

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 Fiscal Policy

BILL: CS/CS/SB 764

INTRODUCER: Appropriations Committee on Criminal and Civil Justice; Criminal Justice Committee;
and Senator Stewart

SUBJECT: Retention of Sexual Offense Evidence

DATE: February 20, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Stokes</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Kolich</u>	<u>Harkness</u>	<u>ACJ</u>	<u>Fav/CS</u>
3.	<u>Cellon</u>	<u>Yeatman</u>	<u>FP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 764 amends s. 943.326(3), F.S., to specify parameters for the storage of sexual assault evidence kits (SAKs) that are collected from alleged victims of a sexual offense, but the alleged *victim elects not to report* the sexual offense to law enforcement during the forensic physical examination and *does not request* to have the evidence tested.¹ Under these specified criteria, the bill requires that:

- The evidence be retained in a secure, environmentally safe manner for a minimum of 50 years after the date of collection; and
- The evidence be stored anonymously and with a documented chain of custody.

The bill also provides that if, at any time following the initial collection of a SAK from a *non-reporting victim* who has not requested DNA testing nor had a request for testing made on his or her behalf, the victim *elects to report* the alleged crime to law enforcement, the previously collected SAK evidence will be retained until the prosecuting agency approves its destruction.

This bill does not have a fiscal impact on state government. See Part V., Fiscal Impact Statement.

¹ Note that if the alleged victim is a minor, the alleged victim's parent, guardian, or legal representative can request to have the SAK evidence tested as can the alleged victim's personal representative, if the alleged victim is deceased. An alleged victim or, if applicable, the person representing the alleged victim must be informed of the purpose of submitting evidence for testing and the right to request testing. Section 943.326(1)(b), and (2), F.S.

The bill becomes effective July 1, 2024.

II. Present Situation:

Tracking Sexual Assault Evidence Kits

In 2021, the Florida Department of Law Enforcement (FDLE) began creating, implementing, and maintaining a statewide database, the purpose of which is to track the location, processing status, and storage of sexual assault evidence kits (SAKs).² As of July 2023, all 67 counties were using the database and 1,602 SAKs were being tracked at that time.³ Law enforcement agencies, medical facilities, crime laboratories, and any other facilities in the chain of custody of the SAKs are required to participate in the statewide database.⁴

An alleged victim⁵ who has reported the offense to law enforcement and who provides the SAK evidence during the forensic physical examination has the ability to access the statewide database.⁶ The reporting alleged victim can follow his or her SAK from the collection site (typically a medical facility)⁷, to law enforcement agency storage, then to the crime laboratory for forensic testing and possible destruction after testing, or back to law enforcement agency storage.⁸

A SAK collected from an alleged victim who chooses not to report the sexual offense to law enforcement is not sent from the medical facility to law enforcement for testing.⁹ A SAK must be retained in a secure, environmentally safe manner until the prosecuting agency has approved its destruction.¹⁰ Section 943.326(3), F.S., does not currently delineate between a SAK collected from a reporting victim and a SAK collected from a non-reporting victim.

² Chapter 2021-213, L.O.F., s. 943.326(4)(c), F.S.; A SAK is defined by FDLE rule as a Florida sexual offense evidence kit or other sealed package containing samples collected from the alleged victim's body. Rule 11D-12.001, F.A.C.

³ Information provided by FDLE via e-mail dated September 5, 2023 (on file with the Senate Criminal Justice Committee).

⁴ Section 943.326(4)(d), F.S.

⁵ If the alleged victim is a minor the alleged victim's parent, guardian, or legal representative can request to have the SAK evidence tested as can the alleged victim's personal representative, if the alleged victim is deceased. An alleged victim or, if applicable, the person representing the alleged victim must be informed of the purpose of submitting evidence for testing and the right to request testing. Sections 943.326(1)(b), and (2), F.S.

⁶ If the alleged victim is a minor, his or her parent, guardian, or legal representative will have access to the database. If the alleged victim is deceased, his or her personal representative will have access. Section 943.326(4)(c) and (e), F.S.

⁷ Section 943.326(4)(c), F.S.

⁸ Section 943.326(4)(c) and (e), F.S.

⁹ For a Florida Department of Law Enforcement (FDLE) or regional county laboratory to process evidence from a SAK, there must be an accompanying law enforcement report. Non-reporting SAKs will not be tested pursuant to s. 943.326, F.S., unless an alleged victim converts from a non-reporting victim to one who makes a report to law enforcement. To test a non-reporting SAK would violate the confidentiality and privacy of the victim's health records under the Health Insurance Portability and Accountability Act (HIPAA). FDLE Sexual Assault Kit Submissions Frequently Asked Questions, available at https://www.fdle.state.fl.us/Forensics/Documents/Sexual-Assault-Kit-FAQs-for-LEA_Final.aspx (last visited December 29, 2023).

¹⁰ Section 943.326(3), F.S.

Time Limitations for Prosecution

The statutes of limitation (SOL) determine the timeframe within which a criminal prosecution must be initiated by a prosecutor.¹¹ The SOL in effect at the time a crime is committed controls.¹² In general, the timeframe is calculated from the day after a person commits an offense to the filing of a charging document, such as an indictment or information, which initiates the prosecution.¹³

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.¹⁴

The standard time limitations for the following crimes are:

- Four years for a first-degree felony.¹⁵
- Three years for a second or third-degree felony.¹⁶
- Two years for a first-degree misdemeanor.¹⁷
- One year for a second-degree misdemeanor.¹⁸

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.¹⁹

Exceptions to the Standard SOL for Sexual Battery Offenses

Florida extends or removes time limitations or changes the date on which the calculation of the SOL begins for specified sexual offenses.²⁰

Pursuant to s. 775.15, F.S., the following SOLs apply to sexual battery prosecutions:

- Prosecution may be commenced at any time, for a specified:
 - Sexual battery involving a victim under 16;²¹
 - Sexual battery involving a victim under 18;²²

¹¹ Section 775.15, F.S.

