

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 111

Statutes of Limitation for Murder and Manslaughter

**SPONSOR(S):** Porth

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 388

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	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1)	Civil Justice & Courts Policy Committee		De La Paz	De La Paz
2)	Criminal & Civil Justice Policy Council			
3)	Criminal & Civil Justice Appropriations Committee			
4)	Full Appropriations Council on General Government & Health Care			
5)				

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**SUMMARY ANALYSIS**

A statute of limitations is an absolute bar to the filing of a legal case after a date set by law.

HB 111 adds a specific reference to the murder and manslaughter statute to the statute of limitations provision governing all homicide prosecutions. The inclusion of these statutory references will have no substantive effect on the application of the current statute of limitations in homicide prosecutions.

HB 111 amends s. 95.11, F.S., which provides statutes of limitations in civil actions, to provide that “action[s] for murder or manslaughter may be commenced at any time.” The bill also makes conforming changes to other subsections of the statute relating to actions founded on negligence, actions for wrongful death, and actions for intentional torts based on abuse.

This bill does not appear to have a fiscal impact on state or local government.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

HB 111 may also be referred to as the "Jeffrey Klee Act." Jeffrey Klee disappeared on June 21, 1977 after last being seen at a lounge in Tamarac, Florida. Witnesses said he left the lounge with a friend named David Cusanelli, but he didn't return home and was never seen again. On March 26, 2008, Jeffrey Klee's remains and van were found at the bottom of a canal in Coral Springs, Florida. Police detectives obtained statements from both David Cusanelli and his brother which revealed facts that appeared sufficient to charge David Cusanelli with manslaughter. The statute of limitations applicable to manslaughter at the time was 3 years. Due to the extended period of time between the day of the Jeffrey's disappearance and the recovery of his body and the admissions of David and his brother, the statute of limitations has long since expired. As a result, a charge of manslaughter cannot be brought against David Cusanelli for the death of Jeffrey Klee.

A statute of limitations is an absolute bar to the filing of a legal case after a date set by law. The date is commonly based on the time that has elapsed since the action giving rise to the case occurred. Such laws creating statutes of limitation specify when the time period begins, how long the limitations period runs, and circumstances by which the running of the statutes may be tolled (suspended).

The state and federal constitutions prohibit ex post facto laws.<sup>1</sup> The prohibition, however, only applies to criminal law. Once the statute of limitations to bring a criminal charge has expired, it cannot be revived by a change made to the criminal law.<sup>2</sup>

##### Statute of Limitations on Manslaughter

Section 775.15, F.S., provides that "[a] prosecution for a capital felony, a life felony, or a felony that resulted in a death may be commenced at any time." Under this provision, a prosecution for

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<sup>1</sup> Art. I, s. 10, U.S. Const.; Art. I s. 10, Fla. Const.

<sup>2</sup> The United States Supreme Court has defined an ex post facto law as one that (a) operates retrospectively, and (b) "make[s] innocent acts criminal, alter[s] the nature of the offense, or increase[s] the punishment." Collins v. Youngblood, 497 U.S. 37, 46, 110 S.Ct. 2715, 111 L.Ed.2d 30 (1990); accord Cal. Dep't of Corr. v. Morales, 514 U.S. 499, 506 n. 3, 115 S.Ct. 1597, 131 L.Ed.2d 588 (1995) ("After Collins, the focus of the ex post facto inquiry is not on whether a legislative change produces some ambiguous sort of 'disadvantage,' ... but on whether any such change alters the definition of criminal conduct or increases the penalty by which a crime is punishable."). Thus, the prohibition on ex post facto laws applies only to criminal or penal provisions. See Westerheide v. State, 831 So.2d 93, 99 (2002). See also, Griffin v. State, 980 So.2d 1035 (Fla. 2008)

manslaughter may be commenced at any time. With respect to all homicide offenses, what is now the current statutory provision was amended into the statute in 1996.<sup>3</sup>

HB 111 adds a specific reference to the murder and manslaughter statute to the statute of limitations provision governing all homicide prosecutions.<sup>4</sup> The inclusion of these statutory references will have no substantive effect on the application of the current statute of limitations in homicide prosecutions.

#### Statute of Limitations on Wrongful Death Actions

Under current law, civil actions for deaths caused by the wrongful act, negligence, default, or breach of contract or warranty of another may be brought under the Wrongful Death Act.<sup>5</sup> Section 95.11(4)(d) provides for a two year statute of limitations for wrongful death actions. Section 768.21, F.S., specifies the types of damages that may be recovered under a wrongful death action. A wrongful death action, when based on negligence, also has a two year statute of limitations notwithstanding the fact that other actions based on negligence have a four year statute of limitations.

HB 111 amends s. 95.11, F.S., which provides statutes of limitations in civil actions, to provide that "action[s] for murder or manslaughter may be commenced at any time." The bill also makes conforming changes to other subsections of the statute relating to actions founded on negligence, actions for wrongful death, and actions for intentional torts based on abuse. See, "Drafting Issues or Other Comments section.

The bill becomes effective upon becoming law.

#### B. SECTION DIRECTORY:

Section 1. Provides a name for the act.

Section 2. Amends s. 95.11, F.S., regarding the statute of limitations for civil actions.

Section 3. Provides for application of the changes to 95.11, F.S., to claims not otherwise time barred.

Section 4. Amends s. 775.15, F.S., regarding the statute of limitations for criminal cases

Section 5. Provides for application of the amendment to 775.15, F.S., to prosecutions not otherwise barred.

Section 6. Provides an effective date of July 1, 2005.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

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

##### 1. Revenues:

None.

##### 2. Expenditures:

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<sup>3</sup> Ch. 96-145, Laws of Florida

<sup>4</sup> Section 775.15(1), F.S.

<sup>5</sup> Section 768.19, F.S.

None.

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 does not appear to require counties or municipalities to take an action requiring the expenditure to funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

N/A

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill creates a new section 9 providing that “actions for murder or manslaughter may be commenced at any time.” The terms *murder* and *manslaughter*, however, are the names given to criminal homicide offenses rather than civil tort actions based on a wrongful death. To accomplish the purpose to authorize civil suits for wrongful death actions resulting from conduct that also constitutes the offense of murder or manslaughter, language could be drafted that would authorize such claims as an intentional tort resulting in death and providing that such torts may be commenced at any time. A suggested placement for such an amendment would be as a new paragraph under subsection (7) or a new subsection.

Also, the limitation on the application of the amended provision regarding civil actions to claims not already time barred is not constitutionally necessary to avoid a violation of the ex post facto clause since that prohibition only applies to criminal law.

In addition, the Florida Supreme Court has recently approved the resuscitation of an otherwise barred claim in a wrongful death action when, based on their subjective assessment of good “public policy,” the Court determined that parents “did not have authority to execute a pre-injury release waiver on behalf of [their] minor child.” The result of the opinion was to authorize the estate of a deceased minor child to revive a claim that would have otherwise been barred had the parental release waiver been enforced. Kirton v. Fields, SC07-1739 (2008). If the Legislature created a new statute of limitations for intentional torts resulting in death, under the circumstances intended by the bill, it would not violate the ex post clause of the Constitution and would at least appear to be consistent with the effect of the Court’s decision in Kirton to permit such claims to be raised retroactively.

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES