

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Lee, Chair
Senator Soto, Vice Chair

MEETING DATE: Tuesday, February 18, 2014
TIME: 10:00 a.m.—12:00 noon
PLACE: *Toni Jennings Committee Room*, 110 Senate Office Building

MEMBERS: Senator Lee, Chair; Senator Soto, Vice Chair; Senators Bradley, Gardiner, Joyner, Latvala, Richter, Ring, and Thrasher

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 162 Stargel (Similar CS/H 59)	Offenses Against Unborn Children; Citing this act as the "Florida Unborn Victims of Violence Act;" providing a rule of construction that a person who engages in conduct that violates any provision of the Florida Criminal Code or of a criminal offense defined by another statute and causes the death of, or bodily injury to, an unborn child commits a separate offense if such an offense is not otherwise specifically provided for; providing for criminal penalties for such an offense, etc. CJ 11/04/2013 Favorable JU 02/18/2014 Favorable RC	Favorable Yeas 6 Nays 2
2	SB 494 Benacquisto (Similar CS/H 445, Compare H 7027)	Time Limitations; Eliminating time limitations to the prosecution of specified criminal offenses relating to lewd or lascivious battery, molestation, conduct, or exhibition against a child if the victim was younger than 16 years of age at the time of the offense, etc. CJ 01/13/2014 Favorable JU 02/18/2014 Fav/CS AP	Fav/CS Yeas 8 Nays 0

Other Related Meeting Documents

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 Judiciary

BILL: SB 162

INTRODUCER: Senator Stargel

SUBJECT: Offenses Against Unborn Children

DATE: February 17, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
2.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 162 creates the “Florida Unborn Victims of Violence Act.”

Current law considers certain offenses against pregnant women as separate offenses against a fetus. These offenses are the death of a viable fetus or unborn quick child through DUI manslaughter, vehicular homicide, and the killing of a fetus through an injury to the mother.

This bill creates new criminal offenses by:

- Creating a new, separate offense against an unborn child for criminal conduct causing injuries to or the death of the unborn child.¹
- Providing that a separate offense results from injuries to an unborn child, not just the death of the unborn child as provided under current law in some circumstances.
- Expanding the class of unborn children who may be crime victims to include unborn children at any stage of fetal development, not just those unborn children who have reached the point of viability.²

The bill does not require that an assailant have the intent to injure or kill an unborn child or to know that the woman injured is pregnant.

Under the bill, the punishment for criminal conduct causing injuries to or the death of an unborn child is the same punishment that would apply if the injury or death occurred to the mother of the unborn child. However, the bill provides that the death penalty may not be imposed for an

¹ This change is made in s. 775.021, F.S., which provides the rules of construction governing the criminal code.

² The expansion in the class of unborn children who may be crime victims results from changing existing statutory terms to unborn child from “viable fetus” or “unborn quick child.” These terms are used in several statutes providing criminal penalties for causing the death of a viable fetus or unborn quick child.

offense against an unborn child. As such, an offender may be charged with a penalty up to a life felony, punishable by life imprisonment.³

Consistent with the Federal Unborn Victims of Violence Act, this bill does not permit the prosecution of:

- Any person for conduct relating to an abortion for which the woman or her legal representative gave permission, or for which there was lawfully implied consent;
- Any person giving medical treatment to a pregnant woman or her unborn child; or
- Any woman with respect to her unborn child.

Section 782.071(3), F.S., currently creates a specific right of action for civil damages under tort law for deaths resulting from vehicular homicide, including the death of an unborn quick child. The bill may increase the number of wrongful death claims due to the change to unborn child from unborn quick child in the vehicular homicide law. The change in terminology eliminates the need to prove viability of the fetus or the length of pregnancy.

II. Present Situation:

History of Prenatal Criminal Law

Since at least the 17th century, the common law rule was that only children who were born alive were afforded protections of the criminal law.⁴ This became known as the “born alive rule.” Due to the lack of medical technology at that time, doctors were unable to accurately ascertain the health or condition of an unborn child and therefore testify about whether an assault on the mother was the proximate cause of the death of the fetus.⁵ The born alive rule became the standard in federal cases for crimes against a pregnant mother.⁶

Alternatively, some jurisdictions began adopting the rule that an unborn child is afforded criminal protection as a human being at the time of quickening, defined as the first recognizable movements of the fetus, and appearing temporally from about the 16th to 18th week of pregnancy.⁷

Some jurisdictions base protection of an unborn child at the point at which the fetus is viable.⁸ Viability is considered to be the time at which a fetus can survive outside the womb.⁹ The Massachusetts Supreme Court became the first court to include viable unborn children in the statutory meaning of “person” for purposes of criminal laws.¹⁰

³ Section 775.082(3)(a)3., F.S.

⁴ Joseph L. Falvey, Jr., *Kill an Unborn Child – Go to Jail: The Unborn Victims of Violence Act of 2004 and Military Justice*, 53 NAVAL L. REV. 1, 3 (2006).

⁵ *Id.* at 3-4.

⁶ *Id.* at 5.

⁷ *Id.* at 5.

⁸ *Id.* at 6.

⁹ *Id.* at 6.

¹⁰ *Id.*

Due to the advancement in technology and challenges to the born alive rule, many state legislatures have enacted changes to their criminal laws to penalize crimes perpetrated against unborn children.¹¹

Federal Unborn Victims of Violence Act

The Unborn Victims of Violence Act (UVVA or act), signed into law on April 1, 2004, establishes a separate offense for harming or killing an unborn child during the commission of specified crimes.¹² When Congress enacted the UVVA, 26 states had already passed homicide laws that recognized unborn victims.¹³ Under the act, any person who injures or kills a “child in utero” during the commission of certain specified crimes is guilty of an offense separate from one involving the pregnant woman. Punishment for the separate offense is the same as if the offense had been committed against the pregnant woman.

