

**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.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: SB 494

INTRODUCER: Senator Benacquisto

SUBJECT: Time Limitations

DATE: February 17, 2014

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	<b>Favorable</b>
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<b>Pre-meeting</b>
3.	_____	_____	<u>AP</u>	_____

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## I. Summary:

SB 494 eliminates the statutes of limitation for prosecuting certain lewd or lascivious offenses committed upon or in the presence of a child who is younger than 16 at the time of the crime.

Generally, the current statute of limitation for lewd or lascivious offenses is 3 years with the exception of lewd or lascivious molestation. That offense is punishable as a life felony and may be prosecuted at any time if the victim is younger than 12 and the offender is older than 18 at the time of the offense. All other lewd and lascivious offenses are classified as second or third degree felonies, and as such, prosecution of these offenses is barred 3 years after the offense is committed, unless an exception to the statute of limitations applies.

If this bill becomes law, prosecutions for lewd or lascivious battery, molestation, conduct, and exhibition, which are currently punishable as second or third degree felonies, may be brought at any time in the future for offenses committed on or after October 1, 2014.

## II. Present Situation:

### Statutes of Limitation in Criminal Cases

#### *Historical Perspective*

At common law, there was no time limit restriction under which a criminal charge was required to be prosecuted. Time limitations, or statutes of limitation, for criminal prosecutions exist only as a creation of statute and are considered to be acts of grace by the sovereign.<sup>1</sup>

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<sup>1</sup> *State v. Hickman*, 189 So. 2d 254, 261 (Fla. 2d DCA 1966).

In *State v. Hickman*, the court stated:

The only purpose of a Statute limiting the time within which a criminal charge may be prosecuted is to protect every person from being interminably under the threat or cloud of possible criminal prosecution, which otherwise might be indefinitely delayed until the time when defense witnesses might die, disappear or otherwise become unavailable, judges would change office, or innumerable other time hazards might develop, which could conceivably defeat, or at least hamper, an otherwise good defense.<sup>2</sup>

Since the creation of statutes of limitation, courts have held that:

- (1) Generally, the statute of limitation that was in effect when a crime was committed controls.<sup>3</sup>
- (2) Statutes of limitation in criminal cases should be construed liberally in favor of the defendant.<sup>4</sup>
- (3) The Legislature may extend the limitations period without violating the ex post facto clause of the State Constitution<sup>5</sup> if the Legislature makes the change before the prosecution is barred under the old statute and clearly demonstrates that the new statute applies to cases pending when the extension takes effect.<sup>6</sup>

### ***Current Application***

Section 775.15, F.S., sets forth time limitations, or statutes of limitation, after which criminal prosecutions are barred.

The statute of limitation for prosecuting a criminal case begins to run on the day after the offense is committed.<sup>7</sup> An offense is deemed to have been committed when either every element of the offense has occurred or if it plainly appears that the legislative purpose is to prohibit a continuing course of conduct, at the time when the course of conduct or the defendant's complicity therein is terminated.<sup>8</sup>

### ***Existing Provisions***

Section 775.15, F.S., provides the following time limitations for initiating a criminal prosecution for a felony offense:

- There is no time limitation for prosecuting a capital felony, a life felony, a felony resulting in death,<sup>9</sup> any sexual battery on a victim younger than 16,<sup>10</sup> a first degree felony sexual battery

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<sup>2</sup> *Id.*

<sup>3</sup> *Beyer v. State*, 76 So. 3d 1132, 1135 (Fla. 4th DCA 2012).

<sup>4</sup> *Id.*

<sup>5</sup> FLA. CONST. art. I, s.10.

<sup>6</sup> *Andrews v. State*, 392 So. 2d 270, 271 (Fla. 2d DCA 1980).

<sup>7</sup> Section 775.15(3), F.S.

<sup>8</sup> *Id.*

<sup>9</sup> Section 775.15(1), F.S.