¹² The statute of limitations to be used in determining whether a prosecution is timely is the one that is in effect at the time of the crime. *State v. Wadsworth*, 293 So.2d 345 (Fla.1974).

¹³ Section 775.15(3) and (4), F.S.

¹⁴ Section 775.15(5), F.S.

¹⁵ Section 775.15(2)(a), F.S.

¹⁶ Section 775.15(2)(b), F.S.

¹⁷ Section 775.15(2)(c), F.S.

¹⁸ Section 775.15(2)(d), F.S.

¹⁹ Section 775.15(1), F.S.

²⁰ 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); The statute of limitations to be used in determining whether a prosecution is timely is the one that is in effect at the time of the crime. *State v. Wadsworth*, 293 So.2d 345 (Fla.1974).

²¹ Prosecution must not have been barred by s. 775.15(2), F.S., on or before July 1, 2010. Section 775.15(13)(c), F.S.

²² Prosecution must not have been barred by s. 775.15(2), F.S., on or before July 1, 2020. Section 775.15(20), F.S.

- First-degree felony sexual battery involving a victim under 18;²³
- First or second-degree felony sexual battery involving a victim less than 18 years of age, *if* the offense is reported within 72 hours of the commission of the offense.²⁴
- First or second-degree felony violations of sexual battery involving a victim who is 16 years of age or older at the time of the offense *if* the offense is reported within 72 hours of the commission of the offense.²⁵
- Prosecution of a specified first- or second-degree felony sexual battery involving a victim 16 or older must be commended within 8 years, if the offense is not reported within 72 hours of the commission of the offense.²⁶

III. Effect of Proposed Changes:

The bill amends s. 943.326(3), F.S., to specify parameters for the storage of SAKs or other DNA evidence that are collected from an alleged victim of a sexual offense, but the alleged victim elects *not* to report the sexual offense to law enforcement during the forensic physical examination and does *not* request to have the evidence tested.²⁷ Under these specified criteria, the bill requires that:

- The evidence must be retained for a minimum of 50 years after the collection date by the medical facility that collected the kit, a certified rape crisis center with appropriate storage capabilities, or a law enforcement agency in a secure, environmentally safe manner; and
- The evidence must be stored anonymously and with a documented chain of custody.

The 50-year DNA retention limitation for possible DNA evidence in non-reported sexual offenses provides a date certain for evidence disposal by medical facilities while allowing a non-reporting alleged victim time to decide to report the sexual offense.

The anonymous storage of the possible DNA evidence complies with HIPPA by preserving the confidentiality and privacy of the alleged victim's health records.²⁸ Requiring that the evidentiary chain of custody remain unbroken is beneficial to the admissibility of the evidence in court should the alleged non-reporting victim decide to report the sexual offense.

The bill also provides that if, at any time following the initial retention of a SAK from a non-reporting victim who has not requested DNA testing or had a request for testing made on his or her behalf, the victim elects to report the alleged crime to law enforcement, the previously collected SAK evidence will be retained until the prosecuting agency approves its destruction.

The bill becomes effective July 1, 2024.

²³ Prosecution must not have been barred by s. 775.15(2), F.S., on or before October 1, 2003. Section 775.15(13)(b), F.S.

²⁴ Prosecution must not have been barred by s. 775.15(2), F.S., on or before December 31, 1984. Section 775.15(13)(a), F.S.

²⁵ Section 775.15(14)(a), F.S.

²⁶ Prosecution must not have been barred by s. 775.15(2), F.S., on or before July 1, 2015. Section 775.15(14)(b), F.S.

²⁷ Note that if the alleged victim is a minor, the alleged victim's parent, guardian, or legal representative can request to have the SAK evidence tested as can the alleged victim's personal representative, if the alleged victim is deceased. An alleged victim or, if applicable, the person representing the alleged victim must be informed of the purpose of submitting evidence for testing and the right to request testing. Sections 943.326(1)(b), and (2), F.S.

²⁸ The Health Insurance Portability and Accountability Act.

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:

Specifying a 50-year time limitation from the date of collection for storing possible DNA evidence in non-reported cases may decrease the storage capacity available for private medical facilities to comply with s. 943.326, F.S. The FDLE suggests that these medical facilities could use local law enforcement agencies for storage of SAKs not reported to law enforcement.²⁹

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

²⁹ FDLE, 2024 Legislative Bill Analysis of SB 764, dated December 6, 2023 (on file with the Senate Criminal Justice Committee).

VIII. Statutes Affected:

This bill substantially amends section 943.326 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/CS by Appropriations Committee on Criminal and Civil Justice on February 8, 2024:

The committee substitute increases the retention time to 50 years for a sexual offense evidence kit collected from a non-reporting victim in s. 943.326(3)(b)1., F.S.

CS by Criminal Justice on January 10, 2024:

The committee substitute:

- Clarifies the length of time and conditions within which a sexual offense evidence kit collected from a reporting victim must be retained in s. 943.326(3)(a), F.S.
- Specifies the manner and length of time a sexual offense evidence kit collected from a non-reporting victim must be retained in s. 943.326(3)(b)1., F.S.
- Provides that a sexual offense evidence kit collected from a non-reporting victim who decides to report the offense to law enforcement before the 8-year kit retention period expires will be retained until the prosecuting agency has approved its destruction in s. 943.326(3)(b)2., F.S.

- B. **Amendments:**

None.