

# Criminal Statutes of Limitations Florida

*Last Updated: December 2017*

## Sexual battery

Question	Answer
What is the statute of limitations for this crime?	<p>The statute of limitations for this crime depends upon how the crime is classified. A classification of this crime depends upon circumstances and facts, as outlined below. The limitation for each classification of the crime follows the outline below.</p> <ul style="list-style-type: none"><li>• Capital felony if offender is at least 18 and commits sexual battery upon, or in an attempt to commit sexual battery injures the sexual organs of, victim under 12;</li><li>• Life felony if offender under 18 commits sexual battery upon, or in an attempt to commit sexual battery injures the sexual organs of, victim under 12;</li><li>• Life felony if offender commits sexual battery upon a victim at least 12, 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;</li><li>• Felony of the first degree if offender commits sexual battery upon a victim, at least 12, without the victim's consent, under any of the following circumstances:<ul style="list-style-type: none"><li>• Victim is physically helpless to resist;</li><li>• Offender coerces submission by threatening to use force or violence likely to cause serious personal injury on the victim, and the victim reasonably believes that the offender has the present ability to execute the threat;</li><li>• Offender coerces submission by threatening to retaliate against the victim or a third person, and the victim reasonably believes that the offender has the present ability to execute the threat in the future;</li><li>• Offender, without the prior knowledge or consent of the victim, administers or has knowledge of someone else administering to the victim any narcotic, anesthetic, or other intoxicating substance which mentally or physically incapacitates victim;</li><li>• Victim is mentally defective and offender knows or has reason to know;</li><li>• Victim is physically incapacitated; or</li><li>• Offender is a law enforcement officer, correctional officer, correctional probation officer, or other person in a position of control or authority in a controlled setting and such person is acting in a manner as to lead the victim to reasonably believe that the offender is in a position of control authority as an agent or employee of government.</li></ul></li><li>• Felony of the first degree if offender 18 or older commits sexual battery upon a person 12 years of age or older, but younger than 18, without that person's consent, without using physical force and violence</li></ul>

- likely to cause serious personal injury;
- Felony of the second degree if offender 18 or older commits sexual battery upon a person 18 or older without that person's consent, without using physical force and violence likely to cause serious personal injury;
- Felony of the second degree if offender younger than 18 commits sexual battery upon a person 12 years of age or older, without that person's consent, without using physical force and violence likely to cause serious personal injury; or
- See statute (Fla. Stat. § 794.011) for other classifications of sexual battery and aggravating factors that may increase the nature of the crime and the statute of limitations in certain circumstances.

The statute of limitations for this offense is as follows:

1. For a capital felony, life felony, or a felony that resulted in death, there is no time limitation;
2. For a felony of the first degree, prosecution must commence within four years after commission of the offense;
3. For any other felony, prosecution must commence within three years after commission of the offense;
4. There is no limitations period for any sexual battery violation committed against a victim under 16.
5. There is no limitations period for any first degree sexual battery offense committed against a victim under 18;
6. There is no limitations period if the offense is a first or second degree felony committed against a victim 16 or older, and the offense is reported within 72 hours after its commission;
7. If the victim was under 18 at the time the offense was committed, the time does not begin to run until the earlier of the victim reaching 18 or the offense being reported to law enforcement, however, there is no limitations period for a first or second degree sexual battery felony on a victim under 18 if the crime is reported within 72 hours after it was committed.

Statutory citation(s):

1. Citation for the crime: Fla. Stat. § 794.011.
2. Citation for the statute of limitations: Fla. Stat. § 775.15.

## Sexual battery by multiple perpetrators

Question	Answer
What is the statute of limitations for this crime?	<p>This crime is classified as follows:</p> <ol style="list-style-type: none"> <li>1. A sexual battery that would be a felony of the second degree becomes a felony of the first degree if there were multiple perpetrators; or</li> <li>2. A sexual battery that would be a felony of the first degree becomes a life felony if there were multiple perpetrators.</li> </ol>

	Please see "Sexual battery" above for a description of the statute of limitations for this crime.
Statutory citation(s):	<ol style="list-style-type: none"> <li>1. Citation for the crime: Fla. Stat. § 794.023.</li> <li>2. Citation for the statute of limitations: Fla. Stat. § 775.15.</li> </ol>