<sup>10</sup> Section 775.15(13)(c), F.S.

on a victim younger than 18,<sup>11</sup> or a first or second degree felony sexual battery and the victim reports the crime to law enforcement within 72 hours.<sup>12</sup>

- A 10-year limitation applies to prosecutions for any felony that results in injury to a person when the felony arises from the use of a destructive device.<sup>13</sup>
- A 4-year time limitation applies to prosecutions for a first degree felony.<sup>14</sup>
- A 3-year time limitation applies to prosecutions for any other felony.<sup>15</sup>

The 4 and 3-year time limitation periods for prosecuting felonies are extended under the statute to 5 years for felony prosecutions involving securities transaction violations (ch. 517, F.S.), Medicaid provider fraud (s. 409.920, F.S.), environmental control violations (ch. 403, F.S.), abuse or exploitation against elderly persons or disabled adults (ss. 825.102 or 825.103, F.S.), and Workers' Compensation and false and fraudulent insurance claims (ss. 440.105 and 817.234, F.S.)<sup>16</sup>

In addition to these enumerated time periods, the offenses of sexual battery, lewd or lascivious acts, and certain other felony offenses<sup>17</sup> may be prosecuted at any time after the date on which the offender's identity is established, or should have been established through the exercise of due diligence, through the analysis of DNA evidence. However, the DNA sample for these prosecutions must be available for testing by the accused.<sup>18</sup>

Finally, if a victim of sexual battery, lewd or lascivious behavior, incest, "statutory rape" under former s. 794.05, F.S., or computer pornography is under the age of 18, the applicable period of limitation does not begin to run until the victim reaches the age of 18 or the violation is reported to a law enforcement or governmental agency, whichever occurs first.<sup>19</sup>

### **Lewd or Lascivious Offenses**

Section 800.04, F.S., proscribes several lewd or lascivious offenses committed upon or in the presence of persons younger than 16 years of age, including lewd or lascivious battery, molestation, conduct, and exhibition.<sup>20</sup>

- ***Lewd or lascivious battery*** occurs when a person engages in "sexual activity"<sup>21</sup> with a person 12 years or older but less than 16 years; or encourages, forces, or entices a person less than

<sup>11</sup> Section 775.15(13)(b), F.S.

<sup>12</sup> Section 775.15(13) and (14), F.S.

<sup>13</sup> Section 775.15(7), F.S.

<sup>14</sup> Section 775.15(2)(a), F.S.

<sup>15</sup> Section 775.15(2)(b), F.S.

<sup>16</sup> Section 775.15(8)-(11), F.S.

<sup>17</sup> These other felony offenses include aggravated battery or any felony battery offense under ch. 784, F.S., kidnapping or false imprisonment, sexual battery, lewd or lascivious offense, burglary, robbery, carjacking, and aggravated child abuse.

<sup>18</sup> Section 775.15(16)(a)4., F.S.

<sup>19</sup> Section 775.15(13)(a), F.S.

<sup>20</sup> Section 800.04(4)-(7), F.S.

<sup>21</sup> "Sexual activity" is defined 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; except for acts done for bona fide medical purposes. Section 800.04(1)(a), F.S.

16 years to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act of sexual activity.<sup>22</sup>

- **Lewd or lascivious molestation** occurs when a person intentionally touches, in a lewd or lascivious manner, the breasts, genitals, genital area, buttocks, or the clothing covering them, of a person less than 16 years, or forces or entices the victim to so touch the perpetrator.<sup>23</sup>
- **Lewd or lascivious conduct** occurs when a person intentionally touches a person less than 16 years in a lewd or lascivious manner or solicits a person to commit a lewd or lascivious act.<sup>24</sup>
- **Lewd or lascivious exhibition** occurs when a person, in the presence of a person less than 16 years, intentionally masturbates, exposes the genitals in a lewd or lascivious manner, or intentionally commits any other sexual act that does not involve actual physical or sexual contact with the victim.<sup>25</sup>

The chart below provides the felony offense levels and general limitation periods for each of the offenses described above, which vary depending upon the age of the victim and offender.

