

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 445 Time Limitations  
**SPONSOR(S):** Criminal Justice Subcommittee; Nuñez  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 494

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 2 N, As CS	Cunningham	Cunningham
2) Justice Appropriations Subcommittee		McAuliffe	Lloyd
3) Judiciary Committee			

### SUMMARY ANALYSIS

Section 800.04, F.S., provides criminal penalties for various lewd and lascivious offenses committed upon or in the presence of a person less than 16 years of age. These offenses, which range from life felonies to third degree felonies, include:

- Lewd or lascivious battery;
- Lewd or lascivious molestation;
- Lewd or lascivious conduct; and
- Lewd or lascivious exhibition.

Section 95.11, F.S., sets forth statutes of limitation for commencing civil actions. Currently, a civil claim for a violation of s. 800.04, F.S., must commence within four years from the date when the cause of action accrues

Similarly, s. 775.15, F.S., sets forth the following general statutes of limitation for commencing criminal prosecutions:

- 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.

Currently, the general time limitations described above apply to violations of s. 800.04, F.S., but may be extended or their onset delayed in specified circumstances (e.g., if DNA evidence establishes the identity of the accused).

The bill amends ss. 95.11 and 775.15, F.S., to remove the statutes of limitation for civil and criminal actions relating to a lewd or lascivious offense where the victim was under 16. The bill applies the new statutes of limitation to all actions except those which would have been time barred on or before October 1, 2014.

The Criminal Justice Impact Conference met January 30, 2014 and found the prison bed impact of the bill was indeterminate. However, the bill may have a negative prison bed impact in that it allows prosecutions for violations of s. 800.04, F.S., to be commenced at any time.

The bill is effective October 1, 2014.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Lewd or Lascivious Offenses**

Section 800.04, F.S., provides criminal penalties for the following lewd and lascivious offenses committed upon or in the presence of a person less than 16 years of age.<sup>1</sup>

##### Lewd or Lascivious Battery

Lewd or lascivious battery, a second degree felony,<sup>2</sup> occurs when a person:

- Engages in sexual activity<sup>3</sup> with a person 12 years of age or older but less than 16; or
- Encourages, forces, or entices any person less than 16 years of age to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity.<sup>4</sup>

##### Lewd or Lascivious Molestation

A person who intentionally touches in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person less than 16 years of age, or forces or entices a person under 16 years of age to so touch the perpetrator, commits lewd or lascivious molestation.<sup>5</sup>

The penalties for lewd or lascivious molestation are as follows:

- An offender 18 years of age or older who commits lewd or lascivious molestation against a victim less than 12 years of age commits a life felony.<sup>6</sup>
- An offender less than 18 years of age who commits lewd or lascivious molestation against a victim less than 12 years of age commits a second degree felony.
- An offender 18 years of age or older who commits lewd or lascivious molestation against a victim 12 years of age or older but less than 16 years of age commits a second degree felony.
- An offender less than 18 years of age who commits lewd or lascivious molestation against a victim 12 years of age or older but less than 16 years of age commits a third degree felony.<sup>7</sup>

##### Lewd or Lascivious Conduct

Lewd or lascivious conduct occurs when a person:

- Intentionally touches a person under 16 years of age in a lewd or lascivious manner; or
- Solicits a person under 16 years of age to commit a lewd or lascivious act.<sup>8</sup>

An offender 18 years of age or older who commits lewd or lascivious conduct commits a second degree felony. An offender less than 18 years of age who commits lewd or lascivious conduct commits a third degree felony.

##### Lewd or Lascivious Exhibition

A person who commits any of the following acts in the presence of a victim who is less than 16 years of age, commits lewd or lascivious exhibition:

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<sup>1</sup> Neither the victim's lack of chastity nor the victim's consent is a defense. Section 800.04(2), F.S.

<sup>2</sup> A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>3</sup> Section 800.04(1)(a), F.S., defines the term "sexual activity" as the 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; however, sexual activity does not include an act done for a bona fide medical purpose.

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

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

<sup>6</sup> A life felony committed on or after September 1, 2005, which is a violation of s. 800.04(5)(b), F.S., is punishable by a term of imprisonment for life; or a split sentence that is a term of not less than 25 years' imprisonment and not exceeding life imprisonment, followed by probation or community control for the remainder of the person's natural life, as provided in s. 948.012(4), F.S. For a life felony committed on or after July 1, 2008, which is a person's second or subsequent violation of s. 800.04(5)(b), F.S., by a term of imprisonment for life. Section 775.082(3)(a)4., F.S.

