

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 Children, Families, and Elder Affairs

BILL: CS/SB 1244

INTRODUCER: Criminal Justice Committee and Senator Gibson

SUBJECT: Statutes of Limitations for Sexual Offenses

DATE: February 7, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stokes</u>	<u>Jones</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Moody</u>	<u>Cox</u>	<u>CF</u>	<u>Favorable</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1244 amends s. 775.15, F.S., to provide that there is no time limitation for the prosecution of:

- Any offense in ch. 794, F.S., relating to sexual battery, with specified exceptions;
- Section 800.04(7)(a)3., F.S., relating to certain acts of lewd or lascivious exhibition; or
- Section 827.071(2) or (3), F.S., relating to use of a child in a sexual performance or promoting a sexual performance of a child.

The bill provides that the exceptions to time limitations apply to any offense that is not otherwise barred from prosecution on or before July 1, 2022.

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 this section. The general time limitations for the prosecution of offenses are based upon the degree of offense, however there are multiple exceptions to the general time limitations.

The bill is effective July 1, 2022.

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.¹

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 apply time limitations retroactively 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
- Courts have recently upheld extensions of time limitations for sexual battery when the amendment takes effect before the case was procedurally barred.⁷

¹ *State v. Hickman*, 189 So. 2d 254, 261-62 (Fla. 2d DCA 1966).

² *Id.*

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

⁴ *Id.*

⁵ FLA. CONST. art. I, s. 10.

⁶ *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).

⁷ *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).

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.⁸

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

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. These exceptions apply, in part, to violations of s. 794.011, F.S., relating to sexual battery, and violations of s. 800.04, F.S., relating to lewd and lascivious offenses. 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;¹²
 - 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;¹³
 - 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;¹⁴
 - 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;¹⁵
 - Any sexual battery offense, when the victim is younger than 18 years of age when the offense was committed, and the offense was committed on or after July 1, 2020.¹⁶
 - A violation of s. 800.04(4) or (5), F.S., relating to lewd or lascivious battery or molestation, when the victim was under 16 years of age at the time of the offense, and the offense was not barred from prosecution on or before October 1, 2014. This exception to

⁸ Section 775.15(3), F.S.

⁹ Section 775.15(1), F.S.

¹⁰ 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.

¹¹ 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.

¹² Section 775.15(13)(a), F.S.

¹³ Section 775.15(13)(b), F.S.

¹⁴ Section 775.15(13)(c), F.S.

¹⁵ Section 775.15(14)(a), F.S.

¹⁶ Section 775.15(20), F.S.

- the time limitation does not apply if the offender is less than 18 years of age and no more than 4 years older than the victim.¹⁷
- 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, 2003.¹⁸

In addition to the time periods prescribed in this section, the prosecution for specific enumerated offenses,¹⁹ including sexual battery, and lewd or lascivious offenses, 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.²⁰ This exception applies to offenses that are not otherwise barred on or after July 1, 2006.^{21, 22}

Another exception provides that the applicable period of limitation does not begin to run until the victim of a sexual battery, lewd or lascivious offense, 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.²³

Sexually Related Offenses

Sexual Battery

Chapter 794, F.S., contains numerous sections of law relating to sexual battery. Felony crimes contained in the chapter include:

- Section 794.011, F.S., provides that “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; however, sexual battery does not include an act done for a bona fide medical purpose.²⁴ Sexual battery offenses are categorized by certain factors including the

¹⁷ Section 775.15(18), F.S.

¹⁸ Section 775.15(14)(b), F.S.

¹⁹ 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.

²⁰ Section 775.15(16)(a), F.S.

²¹ Section 775.15(16)(b), F.S.

²² *Bryson v. State*, 42 So. 3d 852 (Fla. 1st DCA 2010) (holding that the appellants prosecution was not barred, and that s. 775.15(16), F.S., could be applied because appellant's case was not barred at the time that section was enacted).

²³ Section 775.15(13)(a), F.S.

²⁴ Section 794.011(1)(h), F.S.

offender's age, the victim's age, and specified circumstances. Generally, absent any specified circumstances, a sexual battery is a second degree felony.²⁵

- Section 794.08, F.S., provides criminal penalties related to female genital mutilation.²⁶
- Section 794.05, F.S., provides that a person who is 24 years of age or older who engages in sexual activity with a person 16 or 17 years of age commits a second degree felony.²⁷

Chapter 794, F.S., also contains the following misdemeanor crimes:

- Section 794.024, F.S., provides that it is a second degree misdemeanor²⁸ for a public employee or officer who has access to the photograph, name, or address of a person who is alleged to be the victim of specified offenses to willfully and knowingly disclose that information, except to specified persons or entities.²⁹
- Section 794.027, F.S., provides that it is a first degree misdemeanor³⁰ to observe the commission of a sexual battery and fail to seek assistance.³¹
- Section 794.03, F.S., provides that it is a second degree misdemeanor, except in certain circumstances, for a person to print, publish, or broadcast, or cause or allow to be printed, published, or broadcast, in any instrument of mass communication the name, address, or other identifying fact or information of the victim of any sexual offense under ch. 794, F.S.
- Section 794.075, F.S., provides that it is a second degree misdemeanor for a first offense, and a first degree misdemeanor for a second or subsequent offense, for a designated sexual predator to possess a drug for the purpose of treating erectile dysfunction.

