

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.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 494

INTRODUCER: Senator Benacquisto

SUBJECT: Time Limitations

DATE: January 9, 2014

REVISED: 01/13/14

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Dugger	Cannon	CJ	Favorable
2.		JU	
3.		AP	

I. Summary:

SB 494 eliminates the current statutory time limitation for bringing a criminal prosecution for lewd or lascivious offenses committed upon or in the presence of a child less than 16 years of age. (The current time limitation is three years for all such lewd or lascivious offenses except lewd or lascivious molestation punishable as a life felony. In that case, a criminal prosecution may be brought any time in the future.) Thus, prosecutions for lewd or lascivious battery, molestation, conduct, and exhibition that are currently punishable as second or third degree felonies will be able to be brought any time in the future for offenses committed on or after October 1, 2014.

II. Present Situation:

Statutes of Limitation in Criminal Cases

Section 775.15, F.S., sets forth time limitations for commencing criminal prosecutions, commonly known as “statutes of limitation.”

There were no statutes of limitation at common law. Rather, statutes of limitation are a statutory creation.¹

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

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

¹ *State v. McCloud*, 67 So. 2d 242, 243 (Fla. 1953).

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.²

The time for prosecution of a criminal case starts to run on the day after the offense is committed.³ 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 duplicity therein is terminated.⁴

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

- For a capital felony, a life felony, a felony resulting in death,⁵ any sexual battery on a victim under 16,⁶ a first degree felony sexual battery on a victim under 18,⁷ or a first or second degree felony sexual battery on a victim 18 years or older and the victim reports the crime to law enforcement within 72 hours,⁸ there is no time limitation;
- For any felony that results in injury to a person when the felony arises from the use of a destructive device, a ten-year limitation applies;⁹
- For a first degree felony, a four-year time limitation applies;¹⁰ and
- For any other felony, a three-year time limitation applies.¹¹

The four and three-year time limitation periods are extended under the statute to five years for prosecutions involving securities transaction violations (ch. 517, F.S.), Medicaid provider fraud (s. 409.920, F.S.), insurance fraud by an employer (s. 440.105, F.S.), filing a false insurance claim (s. 817.234, F.S.), felony abuse against elderly persons or disabled adults (s. 825.102, F.S.), and environmental control felony violations (ch. 403, F.S.).¹²

In addition to these enumerated time periods, the offenses of sexual battery, lewd or lascivious acts, and certain other felony offenses¹³ 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 (except that for offenses committed between

² *State v. Hickman*, 189 So. 2d 254, 262 (Fla. 2d DCA 1966).

³ Section 775.15(3), F.S.

⁴ *Id.*

⁵ Section 775.15(1), F.S.

⁶ Section 775.15(13)(c), F.S.

⁷ Section 775.15(13)(b), F.S.

⁸ Section 775.15 (13) and (14), F.S.

⁹ Section 775.15(7), F.S.

¹⁰ Section 775.15(2)(a), F.S.

¹¹ Section 775.15(2)(b), F.S.

¹² Section 775.15(8)-(11), F.S.

¹³ 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.

July 1, 2004 and June 30, 2006, an offender may be prosecuted within 1 year after the date on which the identity of the offender is established, or should have been established by the exercise of due diligence, through the analysis of DNA).¹⁴

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 has reached the age of 18 or the violation is reported to a law enforcement or governmental agency, whichever occurs first.¹⁵

Lewd or Lascivious Offenses

Section 800.04, F.S., proscribes several lewd or lascivious offenses committed upon or in the presence of children less than 16 years of age, including lewd or lascivious battery, molestation, conduct, and exhibition.¹⁶

Lewd or lascivious battery occurs when a person engages in “sexual activity”¹⁷ with a child 12 years or older but less than 16 years; or encourages, forces, or entices a child less than 16 years to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act of sexual activity.¹⁸ Lewd or lascivious battery is punishable as a second degree felony.¹⁹

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 child less than 16 years, or forces or entices the child to so touch the perpetrator.²⁰ It is a life felony if this offense is committed on a child less than 12 years by an offender 18 years or older.²¹ It is a second degree felony if the child is less than 12 years and the offender is less than 18 years, or if the child is 12 years or older but less than 16 years and the offender is at least 18 years. It is a third degree felony if the child is 12 years or older but less than 16 years and the offender is less than 18 years.²²

Lewd or lascivious conduct occurs when a person intentionally touches a child less than 16 years in a lewd or lascivious manner or solicits a child to commit a lewd or lascivious act. If the

¹⁴ Subsections 775.15(15) and (16), F.S.

¹⁵ Section 775.15(13)(a), F.S.

¹⁶ Section 800.04(4)-(7), F.S.

¹⁷ “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), F.S.

¹⁸ Section 800.04(4), F.S.

¹⁹ The statutory punishment for a second degree felony is imprisonment not exceeding 15 years and a potential fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S.

²⁰ Section 800.04(5), F.S.

²¹ If this offense is committed after September 1, 2005, it is punishable by imprisonment for life or a split sentence of not less than 25 years’ imprisonment and not exceeding life imprisonment, followed by probation or community control for life. If it is a second or subsequent offense committed after July 1, 2008, it is punishable by life imprisonment. Section 775.082(3)(a)4., F.S. The potential fine may not exceed \$10,000. Section 775.083, F.S.

²² A third degree felony is punishable by imprisonment not exceeding 5 years and a potential fine not exceeding \$5,000. Sections 775.082 and 775.083, F.S.

offender is 18 years or older, it is a second degree felony. If the offender is less than 18 years, it is a third degree felony.²³

Lewd or lascivious exhibition occurs when a person, in the presence of a child 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 child. If the offender is 18 years or older, it is a second degree felony. If the offender is less than 18 years, it is a third degree felony.²⁴

The only lewd or lascivious offense that does not currently have a statutory time limitation for bringing a criminal prosecution is lewd or lascivious molestation that is punishable as a life felony.²⁵ All the others have a three year time limitation because they are punishable as second or third degree felonies.²⁶ However, the three year time limitation does not begin to run until the victim has reached the age of 18 or the violation is reported to a law enforcement or governmental agency, whichever occurs first.²⁷

III. Effect of Proposed Changes:

The bill eliminates the current statutory time limitation for bringing a prosecution for lewd or lascivious offenses committed upon or in the presence of a child less than 16 years. (The current time limitation is three years for all such lewd or lascivious offenses except lewd or lascivious molestation punishable as a life felony. In that instance, a prosecution may be brought any time in the future.) Thus, under the bill, prosecutions for lewd or lascivious battery, molestation, conduct, and exhibition that are currently punishable as second or third degree felonies will be able to be brought 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.

C. Trust Funds Restrictions:

None.

²³ Section 800.04(6), F.S.

²⁴ Section 800.04(7), F.S.

²⁵ See footnote 5.

²⁶ See footnote 11.

²⁷ See footnote 15.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

There could be an increase in the number of persons subjected to criminal punishment for lewd or lascivious offenses as a result of this bill.

C. Government Sector Impact:

The Criminal Justice Impact Conference has not met to consider whether this bill will have any impact on prison beds.

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.