In addition, the offender does not have to have knowledge of the victim’s pregnant condition or intent to cause the death of or bodily injury to the child in utero. The Act defines the term “child in utero” as “a member of the species homo sapiens, at any stage of development, who is carried in the womb.”¹⁴ The death penalty is not applicable to an offense under the UVVA.¹⁵

The UVVA specifically excludes from application of the Act:

- Persons conducting consensual, legal abortions;
- Persons conducting any medical treatment of the pregnant woman or unborn child; and
- Any woman with respect to her unborn child.¹⁶

The federal law was recently used in a Florida case to prosecute a man who tricked his pregnant girlfriend into taking a drug that caused her to lose their baby. John Andrew Welden pled guilty to federal mail fraud and conspiracy to commit product tampering, and the federal judge sentenced him to almost 14 years in prison.¹⁷

Other State Laws

Currently, 38 states have fetal homicide laws. These states are: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Nevada, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia and

¹¹ *Id.* at 1.

¹² 18 U.S.C. s. 1841(a)(1), provides: “Whoever engages in conduct that ... causes the death of, or bodily injury ... to, a child, who is in utero at the time the conduct takes place, is guilty of a separate offense”

¹³ Alexis Gabrielson and Parker Milender, *Abortion*, 14 *Geo. J. Gender & Law* 213, 232 (2013).

¹⁴ 18 U.S.C. s. 1841(d).

¹⁵ 18 U.S.C. s. 1841(a)(2)(D).

¹⁶ 18 U.S.C. s. 1841(c).

¹⁷ Patty Ryan, *Welden gets nearly 14 years in Tampa abortion pill case*, TAMPA BAY TIMES, Jan. 27, 2014, available at <http://www.tampabay.com/news/courts/criminal/john-andrew-welden-faces-sentencing-in-tampa-abortion-pill-case/2162858>.

Wisconsin. Twenty-three of those 38 states have laws that apply to the earliest stages of pregnancy (“any state of gestation,” “conception,” “fertilization,” or “post-fertilization”).¹⁸

Florida Law

Section 782.09, F.S., holds a criminal defendant accountable for the death of an unborn quick child as if the mother or any other person died as a result of the defendant’s actions. Homicide crimes included in this section are first degree (capital) murder, second degree murder, third degree murder, and manslaughter. For purposes of defining “unborn quick child,” this statute references the definition of “viable fetus” in s. 782.071, F.S. In that statute viability is defined as follows: “a fetus is viable when it becomes capable of meaningful life outside the womb through standard medical measures.”

Section 782.071, F.S., Florida’s vehicular homicide statute, holds a defendant equally accountable for the death of a viable fetus as for the death of the mother or any other person killed as a result of the defendant’s actions.

Section 316.193, F.S., Florida’s driving under the influence law, provides that a defendant who kills an unborn quick child as a result of committing DUI manslaughter is equally as culpable as if he or she killed any other human being. In defining the term “unborn quick child,” the statute references the definition of “viable fetus” in s. 782.071, F.S.

In 1989, the Florida Supreme Court defined the term viability as follows:

Viability under Florida law occurs at that point in time when the fetus becomes capable of meaningful life outside the womb through standard medical measures. Under current standards, this point generally occurs upon completion of the second trimester. [N]o medical evidence exists indicating that technological improvements will move viability forward beyond twenty-three to twenty-four weeks gestation within the foreseeable future due to the anatomic threshold of fetal development.¹⁹

Although Florida law uses the definition of “viable fetus” to define “unborn quick child,” the specific term “unborn quick child” is not defined in statute similarly to how it has been defined by the courts. In *Stokes v. Liberty Mutual Insurance Co.*, the Florida Supreme Court used a medical dictionary definition of the term “quick” in its analysis of a wrongful death claim. This term was defined as follows: “Pregnant with a child the movement of which is felt.”²⁰

III. Effect of Proposed Changes:

This bill creates the “Florida Unborn Victims of Violence Act.”

¹⁸ National Conference of State Legislatures, *Fetal Homicide Laws*, <http://www.ncsl.org/issues-research/health/fetal-homicide-state-laws.aspx>. Last visited February 12, 2014.

¹⁹ *In re T.W.*, 551 So. 2d 1186, 1194 (Fla. 1989).
1194 (internal citation omitted).

²⁰ *Stokes v. Liberty Mutual Insurance Co.*, 213 So. 2d 695, 697 (Fla. 1968), citing *Stedman’s Medical Dictionary* (2nd lawyers’ ed. 1966).

Current law considers certain offenses against pregnant women as separate offenses against a fetus. These offenses are the death of a viable fetus or unborn quick child through DUI manslaughter, vehicular homicide, and the killing of a fetus through an injury to the mother.

This bill creates new criminal offenses by:

- Creating a new, separate offense for criminal conduct causing injuries to or the death of an unborn child.²¹
- Providing that a separate offense results from injuries to an unborn child, not just the death of the unborn child as provided under current law in some circumstances.
- Expanding the class of unborn children who may be crime victims to include unborn children at any stage of fetal development, not just those unborn children who have reached the point of viability.²²

Current law, in statutes authorizing criminal penalties or damages for the death of an unborn child, refer to a fetus in the womb as an “unborn quick child” or a “viable fetus.” Both terms are defined the same, and refer to a fetus that “becomes capable of meaningful life outside the womb through standard medical measures.”²³ The bill changes all references to an “unborn quick child” and a “viable fetus” to that of an “unborn child.” The bill tracks federal UVVA language in defining an unborn child as a member of the species *homo sapiens* at any stage of development.

Current law provides as a separate criminal offense the death of an unborn quick child or viable fetus during the commission of specified criminal offenses. Current offenses which punish an offender for causing the death of an unborn fetus are for DUI manslaughter (s. 316.193(3)(c)3., F.S.), vehicular homicide (s. 782.071, F.S.); and the killing of a fetus through injury to the mother (s. 782.09, F.S.). By changing terms in current law to unborn child, the bill expands the class of unborn children who may be considered to be crime victims. Additionally, the concept of punishing criminal conduct resulting in injuries to or the death of an unborn child at any stage of development will be applied uniformly throughout the statutes.

