

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 199 Sexual Battery Prosecution Time Limitation
SPONSOR(S): Criminal Justice Subcommittee, Davis, Plakon and others
TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 170

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Frost	Hall
2) Justice Appropriations Subcommittee	12 Y, 0 N	Jones	Gusky
3) Judiciary Committee	16 Y, 0 N	Frost	Luczynski

SUMMARY ANALYSIS

The statute of limitations (SOL) determines the timeframe in which a criminal prosecution must be initiated. In general, time is calculated from the day after a person commits an offense, and the filing of an indictment or information initiates the prosecution for purposes of satisfying the time limitations. Section 775.15, F.S., provides the SOL for crimes in Florida. Capital felonies, life felonies, and felonies resulting in a death are not subject to time limitations. Standard time limitations for all other crimes are:

- Four years for a first degree felony.
- Three years for a second or third degree felony.
- Two years for a first degree misdemeanor.
- One year for a second degree misdemeanor.

Exceptions to the standard SOL apply to certain crimes and circumstances. In particular, Florida law changes the date on which calculation of the SOL begins and extends or removes the SOL for sex crimes, including sexual battery, lewd or lascivious offenses, and human trafficking.

Sexual battery means oral, anal, or vaginal penetration by, or union with, the sexual organ of another, or the anal or vaginal penetration of another by any other object. The following SOL apply to sexual battery offenses:

- No SOL, and prosecution may be commenced at any time, for:
 - Any sexual battery involving a victim under 16;
 - A first degree felony sexual battery involving a victim under 18; and
 - A first or second degree felony sexual battery involving a victim 16 or older, but only if the offense is reported within 72 hours of commission.
- If not reported within 72 hours of commission, prosecution of a first or second degree felony sexual battery involving a victim 16 or older must be commenced within eight years.
- Prosecution of solicitation of sexual battery on a 16 or 17-year-old victim by a person in familial or custodial authority must be commenced within three years.
- However, if a victim is under 18 at the time any of the above offenses are committed, the applicable SOL does not begin to run until he or she turns 18 or the offense is reported to law enforcement, whichever is earlier.

CS/HB 199 creates “Donna’s Law” to remove the SOL and permit prosecution to be commenced at any time for any sexual battery offense involving a victim younger than 18 at the time the offense is committed. The bill applies only to a qualifying offense committed on or after July 1, 2020.

The Criminal Justice Impact Conference considered the bill on January 27, 2020, and determined the bill will have a positive insignificant impact on the number of prison beds, meaning an increase of 10 or fewer beds.

The bill provides an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Statute of Limitations

The statute of limitations (SOL) determines the timeframe in which a criminal prosecution must be initiated.¹ The SOL in effect at the time a crime is committed controls.² In general, time is calculated from the day after a person commits an offense, and the filing of a charging document such as an indictment or information initiates the prosecution for the purpose of satisfying the time limitations.³ Regardless of whether a charging document is filed, the time limitation does not run during any time an offender is continuously absent from the state or otherwise undiscoverable because he or she lacks a reasonably ascertainable home address or place of employment; however, an extension under this scenario may not exceed the normal time limitation by more than three years.⁴

Capital felonies,⁵ life felonies,⁶ and felonies resulting in a death are not subject to time constraints, and the state may bring charges at any time.⁷ The standard time limitations for other crimes are:⁸

- Four years for a first degree felony.
- Three years for a second or third degree felony.
- Two years for a first degree misdemeanor.
- One year for a second degree misdemeanor.

Exceptions to Standard SOL for Sex Crimes

Exceptions to the standard SOL apply to certain crimes and circumstances. In particular, Florida extends or removes time limitations or changes the date on which calculation of the SOL begins for sex crimes, including sexual battery, lewd or lascivious offenses, and human trafficking.⁹

Sexual Battery

Section 794.011, F.S., criminalizes sexual battery offenses. Sexual battery means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object.¹⁰ The offense level for sexual battery differs based on the offender's age, the victim's age, and the presence of other specified circumstances, as follows:

¹ S. 775.15, F.S.

² *Beyer v. State*, 76 So. 3d 1132, 1135 (Fla. 4th DCA 2012).

