1025;
- Aggravated battery or any felony battery offense under chapter 784;

⁵ See *United States v. Richardson*, 512 F.2d 105, 106 (3rd Cir. 1975); *Reino v. State*, 352 So.2d 853 (Fla. 1977).

⁶ See Senate Staff Analysis and Economic Impact Statement, CS/SB 300, February 15, 2002.

- Kidnapping under s. 787.01 or false imprisonment under s. 787.02;
- A burglary offense under s. 810.02;
- A robbery offense under s. 812.13, s. 812.131, or s. 812.135;
- Carjacking under s. 812.133; and
- Aggravated child abuse under s. 827.03.

C. SECTION DIRECTORY:

Section 1. Amends s. 775.15(15), F.S., providing that a prosecution for certain specified offenses, unless otherwise barred by law, may be commenced at any time after the date on which the identity of the accused is established, or should have been established using due diligence, through the analysis of DNA evidence.

Section 2. This act takes effect July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 22, 2006, the Criminal Justice Committee adopted a strike-all amendment to the proposed committee bill and reported the bill favorably. The strike-all amendment provides that a prosecution for any of the below-listed offenses that are not otherwise barred from prosecution on or after July 1, 2006, may be commenced at any time after the date on which the identity of the accused is established, or should have been established by the exercise of due diligence, through the analysis of DNA evidence.