

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 521 Time Limitations for Prosecution of Certain Sexual Offenses

**SPONSOR(S):** Criminal Justice Subcommittee, Hunschofsky

**TIED BILLS:** IDEN./SIM. BILLS: SB 424

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	17 Y, 0 N, As CS	Leshko	Hall

**SUMMARY ANALYSIS**

The statute of limitations (SOL) determines the timeframe in which a criminal prosecution must be initiated. The SOL in effect at the time a crime is committed controls. 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.

Capital felonies, life felonies, and felonies resulting in a death are not subject to time constraints, and the state may bring charges at any time. The standard time limitations for 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; and one year for a second-degree misdemeanor.

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 specified sexual battery offenses. Section 794.011, F.S., criminalizes sexual battery offenses and defines sexual battery as oral, anal, or female genital penetration by, or union with, the sexual organ of another or the anal or female genital penetration of another by any other object.

Section 775.15(14), F.S., provides that if not reported to a law enforcement agency within 72 hours of commission, a first or second-degree sexual battery offense involving a victim 16 or older must be commenced within eight years, unless a specified exception applies. If, however, the offense is reported to a law enforcement agency within the 72-hour window, a first or second-degree felony sexual battery involving a victim 16 or older may be commenced at any time.

CS/HB 521 amends s. 775.15, F.S., to create an exception to the standard SOL and authorize a prosecution for a first or second-degree felony sexual battery offense to be commenced at any time if a victim is 18 years of age or older at the time of the offense and he or she reports the offense to a law enforcement agency or a person acting within the scope of his or her practice who is a licensed medical doctor, osteopathic doctor, psychologist, or clinical psychotherapist within 21 days after commission of the offense. This exception to the standard SOL applies to an offense that is committed on or after July 1, 2023.

The bill makes a technical change to clarify that any sexual battery offense involving a victim under 18 years of age, which may be prosecuted at any time under s. 775.15(20), F.S., is not subject to the eight-year SOL for the prosecution of a first or second-degree sexual battery offense under s. 775.15(14)(b), F.S.

The bill may have an indeterminate positive impact on the number of jail and prison beds by removing time limitations for the prosecution of specified sexual battery crimes committed against victims who are 18 years of age or older at the time of the offense provided such victims timely report the offense to law enforcement or another specified professional. Additionally, the bill may have an indeterminate negative fiscal impact on state attorney's and public defender's offices due to an increase in workload if more prosecutions are commenced under the new time limits.

The bill provides an effective date of July 1, 2023.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Time Limitations for Prosecution

The statute of limitations (SOL) determines the timeframe in which a criminal prosecution must be initiated.<sup>1</sup> The SOL in effect at the time a crime is committed controls.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

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

- 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 Sexual Battery Offenses

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<sup>9</sup> for specified sexual battery offenses.<sup>10</sup>

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;<sup>11</sup>
  - Any sexual battery involving a victim under 18;<sup>12</sup>
  - A first-degree felony sexual battery involving a victim under 18;<sup>13</sup> and
  - A first or second-degree felony sexual battery involving a victim 16 or older but less than 18 years of age,<sup>14</sup> if the offense is reported within 72 hours of commission.<sup>15</sup>
- 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.<sup>16</sup>

---

<sup>1</sup> S. 775.15, F.S.

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

<sup>3</sup> S. 775.15(3-4), F.S.

<sup>4</sup> S. 775.15(5), F.S.

<sup>5</sup> S. 775.082, F.S.

<sup>6</sup> *Id.*

<sup>7</sup> S. 775.15(1), F.S.

<sup>8</sup> S. 775.15(2), F.S.

<sup>9</sup> See s. 775.15, F.S.

<sup>10</sup> 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. s. 10, art. I, Fla. Const.; *Andrews v. State*, 392 So. 2d 270, 271 (Fla. 2d DCA 1980).

<sup>11</sup> 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.

<sup>12</sup> Prosecution must not have been barred by s. 775.15(2), F.S., on or before July 1, 2020. S. 775.15(20), F.S.

<sup>13</sup> 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.

<sup>14</sup> If a victim is less than 18 years of age, prosecution of the offense must not have been barred by s. 775.15(2), F.S., on or before December 31, 1984. S. 775.15(13)(a), F.S.

<sup>15</sup> S. 775.15(13)(a) and (14)(a), F.S.

<sup>16</sup> 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.

- However, if a victim is under 18 at the time any of the above sexual battery 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.<sup>17</sup>

### Sexual Battery

Section 794.011, F.S., criminalizes sexual battery offenses. Sexual battery means oral, anal, or female genital penetration by, or union with, the sexual organ of another or the anal or female genital penetration of another by any other object.<sup>18</sup> 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:

Subsection	Offender's Age	Victim's Age	Special Circumstances Present	Felony Level
(2)(a)	≥ 18 yrs.	< 12 yrs.	None required	Capital
(2)(b)	< 18 yrs.	< 12 yrs.	None required	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.	1st
(4)(b)	≥ 18 yrs.	≥ 18 yrs.	Any circumstance listed in s. 794.011(4)(e), F.S.	1st
(4)(c)	< 18 yrs.	≥ 12 yrs.	Any circumstance listed in s. 794.011(4)(e), F.S.	1st
(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 minor	1st
(5)(a)	≥ 18 yrs.	≥ 12 yrs., but < 18 yrs.	No physical force or violence likely to cause serious personal injury	1st
(5)(b)	≥ 18 yrs.	≥ 18 yrs.	No physical force or violence likely to cause serious personal injury	2nd
(5)(c)	< 18 yrs.	≥ 12 yrs.	No physical force or violence likely to cause serious personal injury	2nd
(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 minor	1st

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;

<sup>17</sup> S. 775.15(13)(a), F.S.