³ Ss. 775.15(3)–(4), F.S.

⁴ S. 775.15(5), F.S.

⁵ S. 775.082, F.S.

⁶ *Id.*

⁷ S. 775.15(1), F.S.

⁸ S. 775.15(2), F.S.

⁹ An extension of a particular crime's SOL does not violate the ex post facto clause of the Florida Constitution if the extension takes effect before prosecution of an offense is barred by the old SOL and the new SOL clearly indicates it applies to cases pending upon its effective date. Art. I, s. 10, Fla. Const.; *Andrews v. State*, 392 So. 2d 270, 271 (Fla. 2d DCA 1980).

¹⁰ S. 794.011(1)(h), F.S.

Subsection	Offender's Age	Victim's Age	Special Circumstances Present	Felony Level
(2)(a)	≥ 18 yrs.	< 12 yrs.	Injures the victim's sexual organs	Capital
(2)(b)	< 18 yrs.	< 12 yrs.	Injures the victim's sexual organs	Life
(3)	No age requirement	≥ 12 yrs.	Uses or threatens to use a deadly weapon or uses actual physical force likely to cause serious personal injury	Life
(4)(a)	≥ 18 yrs.	≥ 12 yrs., but < 18 yrs.	Any circumstance listed in s. 794.011(4)(e), F.S.	First
(4)(b)	≥ 18 yrs.	≥ 18 yrs.	Any circumstance listed in s. 794.011(4)(e), F.S.	First
(4)(c)	< 18 yrs.	≥ 12 yrs.	Any circumstance listed in s. 794.011(4)(e), F.S.	First
(4)(d)	No age requirement	≥ 12 yrs.	Any circumstance listed in s. 794.011(4)(e), F.S., and offender was previously convicted of an enumerated sexually motivated offense against a child	First
(5)(a)	≥ 18 yrs.	≥ 12 yrs., but < 18 yrs.	No physical force or violence likely to cause serious personal injury	First
(5)(b)	≥ 18 yrs.	≥ 18 yrs.	No physical force or violence likely to cause serious personal injury	Second
(5)(c)	< 18 yrs.	≥ 12 yrs.	No physical force or violence likely to cause serious personal injury	Second
(5)(d)	No age requirement	≥ 12 yrs.	No physical force or violence likely to cause serious personal injury but offender was previously convicted of an enumerated sexually motivated offense against a child	First

Section 794.011(4)(e), F.S., lists specified aggravating factors, including:

- The victim is physically helpless to resist;
- The offender coerces the victim to submit by threatening the use of force or violence likely to cause serious personal injury to the victim, and the victim reasonably believes that the offender has the present ability to execute the threat;
- The offender coerces the victim to submit by threatening to retaliate against the victim, or any other person, and the victim reasonably believes that the offender has the ability to execute the threat in the future;
- The offender, without the prior knowledge or consent of the victim, administers or has knowledge of someone else administering to the victim any narcotic, anesthetic, or other intoxicating substance that mentally or physically incapacitates the victim;
- The victim is mentally defective, and the offender has reason to believe this or has actual knowledge of the fact;
- The victim is physically incapacitated;
- The offender is a law enforcement officer, correctional officer, or correctional probation officer,¹¹ or is an elected official exempt from such certification,¹² or any other person in a position of control or authority in a probation, community control, controlled release, detention, custodial, or similar setting, and such officer, official, or person is acting in such a manner as to lead the victim to reasonably believe that the offender is in a position of control or authority as an agent or employee of government.

¹¹ As defined in ss. 943.10(1), (2), (3), (6), (7), (8), or (9), F.S., and who is certified under s. 943.1395, F.S.

¹² Under s. 943.253, F.S.

