

Senate Bill No. 1440

An act relating to time limitations; amending s. 775.15, F.S.; reorganizing provisions establishing time limitations for prosecuting criminal offenses; clarifying certain provisions; amending s. 922.105, F.S., relating to execution of sentence; conforming a cross-reference; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 775.15, Florida Statutes, is amended to read:

775.15 Time limitations; general time limitations; exceptions.—

(1)(a) A prosecution for a capital felony, a life felony, or a felony that resulted in a death may be commenced at any time. ~~A prosecution for a felony that resulted in injury to any person, when such felony arises from the use of a “destructive device,” as defined in s. 790.001, may be commenced within 10 years.~~ If the death penalty is held to be unconstitutional by the Florida Supreme Court or the United States Supreme Court, all crimes designated as capital felonies shall be considered life felonies for the purposes of this section, and prosecution for such crimes may be commenced at any time.

~~(b) Except as otherwise provided in subsection (7), a prosecution for a first or second degree felony violation of s. 794.011, if such crime is reported to a law enforcement agency within 72 hours after commission of the crime, may be commenced at any time. If such crime is not reported within 72 hours after the commission of the crime, the prosecution must be commenced within the time periods prescribed in subsection (2).~~

~~(c) A prosecution for perjury in an official proceeding that relates to the prosecution of a capital felony may be commenced at any time.~~

(2) Except as otherwise provided in this section, prosecutions for other offenses are subject to the following periods of limitation:

(a) A prosecution for a felony of the first degree must be commenced within 4 years after it is committed.

(b) A prosecution for any other felony must be commenced within 3 years after it is committed.

(c) A prosecution for a misdemeanor of the first degree must be commenced within 2 years after it is committed.

(d) A prosecution for a misdemeanor of the second degree or a noncriminal violation must be commenced within 1 year after it is committed.

~~(e) A prosecution for a felony violation of chapter 517 or s. 409.920 must be commenced within 5 years after the violation is committed.~~

~~(f) A prosecution for a felony violation of chapter 403 must be commenced within 5 years after the date of discovery of the violation.~~

~~(g) A prosecution for a felony violation of s. 825.102 or s. 825.103 must be commenced within 5 years after it is committed.~~

~~(h) A prosecution for a felony violation of ss. 440.105 and 817.234 must be commenced within 5 years after the violation is committed.~~

~~(3) If the period prescribed in subsection (2) has expired, a prosecution may nevertheless be commenced for:~~

~~(a) Any offense, a material element of which is either fraud or a breach of fiduciary obligation, within 1 year after discovery of the offense by an aggrieved party or by a person who has a legal duty to represent an aggrieved party and who is himself or herself not a party to the offense, but in no case shall this provision extend the period of limitation otherwise applicable by more than 3 years.~~

~~(b) Any offense based upon misconduct in office by a public officer or employee at any time when the defendant is in public office or employment, within 2 years from the time he or she leaves public office or employment, or during any time permitted by any other part of this section, whichever time is greater.~~

~~(3)(4) An offense is committed either when every element has occurred or, if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's complicity therein is terminated. Time starts to run on the day after the offense is committed.~~

~~(4)(5)(a) Prosecution on a charge on which the defendant has previously been arrested or served with a summons is commenced by the filing of an indictment, information, or other charging document.~~

~~(b) A prosecution on a charge on which the defendant has not previously been arrested or served with a summons is commenced when either an indictment or information is filed, provided the capias, summons, or other process issued on such indictment or information is executed without unreasonable delay. In determining what is reasonable, inability to locate the defendant after diligent search or the defendant's absence from the state shall be considered. The failure to execute process on or extradite a defendant in another state who has been charged by information or indictment with a crime in this state shall not constitute an unreasonable delay.~~

~~(c) If, however, an indictment or information has been filed within the time period prescribed in this section and the indictment or information is dismissed or set aside because of a defect in its content or form after the time period has elapsed, the period for commencing prosecution shall be extended 3 months from the time the indictment or information is dismissed or set aside.~~

~~(5)(6) The period of limitation does not run during any time when the defendant is continuously absent from the state or has no reasonably ascer-~~

tainable place of abode or work within the state. This provision shall not extend the period of limitation otherwise applicable by more than 3 years, but shall not be construed to limit the prosecution of a defendant who has been timely charged by indictment or information or other charging document and who has not been arrested due to his or her absence from this state or has not been extradited for prosecution from another state.