<sup>18</sup> S. 794.011(1)(j), F.S.

- The offender is a law enforcement officer, correctional officer, or correctional probation officer,<sup>19</sup> or is an elected official exempt from such certification,<sup>20</sup> 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 the government.

### Forensic Physical Exams and Sexual Assault Kits

In Florida, a victim of certain sexual offenses may have a forensic physical examination conducted by a healthcare provider for free, regardless of whether the victim participates in the criminal justice system or cooperates with law enforcement.<sup>21</sup> A sexual assault kit (SAK), sometimes referred to as a “rape kit,” is a medical kit used to collect evidence from a sexual assault victim’s body and clothing during a forensic physical examination. A SAK typically contains standardized items including swabs, tubes, glass slides, containers, and plastic bags used to collect and preserve bodily fluids, hair, and fibers that may contain the perpetrator’s DNA or other forensic evidence.<sup>22</sup> SAKs are submitted by law enforcement agencies to crime laboratories for DNA analysis and resulting DNA profiles are uploaded to local, state, and federal DNA databases to determine whether a match identifying the perpetrator can be made.

According to the U.S. Department of Justice, the recommended time frames for evidence collection using a SAK are as follows:<sup>23</sup>

Type of Assault	Collection Time
Vaginal	Up to 120 hours (5 days)
Anal	Up to 72 hours (3 days)
Oral	Up to 24 hours (1 day)
Bite marks/saliva on skin	Up to 96 hours (4 days)
Unknown	Collect respective samples within the time frames listed above

However, there may be case-specific circumstances that support sample collection beyond any standardized collection period.<sup>24</sup>

### **Effect of Proposed Changes**

CS/HB 521 amends s. 775.15, F.S., to create an exception to the standard SOL and authorize a prosecution for a first or second-degree felony sexual battery<sup>25</sup> offense to be commenced at any time if a victim is 18 years of age or older at the time of the offense and he or she reports the offense to a law enforcement agency or a person acting within the scope of his or her practice who is a licensed medical doctor,<sup>26</sup> osteopathic doctor,<sup>27</sup> psychologist,<sup>28</sup> or clinical psychotherapist<sup>29</sup> within 21 days after commission of the offense. This exception to the standard SOL applies to an offense that is committed on or after July 1, 2023.

<sup>19</sup> As defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9), F.S., and who is certified under s. 943.1395, F.S.

<sup>20</sup> Under s. 943.253, F.S.

<sup>21</sup> S. 960.28, F.S.

<sup>22</sup> The White House, Office of the Press Secretary, *Fact Sheet: Investments to Reduce The National Rape Kit Backlog And Combat Violence Against Women*, (Mar. 16, 2015) <https://obamawhitehouse.archives.gov/the-press-office/2015/03/16/fact-sheet-investments-reduce-national-rape-kit-backlog-and-combat-viole> (last visited Mar. 29, 2023).

<sup>23</sup> U.S. Department of Justice, *National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach*, <https://www.ojp.gov/pdffiles1/nij/250384.pdf> (last visited Mar. 29, 2023).

<sup>24</sup> *Id.*

<sup>25</sup> S. 794.011, F.S.

<sup>26</sup> Ch. 458, F.S.

<sup>27</sup> Ch. 459, F.S.

<sup>28</sup> Ch. 490, F.S.

<sup>29</sup> Ch. 491, F.S.

The bill makes a technical change to clarify that any sexual battery offense involving a victim under 18 years of age, which may be prosecuted at any time under s. 775.15(20), F.S., is not subject to the eight-year SOL for the prosecution of a first or second-degree sexual battery offense under s. 775.15(14)(b), F.S.

The bill provides an effective date of July 1, 2023.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 775.15, F.S., relating to time limitations; general time limitations; exceptions.

**Section 2:** Provides an effective date of July 1, 2023.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

The bill may have an indeterminate positive impact on the number of jail and prison beds by removing any time limitations for the prosecution of specified sexual battery offenses committed against victims who are 18 years of age or older at the time of the offense provided such victims timely report the offense to law enforcement or another specified professional. Additionally, the bill may have an indeterminate negative fiscal impact on state attorney's and public defender's offices due to an increase in workload if more prosecutions are commenced under the new time limits.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have

to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On March 29, 2023, the Criminal Justice Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differed from the original bill as it:

- Removed the ability of the state to commence prosecution of certain sexual battery offenses at any time if the crime was reported to a nurse or dentist.
- Removed the ability of the state to commence prosecution of certain sexual battery offenses when the victim was 16 years of age or older and reported the offense to specified healthcare practitioners within 21 days, as any new sexual battery offense committed against a minor currently has no SOL.
- Removed an extension of the SOL from eight years to 15 years for sexual battery offenses committed against a victim 16 years of age or older who does not report the offense to law enforcement.
- Authorized the state to commence prosecution for a first or second-degree felony sexual battery offense at any time if the victim is 18 years of age or older at the time of the offense and reports the offense within 21 days to a law enforcement agency or a person acting within the scope of his or her practice who is a licensed medical doctor, osteopathic doctor, psychologist, or clinical psychotherapist.

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