Exceptions to Standard SOL for Sex Crimes

Under s. 775.15, F.S., the following SOL apply to sexual battery prosecutions:

- No SOL, and prosecution may be commenced at any time, for:
 - Any sexual battery involving a victim under 16;¹³
 - A first degree felony sexual battery involving a victim under 18;¹⁴ and
 - A first or second degree felony sexual battery involving a victim 16 or older,¹⁵ but only if the offense is reported within 72 hours of commission.¹⁶
- If not reported within 72 hours of commission, prosecution of a first or second degree felony sexual battery involving a victim 16 or older must be commenced within eight years.^{17, 18}
- The standard SOL applies for prosecution of solicitation of sexual battery on a 16 or 17-year-old victim by a person in familial or custodial authority, a third degree felony, and must be commenced within three years.¹⁹
- However, if a victim is under 18 at the time any of the above offenses are committed, the applicable SOL does not begin to run until he or she turns 18 or the violation is reported to law enforcement or a governmental agency, whichever occurs earlier.²⁰

Florida also removes the standard SOL for other sexually motivated crimes. For example:

- A prosecution for lewd or lascivious battery²¹ or molestation²² may be commenced at any time, unless at the time of an offense, the offender was:
 - Less than 18 years old; and
 - No more than four years older than the victim.²³
- A prosecution for human trafficking²⁴ may be commenced at any time.²⁵

Reporting Sexual Violence

The Centers for Disease Control and Prevention's 2015 National Intimate Partner and Sexual Violence Survey found that sexual violence is a serious public health problem affecting millions of people in the U.S. every year, resulting in chronic physical and psychological adverse health conditions. Experiencing sexual violence as a child or teen puts a person at risk for repeated victimization as an adult.²⁶ According to the survey, more than one in three women and nearly one in four men will experience sexual violence involving physical contact at some point in their lives, and nearly one in five women and nearly one in 38 men have experienced attempted or completed rape in their lifetimes.

¹³ Prosecution must not have been barred by s. 775.15(2), F.S., on or before July 1, 2010. S. 775.15(13)(c), F.S.

¹⁴ Prosecution must not have been barred by s. 775.15(2), F.S., on or before October 1, 2003. S. 775.15(13)(b), F.S.

¹⁵ If a victim is 16 or 17, prosecution must not have been barred by s. 775.15(2), F.S., on or before July 1, 2015. If a victim is 18 or older, prosecution of the offense must not have been barred by s. 775.15(2), F.S., on or before October 1, 2003.

¹⁶ Ss. 775.15(13)(a) and (14)(a), F.S.

¹⁷ Prosecution must not have been barred by s. 775.15(2), F.S., on or before July 1, 2015. S. 775.15(14)(b), F.S.

¹⁸ For example, if not reported within 72 hours, prosecution of a sexual battery without physical force or violence likely to cause serious injury upon a 16 or 17-year-old victim, a second degree felony, must be commenced within eight years.

¹⁹ S. 775.15(2)(b), F.S.

²⁰ S. 775.15(13)(a), F.S.

²¹ Engaging in sexual activity with a person 12 years of age or older but less than 16 years of age; or encouraging, forcing, or enticing any person less than 16 years of age to engage in sadomasochistic abuse; sexual bestiality; prostitution; or any other act involving sexual activity. S. 800.04(4), F.S.

²² Intentionally touching in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person under 16; or forcing or enticing a person under 16 to so touch the perpetrator. S. 800.04(5), F.S.

²³ Except for an offense which would have been barred by s. 775.15(2), F.S., on or before October 1, 2014.

²⁴ Human trafficking is modern-day slavery involving exploitation of an adult by using fraud, force, or coercion, or exploitation of a minor. A person commits human trafficking by transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploiting that person. S. 787.06, F.S.

²⁵ Except for an offense which would have been barred by s. 775.15(2), F.S., on or before October 1, 2014.

²⁶ Centers for Disease Control and Prevention, *Violence Prevention*,

<https://www.cdc.gov/violenceprevention/datasources/nisvs/2015NISVSdatabrief.html> (last visited Feb. 12, 2020).

Among victims of completed or attempted rape, the following figures apply to the age when individuals first experienced victimization:²⁷

- 43.2 percent of female victims experienced victimization prior to age 18, and of those individuals:
 - 30.5 percent between ages 11 and 17; and
 - 12.7 percent at age 10 or younger.
- 51.3 percent of male victims experienced victimization prior to age 18, and of those individuals:
 - 25.3 percent between ages 11 and 17; and
 - 26 percent at age 10 or younger.