As intent is not required, this bill potentially expands the number of strict liability offenses. A strict liability offense is defined as an act that does not require *mens rea*, or intent.²⁴ Most crimes require some sort of intent. At common law, all crimes required intent. However, “it was long ago recognized that the legislature has the power to dispense with the element of intent and thereby punish particular acts without regard to the mental attitude of the offender.”²⁵

Under the bill, the punishment for criminal conduct causing injuries to or the death of an unborn child is the same punishment that would apply if the injury or death occurred to the mother of the unborn child. However, the bill provides that the death penalty may not be imposed for an

²¹ This change is made in s. 775.021, F.S., which provides the rules of construction governing the criminal code.

²² The expansion in the class of unborn children who may be crime victims results from changing existing statutory terms to unborn child from “viable fetus” or “unborn quick child.” These terms are used in several statutes providing criminal penalties for causing the death of a viable fetus or unborn quick child.

²³ Section 782.071(2), F.S.

²⁴ Black’s Law Dictionary, 9th ed. (2009).

²⁵ *State v. Oxx*, 417 So. 2d 287, 289 (Fla. 5th DCA 1982).

offense against an unborn child. As such, an offender may be charged with a penalty up to a life felony, punishable by life imprisonment.²⁶

This bill does not permit the prosecution of:

- Any person for conduct relating to an abortion for which the woman or her legal representative gave permission, or for which there was lawfully implied consent;
- Any person giving medical treatment to a pregnant woman or her unborn child; or
- Any woman with respect to her unborn child.

Section 782.071(3), F.S., currently creates a specific right of action for civil damages under tort law for deaths resulting from vehicular homicide, including the death of an unborn quick child. The bill may increase the number of wrongful death claims due to the change to unborn child from unborn quick child in the vehicular homicide law. The change in terminology effectively eliminates the need to prove viability the fetus or the length of pregnancy.

The bill takes effect October 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The seminal cases on fetal homicide statutes are *Minnesota v Merrill*²⁷ and *People v. Ford*.²⁸ In *Minnesota v. Merrill*, the defendant brought a challenge before the state supreme court based on a conviction for the death of a fetus through the assault of a pregnant woman. The defendant was convicted in the shooting death of the pregnant woman. The state also charged him under a separate statute for the murder of an unborn child.²⁹

The defendant challenge the state's fetal homicide law on equal protection and vagueness grounds. Under equal protection, the defendant alleged that the state treated the death of a fetus by a third party (himself) differently than the death of a fetus initiated by the

²⁶ Section 775.082(3)(a)3., F.S.

²⁷ *Minnesota v. Merrill*, 450 N.W. 2d 318 (MN 1990).

²⁸ *People v. Ford*, 581 N.E. 2d 1189 (Ill. 4th DCA 1991).

²⁹ *Id.* at 320.

pregnant woman's decision to abort her pregnancy.³⁰ The Court denied his equal protection claim in asserting that the women's right to privacy in terminating her pregnancy is a constitutionally-protected right.³¹ This right is not extended to the defendant to terminate a woman's pregnancy.

The defendant also brought a vagueness challenge, alleging that the statute failed to give fair warning of the prohibited behavior and encouraged arbitrary and discriminatory enforcement.³² Regarding the issue of fair warning, again the court ruled against the defendant, finding that "the possibility that a female homicide victim of childbearing age may be pregnant is a possibility that an assaulter may not safely exclude."³³ And on the question of arbitrariness, the court held that the "state must prove only that the implanted embryo ... in the ... womb was living, that it had life, and that it has life no longer."³⁴

In *People v. Ford*, a defendant challenged Illinois' fetal homicide statute on equal protection and vagueness grounds.³⁵ The state presented evidence that the defendant physically assaulted a pregnant victim, with the intent to kill her fetus and that the fetus died shortly thereafter.³⁶

The defendant argued that:

- The statute fails to distinguish between viable and nonviable fetuses and is inconsistent with the government recognizing a woman's right to terminate a pregnancy;³⁷ and
- The statute is unconstitutionally vague as the questions of life and death are philosophical and unable to be ascertained with certainty.³⁸

The Illinois Fourth District Court of Appeal found unpersuasive the defendant's argument that a fetal homicide statute is incongruent with a woman's right to abortion, and further, that an assailant causing the death of a fetus and a physician conducting legal abortions are similarly situated in law. The Court reasserted the holding of the *Merrill* court, in citing that case law "protects the woman's right of choice; it does not protect, much less confer on an assailant, a third-party unilateral right to destroy the fetus."³⁹

Regarding defendant's assertion of vagueness, the Court found that a person of ordinary intelligence can reasonably ascertain whether the conduct is lawful under the fetal infanticide law, and that the statute clearly criminalizes the death of a fetus from the time of fertilization, removing any question of a fetus being considered alive only upon birth.⁴⁰

³⁰ *Id.* at 321.

³¹ *Id.* at 321-322.

³² *Id.* at 322.

³³ *Id.* at 323.

³⁴ *Id.* at 324.

³⁵ *People v. Ford*, 581 N.E. 2d 1189 (Ill. 4th DCA 1991).

³⁶ *Id.* at 1191-1195.

³⁷ *Id.* at 1198.

³⁸ *Id.* at 1200.

³⁹ *Id.* at 1199, citing *Minnesota v. Merrill*, 450 N.W. 2d at 322.

⁴⁰ *Id.* at 1201-1202.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference met on January 30, 2014, and determined that this bill will have an indeterminate impact on prison beds.⁴¹

The Department of Corrections (DOC) concurs that the DOC will have an indeterminate fiscal impact, based on being unable to quantify an increase in prison sentences.⁴²

The Office of the State Courts Administrator (OSCA) indicates that this bill will likely increase judicial workload in that a new criminal count is created, and also that causation of injury by the defendant to a fetus may increase litigation time.⁴³ However, OSCA could not quantify the fiscal impact.