## Unlawful sexual activity with certain minors

Question	Answer
What is the statute of limitations for this crime?	<p>This crime is a second degree felony.</p> <ol style="list-style-type: none"> <li>1. Prosecution must commence within three years after commission of the offense.</li> </ol>
Statutory citation(s):	<ol style="list-style-type: none"> <li>1. Citation for the crime: Fla. Stat. § 794.05.</li> <li>2. Citation for the statute of limitations: Fla. Stat. § 775.15(2)(b).</li> </ol>

## Lewd or lascivious offenses committed on or in the presence of persons under 16

Question	Answer
What is the statute of limitations for this crime?	<p>The statute of limitations for this crime depends upon how the crime is classified. A classification of this crime depends upon circumstances and facts, as outlined below.</p> <ol style="list-style-type: none"> <li>1. Felony of the second degree if offender engages in sexual activity with a victim at least 12 but under 16, or encourages, forces, or entices a victim under 16 to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other sexual activity as defined by law; or</li> <li>2. Life felony if offender at least 18 intentionally touches in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing over them, of a victim under 12; or</li> <li>3. Felony of the second degree if offender is under 18 and intentionally touches in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing over them, of a victim under 12, or if offender is at least 18 and victim is at least 12 but under 16; or</li> <li>4. Felony of the third degree if offender is under 18 and intentionally touches in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing over them, of a victim at least 12 but under 16; or</li> <li>5. Felony of the second degree if offender 18 or older intentionally touches a person under 16 in a lewd</li> </ol>

- or lascivious manner or solicits a person under 16 to commit a lewd or lascivious act; or
- 6. Felony of the third degree if offender less than 18 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.
- 7. Life felony if offender was previously convicted of this section or sexual battery of a child, sexual battery under Chapter 794, or transmission of child pornography.

The statute of limitations for this offense is as follows:

- 1. No limitation for capital felony, life felony, or a felony that resulted in death;
- 2. For first, second, or third degree felony offenses, the time limitation is three years after commission of the offense; however if the victim was under 18 at the time the offense was committed, the time does not begin to run until victim has reached 18 or the offense is reported to law enforcement, whichever occurs first.
- 3. Lewd or Lascivious Battery or Molestation under Fla. Stat. § 800.04(4) or (5), if committed against a victim under 16, may have prosecution commence at any time, unless the offender was under 18 and no more than one year older than the victim

Statutory citation(s):	<ul style="list-style-type: none"> <li>1. Citation for the crime: Fla. Stat. § 800.04.</li> <li>2. Citation for the statute of limitations: Fla. Stat. § 775.15.</li> </ul>
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### **Lewd or lascivious offenses committed on or in the presence of an elderly person or disabled person**

Question	Answer
What is the statute of limitations for this crime?	<p>This crime is a felony of the second degree.</p> <ul style="list-style-type: none"> <li>1. Prosecution must commence within three years after commission of the offense.</li> </ul>
Statutory citation(s):	<ul style="list-style-type: none"> <li>1. Citation for the crime: Fla. Stat. § 825.1025.</li> <li>2. Citation for the statute of limitations: Fla. Stat. § 775.15(2)(b).</li> </ul>

### **Incest**

Question	Answer
What is the statute of limitations for this crime?	<p>This crime is a felony of the third degree.</p> <ol style="list-style-type: none"> <li>1. Prosecution must commence within three years after commission of the offense; but</li> <li>2. If the victim was under 18 at the time the offense was committed, the time does not begin to run until victim has reached 18 or the offense is reported to law enforcement, whichever occurs first.</li> </ol>
Statutory citation(s):	<ol style="list-style-type: none"> <li>1. Citation for the crime: Fla. Stat. § 826.04.</li> <li>2. Citation for the statute of limitations: Fla. Stat. § 775.15(2)(b) and (13)(a).</li> </ol>