(6) A prosecution for perjury in an official proceeding that relates to the prosecution of a capital felony may be commenced at any time.

(7) A prosecution for a felony that resulted in injury to any person, when such felony arises from the use of a "destructive device," as defined in s. 790.001, may be commenced within 10 years.

(8) A prosecution for a felony violation of chapter 517 or s. 409.920 must be commenced within 5 years after the violation is committed.

(9) A prosecution for a felony violation of chapter 403 must be commenced within 5 years after the date of discovery of the violation.

(10) A prosecution for a felony violation of s. 825.102 or s. 825.103 must be commenced within 5 years after it is committed.

(11) A prosecution for a felony violation of ss. 440.105 and 817.234 must be commenced within 5 years after the violation is committed.

(12) If the period prescribed in subsection (2), subsection (8), subsection (9), subsection (10), or subsection (11) has expired, a prosecution may nevertheless be commenced for:

(a) Any offense, a material element of which is either fraud or a breach of fiduciary obligation, within 1 year after discovery of the offense by an aggrieved party or by a person who has a legal duty to represent an aggrieved party and who is himself or herself not a party to the offense, but in no case shall this provision extend the period of limitation otherwise applicable by more than 3 years.

(b) Any offense based upon misconduct in office by a public officer or employee at any time when the defendant is in public office or employment, within 2 years from the time he or she leaves public office or employment, or during any time permitted by any other part of this section, whichever time is greater.

(13)(7)(a) If the victim of a violation of s. 794.011, former s. 794.05, Florida Statutes 1995, s. 800.04, or s. 826.04 is under the age of 18, the applicable period of limitation, if any, does not begin to run until the victim has reached the age of 18 or the violation is reported to a law enforcement agency or other governmental agency, whichever occurs earlier. Such law enforcement agency or other governmental agency shall promptly report such allegation to the state attorney for the judicial circuit in which the alleged violation occurred. If the offense is a first or second degree felony violation of s. 794.011, and the offense crime is reported within 72 hours after its commission, the prosecution for such offense may be commenced at

any time paragraph (1)(b) applies. This paragraph applies to any such offense except an offense the prosecution of which would have been barred by subsection (2) on or before December 31, 1984.

~~(b) Notwithstanding the provisions of paragraph (1)(b) and paragraph (a) of this subsection,~~ If the offense is a first degree felony violation of s. 794.011 and the victim was under 18 years of age at the time the offense was committed, a prosecution of the offense may be commenced at any time. This paragraph applies to any such offense except an offense the prosecution of which would have been barred by subsection (2) on or before October 1, 2003.

(14) A prosecution for a first or second degree felony violation of s. 794.011, if the victim is 18 years of age or older at the time of the offense and the offense is reported to a law enforcement agency within 72 hours after commission of the offense, may be commenced at any time. If the offense is not reported within 72 hours after the commission of the offense, the prosecution must be commenced within the time periods prescribed in subsection (2).

~~(15)(8)(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.

Section 2. Subsection (8) of section 922.105, Florida Statutes, is amended to read:

922.105 Execution of death sentence; prohibition against reduction of death sentence as a result of determination that a method of execution is unconstitutional.—

(8) Notwithstanding s. 775.082(2), s. 775.15(1)~~(a)~~, or s. 790.161(4), or any other provision to the contrary, no sentence of death shall be reduced as a result of a determination that a method of execution is declared unconstitutional under the State Constitution or the Constitution of the United States. In any case in which an execution method is declared unconstitutional, the death sentence shall remain in force until the sentence can be lawfully executed by any valid method of execution.

Section 3. This act shall take effect July 1, 2005.

Approved by the Governor June 1, 2005.

Filed in Office Secretary of State June 1, 2005.