

**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 Committee on Criminal Justice

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BILL: SB 170

INTRODUCER: Senators Stewart and Perry

SUBJECT: Time Limitation on the Prosecution of Sexual Battery Cases

DATE: October 21, 2019

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stokes	Jones	CJ	<b>Pre-meeting</b>
2.			ACJ	
3.			AP	

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**I. Summary:**

SB 170 provides that there is no time limitation for prosecuting sexual battery, contrary to s. 794.011, F.S., when the victim is younger than 18 years of age at the time of the offense, and the offense is not otherwise barred from prosecution on or before July 1, 2020. This bill creates a new exception to the general time limitation proscribed in s. 775.15, F.S.

Section 775.15, F.S., sets forth time limitations for the prosecution of crime. Prosecution is barred if it is not commenced within the time limitations provided in s. 775.15, F.S. The general time limitations for the prosecution of offenses are based upon the degree of offense. This section also provides exceptions to the general time limitations. There are multiple exceptions that apply to violations of s. 794.011, F.S.

This bill is effective July 1, 2020.

**II. Present Situation:**

**Statute of Limitations**

*Historical Perspective*

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

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<sup>1</sup> *State v. Hickman*, 189 So. 2d 254, 261-62 (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.<sup>2</sup>

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.<sup>3</sup>
- Statutes of limitation in criminal cases should be construed liberally in favor of the defendant.<sup>4</sup>
- The Legislature may apply time limitations retroactively 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>
- Courts have recently upheld extensions of time limitations for sexual battery when the amendment takes effect before the case was procedurally barred.<sup>7</sup>

### ***Existing Provisions***

Section 775.15, F.S., sets forth time limitations, also referred to as statutes of limitation, for the prosecution of crime. Prosecution is barred if it is not commenced within the time limitations provided in this section. The time 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.<sup>8</sup>

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

<sup>3</sup> *Beyer v. State*, 76 So.3d 1132, 1134 (Fla. 4th DCA 2012).

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

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

<sup>6</sup> *Schargschwerdt v. Kanerek*, 553 So.2d 218, 220 (Fla. 4th DCA 1989), citing *Andrews v. State*, 392 So.2d 270 (Fla. 2d DCA 1980), rev. denied, 399 So.2d 114 (Fla. 1981); See also *United States v. Richardson*, 512 F. 2d 105, 106 (3rd Cir. 1975); *Smith v. State*, 213 So.3d 722, 1740 (Fla. 2017).

<sup>7</sup> *Brown v. State*, 179 So. 3d 466, 468 (Fla. 4th DCA 2015) (The court affirmed the conviction for one count of sexual battery on a victim less than 16 years of age. The abuse occurred between May 1997 and July 1998. The abuse was reported November 15, 1999. The State brought charges against the defendant in 2011. The Statute of limitation in effect at the time of the offense would have barred prosecution in November 2003; however, the Legislature amended the statute of limitations in October 2003 to provide no time limitation for the offense for which the defendant was charged. Because the case was not barred at the time the amended statute of limitations went into effect, the court held that the statute of limitation was properly extended and did not violate the ex post facto clause).

<sup>8</sup> Section 775.15(3), F.S.

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.<sup>9</sup>
- A 4-year time limitation for prosecuting a first degree felony.<sup>10</sup>
- A 3-year time limitation for prosecuting a second or third degree felony.<sup>11</sup>

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. Many of these exceptions apply to sexual battery, contrary to s. 794.011, F.S. These exceptions include:

- No time limitation for prosecuting:
  - 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;<sup>12</sup>
  - 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;<sup>13</sup>
  - 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;<sup>14</sup>
  - 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;<sup>15</sup>
- There is 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 provided the offense was not barred from prosecution on or before July 1, 2015, except for:
  - 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; or
  - 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.<sup>16</sup>

In addition to the time periods prescribed in this section, the prosecution for specific enumerated offenses,<sup>17</sup> 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

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

<sup>10</sup> 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.

<sup>11</sup> 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.

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

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

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

<sup>15</sup> Section 775.15(14)(a), F.S.

<sup>16</sup> Section 775.15(14)(b), F.S.

<sup>17</sup> Section 775.15(16)(a), F.S., applies these provisions to the following offenses: aggravated battery or any felony battery offense under ch. 784, F.S.; kidnapping offenses under s. 787.01, F.S., or false imprisonment offenses under s. 787.02, F.S.; sexual battery offenses under ch. 794, 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 offenses under s. 812.133, F.S.; or aggravated child abuse under s. 827.03, F.S.

the original investigation. The DNA sample for these prosecutions must be available for testing by the accused.<sup>18</sup>

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.<sup>19</sup>

### **III. Effect of Proposed Changes:**

The bill provides that there is no time limitation for prosecuting offenses of sexual battery, contrary to s. 794.011, F.S., when the victim is younger than 18 years of age and the offense was not barred from prosecution on or before July 1, 2020. This creates a new exception to the general time limitations proscribed in s. 775.15, F.S.

This change is retroactive to previously committed offenses, provided the offense is not otherwise barred on the date the legislation takes effect.

The bill is effective July 1, 2020.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

It is possible that the requirements of the bill related to time limitations may result in local fund expenditures for housing offenders in county jail, or investigating offenses that otherwise would have been barred from prosecution. However, because any such local funding resulting from the requirements of the bill will directly relate to the defense and prosecution of criminal offenses, under Article VII, subsection 18(d) of the Florida Constitution, it appears there is no unfunded mandate.

#### **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.

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<sup>18</sup> Section 775.15(16)(a), F.S.

<sup>19</sup> Section 775.15(13)(a), F.S.

**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. The Department of Corrections may see a positive indeterminate prison bed impact if there is an increase in prosecution of felony sex offenses due to extending the time limitation for crimes not barred on or before July 1, 2020.

Additionally, the bill may result in a positive indeterminate fiscal impact to the courts, State Attorneys, and Public Defenders due to extending the time limitations for crimes not bared on or before July 1, 2020.

**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.