### Computer pornography/traveling to meet minors

Question	Answer
What is the statute of limitations for this crime?	<p>The statute of limitations for this crime depends upon how the crime is classified. A classification of this crime depends upon circumstances and facts, as outlined below.</p> <ol style="list-style-type: none"> <li>1. Felony of the third degree if person uses a device capable of electronic data storage or transmission to seduce, solicit, lure, or entice a person believed to be a child to engage in unlawful sexual conduct, or attempt to gain consent from a guardian of a child for the child to engage in such conduct; or</li> <li>2. Felony of the second degree if person travels any distance to attempt to engage in unlawful sexual conduct with a person believed to be a child after using a device capable of electronic data storage or transmission to seduce, solicit, lure, or entice a person believed to be a child to engage in unlawful sexual conduct, or attempt to gain consent from a guardian of a child for the child to engage in such conduct.</li> </ol> <p>The statute of limitations for this offense is as follows:</p> <ol style="list-style-type: none"> <li>1. Prosecution must bring a case within three years after commission of the offense; and</li> <li>2. For certain computer actions prohibited by Fla. Stat. § 847.1035(5), if the victim was under 18 at the time the offense was committed, the time does not begin to run until victim has reached 18 or the offense is reported to law enforcement, whichever occurs first.</li> </ol>
Statutory citation(s):	<ol style="list-style-type: none"> <li>1. Citation for the crime: Fla. Stat. § 847.0135.</li> <li>2. Citation for the statute of limitations: Fla. Stat. § 775.15(2)(b) and (13)(a).</li> </ol>

## Human trafficking

Question	Answer
What is the statute of limitations for this crime?	There is no time limitation for this crime.
Statutory citation(s):	<ol style="list-style-type: none"> <li>1. Citation for the crime: Fla. Stat. § 787.06.</li> <li>2. Citation for the statute of limitations: Fla. Stat. § 775.15(19).</li> </ol>

## Are there any exceptions to the statute of limitations laws?

Question	Answer
Exceptions	<ul style="list-style-type: none"> <li>• DNA Evidence Exception - under Fla. Stat. § 775.15:               <ul style="list-style-type: none"> <li>• Subsection (15)(a): For the following offenses, within one 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 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; applies to any offense not otherwise barred from prosecution between July 1, 2004 and June 30, 2006                   <ul style="list-style-type: none"> <li>• Sexual battery (§ 794.011)</li> <li>• Lewd or lascivious offense upon or in the presence of a child (§ 800.04)</li> <li>• Lewd or lascivious offense upon or in the presence of an elderly or disabled person (§ 825.1025)</li> </ul> </li> <li>• Subsection (16)(a): For the following offenses, a prosecution 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; applies to offenses not otherwise barred from prosecution on or after July 1, 2006:                   <ul style="list-style-type: none"> <li>• Sexual battery (§ 794.011)</li> <li>• Lewd or lascivious offense in the presence of a child (§ 800.04)</li> <li>• Lewd or lascivious offense upon or in the presence of an elderly or disabled person (§ 825.1025)</li> <li>• Certain computer transmissions related to child pornography (§ 847.0135 (5))</li> </ul> </li> </ul> </li> </ul>

## Anything else I should know?

Question	Answer
Anything else I should know?	<ul style="list-style-type: none"><li>• <i>Scharfschwerdt v. Kanarek</i>, 553 So.2d 218, 220 (Fla. 4th DCA 1989)<ul style="list-style-type: none"><li>• Legislature can amend statutes of limitation for sexual battery to apply retroactively without running afoul of constitutional ex post facto prohibition if it does so before prosecution is barred by old statute, and legislature clearly indicates that new statute is to apply retroactively.</li><li>• See also <i>Dixon v. State</i>, 53 So.3d 1242, 1243-44 (Fla. 2d DCA 2011) (refusing to apply statute of limitations extension based on DNA analysis when the subsequent statute had not been enacted when the original limitations period for a sexual battery offense had already expired).</li></ul></li><li>• <i>Torgerson v. State</i>, 964 So. 2d 178, 179 (Fla. 2007)<ul style="list-style-type: none"><li>• In a trial for lewd or lascivious battery upon a person between 12 and 16 and sexual battery, the statute of limitations in effect at the time defendant allegedly committed the offenses was applicable. Thus, the limitations period began to run when the victim reached 16 or when the crime was reported to law enforcement agency – not when the victim turned 18 as provided in statute relied on by prosecution.</li></ul></li></ul>