

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

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BILL: SB 1270

INTRODUCER: Senator Soto

SUBJECT: Sexual Offenses

DATE: April 7, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	<b>Favorable</b>
2.	<u>Harkness</u>	<u>Sadberry</u>	<u>ACJ</u>	<b>Pre-meeting</b>
3.	_____	_____	<u>FP</u>	_____

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## I. Summary:

SB 1270 amends s. 775.15, F.S., by extending the current statute of limitation time periods of three or four years to 10 years for a first or second degree felony sexual battery prosecution when the victim is 16 years of age or older and does not report the crime within 72 hours. (If a 16 year old or older victim of *second* degree felony sexual battery or an 18 year old or older victim of *first* degree felony sexual battery report the crime within 72 hours, current law is applicable and there is no time limitation for bringing a prosecution.)

The bill has a moderate fiscal impact, as determined by the Criminal Justice Impact Conference on February 27, 2015. See Section V.

The bill takes effect on July 1, 2015.

## II. Present Situation:

### Statutes of Limitation in Criminal Cases

#### *Historical Perspective*

At common law, there was no time limit restriction under which a criminal charge was barred from prosecution. Time limitations, or statutes of limitation, for criminal prosecutions exist only as a creation of statute and are considered to be acts of grace by the sovereign.<sup>1</sup>

In *State v. Hickman*, the court stated:

The only purpose of a Statute limiting the time within which a criminal charge may be prosecuted is to protect every person from being

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<sup>1</sup> *State v. Hickman*, 189 So. 2d 254, 261 (Fla. 2d DCA 1966).

interminably under the threat or cloud of possible criminal prosecution, which otherwise might be indefinitely delayed until the time when defense witnesses might die, disappear or otherwise become unavailable, judges would change office, or innumerable other time hazards might develop, which could conceivably defeat, or at least hamper, an otherwise good defense.<sup>2</sup>

Since the creation of statutes of limitation, courts have held that:

- (1) Generally, the statute of limitation that was in effect when a crime was committed controls.<sup>3</sup>
- (2) Statutes of limitation in criminal cases should be construed liberally in favor of the defendant.<sup>4</sup>
- (3) The Legislature may extend the limitations period without violating the ex post facto clause of the State Constitution<sup>5</sup> if the Legislature makes the change before the prosecution is barred under the old statute and clearly demonstrates that the new statute applies to cases pending when the extension takes effect.<sup>6</sup>

### ***Existing Provisions***

Section 775.15, F.S., sets forth time limitations, or statutes of limitation, after which criminal prosecutions are barred.

The statute of limitation for prosecuting a criminal case begins to run on the day after the offense is committed.<sup>7</sup> An offense is deemed to have been committed when either every element of the offense has occurred or if it plainly appears that the legislative purpose is to prohibit a continuing course of conduct, at the time when the course of conduct or the defendant's complicity therein is terminated.<sup>8</sup>

Section 775.15, F.S., provides the following time limitations for initiating a criminal prosecution for a felony offense:

- There is no time limitation for prosecuting a capital felony, a life felony, a felony resulting in death,<sup>9</sup> any sexual battery on a victim younger than 16,<sup>10</sup> a first degree felony sexual battery on a victim younger than 18,<sup>11</sup> or a first or second degree felony sexual battery and the victim reports the crime to law enforcement within 72 hours.<sup>12</sup>
- A 10-year limitation applies to prosecutions for any felony that results in injury to a person when the felony arises from the use of a destructive device.<sup>13</sup>

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<sup>2</sup> *Id.*

<sup>3</sup> *Beyer v. State*, 76 So. 3d 1132, 1135 (Fla. 4th DCA 2012).

<sup>4</sup> *Id.*

<sup>5</sup> FLA. CONST. art. I, s.10.

<sup>6</sup> *Andrews v. State*, 392 So. 2d 270, 271 (Fla. 2d DCA 1980).

<sup>7</sup> Section 775.15(3), F.S.

<sup>8</sup> *Id.*

<sup>9</sup> Section 775.15(1), F.S.

<sup>10</sup> Section 775.15(13)(c), F.S.

