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Committee on Criminal Justice

Senator Stephen R. Wise, Chair

TIME LIMITATIONS FOR INITIATING CRIMINAL PROSECUTIONS

SUMMARY

Section 775.15, F.S., provides time limitations for initiating criminal prosecutions, commonly known as the “statute of limitations.” The statute of limitations contains general time limitation periods as well as various exceptions and extensions to the general limitation periods. Over time, the statute of limitations has become somewhat disorganized and confusing because it has been amended “piecemeal” over the years with no real attempt to restructure the statute to logically group these amendments with existing provisions.

The statute of limitations would be easier to understand and more “user friendly” to practitioners and ordinary citizens if it were reorganized into a more logical format. The statutory language providing for no time limitation periods would be grouped together, followed by the general time limitation periods organized in descending order of years. Then the exceptions and extensions to the time limitation periods would come next. The “administrative” provisions such as when an offense is committed and when a prosecution is commenced would become the final subsections in the statute.

This reorganization would be technical and clarifying in nature; there would be no substantive law changes to s. 775.15, F.S.

Staff recommends that a committee bill be drafted to accomplish this technical reorganization of s. 775.15, F.S.

BACKGROUND

Section 775.15, F.S., sets forth time limitations for commencing criminal prosecutions, commonly known as the “statute of limitations.” The purpose of the statute of limitations for a criminal prosecution is to protect people from being indefinitely threatened by possible criminal prosecution, which might otherwise

be delayed until such a time when defense witnesses become unavailable, judges change office, or other time hazards develop which could impede an otherwise good defense. *State v. Hickman*, 189 So.2d 254 (Fla. 2nd DCA 1966), cert. denied, 194 So.2d 618 (1966).

There were no statutes of limitation at common law. *State v. McCloud*, 67 So.2d 242 (Fla. 1953). It is purely a statutory creation. In *State v. Hickman*, the court borrows a section from 22 C.J.S., Criminal Law s. 223 to explain that:

“Statutes of Limitation are construed as being acts of grace, and as a surrendering by the sovereign of its right to prosecute or of its right to prosecute at its discretion, and they are considered as equivalent to acts of amnesty. Such statutes are founded on the liberal theory that prosecutions should not be allowed to ferment endlessly in the files of the government to explode only after witnesses and proofs necessary to the protection of accused have by sheer lapse of time passed beyond availability. They serve, not only to bar prosecutions on aged and untrustworthy evidence, but also to cut off prosecution for crimes a reasonable time after completion, when no further danger to society is contemplated from the criminal activity.” *Hickman*, 189 So.2d 254 at 262.

Florida’s statute of limitations contains general time limitation periods as well as various exceptions and extensions to the general limitation periods. It also contains “administrative” provisions which lay the groundwork for determining when an offense is committed and when a prosecution is commenced.

Over time, the statute of limitations has become somewhat disorganized and confusing because it has been amended “piecemeal” over the years, with no real attempt to restructure the statute to logically group these amendments with existing provisions. (The statute was amended as recently as April 27, 2004,

during the 2004 Regular Legislative Session by HB 1831, ch. 2004-94, Laws of Florida.) This project will review s. 775.15, F.S., and make suggestions for providing technical clarity by reorganizing the statute in an effort to make it more understandable and “user friendly.”

METHODOLOGY

Staff will review the statute of limitations, s. 775.15, F.S., including its history, amendments, and relevant case law, in an effort to suggest technical and clarifying structural changes that will make it easier to follow and understand.

FINDINGS

Florida’s Statute of Limitation

Subsections (1) and (2) of s. 775.15, F.S., control the time limitations for initiating a criminal prosecution for most offenses. Generally, the length of the time periods under the statute increase with the severity of the offense as follows:

- For a capital felony, a life felony, or a felony resulting in death, there is no time limitation.
- For a first or second degree felony violation of s. 794.011, F.S., which includes several different sexual battery offenses, if reported to a law enforcement agency within 72 hours after commission of the crime, there is no time limitation.
- For a first degree felony sexual battery violation upon a victim less than 18 years of age (regardless of whether a victim reports it to law enforcement), there is no time limitation.
- For the crime of perjury in an official proceeding that relates to the prosecution of a capital felony, there is no time limitation.
- For a felony resulting in injury to a person when the felony arises from the use of a “destructive device,” there is a ten-year time limitation.
- For prosecutions involving felony securities transaction violations, insurance fraud, and Medicaid provider fraud under ch. 517, F.S., s. 409.920, F.S., s. 440.105, F.S., and s. 817.234, F.S., there is a five-year time limitation.
- For prosecutions involving environmental control felony violations under ch. 403, F.S., there is a

five-year time limitation from the date of the violation discovery.

- For prosecutions involving felony elderly person abuse or disabled adult abuse under s. 825.102, F.S., or s. 825.103, F.S., there is a five-year time period.
- For a first degree felony, there is a four-year time limitation.
- For any other felony, there is a three-year time limitation.
- For a first degree misdemeanor, there is a two-year time limitation.
- For a second degree misdemeanor or a noncriminal violation, there is a one-year time limitation.

