

## **HB 525 — Statutes of Limitation for Sexual Battery**

by Reps. Dorworth, Fetterman, Pafford, and others (SB 870 by Senators Aronberg, Lynn, Storms, and Deutch)

Section 775.15, F.S., sets forth time limitations for commencing criminal prosecutions, commonly known as “statutes of limitation.” Section 775.15(3), F.S., provides that the time for prosecution of a criminal case starts to run on the day after the offense is committed.

Section 775.15, F.S., provides the following general time limitations for initiating a criminal prosecution for any felony offense:

- For a capital felony, a life felony, a felony resulting in death, or a first degree felony sexual battery on a victim under 18, 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 any felony that results in injury to a person when the felony arises from the use of a destructive device, a ten-year limitation applies;
- For a first degree felony, a four-year limitation applies;
- For any other felony, a three-year limitation applies.

These general time limitation periods are extended to five years for prosecutions involving securities transaction violations (ch. 517, F.S.), Medicaid provider fraud (s. 409.920, F.S.), insurance fraud by an employer (s. 440.105, F.S.), filing a false insurance claim (s. 817.234, F.S.), felony abuse against elderly persons or disabled adults (s. 825.102, F.S.), and prosecutions involving environmental control felony violations (ch. 403, F.S.).

For the offenses of sexual battery, lewd or lascivious acts, and other enumerated felony offenses, in addition to these general time periods, an offender may be prosecuted at any time after the date on which his or her identity is established, or should have been established through the exercise of due diligence, through the analysis of DNA evidence (except that for offenses committed between July 1, 2004 and June 30, 2006, an offender may be prosecuted within 1 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 DNA). ss. 775.15(15), (16), F.S.

Under current law, there is no time limitation for beginning a prosecution of most sexual battery crimes where the victim is a minor. Only two sexual battery offenses where the victim is a minor have an applicable time limitation. The specific sexual battery crimes to which this change would apply are found in subsections 794.011(5) and (8), of the sexual battery statute.

As to these two offenses, the applicable time limitation does not begin to run until the earlier of the date that the minor reaches 18 years of age or the crime is reported to law enforcement. The two offenses are as follows:

- Section 794.011(5), F.S., provides that a person who commits sexual battery upon a person 12 years of age or older, without that person's consent, and in the process thereof does not use physical force and violence likely to cause serious personal injury commits a felony of the second degree. There is no time limitation for commencing prosecution for this crime if the sexual battery was reported to law enforcement within 72 hours after the commission of the crime or if there were multiple perpetrators. Otherwise, the time limitation is 3 years.
- Section 794.011(8), F.S., provides that without regard to the willingness or consent of the victim, a person who is in a position of familial or custodial authority to a person less than 18 years of age and who solicits that person to engage in any act which would constitute sexual battery commits a felony of the third degree. The time limitation is 3 years.

This bill eliminates the statute of limitations in criminal cases of sexual battery when the victim is under the age of 16 at the time of the offense.

In civil actions, s. 95.031, F.S., provides that the time within which an action commences under any statutes of limitation runs from the time that the cause of action accrues. In an action for recovery of damages based upon a theory of intentional tort, the action must commence within four years, pursuant to s. 95.11(3)(o), F.S.

In a case where the action is specifically based upon abuse or incest, the action must commence within seven years of the victim reaching age 18, or within four years after the child leaves the dependency of the abuser, or of the discovery by the injured party of both the injury and the causal relationship between the injury and the abuse, whichever occurs later. s. 95.11(7), F.S. This time limitation is the statutory application of the "delayed discovery doctrine" and its use in childhood sexual abuse or incest cases was upheld in *Hearndon v. Graham*, 767 So.2d 1179 (Fla. 2000). In that case, the Florida Supreme Court held that the delayed discovery doctrine applies in childhood sexual abuse cases. This doctrine is applied in other types of tort actions as well. The delayed discovery doctrine provides that a "cause of action does not accrue until the plaintiff either knows or reasonably should know of the tortious act giving rise to the cause of action." *Id.* at 1184. As the court noted, it is both the majority rule and the modern trend to apply the doctrine in cases of childhood sexual abuse followed by a temporary loss of memory. *Id.* at 1186.

This bill eliminates the civil statutes of limitation in cases involving acts which constitute sexual battery on a minor during the time when the victim is under the age of 16 at the time of the act. The current time limitation in an action for recovery of damages based upon a theory of intentional tort is four years.

If approved by the Governor, these provisions take effect July 1, 2010.

*Vote: Senate 34-0; House 110-0*