<sup>11</sup> Section 775.15(13)(b), F.S.

<sup>12</sup> Section 775.15(13) and (14), F.S.

<sup>13</sup> Section 775.15(7), F.S.

- A four-year time limitation applies to prosecutions for a first degree felony.<sup>14</sup>
- A three-year time limitation applies to prosecutions for any other felony.<sup>15</sup>

In addition to these enumerated time periods, the offenses of sexual battery, lewd or lascivious acts, and certain other felony offenses<sup>16</sup> may be prosecuted at any time after the date on which the offender's identity is established, or should have been established through the exercise of due diligence, through the analysis of Deoxyribonucleic acid (DNA) evidence. However, the DNA sample for these prosecutions must be available for testing by the accused.<sup>17</sup>

There is also an extension of time if a victim of sexual battery, lewd or lascivious behavior, incest, "statutory rape" under former s. 794.05, F.S., or computer pornography is under the age of 18. In these cases, the applicable period of limitation does not begin to run until the victim reaches the age of 18 or the violation is reported to a law enforcement or governmental agency, whichever occurs first.<sup>18</sup>

If a victim 18 years or older reports a first or second degree felony sexual battery within 72 hours of the crime, there is no statute of limitation. If the victim does not report the crime within this time period, the statute of limitation is four years for a first degree felony sexual battery<sup>19</sup> and three years for a second degree felony sexual battery.<sup>20</sup>

Similarly, if a 16 or 17 year old who is a victim of a second degree felony sexual battery does not report the crime within 72 hours, the applicable time period to bring a prosecution is three years.<sup>21</sup> (There is no limitation period if they are a victim of a first degree felony sexual battery, regardless of whether they report the crime.<sup>22</sup> There is also no limitation period if they report within 72 hours of being a victim of second degree felony sexual battery.<sup>23</sup>)

### III. Effect of Proposed Changes:

The bill amends s. 775.15, F.S., by extending the current statute of limitation time periods of three or four years to 10 years for a first or second degree felony sexual battery prosecution when the victim is 16 years of age or older and does not report the crime within 72 hours. (If a 16 year old or older victim of *second* degree felony sexual battery or an 18 year old or older victim of *first* degree felony sexual battery report the crime within 72 hours, current law is applicable and there is no time limitation for bringing a prosecution.)

<sup>14</sup> Section 775.15(2)(a), F.S.

<sup>15</sup> Section 775.15(2)(b), F.S.

<sup>16</sup> These other felony offenses include aggravated battery or any felony battery offense under ch. 784, F.S., kidnapping or false imprisonment, sexual battery, lewd or lascivious offense, burglary, robbery, carjacking, and aggravated child abuse.

<sup>17</sup> Section 775.15(16)(a)4., F.S.

<sup>18</sup> Section 775.15(13)(a), F.S.

<sup>19</sup> Section 775.15(14), F.S. First degree felony sexual battery is defined as non-consensual sexual battery under certain enumerated circumstances, including in part, the victim is physically helpless to resist, the victim is threatened, the victim is physically or mentally incapacitated, or the offender is law enforcement. Section 794.011(4), F.S.

<sup>20</sup> Section 775.15(14), F.S. Second degree felony sexual battery is defined as non-consensual sexual battery without the use of physical force or violence likely to cause serious personal injury. Section 794.011(5)(b), F.S.

<sup>21</sup> The three year limitation does not commence until the earlier of the date that the victim turns 18 or the crime is reported. Section 775.15(13)(a), F.S.

<sup>22</sup> Section 775.15(13)(b), F.S.

<sup>23</sup> Section 775.15(13)(a), F.S.

The bill makes this change apply to any such offense except one already time-barred on or before July 1, 2015 (meaning it applies retroactively to previously committed offenses as long as the statute of limitation has not run on these offenses prior to July 1, 2015).

The bill also provides that this act may be cited as the “43 Days Initiative Act.”

The effective date of the bill is July 1, 2015.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC) met February 27, 2015, and determined that SB 1270 will have a positive moderate impact on state prison beds (meaning CJIC estimates that it may increase the prison population by more than 10 but less than 25 inmates annually).

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 775.15 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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