

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.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 130

INTRODUCER: Senator Stewart

SUBJECT: Sexual Battery Prosecution Time Limitation

DATE: February 1, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	Pre-meeting
2.			JU	
3.			ACJ	
4.			AP	

I. Summary:

SB 130 provides that there is no time limitation for prosecuting offenses of sexual battery when the victim is younger than 18 years of age and the offense was not barred from prosecution on or before July 1, 2019. The bill creates a new exception to the general time limitations proscribed in s. 775.15, F.S.

Section 775.15, F.S., sets forth time limitations, or statutes of limitation, after which criminal prosecutions are barred. There are standard time limitations for initiating a criminal prosecution for felony offenses based on the degree of the offense as well as a number of exceptions that apply to certain offenses or victims. Section 794.011, F.S., related to sexual battery, is an offense to which many of these exceptions apply.

The bill is effective July 1, 2019.

II. Present Situation:

Statute of Limitations

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.¹

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

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 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.²

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

- Generally, the statute of limitation that was in effect when a crime was committed controls.³
- Statutes of limitation in criminal cases should be construed liberally in favor of the defendant.⁴
- The Legislature may extend the limitations period without violating the ex post facto clause of the State Constitution⁵ 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.⁶

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, unless otherwise stated. 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.⁷

In part, s. 775.15, F.S., provides time limitations for initiating a criminal prosecution for a felony offense. The general provisions provide that there is:

- No time limitation for prosecuting a capital felony, a life felony, a felony resulting in death.⁸
- A 4-year time limitation for prosecuting a first degree felony.⁹
- A 3-year time limitation for prosecuting a second or third degree felony.¹⁰

However, a number of exceptions to the time limitation provisions mentioned above exist. Many of these exceptions are specific to certain offenses or types of victims. Section 794.011, F.S.,

² *Id.*

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

⁴ *Id.*

⁵ FLA. CONST. art. I, s. 10.

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

⁷ Section 775.15(3), F.S.

⁸ Section 775.15(1), F.S.

⁹ Section 775.15(2)(a), F.S. A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

¹⁰ Section 775.15(2)(b), F.S. A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine and a third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

related to sexual battery, is an offense to which many of these exceptions apply, including that there is:

- No time limitation for prosecuting:
 - A first degree felony sexual battery when the victim is younger than 18 years of age provided the offense was not barred from prosecution on or before October 1, 2003;¹¹
 - Any felony sexual battery when the victim is younger than 16 years of age provided the offense was not barred from prosecution on or before July 1, 2010;¹²
 - A first or second degree felony sexual battery when the victim is under 18 years of age and he or she reports the crime to law enforcement within 72 hours provided the offense was not barred from prosecution on or before December 31, 1984;¹³
 - A first or second degree felony sexual battery when the victim is 16 years of age or older and reports the crime to law enforcement within 72 hours;¹⁴
- An eight-year time limitation on prosecuting a first or second degree felony sexual battery when the victim is 16 years of age or older at the time of the offense and he or she did not report the crime to law enforcement within 72 hours provided the offense was not barred from prosecution on or before July 1, 2015.¹⁵

In addition to these enumerated time periods, the prosecution for specified offenses,¹⁶ including sexual battery, 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 collected at the time of the original investigation. The DNA sample for these prosecutions must be available for testing by the accused.¹⁷

Another exception provides that the applicable period of limitation does not begin to run until the victim of a sexual battery or other specified offense reaches the age of 18 years or the violation is reported to a law enforcement or governmental agency, whichever occurs first. This provision only applies to a victim who was younger than 18 years of age at the time of the offense.¹⁸

III. Effect of Proposed Changes:

The bill provides that there is no time limitation for prosecuting offenses of sexual battery when the victim is younger than 18 years of age and the offense was not barred from prosecution on or before July 1, 2019. This creates a new exception to the general time limitations proscribed in s. 775.15, F.S.

¹¹ Section 775.15(13)(b), F.S.

¹² Section 775.15(13)(c), F.S.

¹³ Section 775.15(13)(a), F.S.

¹⁴ Section 775.15(14)(a), F.S.

¹⁵ Section 775.15(14)(b), F.S.

¹⁶ The offenses that this provision apply to include aggravated battery or any felony battery offense under ch. 784, F.S.; kidnapping under s. 787.01, F.S.; an offense of sexual battery under ch. 794, F.S.; false imprisonment under s. 787.02, F.S.; lewd or lascivious offenses under s. 800.04, F.S., s. 825.1025, F.S., or s. 847.0135(5), F.S.; burglary offenses under s. 810.02, F.S.; robbery offenses under s. 812.13, F.S., s. 812.131, F.S., or s. 812.135, F.S.; carjacking under s. 812.133, F.S.; or aggravated child abuse under s. 827.03, F.S. Section 775.15(16)(a), F.S.

¹⁷ Section 775.15(16)(a), F.S.

¹⁸ Section 775.15(13)(a), F.S.

The bill is effective July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference has not heard the bill at this time. However, the bill creates a new exception to the time limitations for prosecuting sexual battery offenses against specified victims. To the extent that this increases the ability for felony sexual offenses to be prosecuted that would otherwise have been barred, the Department of Corrections will likely see a positive indeterminate prison bed impact.

Additionally, the bill will likely result in a positive indeterminate fiscal impact to the courts, State Attorneys, and Public Defenders due to additional resources necessary to litigate cases that would have otherwise been barred from prosecution.

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.

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