

By Senator Aronberg

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

11  
12 Be It Enacted by the Legislature of the State of Florida:

13  
14       Section 1. Section 95.11, Florida Statutes, is amended to  
15      read:

16       95.11 Limitations other than for the recovery of real  
17      property.—Actions other than for recovery of real property shall  
18      be commenced as follows:

19       (1) WITHIN TWENTY YEARS.—An action on a judgment or decree  
20      of a court of record in this state.

21       (2) WITHIN FIVE YEARS.—

22       (a) An action on a judgment or decree of any court, not of  
23      record, of this state or any court of the United States, any  
24      other state or territory in the United States, or a foreign  
25      country.

26       (b) A legal or equitable action on a contract, obligation,  
27      or liability founded on a written instrument, except for an  
28      action to enforce a claim against a payment bond, which shall be  
29      governed by the applicable provisions of ss. 255.05(10) and

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30 713.23(1)(e).

31 (c) An action to foreclose a mortgage.

32 (d) An action alleging a willful violation of s. 448.110.

33 (3) WITHIN FOUR YEARS.—

34 (a) An action founded on negligence.

35 (b) An action relating to the determination of paternity,  
36 with the time running from the date the child reaches the age of  
37 majority.

38 (c) An action founded on the design, planning, or  
39 construction of an improvement to real property, with the time  
40 running from the date of actual possession by the owner, the  
41 date of the issuance of a certificate of occupancy, the date of  
42 abandonment of construction if not completed, or the date of  
43 completion or termination of the contract between the  
44 professional engineer, registered architect, or licensed  
45 contractor and his or her employer, whichever date is latest;  
46 except that, when the action involves a latent defect, the time  
47 runs from the time the defect is discovered or should have been  
48 discovered with the exercise of due diligence. In any event, the  
49 action must be commenced within 10 years after the date of  
50 actual possession by the owner, the date of the issuance of a  
51 certificate of occupancy, the date of abandonment of  
52 construction if not completed, or the date of completion or  
53 termination of the contract between the professional engineer,  
54 registered architect, or licensed contractor and his or her  
55 employer, whichever date is latest.

56 (d) An action to recover public money or property held by a  
57 public officer or employee, or former public officer or  
58 employee, and obtained during, or as a result of, his or her

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59 public office or employment.

60 (e) An action for injury to a person founded on the design,  
61 manufacture, distribution, or sale of personal property that is  
62 not permanently incorporated in an improvement to real property,  
63 including fixtures.

64 (f) An action founded on a statutory liability.

65 (g) An action for trespass on real property.

66 (h) An action for taking, detaining, or injuring personal  
67 property.

68 (i) An action to recover specific personal property.

69 (j) A legal or equitable action founded on fraud.

70 (k) A legal or equitable action on a contract, obligation,  
71 or liability not founded on a written instrument, including an  
72 action for the sale and delivery of goods, wares, and  
73 merchandise, and on store accounts.

74 (l) An action to rescind a contract.

75 (m) An action for money paid to any governmental authority  
76 by mistake or inadvertence.

77 (n) An action for a statutory penalty or forfeiture.

78 (o) An action for assault, battery, false arrest, malicious  
79 prosecution, malicious interference, false imprisonment, or any  
80 other intentional tort, except as provided in subsections (4),  
81 (5), and (7).

82 (p) Any action not specifically provided for in these  
83 statutes.

84 (q) An action alleging a violation, other than a willful  
85 violation, of s. 448.110.

86 (4) WITHIN TWO YEARS.—

87 (a) An action for professional malpractice, other than

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88 medical malpractice, whether founded on contract or tort;  
89 provided that the period of limitations shall run from the time  
90 the cause of action is discovered or should have been discovered  
91 with the exercise of due diligence. However, the limitation of  
92 actions herein for professional malpractice shall be limited to  
93 persons in privity with the professional.

