

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: SB 528

INTRODUCER: Senator Aronberg

SUBJECT: Sexual battery time limitations

DATE: February 27, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Favorable
2.			JU	
3.			JA	
4.				
5.				
6.				

I. Summary:

Senate Bill 528 would eliminate the current three-year time limitation on prosecutions involving persons who commit a second degree sexual battery on a victim between the ages of 12 and 18. (The current three-year time limitation for this group of children does not begin to run until the crime is reported to law enforcement or until the child turns 18, whichever occurs first. This is true unless the crime is reported to law enforcement within 72 hours, in which case the three-year limitation is eliminated under current law.)

So essentially, the bill eliminates the requirement for the victim of this type of sexual battery (committed without the child’s consent, and without physical force or violence likely to cause serious personal injury) to report the crime within 72 hours in order to be able to pursue a prosecution indefinitely.

This bill substantially amends section 775.15 of the Florida Statutes.

II. Present Situation:

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).

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 felony offenses, including sexual 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 degree felony, there is a four-year time limitation.
- For any other felony, there is a three-year time limitation.

Except that:

- 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 a first or second degree felony sexual battery violation (which includes several different sexual battery offenses committed on victims under and over 18 years), if reported to a law enforcement agency within 72 hours after commission of the crime, there is no time limitation.

The general time limitation periods are also extended for prosecutions involving certain sexual offenses when committed against children or when DNA evidence is gathered in those cases.

For instance, subsection (15) allows prosecution for sexual battery under ch. 794, F.S., or lewd or lascivious offenses under s. 800.04 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. In addition, last year the Legislature enacted subsection (16) which eliminated the current time limitation for certain personal crimes of violence, including sexual battery and lewd or lascivious offenses, when the perpetrator's identity is established by DNA evidence.

Furthermore, subsection (13) provides that the applicable time limitation for prosecutions involving certain sexual crimes against children under 18 years of age (sexual battery, "statutory rape" under former s. 794.05, F.S., lewd or lascivious offenses, or incest) does not begin to run until the crime is reported to a law enforcement agency or until the child turns 18, whichever occurs first.

So, 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 (except if it is reported within 72 hours to law enforcement, there is no time limitation). s. 775.15(13)(a), F.S. *See also, Constantine v.*

State, 566 So.2d 321, 322 (2nd DCA 1990). (A second degree sexual battery occurs when a person commits sexual battery on a person 12 years of age or older, without that person's consent, and in that process does not use physical force and violence likely to cause serious personal injury. s. 794.011(5), F.S.)

III. Effect of Proposed Changes:

Senate Bill 528 would eliminate the current three-year time limitation on prosecutions involving persons who commit a second degree sexual battery on a victim between the ages of 12 and 18. (The current three-year time limitation for this group of children does not begin to run until the crime is reported to law enforcement or until the child turns 18, whichever occurs first. This is true unless the crime is reported to law enforcement within 72 hours, in which case the three-year limitation is eliminated under current law.)

So essentially, the bill eliminates the requirement for a victim of this type of sexual battery (committed without the child's consent, and without physical force or violence likely to cause serious personal injury) to report the crime within 72 hours in order to be able to pursue a prosecution indefinitely.

Accordingly, under the bill, a second degree sexual battery committed on a child between 12 and 18 years would join the other types of sexual battery offenses that have no statute of limitations period applied to them as follows: a first degree felony sexual battery violation upon a victim less than 18 years, a first or second degree felony sexual battery violation if reported to a law enforcement agency within 72 hours after commission of the crime, and a sexual battery violation when the perpetrator's identity is established by DNA evidence.

The bill does not extend the statute of limitations for an offense already time-barred on or before October 1, 2008.

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 F2d 105 (3rd Cir. 1975). The bill appears to meet the criteria.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference projects there will be insignificant prison bed impact under this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.