The state may incur costs related to prosecution of fetal homicide or injury cases to the extent that more expert testimony is needed to prove causation between the defendant's actions and injury or death to a fetus. Also, the state may have to incur costs to prove that a victim was pregnant at the time of injury.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 316.193, 435.05, 775.021, 782.071, 782.09, and 921.0022.

⁴¹ Criminal Justice Impact Conference (January 30, 2014).

⁴² Department of Corrections, *2014 Legislative Bill Analysis for SB 162* (October 1, 2014) (on file with the Senate Committee on Judiciary).

⁴³ Office of the State Courts Administrator, *2014 Judicial Impact Statement*, (February 10, 2014) (on file with the Senate Committee on Judiciary).

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date _____

Topic Unborn Victims of Violence

Bill Number 162
(if applicable)

Name Ingrid Delgado

Amendment Barcode _____
(if applicable)

Job Title Associate for Social Concerns

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Speaking: For Against Information

Representing Florida Conference of Catholic Bishops

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/2014

Meeting Date

Topic _____

Bill Number 162
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

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State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/2014

Meeting Date

Topic UNBORN VICTIMS OF VIOLENCE

Bill Number 162
(if applicable)

Name REEMEE JO LEE

Amendment Barcode _____
(if applicable)

Job Title _____

Address 16824 LIVINGSTON AVENUE
Street

Phone _____

WTZ FL 33559
City State Zip

E-mail _____

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

By Senator Stargel

15-00115-14

2014162__

1 A bill to be entitled
2 An act relating to offenses against unborn children;
3 providing a short title; amending s. 775.021, F.S.;
4 providing a rule of construction that a person who
5 engages in conduct that violates any provision of the
6 Florida Criminal Code or of a criminal offense defined
7 by another statute and causes the death of, or bodily
8 injury to, an unborn child commits a separate offense
9 if such an offense is not otherwise specifically
10 provided for; providing for criminal penalties for
11 such an offense; specifying that certain types of
12 knowledge or intent are not necessary for such an
13 offense; providing exceptions; providing a definition;
14 amending ss. 316.193, 435.04, 782.071, 782.09, and
15 921.0022, F.S.; defining and substituting the term
16 "unborn child" for similar terms used in provisions
17 relating to driving under the influence, employment
18 background screening standards, vehicular homicide,
19 the killing of an unborn quick child by injury to the
20 child's mother, and the offense severity ranking chart
21 of the Criminal Punishment Code, respectively;
22 conforming terminology; providing an effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:

25
26 Section 1. This act may be cited as the "Florida Unborn
27 Victims of Violence Act."

28 Section 2. Subsection (5) is added to section 775.021,
29 Florida Statutes, to read:

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30 775.021 Rules of construction.—

31 (5) Whoever commits an act that violates any provision of
32 this code or commits a criminal offense defined by another
33 statute and thereby causes the death of, or bodily injury to, an
34 unborn child commits a separate offense if the provision or
35 statute does not otherwise specifically provide a separate
36 offense for such death or injury to an unborn child.

37 (a) Except as otherwise provided in this subsection, the
38 punishment for a separate offense under this subsection is the
39 same as the punishment provided under this code or other statute
40 for that conduct had the injury or death occurred to the mother
41 of the unborn child.

42 (b) An offense under this subsection does not require proof
43 that the person engaging in the conduct:

44 1. Had knowledge or should have had knowledge that the
45 victim of the underlying offense was pregnant; or

46 2. Intended to cause the death of, or bodily injury to, the
47 unborn child.

48 (c) Notwithstanding any other provision of law, the death
49 penalty may not be imposed for an offense under this subsection.

50 (d) This subsection does not permit the prosecution:

51 1. Of any person for conduct relating to an abortion for
52 which the consent of the pregnant woman, or a person authorized
53 by law to act on her behalf, has been obtained or for which such
54 consent is implied by law;

55 2. Of any person for any medical treatment of the pregnant
56 woman or her unborn child; or

57 3. Of any woman with respect to her unborn child.

58 (e) As used in this subsection, the term "unborn child"

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59 means a member of the species homo sapiens, at any stage of
 60 development, who is carried in the womb.

61 Section 3. Subsection (3) of section 316.193, Florida
 62 Statutes, is amended to read:

63 316.193 Driving under the influence; penalties.—

64 (3) Any person:

65 (a) Who is in violation of subsection (1);

66 (b) Who operates a vehicle; and

67 (c) Who, by reason of such operation, causes or contributes
 68 to causing:

69 1. Damage to the property or person of another commits a
 70 misdemeanor of the first degree, punishable as provided in s.
 71 775.082 or s. 775.083.

72 2. Serious bodily injury to another, as defined in s.
 73 316.1933, commits a felony of the third degree, punishable as
 74 provided in s. 775.082, s. 775.083, or s. 775.084.

75 3. The death of any human being or unborn ~~quick~~ child
 76 commits DUI manslaughter, and commits:

77 a. A felony of the second degree, punishable as provided in
 78 s. 775.082, s. 775.083, or s. 775.084.

79 b. A felony of the first degree, punishable as provided in
 80 s. 775.082, s. 775.083, or s. 775.084, if:

81 (I) At the time of the crash, the person knew, or should
 82 have known, that the crash occurred; and

83 (II) The person failed to give information and render aid
 84 as required by s. 316.062.

85
 86 For purposes of this subsection, the ~~definition of the term~~
 87 "unborn ~~quick~~ child" has the same meaning as provided in s.

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88 ~~775.021(5) shall be determined in accordance with the definition~~
89 ~~of viable fetus as set forth in s. 782.071.~~ A person who is
90 convicted of DUI manslaughter shall be sentenced to a mandatory
91 minimum term of imprisonment of 4 years.