Among male victims who were forced to perform a sexual act on someone else, the majority first experienced victimization before age 25, while approximately one quarter report that their first victimization occurred before the age of 18, and 19.2 percent report a first occurrence between the ages of 11 and 17.²⁸

According to the National Sexual Violence Resource Center (NSVRC), rape is the most under-reported crime.²⁹ The NSVRC finds that:

- 63 percent of sexual assaults are not reported to police;³⁰ and
- Only 12 percent of child sexual abuse is reported to appropriate authorities.³¹

A sexual abuse victim may struggle with a range of emotions making it difficult to report or disclose the abuse. Victims who report sexual abuse often delay doing so for reasons related to neurobiological and psychological responses to their assault.³² According to the Rape, Abuse, and Incest National Network and the Department of Justice National Sex Offender Public Website, teen victims may fail to report sexual abuse because of:

- Emotional pain;
- Shame;
- Fear of not being believed;
- Fear of being blamed;
- Fear of punishment or reprisal;
- Feeling partially responsible;
- Traumatic psychological reactions;
- Confidentiality limitations;
- Fear that nothing will be done; and
- Cultural or religious reasons.³³

Effect of Proposed Changes

CS/HB 199 creates “Donna’s Law”³⁴ to remove the SOL for the prosecution of sexual battery offenses involving a victim younger than 18 at the time the offense is committed. The bill creates consistency for

²⁷ *Id.*

²⁸ *Id.*

²⁹ National Sexual Violence Resource Center, *Statistics about Sexual Violence*, https://www.nsvrc.org/sites/default/files/publications_nsvrc_factsheet_media-packet_statistics-about-sexual-violence_0.pdf (last visited Feb. 12, 2020).

³⁰ *Id.*

³¹ *Id.*

³² National Sexual Violence Resource Center, *False Reporting Overview*, https://www.nsvrc.org/sites/default/files/Publications_NSVRC_Overview_False-Reporting.pdf (last visited Feb. 12, 2020).

³³ National Child Traumatic Stress Network, *Why Don't they Tell? Teens and Sexual Assault Disclosure*, https://www.nctsn.org/sites/default/files/resources/fact-sheet/why_dont_they_tell_teens_and_sexual_assault_disclosure.pdf (last visited Feb. 12, 2020).

³⁴ In December 1971, Donna Hedricks was 15 years old when her 28-year-old high school chorus teacher forced her to have sex with him. Ms. Hedricks never reported the crime as a child, but 40 years later, she and at least five more former students have spoken publicly about being abused by the former teacher. Because the law in the 1970's required a victim to report sexual battery within four years, Donna's former teacher will never face potential charges for the allegations against him. Change.org, *Support Donna's Law and End Sex Crimes Against Children in Florida*, <https://www.change.org/p/florida-governor-rick-scott-abolishing-the-statute-of-limitations-for-sexual-crimes-against-minors-in->

commencing prosecution of any sexual battery offense committed on a minor victim, regardless of the degree of felony or time frame in which the minor victim reported the offense to law enforcement.

The bill may increase the number of offenders facing charges for sexual battery of a minor by authorizing prosecution of some offenses that would currently be barred because of a minor victim's delayed report of the offense. The bill applies only to a qualifying offense committed on or after July 1, 2020.

The bill provides an effective date of July 1, 2020.

B. SECTION DIRECTORY:

Section 1: Declares this act may be cited as "Donna's Law."

Section 2: Amends s. 775.15, F.S., relating to time limitations; general time limitations; exceptions.

Section 3: Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference considered the bill on January 27, 2020, and determined the bill will have a positive insignificant impact on the number of prison beds (an increase of 10 or fewer beds) by removing any time limitations for the prosecution of sexual battery crimes against minor victims.

The bill may result in increased investigative expenditures for state attorneys and public defenders assigned to prosecute and defend a crime which may have occurred years in advance of being reported to law enforcement.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have a positive impact on the number of jail beds by removing any time limitations for the prosecution of sexual battery crimes against minor victims.

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. The bill appears to be exempt from the requirements of Article VII, section 18, of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not Applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 15, 2020, the Criminal Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Clarified that the bill is not retroactive, and the removal of the SOL applies only to a qualifying offense committed on or after July 1, 2020.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.