94 (b) An action for medical malpractice shall be commenced  
95 within 2 years from the time the incident giving rise to the  
96 action occurred or within 2 years from the time the incident is  
97 discovered, or should have been discovered with the exercise of  
98 due diligence; however, in no event shall the action be  
99 commenced later than 4 years from the date of the incident or  
100 occurrence out of which the cause of action accrued, except that  
101 this 4-year period shall not bar an action brought on behalf of  
102 a minor on or before the child's eighth birthday. An "action for  
103 medical malpractice" is defined as a claim in tort or in  
104 contract for damages because of the death, injury, or monetary  
105 loss to any person arising out of any medical, dental, or  
106 surgical diagnosis, treatment, or care by any provider of health  
107 care. The limitation of actions within this subsection shall be  
108 limited to the health care provider and persons in privity with  
109 the provider of health care. In those actions covered by this  
110 paragraph in which it can be shown that fraud, concealment, or  
111 intentional misrepresentation of fact prevented the discovery of  
112 the injury the period of limitations is extended forward 2 years  
113 from the time that the injury is discovered or should have been  
114 discovered with the exercise of due diligence, but in no event  
115 to exceed 7 years from the date the incident giving rise to the  
116 injury occurred, except that this 7-year period shall not bar an

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117 action brought on behalf of a minor on or before the child's  
118 eighth birthday. This paragraph shall not apply to actions for  
119 which ss. 766.301-766.316 provide the exclusive remedy.

120 (c) An action to recover wages or overtime or damages or  
121 penalties concerning payment of wages and overtime.

122 (d) An action for wrongful death.

123 (e) An action founded upon a violation of any provision of  
124 chapter 517, with the period running from the time the facts  
125 giving rise to the cause of action were discovered or should  
126 have been discovered with the exercise of due diligence, but not  
127 more than 5 years from the date such violation occurred.

128 (f) An action for personal injury caused by contact with or  
129 exposure to phenoxy herbicides while serving either as a  
130 civilian or as a member of the Armed Forces of the United States  
131 during the period January 1, 1962, through May 7, 1975; the  
132 period of limitations shall run from the time the cause of  
133 action is discovered or should have been discovered with the  
134 exercise of due diligence.

135 (g) An action for libel or slander.

136 (5) WITHIN ONE YEAR.—

137 (a) An action for specific performance of a contract.

138 (b) An action to enforce an equitable lien arising from the  
139 furnishing of labor, services, or material for the improvement  
140 of real property.

141 (c) An action to enforce rights under the Uniform  
142 Commercial Code—Letters of Credit, chapter 675.

143 (d) An action against any guaranty association and its  
144 insured, with the period running from the date of the deadline  
145 for filing claims in the order of liquidation.

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146 (e) An action to enforce any claim against a payment bond  
147 on which the principal is a contractor, subcontractor, or sub-  
148 subcontractor as defined in s. 713.01, for private work as well  
149 as public work, from the last furnishing of labor, services, or  
150 materials or from the last furnishing of labor, services, or  
151 materials by the contractor if the contractor is the principal  
152 on a bond on the same construction project, whichever is later.

153 (f) Except for actions described in subsection (8), a  
154 petition for extraordinary writ, other than a petition  
155 challenging a criminal conviction, filed by or on behalf of a  
156 prisoner as defined in s. 57.085.

157 (g) Except for actions described in subsection (8), an  
158 action brought by or on behalf of a prisoner, as defined in s.  
159 57.085, relating to the conditions of the prisoner's  
160 confinement.

161 (6) LACHES.—Laches shall bar any action unless it is  
162 commenced within the time provided for legal actions concerning  
163 the same subject matter regardless of lack of knowledge by the  
164 person sought to be held liable that the person alleging  
165 liability would assert his or her rights and whether the person  
166 sought to be held liable is injured or prejudiced by the delay.  
167 This subsection shall not affect application of laches at an  
168 earlier time in accordance with law.

169 (7) FOR INTENTIONAL TORTS BASED ON ABUSE.—An action founded  
170 on alleged abuse, as defined in s. 39.01, s. 415.102, or s.  
171 984.03, or incest, as defined in s. 826.04, may be commenced at  
172 any time within 7 years after the age of majority, or within 4  
173 years after the injured person leaves the dependency of the  
174 abuser, or within 4 years from the time of discovery by the

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175 injured party of both the injury and the causal relationship  
176 between the injury and the abuse, whichever occurs later.