<sup>7</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

<sup>8</sup> Section 800.04(6), F.S.

- Intentionally masturbates;
- Intentionally 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, including, but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity.<sup>9</sup>

An offender 18 years of age or older who commits a lewd or lascivious exhibition commits a second degree felony. An offender less than 18 years of age who commits a lewd or lascivious exhibition commits a third degree felony.

## **Statute of Limitations**

### Background

Statutes of limitations sets forth time limitations, or “statutes of limitations,” for commencing criminal prosecutions and civil actions. In *State v. Hickman*,<sup>10</sup> the court explained 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.

Similarly, in *State v. Garofalo*, the court found that “[t]he sole purpose of a statute of limitations in a criminal context is to prevent the State from hampering defense preparation by delaying prosecution until a point in time when its evidence is stale and defense witnesses have died, disappeared or otherwise become unavailable.”<sup>11</sup>

### Civil Cases

Section 95.11, F.S., sets forth statutes of limitation for commencing civil actions in Florida, which range from 30 days to 20 years. The time for commencing civil actions starts to run from the time the cause of action accrues, which occurs when the last element constituting the cause of action occurs.<sup>12</sup>

Currently, a civil claim for a violation of s. 800.04, F.S., must commence within four years from the date when the cause of action accrues.<sup>13</sup>

### Criminal Cases

Section 775.15, F.S., sets forth statutes of limitation for commencing criminal prosecutions. For example:

- 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.

The general time limitations described above currently apply to the lewd and lascivious offenses in s. 800.04, F.S. However, these limitations may be extended or their onset delayed in specified circumstances. For example:

- A prosecution for a lewd or lascivious offense under s. 800.04, F.S., committed between July 1, 2004 and June 30, 2006, may be commenced within 1 year after the date on which the identity

<sup>9</sup> Section 800.04(7), F.S.

<sup>10</sup> 189 So.2d 254, 262 (Fla. 2nd DCA 1966).

<sup>11</sup> 453 So.2d 905, 906 (Fla. 4th DCA 1984)(citing *State v. Hickman*, 189 So.2d 254 (Fla. 2nd DCA 1966)).

<sup>12</sup> Section 95.031(1), F.S.

<sup>13</sup> Section 95.11(3)(n), F.S.

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.<sup>14</sup>

- A prosecution for a lewd or lascivious offense under s. 800.04, F.S., committed on or after July 1, 2006, 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.<sup>15</sup>

It should also be noted that for violations of s. 800.04, F.S., the applicable period of limitation 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 (generally, the time for prosecution of a criminal case starts to run on the day after the offense is committed).<sup>16</sup>

### **Effect of the Bill**

The bill amends s. 95.11, F.S., to provide that there is no time limitation for a civil cause of action of a violation of s. 800.04, F.S., involving a victim under the age of 16 at the time of the offense. The bill applies to all actions except those which would have been time barred on or before October 1, 2014.

The bill amends s. 775.15, F.S., to provide there is no time limitation for the criminal prosecution of a violation of s. 800.04, F.S., involving a victim under the age of 16 at the time of the offense. The bill applies to all offenses except those offenses barred by prosecution on or before October 1, 2014.

## **B. SECTION DIRECTORY:**

Section 1. Amends s. 95.11, F.S., relating to limitations other than for the recovery of real property.

Section 2. Amends s. 775.15, F.S., relating to time limitations; general time limitations; exceptions.

Section 3. Provides an effective date of October 1, 2014.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The bill does not appear to have any impact on state revenues.

#### **2. Expenditures:**

The Criminal Justice Impact Conference met January 30, 2014 and found the prison bed impact of the bill was indeterminate. However, the bill may have a negative prison bed impact in that it allows prosecutions for violations of s. 800.04, F.S., to be commenced at any time.

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<sup>14</sup> Section 775.15(15), F.S.

<sup>15</sup> Section 775.15(16), F.S.

<sup>16</sup> Section 775.15(13)(a), F.S.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

**1. Revenues:**

The bill does not appear to have any impact on local government revenues.

**2. Expenditures:**

The bill does not appear to have any impact on local government expenditures.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

The bill does not appear to create a need for rulemaking or rulemaking authority.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 16, 2014, the Criminal Justice Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment:

- Removes the statutes of limitation for civil and criminal actions relating to a lewd or lascivious offense where the victim was under 16; and
- Applies the new statutes of limitation to all actions except those which would have been time barred on or before October 1, 2014.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.