92 Section 4. Paragraph (g) of subsection (2) of section
93 435.04, Florida Statutes, is amended to read:

94 435.04 Level 2 screening standards.—

95 (2) The security background investigations under this
96 section must ensure that no persons subject to the provisions of
97 this section have been arrested for and are awaiting final
98 disposition of, have been found guilty of, regardless of
99 adjudication, or entered a plea of nolo contendere or guilty to,
100 or have been adjudicated delinquent and the record has not been
101 sealed or expunged for, any offense prohibited under any of the
102 following provisions of state law or similar law of another
103 jurisdiction:

104 (g) Section 782.09, relating to killing of an unborn ~~quick~~
105 child by injury to the mother.

106 Section 5. Section 782.071, Florida Statutes, is amended to
107 read:

108 782.071 Vehicular homicide.—“Vehicular homicide” is the
109 killing of a human being, or the killing of an unborn child ~~a~~
110 ~~viable fetus~~ by an ~~any~~ injury to the mother, caused by the
111 operation of a motor vehicle by another in a reckless manner
112 likely to cause the death of, or great bodily harm to, another.

113 (1) Vehicular homicide is:

114 (a) A felony of the second degree, punishable as provided
115 in s. 775.082, s. 775.083, or s. 775.084.

116 (b) A felony of the first degree, punishable as provided in

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2014162__

117 s. 775.082, s. 775.083, or s. 775.084, if:

118 1. At the time of the accident, the person knew, or should
119 have known, that the accident occurred; and

120 2. The person failed to give information and render aid as
121 required by s. 316.062.

122

123 This paragraph does not require that the person knew that the
124 accident resulted in injury or death.

125 (2) For purposes of this section, the term "unborn child"
126 has the same meaning as provided in s. 775.021(5) ~~a fetus is~~
127 ~~viable when it becomes capable of meaningful life outside the~~
128 ~~womb through standard medical measures.~~

129 (3) A right of action for civil damages shall exist under
130 s. 768.19, under all circumstances, for all deaths described in
131 this section.

132 (4) In addition to any other punishment, the court may
133 order the person to serve 120 community service hours in a
134 trauma center or hospital that regularly receives victims of
135 vehicle accidents, under the supervision of a registered nurse,
136 an emergency room physician, or an emergency medical technician
137 pursuant to a voluntary community service program operated by
138 the trauma center or hospital.

139 Section 6. Section 782.09, Florida Statutes, is amended to
140 read:

141 782.09 Killing of unborn ~~quick~~ child by injury to mother.—

142 (1) The unlawful killing of an unborn ~~quick~~ child, by an
143 ~~any~~ injury to the mother of the ~~such~~ child which would be murder
144 if it resulted in the death of the ~~such~~ mother, shall be deemed
145 murder in the same degree as that which would have been

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146 committed against the mother. A ~~Any~~ person, other than the
147 mother, who unlawfully kills an unborn ~~quick~~ child by any injury
148 to the mother:

149 (a) Which would be murder in the first degree constituting
150 a capital felony if it resulted in the mother's death commits
151 murder in the first degree constituting a capital felony,
152 punishable as provided in s. 775.082.

153 (b) Which would be murder in the second degree if it
154 resulted in the mother's death commits murder in the second
155 degree, a felony of the first degree, punishable as provided in
156 s. 775.082, s. 775.083, or s. 775.084.

157 (c) Which would be murder in the third degree if it
158 resulted in the mother's death commits murder in the third
159 degree, a felony of the second degree, punishable as provided in
160 s. 775.082, s. 775.083, or s. 775.084.

161 (2) The unlawful killing of an unborn ~~quick~~ child by any
162 injury to the mother of the ~~such~~ child which would be
163 manslaughter if it resulted in the death of the ~~such~~ mother
164 shall be deemed manslaughter. A person who unlawfully kills an
165 unborn ~~quick~~ child by any injury to the mother which would be
166 manslaughter if it resulted in the mother's death commits
167 manslaughter, a felony of the second degree, punishable as
168 provided in s. 775.082, s. 775.083, or s. 775.084.

169 (3) The death of the mother resulting from the same act or
170 criminal episode that caused the death of the unborn ~~quick~~ child
171 does not bar prosecution under this section.

172 (4) This section does not authorize the prosecution of any
173 person in connection with a termination of pregnancy pursuant to
174 chapter 390.

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175 (5) For purposes of this section, the ~~definition of the~~
 176 term "unborn ~~quick~~ child" has the same meaning as provided in s.
 177 775.021(5) ~~shall be determined in accordance with the definition~~
 178 ~~of viable fetus as set forth in s. 782.071.~~

179 Section 7. Paragraph (g) of subsection (3) of section
 180 921.0022, Florida Statutes, is amended to read:

181 921.0022 Criminal Punishment Code; offense severity ranking
 182 chart.—

183 (3) OFFENSE SEVERITY RANKING CHART

184 (g) LEVEL 7

185

Florida Statute	Felony Degree	Description
316.027(1)(b)	1st	Accident involving death, failure to stop; leaving scene.
316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol

186

187

188

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vehicle with siren and
lights activated.

189

327.35 (3) (c) 2.

3rd

Vessel BUI resulting in
serious bodily injury.

190

402.319 (2)

2nd

Misrepresentation and
negligence or intentional
act resulting in great
bodily harm, permanent
disfiguration, permanent
disability, or death.

191

409.920
(2) (b) 1.a.

3rd

Medicaid provider fraud;
\$10,000 or less.

192

409.920
(2) (b) 1.b.

2nd

Medicaid provider fraud;
more than \$10,000, but
less than \$50,000.

193

456.065 (2)

3rd

Practicing a health care
profession without a
license.

194

456.065 (2)

2nd

Practicing a health care
profession without a
license which results in
serious bodily injury.