177 (8) FOR INTENTIONAL TORTS BASED UPON SEXUAL BATTERY OF A  
178 MINOR.—The time period for commencing an action based on an act  
179 upon a victim younger than 18 years of age which constitutes  
180 what is described as sexual battery in s. 794.011 shall be  
181 tolled until the victim becomes 18 years of age or during any  
182 period of time in which it is determined by a medical  
183 practitioner licensed under chapter 458 or chapter 459, a  
184 psychotherapist licensed under chapter 491, or a psychologist  
185 licensed under chapter 490, that the victim should not yet:

186 (a) Disclose information concerning the incident from which  
187 the action arises outside a clinical setting;

188 (b) Confront the alleged perpetrator of the act; or

189 (c) Publicly disclose the incident from which the action  
190 arises.

191 (9)~~(8)~~ WITHIN 30 DAYS FOR ACTIONS CHALLENGING CORRECTIONAL  
192 DISCIPLINARY PROCEEDINGS.—Any court action challenging prisoner  
193 disciplinary proceedings conducted by the Department of  
194 Corrections pursuant to s. 944.28(2) must be commenced within 30  
195 days after final disposition of the prisoner disciplinary  
196 proceedings through the administrative grievance process under  
197 chapter 33, Florida Administrative Code. Any action challenging  
198 prisoner disciplinary proceedings shall be barred by the court  
199 unless it is commenced within the time period provided by this  
200 section.

201 Section 2. Section 775.15, Florida Statutes, is amended to  
202 read:

203 775.15 Time limitations; general time limitations;

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204 exceptions.-

205 (1) A prosecution for a capital felony, a life felony, or a  
206 felony that resulted in a death may be commenced at any time. If  
207 the death penalty is held to be unconstitutional by the Florida  
208 Supreme Court or the United States Supreme Court, all crimes  
209 designated as capital felonies shall be considered life felonies  
210 for the purposes of this section, and prosecution for such  
211 crimes may be commenced at any time.

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

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

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

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

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

224 (3) An offense is committed either when every element has  
225 occurred or, if a legislative purpose to prohibit a continuing  
226 course of conduct plainly appears, at the time when the course  
227 of conduct or the defendant's complicity therein is terminated.  
228 Time starts to run on the day after the offense is committed.

229 (4) (a) Prosecution on a charge on which the defendant has  
230 previously been arrested or served with a summons is commenced  
231 by the filing of an indictment, information, or other charging  
232 document.



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233 (b) A prosecution on a charge on which the defendant has  
234 not previously been arrested or served with a summons is  
235 commenced when either an indictment or information is filed,  
236 provided the capias, summons, or other process issued on such  
237 indictment or information is executed without unreasonable  
238 delay. In determining what is reasonable, inability to locate  
239 the defendant after diligent search or the defendant's absence  
240 from the state shall be considered. The failure to execute  
241 process on or extradite a defendant in another state who has  
242 been charged by information or indictment with a crime in this  
243 state shall not constitute an unreasonable delay.

244 (c) If, however, an indictment or information has been  
245 filed within the time period prescribed in this section and the  
246 indictment or information is dismissed or set aside because of a  
247 defect in its content or form after the time period has elapsed,  
248 the period for commencing prosecution shall be extended 3 months  
249 from the time the indictment or information is dismissed or set  
250 aside.

251 (5) The period of limitation does not run during any time  
252 when the defendant is continuously absent from the state or has  
253 no reasonably ascertainable place of abode or work within the  
254 state. This provision shall not extend the period of limitation  
255 otherwise applicable by more than 3 years, but shall not be  
256 construed to limit the prosecution of a defendant who has been  
257 timely charged by indictment or information or other charging  
258 document and who has not been arrested due to his or her absence  
259 from this state or has not been extradited for prosecution from  
260 another state.

261 (6) A prosecution for perjury in an official proceeding

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262 that relates to the prosecution of a capital felony may be  
263 commenced at any time.

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

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

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

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

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

280 (12) If the period prescribed in subsection (2), subsection  
281 (8), subsection (9), subsection (10), or subsection (11) has  
282 expired, a prosecution may nevertheless be commenced for:

283 (a) Any offense, a material element of which is either  
284 fraud or a breach of fiduciary obligation, within 1 year after  
285 discovery of the offense by an aggrieved party or by a person  
286 who has a legal duty to represent an aggrieved party and who is  
287 himself or herself not a party to the offense, but in no case  
288 shall this provision extend the period of limitation otherwise  
289 applicable by more than 3 years.

