

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 445 Time Limitations

SPONSOR(S): Judiciary Committee; Criminal Justice Subcommittee; Nuñez and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/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	13 Y, 0 N	McAuliffe	Lloyd
3) Judiciary Committee	17 Y, 0 N, As CS	Cunningham	Havlicak

SUMMARY ANALYSIS

Section 800.04, F.S., provides criminal penalties for various lewd or 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; and
- Lewd or lascivious molestation.

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

Similarly, s. 775.15, F.S., sets forth statutes of limitation for commencing criminal prosecutions. Generally, the statute of limitation for the criminal prosecution of lewd or lascivious battery or molestation is 3 years. However, these limitations 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 eliminate the statutes of limitation for civil and criminal actions relating to lewd or lascivious battery or molestation where the victim was under 16 at the time of the offense. This provision does not apply if the offender was under the age of 18 and no more than 4 years older than the victim at the time of the offense. 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 bill may have a negative prison bed impact in that it allows prosecutions for lewd or lascivious battery or molestation to be commenced at any time in specified instances.

The bill is effective October 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Statutes of Limitation

Background

Statutes of limitation sets forth time limitations for commencing criminal prosecutions and civil actions. In *State v. Hickman*,¹ 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 limitation 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.”²

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.³

Currently, a civil claim for an action for a statutory penalty must commence within four years from the date when the cause of action accrues.⁴

Criminal Cases

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

- For a capital felony,⁵ a life felony,⁶ or a felony resulting in death, there is no time limitation;
- For a first degree felony,⁷ there is a four-year limitation; and
- For any other felony, there is a three-year limitation.

Lewd or Lascivious Offenses

¹ 189 So.2d 254, 262 (Fla. 2d DCA 1966).

² 453 So.2d 905, 906 (Fla. 4th DCA 1984)(citing *State v. Hickman*, 189 So.2d 254 (Fla. 2d DCA 1966)).

³ Section 95.031(1), F.S.

⁴ Section 95.11(3)(n), F.S.

⁵ A person convicted of a capital felony must be punished by death if the proceeding held to determine sentence according to s. 921.141 results in findings by the court that such person must be punished by death, otherwise such person shall be punished by life imprisonment and is ineligible for parole. Section 775.082(1), F.S.

⁶ 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.

⁷ A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

Section 800.04, F.S., provides criminal penalties for various lewd or lascivious offenses committed upon or in the presence of a person less than 16 years of age.⁸

Lewd or Lascivious Battery

Lewd or lascivious battery, a second degree felony,⁹ occurs when a person:

- Engages in sexual activity¹⁰ 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.¹¹

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.¹²

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.
- 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.¹³

Currently, a civil claim for a violation of lewd or lascivious battery or molestation must commence within four years from the date when the cause of action accrues.¹⁴

With one exception,¹⁵ the statute of limitation for the criminal prosecution of lewd or lascivious battery or molestation is 3 years. 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 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.¹⁶
- 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.¹⁷

⁸ Neither the victim's lack of chastity nor the victim's consent is a defense. Section 800.04(2), F.S.

⁹ 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.

¹⁰ 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.

¹¹ Section 800.04(4), F.S.

¹² Section 800.04(5), F.S.

¹³ 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.

¹⁴ Section 95.11(3)(n), F.S.

¹⁵ Lewd or lascivious molestation by an offender 18 years of age or older against a victim less than 12 years is a life felony, which has no statute of limitations.

¹⁶ Section 775.15(15), F.S.

¹⁷ Section 775.15(16), F.S.

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).¹⁸

Effect of the Bill

The bill amends s. 95.11, F.S., to eliminate the statute of limitation for civil causes of action for lewd or lascivious battery or molestation involving a victim under the age of 16 at the time of the offense. This provision does not apply if the offender was under the age of 18 and no more than 4 years older than the victim at the time of the offense (in such instances, the statute of limitation is 4 years). 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 eliminate the statute of limitation for the criminal prosecution of lewd or lascivious battery or molestation involving a victim under the age of 16 at the time of the offense. This provision does not apply if the offender was under the age of 18 and no more than 4 years older than the victim at the time of the offense (in such instances, the statute of limitation is 3 years). 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:

Prior to being amended in the Judiciary Committee, the bill eliminated the statutes of limitation for civil actions and criminal prosecutions of all violations of s. 800.04, F.S., involving a victim under the age of 16. The Criminal Justice Impact Conference met January 30, 2014, and determined the prison bed impact of the bill was indeterminate. Since this determination, the bill has been amended to limit its application to violations of s. 800.04(4) and (5), F.S., and to create an exception for instances in which the offender was less than 18 and no more than 4 years older than the victim at the time of the offense. As amended, the bill may still have a negative prison bed impact in that it allows prosecutions for violations of s. 800.04(4) and (5), F.S., to be commenced at any time in specified instances.

¹⁸ Section 775.15(13)(a), F.S.
STORAGE NAME: h0445e.JDC
DATE: 2/25/2014

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.

On February 20, 2014, the Judiciary Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment limited the bill's application to violations of s. 800.04(4) and (5), F.S., and created an exception for instances in which the offender was less than 18 and no more than 4 years older than the victim at the time of the offense.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.