Additionally, ch. 794, F.S., provides various sections of law relating to sexual battery but do not contain misdemeanor or felony offenses. For example, s. 794.026, F.S., provides a victim with a civil cause of action against a person or entity who communicates to others, prior to open judicial proceedings, the name, address, or other specific identifying information about the victim of any sexual offense under ch. 794 or ch. 800, F.S.

Lewd and Lascivious Offenses

Section 800.04, F.S., contains numerous offenses relating to lewd or lascivious offenses committed on or in the presence of a person younger than 16 years of age.

Section 800.04(7)(a), F.S., provides that a person commits a lewd or lascivious exhibition when he or she, in the presence of a victim who is younger than 16 years of age, intentionally:

²⁵ The maximum term of imprisonment for a second degree felony is 15 years imprisonment and a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S.

²⁶ Currently, the general time limitations contained in s. 775.15(1), F.S., apply to s. 794.08, F.S.

²⁷ Currently, the general time limitations contained in s. 775.15(1), F.S., apply to s. 794.05, F.S.

²⁸ A second degree misdemeanor is punishable by up to 60 days in county jail and a fine not exceeding \$500. Sections 775.082 and 775.083, F.S.

²⁹ Section 794.024, F.S., specific offenses include a violation of ch. 794, ch. 800, ss. 827.03, 827.04, or 827.071, F.S.; specified persons or entities include a person assisting in the investigation or prosecution of the alleged offense, the defendant, the defendant's attorney, a person specified in a court order, an organization authorized to receive such information made exempt by s. 119.071(2)(h), F.S., or to a rape crisis center or sexual assault counselor as defined in s. 90.5035(1)(b), F.S., who will be offering services to the victim.

³⁰ A first degree misdemeanor is punishable by up to a year in county jail and a fine not exceeding \$1,000. Sections 775.082 and 775.083, F.S.

³¹ Section 794.027, F.S.

- Masturbates;³²
- Exposes the genitals in a lewd or lascivious manner;³³ or
- Commits any other sexual act that does not involve actual physical or sexual contact with the victim, including but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity.³⁴

Sexual Performance by a Child

Section 827.071, F.S., specifies the criminal offenses for the production of child pornography and the possession and promotion of child pornography. It is a second degree felony for a person:

- Knowing the character and content thereof, to employ, authorize, or induce a child to engage in a sexual performance.^{35, 36}
- Who is a parent, legal guardian or custodian to consent for a child to participate in a sexual performance.³⁷
- Knowing the character and content, to produce, direct, or promote³⁸ any performance which includes sexual conduct by a child.³⁹

III. Effect of Proposed Changes:

The bill amends s. 775.15, F.S., to provide that there is no time limitation for the prosecution of:

- Any offense in ch. 794, F.S., relating to sexual battery, except:
 - Section 794.024, F.S., relating to unlawful to disclose identifying information;
 - Section 794.027, F.S., relating to duty to report sexual battery; penalties;
 - Section 794.03, F.S., relating to unlawful to publish or broadcast information identifying sexual offense victim; and
 - Section 794.075, F.S., relating to sexual predators; erectile dysfunction drugs.
- Section 800.04(7)(a)3., F.S., relating to certain acts of lewd or lascivious exhibition; or
- Section 827.071(2) or (3), F.S., relating to use of a child in a sexual performance or promoting a sexual performance of a child.

The bill provides that the exceptions to time limitations apply to any offense that is not otherwise barred from prosecution on or before July 1, 2022.

The bill is effective July 1, 2022.

³² Section 800.04(7)(a)1., F.S.

³³ Section 800.04(7)(a)2., F.S.

³⁴ Section 800.04(7)(a)3., F.S.

³⁵ Section 827.071(2), F.S.

³⁶ Section 827.071(1)(c), F.S., provides “performance” means any play, motion picture, photograph, or dance or any other visual representation exhibited before an audience.

³⁷ Section 827.071(2), F.S.

³⁸ Section 827.071(1)(d), F.S., provides “promote” means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit, or advertise or to offer to agree to do the same.

³⁹ Section 827.071(3), F.S.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

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

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 reviewed the bill at this time. However, the bill will likely have a positive indeterminate (unquantifiable positive prison bed) impact on the Department of Corrections due to removing the time limitation for prosecution of these offenses. There may be individuals in the future who are prosecuted, who would have otherwise been barred from prosecution without the changes made in the bill.

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 Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on February 1, 2022:

The committee substitute removes s. 794.026, F.S., from the list of exceptions provided in the bill. Additionally, the bill removes unnecessary language to clarify the applicability of the bill.

- B. **Amendments:**

None.