

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 133 Sexual Offenses

**SPONSOR(S):** Civil Justice Subcommittee; Plasencia

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1270

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N, As CS	Malcolm	Bond
2) Justice Appropriations Subcommittee	12 Y, 0 N	Schrader	Lloyd
3) Judiciary Committee		Malcolm	Havlicak

### SUMMARY ANALYSIS

A statute of limitations is an absolute bar to the filing of a legal case after a date set by law. Some statutes of limitations related to felony sexual battery offenses are currently 4 years. The bill extends those statutes of limitations for sexual battery from 4 years to 10 years.

The Criminal Justice Impact Conference (CJIC) met February 27, 2015, and determined this bill will have a positive moderate impact on state prison beds. This means CJIC estimates that this bill may increase the department's prison population by greater than 10, less than 25 inmates annually. The bill does not appear to have a fiscal impact on local governments.

The bill has an effective date of July 1, 2015.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

A statute of limitations is an absolute bar to the filing of a legal case after a date set by law. The date is commonly based on the time that has elapsed since the action giving rise to the case occurred. Laws creating statutes of limitation specify when the time period begins, how long the limitations period runs, and circumstances by which the running of the statutes may be tolled (suspended).

The prohibition on ex post facto laws in the state and federal constitutions<sup>1</sup> applies to laws that extend a statute of limitations. A law that extends a statute of limitations may only delay the conclusion of the limitations period, it cannot revive a previously time-barred action. Accordingly, if the limitations period on a case has already expired, any extension created by this bill will not serve to revive the action.<sup>2</sup>

The title of the bill, the "43 Days Initiative Act," comes from a Florida resident who was the victim of a sexual battery. Unaware of the four-year criminal statute of limitations, the victim did not report the crime to law enforcement until four years and 43 days after the crime, which meant that no charges could be brought against the offender.<sup>3</sup>

#### **Criminal Statutes of Limitation Applicable to Sexual Battery**

Section 794.011, F.S., identifies numerous sexual battery<sup>4</sup> crimes, commonly referred to as rape.<sup>5</sup> Section 775.15, F.S., sets forth the statutes of limitation applicable to criminal prosecutions for sexual battery and provides that the time for prosecution of a criminal case starts to run on the day after the offense is committed. An offense is deemed to have been committed either when every element of the offense has occurred, or, if the legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's duplicity in the course of conduct is terminated.<sup>6</sup>

Under current law, there is no statute of limitations for first-degree felony sexual battery crimes where the victim is a minor.<sup>7</sup> Nor is there a statute of limitations for any sexual battery crime where the victim is under 16 years old.<sup>8</sup> Only two sexual battery offenses where the victim is a minor aged 16 or 17 years have an applicable three-year statute of limitations under current law: sexual battery without the use physical force and violence likely to cause serious personal injury - a second-degree felony;<sup>9</sup> and solicitation of sexual battery by a person in a position of familial or custodial authority to a person less than 18 years of age - a third-degree felony.<sup>10</sup> As to these two offenses, the applicable statute of limitations does not commence until the earlier of the date that the minor reaches 18 years of age or the crime is reported to law enforcement.<sup>11</sup> Moreover, if the sexual battery is a first- or second-degree felony and is reported to law enforcement within 72 hours after the commission of the crime, there is no statute of limitations.<sup>12</sup>

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<sup>1</sup> Article I, s. 9, U.S.Const.; Article I, s. 10, Fla.Const.

<sup>2</sup> *Stogner v. California*, 539 U.S. 607, 632-33 (2003)

<sup>3</sup> 43 Days Initiative, My Story, <http://www.43daysinitiative.org/#!mystory/c1Inf> (last accessed Feb. 4, 2015).

<sup>4</sup> Section 794.011(1)(h), F.S., defines sexual battery as "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."

<sup>5</sup> See Note 7 for definition of sexual battery.

<sup>6</sup> s. 775.15(3), F.S.

<sup>7</sup> *Id.* at (13)(b).

<sup>8</sup> *Id.* at (13)(c).

<sup>9</sup> s. 794.011(5)(c), F.S.

<sup>10</sup> s. 794.011(8)(a), F.S.

<sup>11</sup> s. 775.15(13)(a), F.S.