195

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196	458.327 (1)	3rd	Practicing medicine without a license.
197	459.013 (1)	3rd	Practicing osteopathic medicine without a license.
198	460.411 (1)	3rd	Practicing chiropractic medicine without a license.
199	461.012 (1)	3rd	Practicing podiatric medicine without a license.
200	462.17	3rd	Practicing naturopathy without a license.
201	463.015 (1)	3rd	Practicing optometry without a license.
202	464.016 (1)	3rd	Practicing nursing without a license.
203	465.015 (2)	3rd	Practicing pharmacy without a license.
	466.026 (1)	3rd	Practicing dentistry or dental hygiene without a

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204

license.

467.201

3rd

Practicing midwifery
without a license.

205

468.366

3rd

Delivering respiratory
care services without a
license.

206

483.828 (1)

3rd

Practicing as clinical
laboratory personnel
without a license.

207

483.901 (9)

3rd

Practicing medical physics
without a license.

208

484.013 (1) (c)

3rd

Preparing or dispensing
optical devices without a
prescription.

209

484.053

3rd

Dispensing hearing aids
without a license.

210

494.0018 (2)

1st

Conviction of any
violation of ss. 494.001-
494.0077 in which the
total money and property
unlawfully obtained
exceeded \$50,000 and there

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were five or more victims.

211

560.123(8)(b)1.

3rd

Failure to report currency or payment instruments exceeding \$300 but less than \$20,000 by a money services business.

212

560.125(5)(a)

3rd

Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.

213

655.50(10)(b)1.

3rd

Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.

214

775.21(10)(a)

3rd

Sexual predator; failure to register; failure to renew driver ~~driver's~~ license or identification card; other registration violations.

215

775.21(10)(b)

3rd

Sexual predator working where children regularly

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congregate.

216

775.21(10)(g)

3rd

Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.

217

782.051(3)

2nd

Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.

218

782.07(1)

2nd

Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).

219

782.071

2nd

Killing of a human being or unborn child ~~viable fetus~~ by the operation of a motor vehicle in a reckless manner (vehicular homicide).

220

782.072

2nd

Killing of a human being by the operation of a vessel in a reckless

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manner (vessel homicide).

221

784.045 (1) (a) 1.

2nd

Aggravated battery;
intentionally causing
great bodily harm or
disfigurement.

222

784.045 (1) (a) 2.

2nd

Aggravated battery; using
deadly weapon.

223

784.045 (1) (b)

2nd

Aggravated battery;
perpetrator aware victim
pregnant.

224

784.048 (4)

3rd

Aggravated stalking;
violation of injunction or
court order.

225

784.048 (7)

3rd

Aggravated stalking;
violation of court order.

226

784.07 (2) (d)

1st

Aggravated battery on law
enforcement officer.

227

784.074 (1) (a)

1st

Aggravated battery on
sexually violent predators
facility staff.

228

784.08 (2) (a)

1st

Aggravated battery on a

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person 65 years of age or older.

229

784.081 (1)

1st

Aggravated battery on specified official or employee.

230

784.082 (1)

1st

Aggravated battery by detained person on visitor or other detainee.

231

784.083 (1)

1st

Aggravated battery on code inspector.

232

787.06 (3) (a)

1st

Human trafficking using coercion for labor and services.

233

787.06 (3) (e)

1st

Human trafficking using coercion for labor and services by the transfer or transport of any individual from outside Florida to within the state.

234

790.07 (4)

1st

Specified weapons violation subsequent to previous conviction of s.

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790.07(1) or (2).

235

790.16(1)

1st

Discharge of a machine gun under specified circumstances.

236

790.165(2)

2nd

Manufacture, sell, possess, or deliver hoax bomb.

237

790.165(3)

2nd

Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.

238

790.166(3)

2nd

Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.

239

790.166(4)

2nd

Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.

240

790.23

1st, PBL

Possession of a firearm by

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a person who qualifies for the penalty enhancements provided for in s. 874.04.

241

794.08(4)

3rd

Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.

242

796.03

2nd

Procuring any person under 16 years for prostitution.

243

800.04(5)(c)1.

2nd

Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.

244

800.04(5)(c)2.

2nd

Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender 18 years or older.

245

806.01(2)

2nd

Maliciously damage structure by fire or

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explosive.

246

810.02 (3) (a)

2nd

Burglary of occupied dwelling; unarmed; no assault or battery.

247

810.02 (3) (b)

2nd

Burglary of unoccupied dwelling; unarmed; no assault or battery.

248

810.02 (3) (d)

2nd

Burglary of occupied conveyance; unarmed; no assault or battery.

249

810.02 (3) (e)

2nd

Burglary of authorized emergency vehicle.

250

812.014 (2) (a) 1.

1st

Property stolen, valued at \$100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.

251

812.014 (2) (b) 2.

2nd

Property stolen, cargo valued at less than \$50,000, grand theft in

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2nd degree.

252

812.014 (2) (b) 3.

2nd

Property stolen, emergency medical equipment; 2nd degree grand theft.

253

812.014 (2) (b) 4.

2nd

Property stolen, law enforcement equipment from authorized emergency vehicle.

254

812.0145 (2) (a)

1st

Theft from person 65 years of age or older; \$50,000 or more.

255

812.019 (2)

1st

Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.

256

812.131 (2) (a)

2nd

Robbery by sudden snatching.

257

812.133 (2) (b)

1st

Carjacking; no firearm, deadly weapon, or other weapon.

258

817.034 (4) (a) 1.

1st

Communications fraud,

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value greater than
\$50,000.

259

817.234 (8) (a)

2nd

Solicitation of motor
vehicle accident victims
with intent to defraud.

260

817.234 (9)

2nd

Organizing, planning, or
participating in an
intentional motor vehicle
collision.

261

817.234 (11) (c)

1st

Insurance fraud; property
value \$100,000 or more.

262

817.2341

1st

(2) (b) & (3) (b)

Making false entries of
material fact or false
statements regarding
property values relating
to the solvency of an
insuring entity which are
a significant cause of the
insolvency of that entity.

263

817.535 (2) (a)

3rd

Filing false lien or other
unauthorized document.

264

825.102 (3) (b)

2nd

Neglecting an elderly
person or disabled adult

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causing great bodily harm,
disability, or
disfigurement.

