

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1074

SPONSOR: Judiciary Committee and Senator Fasano

SUBJECT: Limitation of Action/Sexual Offenses

DATE: April 20, 2003

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Lang</u>	<u>JU</u>	<u>Fav/CS</u>
2.	_____	_____	<u>CJ</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill authorizes prosecution to begin within one year after the date on which the identity of the accused is established through DNA evidence, provided that a sufficient portion of the evidence tested for DNA is preserved and available for testing by the accused, in cases of sexual battery and certain lewd and lascivious offenses.

This bill clarifies that the one year period is in addition to other time limitations provided in law.

This bill substantially amends section 775.15 of the Florida Statutes.

The provisions in this bill apply to any offense not otherwise barred from prosecution on or after July 1, 2004.

II. Present Situation:

Lewd or Lascivious Offenses

Lewd or lascivious battery occurs where a perpetrator:

- Engages in sexual activity with a person 12 years 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

and is charged as a second degree felony.¹

¹ s. 800.04 (4), F.S.

Lewd or lascivious molestation occurs where a perpetrator 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 charged in the following manner:

- As a first degree felony, where the perpetrator is 18 years or older and the victim is under the age of 12;
- As a second degree felony, where the perpetrator is under 18 and the victim is under the age of 12, or where the perpetrator is 18 or older and the victim is older than 12 and younger than 16;
- As a third degree felony, where the perpetrator is under 18 and the victim is older than 12 and younger than 16.²

Lewd or lascivious conduct occurs where a perpetrator intentionally touches a person under 16 in a lewd or lascivious manner or solicits a person under 16 to commit a lewd or lascivious act and is charged in the following manner:

- As a second degree felony, where the perpetrator is 18 years or older;
- As a third degree felony, where the perpetrator is under 18.³

Lewd or lascivious exhibition includes masturbation, genital exposure, and certain other sexual acts in a lewd or lascivious manner either in person or over the Internet and is charged in the following manner:

- As a second degree felony, where the perpetrator is 18 or older;
- As a third degree felony, where the perpetrator is under 18.⁴

Lewd or lascivious battery on a disabled adult or elderly person is punishable as a second degree felony, and molestation or exhibition are chargeable as a third degree felony.⁵

Sexual Battery

Sexual battery is defined in statute 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.”⁶

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

² s. 800.04 (5), F.S.

³ s. 800.04 (6), F.S.

⁴ s. 800.04 (7), F.S.

⁵ s. 825.1025, F.S.

⁶ s. 794.011 (1) (h), F.S.

- A perpetrator who is 18 or older who commits sexual battery upon, or in an attempt to commit sexual battery injures the sexual organs of, a person under 12 years commits a capital felony.⁷
- A perpetrator under 18 who commits sexual battery upon, or in an attempt to commit sexual battery injures the sexual organs of, a person under 12 years commits a life felony.⁸
- A perpetrator who commits sexual battery upon a person 12 or older, without that person's consent, and in the process thereof uses or threatens to use a deadly weapon or uses actual physical force likely to cause serious personal injury commits a life felony.⁹
- A person who commits sexual battery upon a person 12 or older without that person's consent, where the victim is physically helpless, under coercion of force, violence, or threats, involuntarily under the influence, mentally defective, or where the perpetrator is a law enforcement officer or a certain public official, commits a felony of the first degree.¹⁰
- A perpetrator who commits sexual battery upon a person 12 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.¹¹

Statute of Limitations

The Florida Criminal Code is contained in ch. 775, F.S.¹² Section 775.15, F.S. provides the statute of limitations to be applied in criminal cases. The statute of limitations applies as follows, to provide that a prosecution can commence:

- At any time for a capital felony, life felony or felony that resulted in a death;
- At any time for sexual battery offenses that constitute first or second degree felonies if reported to law enforcement within 72 hours;
- At any time for the crime of perjury in an official proceeding that relates to the prosecution of a capital felony;
- Within 10 years for a felony that resulted in an injury through use of a “destructive device”¹³ ;
- Within four years for a first degree felony;
- Within three years for a second or third degree felony;
- Within two years or one year for a first degree or a second degree misdemeanor, respectively;

⁷ s. 794.011 (2)(a), F.S.

⁸ s. 794.011 (2)(b), F.S.

⁹ s. 794.011 (3), F.S.

¹⁰ s. 794.011 (4), F.S.

¹¹ s. 794.011 (5), F.S.

¹² s. 775.011, F.S.

¹³ s. 790.011, F.S. defines a destructive device as “any bomb, grenade, mine, rocket, missile, pipebomb, or similar device containing an explosive, incendiary, or poison gas and includes any frangible container filled with an explosive, incendiary, explosive gas, or expanding gas, which is designed or so constructed as to explode by such filler and is capable of causing bodily harm or property damage; any combination of parts either designed or intended for use in converting any device into a destructive device and from which a destructive device may be readily assembled; any device declared a destructive device by the Bureau of Alcohol, Tobacco, and Firearms; any type of weapon which will, is designed to, or may readily be converted to expel a projectile by the action of any explosive and which has a barrel with a bore of one-half inch or more in diameter; and ammunition for such destructive devices, but not including shotgun shells or any other ammunition designed for use in a firearm other than a destructive device.”

- Within five years for a felony violation of securities transactions,¹⁴ Medicaid provider fraud,¹⁵ environmental control violations,¹⁶ abuse, neglect, and exploitation of the elderly or disabled adults,¹⁷ Worker's Compensation fraudulent acts,¹⁸ and fraudulent insurance claims.¹⁹

For purposes of commencement of the period of limitation, an offense is considered committed either when every element has occurred, or, if a legislative purpose to ban a continuing course of conduct is evident, at the time when the course of conduct or the defendant's complicity ceases.²⁰

The statute of limitations is tolled when the defendant is continuously absent from the state or has no reasonably ascertainable place of abode or work within the state, for up to three years, unless the defendant has been timely charged by indictment or information or other charging document and who has not been arrested due to a voluntary absence from the state or has not been extradited for prosecution from another state.²¹

Pending Legislation in Other States

Legislation providing for the extension of statutes of limitation in DNA/sexual offense cases is currently being considered in Illinois, Kansas, Massachusetts, Minnesota, New Hampshire, New York and Oklahoma.²² Some states have proposed legislation to extend the statute of limitations by a time specified period, and others eliminate the statute of limitations for certain sex offenses altogether.

III. Effect of Proposed Changes:

This bill authorizes prosecution to begin within one year after the date on which the identity of the accused is or should have been established through DNA evidence, provided that 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.

This bill clarifies that the one year period is in addition to other time limitations provided in law.

This bill applies to sexual battery and lewd and lascivious cases.

This bill substantially amends s. 775.15 of the Florida Statutes.

The provisions in this bill apply to any offense not otherwise barred from prosecution on or after July 1, 2004.

¹⁴ Chapter 517, F.S.

¹⁵ s. 409.920, F.S.

¹⁶ See Chapter 403, F.S., which applies the statute of limitations to commence within five years after the date of discovery of the violation.

¹⁷ See Chapter 825, which requires the elderly victim to be 60 years of age or older and infirm.

¹⁸ s. 440.105, F.S.

¹⁹ s. 817.234, F.S.

²⁰ s. 775.15 (4), F.S.

²¹ s. 775.15 (6), F.S.

²² White Paper prepared by Smith Alling Lane on behalf of Applied Biosystems, as of February 25, 2004.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

This bill may lead to more victims being able to bring their cases to court.

C. Government Sector Impact:

It is unknown what impact this bill will have on judicial, state attorney, law enforcement, and public defender workload.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.