<sup>12</sup> *Id.*

In cases of sexual battery crimes against victims 18 years of age or older, current law provides that if the offense is reported to law enforcement within 72 hours of the offense, there is no statute of limitations.<sup>13</sup> If the offense is not reported within 72 hours, the statute of limitations is either four years for first-degree felony sexual battery or three years for second-degree felony sexual battery.<sup>14</sup>

In addition to the time periods for minors and adults stated above, an offender may be prosecuted within one year after the date on which the identity of the offender is established, or should have been established by the exercise of due diligence, through the analysis of deoxyribonucleic acid (DNA) evidence, if a sufficient portion of the evidence collected at the time of the original investigation and tested for DNA is preserved and available for testing by the accused.<sup>15</sup>

### *Effect of Bill*

This bill amends the statute of limitations applicable to sexual battery criminal cases, s. 775.15, F.S., to provide that the statute of limitations for first- or second-degree sexual battery committed against a victim 16 years of age or older is extended to 10 years from the date of the crime, except as otherwise provided in current law. The provision providing for no statute of limitations when the crime is reported within 72 hours of its commission is retained in law.

This change applies to any such offense except one already time-barred on or before July 1, 2015. This provision makes the change retroactive to previously committed offenses, provided that the statute of limitations did not run out of time prior to July 1, 2015.

## B. SECTION DIRECTORY:

Section 1 provides a name for the act.

Section 2 amends s. 775.15, F.S., regarding the statute of limitations for criminal actions.

Section 3 provides an effective date of July 1, 2015.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill does not appear to have any impact on state revenues.

#### 2. Expenditures:

The Criminal Justice Impact Conference (CJIC) met February 27, 2015, and determined this bill will have a positive moderate impact on state prison beds. This means CJIC estimates that this bill may increase the department's prison population by greater than 10, less than 25 inmates annually. For fiscal year 2013-14, 83 people were sentenced to prison within a year of their offense, 89 within two years, 55 within three years, 26 within four years, and 11 within five years of the offense. The fewer offenders with each additional year imply a declining number over time, but data is not available on the number of unreported offenses that could be captured in an expanded statute of limitation.

Furthermore, the CJIC was unable to separate those under 16 years old from the available data, causing the data to be skewed upwards.

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<sup>13</sup> *Id.* at (14).

<sup>14</sup> First-degree felony sexual battery is defined in s. 794.011(4)(b), F.S., as non-consensual sexual battery under a list of enumerated circumstances, including, when the victim is physically helpless to resist, the victim is threatened, the victim is physically or mentally incapacitated, and the offender is a law enforcement officer. Second-degree felony sexual battery is defined in s. 794.011(5)(b), F.S., as non-consensual sexual battery without the use of physical force or violence likely to cause serious personal injury.

<sup>15</sup> Section 775.15(8), F.S.

## B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

### 2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

## C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

## D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

#### 2. Other:

The statute of limitations in effect at the time the crime is committed controls.<sup>16</sup> However, the legislature can amend statutes of limitation to apply retroactively without running afoul of the constitutional ex post facto prohibition if it does so before prosecution is barred by the old statute and clearly indicates that the new statute is to apply retroactively to cases pending when it becomes effective.<sup>17</sup>

The bill appears to express an intent that it apply retroactively to cases pending on the effective date.

A prosecution pursuant to this bill may raise due process concerns if there is a long delay between the commission of the crime and the prosecution of the case. In *United States v. Lovasco*,<sup>18</sup> the United States Supreme Court explained that criminal statutes of limitations provide the “primary guarantee” against bringing “stale” criminal charges and said that the Due Process Clause has a “limited role” in protecting against oppressive delay. The court said that it could “not determine in the abstract the circumstances in which preaccusation delay would require dismissing prosecutions.”<sup>19</sup> In considering whether a delay violates due process, other states have considered factors such as the length of the delay, the prejudice to the accused, and the reason for the delay.<sup>20</sup>

### B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

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<sup>16</sup> *State v. Wadsworth*, 293 So.2d 345, 347 (Fla. 1974).

<sup>17</sup> *E.g., Scharfschwerdt v. Kanarek*, 553 So.2d 218, 220 (Fla. 4th DCA 1989) (recognizing extended statute of limitations regarding lewd and lascivious assault upon a child and sexual battery); *State v. Calderon*, 951 So. 2d 1031, 1035 (Fla. 3d DCA 2007); *Reino v. State*, 352 So.2d 853 (Fla. 1977) receded from on other grounds, *Perez v. State*, 545 So.2d 1357 (Fla. 1989).

<sup>18</sup> 431 U.S. 783, 789 (1977).

<sup>19</sup> *Id.* at 796.

<sup>20</sup> See *State v. Gray*, 917 S.W. 668 (Tenn. 1996) (holding a 42 year delay between commission of a sex crime and prosecution violated the due process clause).

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 10, 2015, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Removes the section of the bill that would have extended from 4 years to 10 years the statutes of limitation applicable to civil action involving sexual battery where the victim is 16 years old or older; and
- Expands the extension of the criminal statute of limitations for sexual battery to include cases where the victim is 16 years of age or older.

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