290 (b) Any offense based upon misconduct in office by a public

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291 officer or employee at any time when the defendant is in public  
292 office or employment, within 2 years from the time he or she  
293 leaves public office or employment, or during any time permitted  
294 by any other part of this section, whichever time is greater.

295 (13) (a) If the victim of a violation of s. 794.011, former  
296 s. 794.05, Florida Statutes 1995, s. 800.04, s. 826.04, or s.  
297 847.0135(5) is under the age of 18, the applicable period of  
298 limitation, if any, does not begin to run until the victim has  
299 reached the age of 18 or the violation is reported to a law  
300 enforcement agency or other governmental agency, whichever  
301 occurs earlier. Such law enforcement agency or other  
302 governmental agency shall promptly report such allegation to the  
303 state attorney for the judicial circuit in which the alleged  
304 violation occurred. If the offense is a first-degree ~~first~~ or  
305 second-degree ~~second-degree~~ felony violation of s. 794.011, and  
306 the offense is reported within 72 hours after its commission,  
307 the prosecution for such offense may be commenced at any time.  
308 This paragraph applies to any such offense except an offense the  
309 prosecution of which would have been barred by subsection (2) on  
310 or before December 31, 1984.

311 (b) If the offense is a first-degree ~~first-degree~~ felony  
312 violation of s. 794.011 and the victim was under 18 years of age  
313 at the time the offense was committed, a prosecution of the  
314 offense may be commenced at any time. This paragraph applies to  
315 any such offense except an offense the prosecution of which  
316 would have been barred by subsection (2) on or before October 1,  
317 2003.

318 (c)1. If the offense is a second-degree felony violation of  
319 s. 794.011 and the victim was younger than 18 years of age at

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320 the time the offense was committed, the period of limitation  
321 does not run during the time the victim is younger than 18 years  
322 of age or during any period of time in which it is determined by  
323 a medical practitioner licensed under chapter 458 or chapter  
324 459, a psychotherapist licensed under chapter 491, or  
325 psychologist licensed under chapter 490, that the victim should  
326 not yet:

327 a. Disclose information concerning the incident from which  
328 the action arises outside of a clinical setting;

329 b. Confront the alleged perpetrator of the act; or

330 c. Publicly disclose the incident from which the action  
331 arises.

332 2. This paragraph applies to any such offense except an  
333 offense the prosecution of which would have been barred on or  
334 before July 1, 2009.

335 (14) A prosecution for a first-degree ~~first~~ or second-  
336 degree ~~second-degree~~ felony violation of s. 794.011, if the  
337 victim is 18 years of age or older at the time of the offense  
338 and the offense is reported to a law enforcement agency within  
339 72 hours after commission of the offense, may be commenced at  
340 any time. If the offense is not reported within 72 hours after  
341 the commission of the offense, the prosecution must be commenced  
342 within the time periods prescribed in subsection (2).

343 (15) (a) In addition to the time periods prescribed in this  
344 section, a prosecution for any of the following offenses may be  
345 commenced within 1 year after the date on which the identity of  
346 the accused is established, or should have been established by  
347 the exercise of due diligence, through the analysis of  
348 deoxyribonucleic acid (DNA) evidence, if a sufficient portion of

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349 the evidence collected at the time of the original investigation  
350 and tested for DNA is preserved and available for testing by the  
351 accused:

352 1. An offense of sexual battery under chapter 794.

353 2. A lewd or lascivious offense under s. 800.04 or s.  
354 825.1025.

355 (b) This subsection applies to any offense that is not  
356 otherwise barred from prosecution between July 1, 2004, and June  
357 30, 2006.

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

367 1. Aggravated battery or any felony battery offense under  
368 chapter 784.

369 2. Kidnapping under s. 787.01 or false imprisonment under  
370 s. 787.02.

371 3. An offense of sexual battery under chapter 794.

372 4. A lewd or lascivious offense under s. 800.04, s.  
373 825.1025, or s. 847.0135(5).

374 5. A burglary offense under s. 810.02.

375 6. A robbery offense under s. 812.13, s. 812.131, or s.  
376 812.135.

377 7. Carjacking under s. 812.133.

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378           8. Aggravated child abuse under s. 827.03.  
379           (b) This subsection applies to any offense that is not  
380 otherwise barred from prosecution on or after July 1, 2006.  
381           Section 3. This act shall take effect July 1, 2009.