Subsection (3) of s. 775.15, F.S., extends these otherwise applicable time limitation periods up to three years for any offense involving a material element of fraud or breach of fiduciary duty, within one year after discovery of the offense by an aggrieved party or his or her legal representative.

These general time limitation periods are also extended in subsections (7) and (8) of s. 775.15, F.S., for prosecutions involving certain sexual offenses when committed against children or when DNA evidence is gathered in those cases. Specifically, subsection (7), provides that the applicable time limitation for prosecutions involving certain sexual crimes (sexual battery, “statutory rape” under former s. 794.05, F.S., lewd or lascivious offenses, or incest) against children under 18 years of age does not begin to run until the crime is reported to a law enforcement agency or to another governmental agency or until the child turns 18, whichever occurs first.

Thus under subsection (7), if someone commits a second degree felony sexual battery on a 14 year old child, the normal three-year time limitation period does not begin to run until that child turns 18 years of age, or until he or she reports the crime, whichever occurs earlier. s. 775.15(7), F.S. *See also, Constantine v. State*, 566 So.2d 321,322 (2nd DCA 1990).

As a result of recent legislation, subsection (8) of s. 775.15, F.S., allows prosecution for sexual battery under ch. 794, F.S., or lewd or lascivious offenses under s. 800.04, F.S., or s. 825.1025, F.S., to begin one

year after the date on which the identity of the accused is or should have been established through DNA evidence.

This one year period is in addition to any other authorized time limitation period.

The delayed prosecution is authorized only if due diligence is used in the identification of a defendant through the analysis of DNA evidence and if a sufficient portion of the evidence collected during the original investigation and then tested is preserved and available for testing by the accused.

Subsection (8) does not apply retroactively, so only new cases arising under the statute are covered. (*See* HB 1831, ch. 2004-94, Laws of Florida.) However, “[T]he legislature can amend statutes of limitation to apply retroactively without running afoul of the constitutional ex post facto prohibition if it (a) does so before prosecution is barred by the old statute, and (b) clearly indicates that the new statute is to apply retroactively to cases pending when it becomes effective.” *Andrews v. State*, 392 So.2d 270 (2nd DCA 1980), *rev. denied*, 399 So.2d 1145 (Fla. 1981). *See also, Scharfschwerdt v. Kanarek*, 553 So.2d 218 (4th DCA 1989).

Section 775.15(4), F.S., provides that 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 therein is terminated.

Subsection (5) of this section provides that prosecution on a criminal charge on which the defendant has already been arrested or served with a summons is commenced when the indictment, information, or other charging document is filed. This is also true when the defendant has not previously been arrested or served with a summons, except the *capias*, summons, or other process issued on the indictment or information must be executed without unreasonable delay.

If an indictment or information is filed within the appropriate time period and it is dismissed or set aside because of a defect in its content or form after the applicable time period has elapsed, the time period for commencing prosecution will be extended three months from when the indictment or information was dismissed or set aside.

The statute of limitations is tolled under s. 775.15(6), F.S., when the defendant is continuously absent from the state or has no reasonably ascertainable place of abode or work within the state. This provision does not extend the otherwise applicable period of limitation beyond three years. It is also not intended to limit the prosecution of a defendant unless the defendant has been timely charged by indictment, information, or other charging document and has not been arrested due to a voluntary absence from the state or has not been extradited for prosecution from another state.

As a general rule, tolling provisions keep the statute of limitations from running until the party whose legal rights are violated has or should have had notice of such violation. *See Proctor v. Schomberg*, 63 So.2d 68, 70 (Fla. 1953).

The statute of limitations is not structured in an extremely logical or organized fashion. It contains general time limitation periods which are interspersed with various exceptions, extensions, and “administrative” provisions that are not necessarily in any given order. The statute could be better organized to enhance the reader’s ability to follow all the nuances of the statute.

In order to understand the applicability of the statute of limitations to the various sexual battery and lewd or lascivious offenses, a review of these statutes is also necessary.

Sexual Battery

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.”

The level and severity of the offense charged varies according to the age of the perpetrator, the victim, and the specific circumstances as follows:

- A person 18 years of age or older who commits sexual battery upon, or in an attempt to commit sexual battery injures the sexual organs of, a child under 12 years of age commits a capital felony under s. 794.011(2)(a), F.S.

(There is no time limitation, so a prosecution may be brought at any time in the future.)

- A person under 18 years of age who commits sexual battery upon, or in an attempt to commit sexual battery injures the sexual organs of, a child under 12 years of age commits a life felony under s. 794.011(2)(b), F.S.

(There is no time limitation, so a prosecution may be brought at any time in the future.)

- A person who commits sexual battery upon a person 12 years of age or older, without that person's consent, and in the process uses or threatens to use a deadly weapon or uses actual physical force likely to cause serious personal injury commits a life felony under s. 794.011(3), F.S.