265

825.103 (2) (b)

2nd

Exploiting an elderly
person or disabled adult
and property is valued at
\$20,000 or more, but less
than \$100,000.

266

827.03 (2) (b)

2nd

Neglect of a child causing
great bodily harm,
disability, or
disfigurement.

267

827.04 (3)

3rd

Impregnation of a child
under 16 years of age by
person 21 years of age or
older.

268

837.05 (2)

3rd

Giving false information
about alleged capital
felony to a law
enforcement officer.

269

838.015

2nd

Bribery.

270

838.016

2nd

Unlawful compensation or
reward for official

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behavior.

271

838.021 (3) (a)

2nd

Unlawful harm to a public servant.

272

838.22

2nd

Bid tampering.

273

843.0855 (2)

3rd

Impersonation of a public officer or employee.

274

843.0855 (3)

3rd

Unlawful simulation of legal process.

275

843.0855 (4)

3rd

Intimidation of a public officer or employee.

276

847.0135 (3)

3rd

Solicitation of a child, via a computer service, to commit an unlawful sex act.

277

847.0135 (4)

2nd

Traveling to meet a minor to commit an unlawful sex act.

278

872.06

2nd

Abuse of a dead human body.

279

874.05 (2) (b)

1st

Encouraging or recruiting

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person under 13 to join a criminal gang; second or subsequent offense.

280

874.10

1st,PBL

Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.

281

893.13(1)(c)1.

1st

Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.

282

893.13(1)(e)1.

1st

Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b),

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(1) (d), (2) (a), (2) (b), or
 (2) (c) 4., within 1,000
 feet of property used for
 religious services or a
 specified business site.

283

893.13 (4) (a)

1st

Deliver to minor cocaine
 (or other s. 893.03(1) (a),
 (1) (b), (1) (d), (2) (a),
 (2) (b), or (2) (c) 4.
 drugs).

284

893.135 (1) (a) 1.

1st

Trafficking in cannabis,
 more than 25 lbs., less
 than 2,000 lbs.

285

893.135
 (1) (b) 1.a.

1st

Trafficking in cocaine,
 more than 28 grams, less
 than 200 grams.

286

893.135
 (1) (c) 1.a.

1st

Trafficking in illegal
 drugs, more than 4 grams,
 less than 14 grams.

287

893.135 (1) (d) 1.

1st

Trafficking in
 phencyclidine, more than
 28 grams, less than 200
 grams.

288

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289	893.135 (1) (e) 1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
290	893.135 (1) (f) 1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
291	893.135 (1) (g) 1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
292	893.135 (1) (h) 1.a.	1st	Trafficking in gamma- hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
293	893.135 (1) (j) 1.a.	1st	Trafficking in 1,4- Butanediol, 1 kilogram or more, less than 5 kilograms.
294	893.135 (1) (k) 2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
294	893.1351 (2)	2nd	Possession of place for

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trafficking in or
 manufacturing of
 controlled substance.

295

896.101 (5) (a)

3rd

Money laundering,
 financial transactions
 exceeding \$300 but less
 than \$20,000.

296

896.104 (4) (a) 1.

3rd

Structuring transactions
 to evade reporting or
 registration requirements,
 financial transactions
 exceeding \$300 but less
 than \$20,000.

297

943.0435 (4) (c)

2nd

Sexual offender vacating
 permanent residence;
 failure to comply with
 reporting requirements.

298

943.0435 (8)

2nd

Sexual offender; remains
 in state after indicating
 intent to leave; failure
 to comply with reporting
 requirements.

299

943.0435 (9) (a)

3rd

Sexual offender; failure
 to comply with reporting

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requirements.

300

943.0435 (13)

3rd

Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.

301

943.0435 (14)

3rd

Sexual offender; failure to report and reregister; failure to respond to address verification.

302

944.607 (9)

3rd

Sexual offender; failure to comply with reporting requirements.

303

944.607 (10) (a)

3rd

Sexual offender; failure to submit to the taking of a digitized photograph.

304

944.607 (12)

3rd

Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.

305

944.607 (13)

3rd

Sexual offender; failure to report and reregister;

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failure to respond to
address verification.

306

985.4815(10)

3rd

Sexual offender; failure
to submit to the taking of
a digitized photograph.

307

985.4815(12)

3rd

Failure to report or
providing false
information about a sexual
offender; harbor or
conceal a sexual offender.

308

985.4815(13)

3rd

Sexual offender; failure
to report and reregister;
failure to respond to
address verification.

309

310

311

Section 8. This act shall take effect October 1, 2014.

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 Judiciary

BILL: CS/SB 494

INTRODUCER: Judiciary Committee and Senator Benacquisto

SUBJECT: Time Limitations

DATE: February 18, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 494 generally eliminates the statutes of limitation for prosecuting lewd or lascivious battery or lewd or lascivious molestation committed upon or in the presence of a child who is younger than 16 at the time of the crime. However, if at the time of an offense, the offender is younger than 18 years and is no more than 4 years older than the victim, the existing statutes of limitation, along with their exceptions, apply.

Generally, the current statute of limitation for lewd or lascivious battery or molestation offenses is 3 years. There is one exception, a molestation offense, which is punishable as a life felony. It may be prosecuted at any time if, at the time of the offense, the victim is younger than 12 and the offender is older than 18. All other lewd and lascivious offenses of battery or molestation 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.

This bill applies to 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 barred from prosecution. 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.¹

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.²

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.³
- (2) Statutes of limitation in criminal cases should be construed liberally in favor of the defendant.⁴
- (3) The Legislature may extend the limitations period without violating the ex post facto clause of the State Constitution⁵ 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.⁶

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.⁷ 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.⁸

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

² *Id.*

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

⁴ *Id.*

⁵ FLA. CONST. art. I, s.10.

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

⁷ Section 775.15(3), F.S.