Crime	Sub-Crime/Crime Description	Offender's Age	Victim's Age	Felony Level	General Limitations Periods
<b>Lewd or Lascivious Battery 800.04(4)</b>	Sexual activity	N/A	12 but less than 16	Second Degree	3 Years
	Sadomasochistic abuse, bestiality, etc.	N/A	Less than 16	Second Degree	3 Years
<b>Lewd or Lascivious Molestation 800.04(5)</b>	Lewd or lascivious touching of private areas	N/A	Less than 16	Second Degree	3 Years
		18 or older	Less than 12	Life Felony	None
		Less than 18		Second Degree	3 Years
		18 or older	12 but less than 16	Second Degree	3 Years
		Less than 18		Third Degree	3 Years
<b>Lewd or Lascivious Conduct 800.04(6)</b>	Lewd or lascivious touching; solicitation to commit lewd or lascivious act	18 or older	Less than 16	Second Degree	3 Years
		Less than 18		Third Degree	3 Years
<b>Lewd or Lascivious Exhibition 800.04(7)</b>	Masturbation, exposing privates, sexual acts not involving contact	18 or older	Less than 16	Second Degree	3 Years
		Less than 18		Third Degree	3 years

<sup>22</sup> Section 800.04(4), F.S.

<sup>23</sup> Section 800.04(5), F.S.

<sup>24</sup> Section 800.04(6), F.S.

<sup>25</sup> Section 800.04(7), F.S.

***Exceptions to the General Limitations Periods***

Several exceptions to the general limitations periods in the chart exist:

- The limitations period does not begin to run until the victim turns 18 or reports the violation, whichever is earlier.<sup>26</sup>
- If sufficient DNA evidence of a lewd or lascivious offense exists and is available for testing, a prosecution for the offense may be commenced at any time after the date on which the identity of the accused is established, or should have been established, through the analysis of DNA evidence.<sup>27</sup>
- For offenses not otherwise barred from prosecution between July 1, 2004 and June 30, 2006, if sufficient DNA evidence of a lewd or lascivious offense exists and is available for testing, a prosecution for the offense may be commenced 1 year after the date on which the identity of the accused is established, or should have been established, through the analysis of DNA evidence.<sup>28</sup>

**III. Effect of Proposed Changes:**

This bill eliminates the statutes of limitation for prosecuting lewd or lascivious offenses committed on or after October 1, 2014, and committed upon or in the presence of a child who is younger than 16 years at the time of the offense.

Generally, the current time limitation for lewd or lascivious offenses is 3 years with the exception of except lewd or lascivious molestation. That offense is punishable as a life felony and may be prosecuted at any time if the victim is younger than 12 and the offender is older than 18 at the time of the offense. All other lewd and lascivious offenses are classified as second or third degree felonies, and as such, the prosecution of these offenses is barred 3 years after the offense is committed, unless an exception to the statute of limitation applies.

Therefore, under this bill, prosecutions for lewd or lascivious battery, molestation, conduct, and exhibition, which are currently punishable as second or third degree felonies, may be brought at any time in the future for offenses committed on or after October 1, 2014.

The bill will take effect on July 1, 2014.

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

None.

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

None.

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<sup>26</sup> Section 775.15(13)(a), F.S.

<sup>27</sup> Section 775.15(16)(a)4., F.S.

<sup>28</sup> Section 775.15(15), F.S.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The number of persons subjected to criminal punishment for lewd or lascivious offenses may increase as a result of this bill.

C. Government Sector Impact:

The Criminal Justice Impact Conference has determined that the impact of this bill is “positive indeterminate.” This means there will be an unquantifiable increase in the number of prison beds needed. There is no way to estimate how many victims will step forward more than 3 years after an offense was committed. However, incarceration rates are high for persons convicted of lewd or lascivious offenses.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 775.15 of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.