

# 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.)

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Prepared By: Criminal Justice Committee

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BILL: CS/SB 1522

INTRODUCER: Criminal Justice Committee and Senator Diaz de la Portilla

SUBJECT: Statutes of Limitation

DATE: April 25, 2006

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Fav/CS
2.	_____	_____	JU	_____
3.	_____	_____	JA	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

The bill eliminates, under certain circumstances, the time limitation for commencing the prosecution of the following crimes of violence against the person:

- aggravated battery or felony battery
- kidnapping or false imprisonment
- sexual battery
- lewd or lascivious offenses
- burglary
- robbery
- carjacking
- aggravated child abuse

Prosecution in these cases may be commenced at any time after the date on which the identity of the accused is established, or should have been established by the exercise of due diligence, through the analysis of 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.

The bill becomes effective on July 1, 2006, and applies to offenses committed after that date.

This bill substantially amends section 775.15 of the Florida Statutes.

## II. Present Situation:

The use of DNA evidence in criminal cases has been in the spotlight throughout the country in recent years, from both the perspective of its use in exonerations and in solving “cold cases.” Because testing methods have improved, it is now possible to solve cold cases, years later, by testing evidence collected at the crime scene which may contain DNA. The national network of DNA databases containing the DNA profiles of convicted offenders has made it possible to solve cases in which the perpetrator might have otherwise remained unknown.

The FBI administers the Combined DNA Index System (CODIS) which allows federal, state, and local crime labs to exchange and compare DNA profiles electronically. There are three tiers within the CODIS system – National (NDIS), State (SDIS), and Local (LDIS). The databases include DNA profiles from convicted offenders, unsolved crime scene evidence, and missing persons. *Using DNA to Solve Cold Cases*, Special Report, National Institute of Justice, July 2002.

CODIS can provide investigative leads in crimes where biological evidence is recovered from the scene using two indexes: the forensic and offender indexes. The forensic index contains DNA profiles from crime scene evidence while the offender index contains DNA profiles from the convicted offender databases of all 50 states. The system contained a total of 3,072,083 profiles as of February 2006.

According to the FBI, Florida had contributed 287,590 offender profiles and 10,353 forensic samples through February 2006. (Source: <http://www.fbi.gov/hq/lab/codis/national.htm>, last visited April 11, 2006.) CODIS has aided 3,903 investigations in Florida.

The following are just two examples of how the CODIS/NDIS is used to solve crimes:

- *Forensic database “hit”* - “In 1999 Leon Dundas was killed in a drug deal. Investigators remembered Dundas refusing to give a blood sample in connection with a rape investigation in 1998. They were able to obtain Dundas’ blood sample through the medical examiner’s office and forwarded it to the DNA lab at the Florida Department of Law Enforcement. Dundas’ DNA profile was compared with the national forensic index and a match was made between Dundas and DNA evidence from a rape victim in Washington, D.C. The FBI then entered DNA evidence from additional unsolved rapes committed in Washington. Dundas’ DNA matched seven additional rapes in Washington and three more in Jacksonville, Florida. Police in Washington said that without DNA, they never would have identified Dundas, who had no prior recorded history of violent crime.” *Using DNA to Solve Cold Cases*, Special Report, National Institute of Justice, July 2002.
- *Offender database “hit”* – “In 1995, an unidentified woman’s body was found on an off-ramp along an interstate in Des Moines, Iowa. After identifying the victim, police began looking at truck drivers as suspects, due to the location of the body. The Iowa Department of Public Safety

sent biological evidence left at the crime scene to the FBI laboratory for DNA analysis. The FBI lab analyzed the evidence and developed a DNA profile of the perpetrator. The profile was uploaded to CODIS, where NDIS matched it to the Florida offender. At the time of the hit, the offender was incarcerated in a Florida prison for a sexual assault conviction in early 1999. After identifying the offender, police discovered that he possessed a commercial trucking license.” (Source: <http://www.fbi.gov/hq/lab/codis/national.htm>, December 5, 2002.)