(There is no time limitation, so a prosecution may be brought at any time in the future.)

- A person who commits sexual battery upon a victim 12 years of age or older without the victim's consent and the victim is physically helpless to resist; is coerced by threat of force, retaliation, or violence; is involuntarily under the influence; is mentally defective or physically incapacitated; or the perpetrator is a law enforcement officer or a certain public official, commits a felony of the first degree under s. 794.011(4), F.S.

(There is a four-year time limitation unless the victim is younger than 18, in which case there is no time limitation. There is also no time limitation if the victim is 18 years of age or older and reports the sexual battery to law enforcement within 72 hours.)

- Furthermore, a person who stands in familial or custodial authority to a child between the ages of 12 and 18 years of age and engages in sexual battery with that child commits a first degree felony under s. 794.011(8)(b), F.S.

(There is no time limitation since the victim is under 18 years of age.)

- A person who commits sexual battery upon a person 12 years of age or older, without that person's consent, and in the process does not use physical force and violence likely to cause serious

personal injury commits a felony of the second degree under s. 794.011(5), F.S.

(There is a three-year time limitation, unless the victim reports the sexual battery to law enforcement within 72 hours, in which case there is no time limitation.)

- Any person who stands in familial or custodial authority to a child under 18 years of age, and who solicits that child to engage in any act defined as sexual battery commits a third degree felony under s. 794.011(8)(a), F.S.

(The applicable time limitation period for this offense is three years.)

In cases of sexual battery offenses, the DNA time limitation extension (prosecution may commence within one year after the date of discovering the identity of the accused through DNA evidence) can apply, if the other statutory requirements are met. s. 775.15(8), F.S.

The other time limitation extension that allows a child victim to wait until he or she turns 18 years of age or report the crime to trigger prosecution, whichever occurs first, also applies unless there is no time limitation period because of another exception. s. 775.15(7), F.S.

Lewd or Lascivious Offenses

Under s. 800.04(4), F.S., lewd or lascivious battery, a second degree felony, occurs when a person:

- Engages in sexual activity (defined like sexual battery) with a person 12 years of age or older, but under 16 years of age; or
- Encourages, forces, or entices any person under 16 years of age to engage in sadomasochism, sexual bestiality, prostitution, or any other act involving sexual activity.

(There is a three-year time limitation for prosecuting a lewd or lascivious battery.)

Lewd or lascivious molestation under s. 800.04(5), F.S., occurs when a person intentionally touches certain parts of the body, whether or not clothed, of a person under the age of 16, or forces them to touch the perpetrator, and is punishable in the following manner:

- As a first degree felony, when the person is 18 years of age or older and the victim is under the age of 12 (four-year time limitation);
- As a second degree felony, when the person is under 18 years of age and the victim is under the age of 12, or when the perpetrator is 18 years of age or older and the victim is older than 12 and younger than 16 (three-year time limitation); or
- As a third degree felony, when the person is under 18 years of age and the victim is older than 12 and younger than 16 (three-year time limitation).

Lewd or lascivious conduct under s. 800.04(6), F.S., occurs when a person intentionally touches a person less than 16 years of age in a lewd or lascivious manner or solicits a person under 16 years of age to commit a lewd or lascivious act and is punishable in the following manner:

- As a second degree felony, when the perpetrator is 18 years of age or older (three-year time limitation); or
- As a third degree felony, when the perpetrator is under 18 years of age (three-year time limitation).

Lewd or lascivious exhibition under s. 800.04(7), F. S., includes masturbation, genital exposure, and certain other sexual acts in a lewd or lascivious manner either in person or over the Internet and is punishable as follows:

- As a second degree felony, when the person is 18 years of age or older (three-year time limitation); or
- As a third degree felony, when the person is under 18 years of age (three-year time limitation).

Finally, under s. 825.1025, F.S., lewd or lascivious battery on a disabled adult or elderly person is punishable as a second degree felony (three-year time limitation), and lewd or lascivious molestation and lewd or lascivious exhibition are both punishable as third degree felonies (three-year time limitation).

In cases of lewd or lascivious offenses, the DNA time limitation extension (prosecution may commence within one year after the date of discovering the identity of the accused through DNA evidence) can apply if the other statutory requirements are met. s. 775.15(8), F.S. The other time limitation extension that allows a child victim to wait until he or she turns 18 years of age or report the crime to trigger prosecution, whichever occurs first, also applies in these type cases. s. 775.15(7), F.S.

RECOMMENDATIONS

The statute of limitations would be easier to understand and more “user friendly” to practitioners and ordinary citizens if it were reorganized into a more logical format. The statutory language providing for no time limitation periods would be grouped together, followed by the general time limitation periods organized in descending order of years. Then the exceptions and extensions to the time limitation periods would come next. The “administrative” provisions such as when an offense is committed and when a prosecution is commenced would become the final subsections in the statute. This reorganization would be technical and clarifying in nature; there would be no substantive law changes to s. 775.15, F.S.

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