### ***DNA’s Unique Effect on Statutes of Limitation***

Because of advances in testing techniques, there is potential for solving crimes that are outside the crimes normally expected to yield DNA evidence – murder and sex crimes involving blood and semen. For example, blood from a broken window at the scene of a burglary, saliva from a discarded cigarette butt or beer bottle, or even skin cells rubbed off on a rope used as a restraint can yield DNA evidence. It is possible now to connect a suspect with a crime that occurred many years ago using DNA evidence gathered from places not routinely thought of in the past.

A rather dramatic example of the use of “unconventional” DNA evidence to solve a cold case occurred in Michigan where DNA lifted from cigarette butts led to a murder conviction in a 1973 case. The twenty year old victim had disappeared from a shopping mall, was raped and shot in the head. Her frozen body was discovered in a forest two months later. A gun was found in a river in 1974 and the victim’s wallet was found nearby two years later. Police re-examined the “cold” case in the mid-1990’s, focusing on the gun. One of the gun’s owner’s told police he suspected a man named Wingart had stolen the gun. Using DNA extracted from cigarette butts taken from Wingart’s trash, investigators matched his DNA to semen taken from the victim’s body nearly 29 years previously.

In cases where the Statute of Limitation has expired, cold cases that are solved would never be brought to justice.

### ***Florida’s Statutes of Limitation***

Section 775.15, F.S., sets forth time limitations for commencing criminal prosecutions, commonly known as “Statutes of Limitation.”

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.” *State v. Hickman*, 189 So.2d 254, 262 (Fla. 2nd DCA 1966).

Section 775.15(3), 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.

Section 775.15, F.S., controls the time limitations for initiating a criminal prosecution for any felony offense in the following manner:

- For a capital felony, a life felony, or a felony resulting in death, there is no time limitation;
- For a first degree felony, there is a four-year limitation; and
- For any other felony, there is a three-year limitation.

These general time limitation periods are extended for prosecutions involving 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. (five years); prosecutions involving environmental control felony violations under ch. 403, F.S. (five years); prosecutions involving felony elderly person or disabled adult abuse under s. 825.102, F.S. (four years); and prosecutions involving certain sexual offenses committed against children under 18 years of age (applicable time limitation does not begin to run until the crime is reported or until the child turns 18, whichever occurs first).

In 2003 the Statutes of Limitation were extended in cases of sexual battery and certain lewd or lascivious offenses where DNA evidence identifies the perpetrator outside the normal time limitations for prosecution.. Subsection (15) of s. 775.15, F.S., now states:

(a) In addition to the time periods prescribed in this section, a prosecution for any of the following offenses may be commenced within 1 year after the date on which the identity of the accused 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:

1. An offense of sexual battery under chapter 794.
2. A lewd or lascivious offense under s. 800.04 or s. 825.1025.

(b) This subsection applies to any offense that is not otherwise barred from prosecution on or after July 1, 2004.

### III. Effect of Proposed Changes:

The bill eliminates, under circumstances where the perpetrator's identity is established by DNA evidence, the current Statutes of Limitation for certain personal crimes of violence by further amending subsection (15), and creating a new subsection (16) of s. 775.15, F.S.

The bill provides that the following offenses can be prosecuted at any time after the date on which the identity of the accused is established, or should have been established by the exercise of due diligence, through the analysis of 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:

- aggravated battery or felony battery
- kidnapping or false imprisonment
- sexual battery
- lewd or lascivious offenses
- burglary
- robbery
- carjacking
- aggravated child abuse

The provisions of the bill take effect July 1, 2006, and apply to crimes committed on or after that date.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

#### D. Other Constitutional Issues:

The statute of limitations in effect at the time the crime is committed controls. *State v. Wadsworth*, 293 So.2d 345 (Fla. 1974). The Legislature can extend the limitations period without violating the ex post facto laws if it does so before prosecution is barred by the old statute and clearly indicates that the new statute is to apply to cases pending when it becomes effective. *U.S. v. Richardson*, 512 F.2d 105 (3rd Cir. 1975). The bill appears to meet the criteria.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill has not been analyzed by the Criminal Justice Impact Conference as of the date of this writing, therefore the fiscal impact, if any, has not been projected.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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## **VIII. Summary of Amendments:**

None.

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