⁸ *Id.*

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,⁹ any sexual battery on a victim younger than 16,¹⁰ a first degree felony sexual battery on a victim younger than 18,¹¹ or a first or second degree felony sexual battery and the victim reports the crime to law enforcement within 72 hours.¹²
- 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.¹³
- A 4-year time limitation applies to prosecutions for a first degree felony.¹⁴
- A 3-year time limitation applies to prosecutions for any other felony.¹⁵

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.)¹⁶

In addition to these enumerated time periods, the offenses of sexual battery, lewd or lascivious acts, and certain other felony offenses¹⁷ 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.¹⁸

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.¹⁹

⁹ Section 775.15(1), F.S.

¹⁰ Section 775.15(13)(c), F.S.

¹¹ Section 775.15(13)(b), F.S.

¹² Section 775.15(13) and (14), F.S.

¹³ Section 775.15(7), F.S.

¹⁴ Section 775.15(2)(a), F.S.

¹⁵ Section 775.15(2)(b), F.S.

¹⁶ Section 775.15(8)-(11), F.S.

¹⁷ 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.

¹⁸ Section 775.15(16)(a)4., F.S.

¹⁹ Section 775.15(13)(a), F.S.

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.²⁰

Lewd or lascivious battery occurs when a person engages in “sexual activity”²¹ with a person 12 years or older but less than 16 years; or encourages, forces, or entices a person less than 16 years to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act of sexual activity.²²

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.²³

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.²⁴

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.²⁵

The chart on the next page 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.

²⁰ Section 800.04(4)-(7), F.S.

²¹ “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.

²² Section 800.04(4), F.S.

²³ Section 800.04(5), F.S.

²⁴ Section 800.04(6), F.S.

²⁵ Section 800.04(7), F.S.

Crime	Sub-Crime/Crime Description	Offender's Age	Victim's Age	Felony Level	General Limitations Periods
Lewd or Lascivious Battery 800.04(4)	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
Lewd or Lascivious Molestation 800.04(5)	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
Lewd or Lascivious Conduct 800.04(6)	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
Lewd or Lascivious Exhibition 800.04(7)	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

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.²⁶
- 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.²⁷
- 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.²⁸

²⁶ Section 775.15(13)(a), F.S.

²⁷ Section 775.15(16)(a)4., F.S.

²⁸ Section 775.15(15), F.S.

III. Effect of Proposed Changes:

This bill generally eliminates the statutes of limitation for prosecuting lewd or lascivious battery or lewd or lascivious molestation committed upon or in the presence of a child who is younger than 16 at the time of the crime. However, if at the time of an offense, the offender is younger than 18 years and is no more than 4 years older than the victim, the existing statutes of limitation, along with their exceptions, apply.

Therefore, unless an exception applies, a prosecution for a lewd or lascivious battery or a lewd or lascivious molestation may be brought at any time in the future for offenses committed on or after October 1, 2014.

The bill takes 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.

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 (CJIC) reviewed the original version of this bill, which would have had a broader impact than the committee substitute. However, the CJIC determined that the impact of the original bill was “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 Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/SB 494 by Judiciary on February 18, 2014:

The committee substitute limits the application of the underlying bill to the most severe categories of offenses, lewd or lascivious battery or lewd or lascivious molestation, and creates an exception that maintains the existing statutes of limitation for an offender younger than 18 who is no more than 4 years older than the victim.

- B. **Amendments:**

None.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/14

Meeting Date

Topic Time Limitations

Bill Number 494
(if applicable)

Name Sheriff Nienhuis

Amendment Barcode _____
(if applicable)

Job Title Sheriff of Hernando County

Address 2167 Mahan Dr.

Phone 850-877-2165

Street

Tallahassee

FL

32308

City

State

Zip

E-mail _____

Speaking: For Against Information

Representing Florida Sheriff Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

21 18 2014

Meeting Date

Topic _____

Bill Number 494
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG

FLORIDA

33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date _____

Topic Time Limitations

Bill Number 494
(if applicable)

Name Ashley Foster

Amendment Barcode _____
(if applicable)

Job Title _____

Address 200 Scotia Drive unit 303
Street

Phone _____

Hypoluxo, FL 33462
City State Zip

E-mail _____

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/14
Meeting Date

Topic statute of Inventions

Bill Number SB 494
(if applicable)

Name Ron Book

Amendment Barcode _____
(if applicable)

Job Title _____

Address 104 W. Jefferson
Street
TLH 32301
City State Zip

Phone _____

E-mail _____

Speaking: For Against Information

Representing Lauren's Kids

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

By Senator Benacquisto

30-00067-14

2014494__

1 A bill to be entitled
2 An act relating to time limitations; amending s.
3 775.15, F.S.; eliminating time limitations to the
4 prosecution of specified criminal offenses relating to
5 lewd or lascivious battery, molestation, conduct, or
6 exhibition against a child if the victim was younger
7 than 16 years of age at the time of the offense;
8 providing applicability; providing an effective date.
9

10 Be It Enacted by the Legislature of the State of Florida:
11

12 Section 1. Subsection (18) is added to section 775.15,
13 Florida Statutes, to read:

14 775.15 Time limitations; general time limitations;
15 exceptions.—

16 (18) (a) If the offense is a violation of s. 800.04 and the
17 victim was younger than 16 years of age at the time the offense
18 was committed, a prosecution of the offense may be commenced at
19 any time.

20 (b) Paragraph (a) applies to any offense committed on or
21 after October 1, 2014.

22 Section 2. This act shall take effect July 1, 2014.



731088

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/18/2014	.	
	.	
	.	
	.	

The Committee on Judiciary (Lee) recommended the following:

Senate Amendment (with title amendment)

Delete lines 16 - 19
and insert:
(18) (a) If the offense is a violation of s. 800.04(4) or (5) and the victim was younger than 16 years of age at the time the offense was committed, a prosecution of the offense may be commenced at any time. This paragraph does not apply if, at the time of the offense, the offender is less than 18 years of age and the offender is no more than 4 years older than the victim.



731088

12 ===== T I T L E A M E N D M E N T =====

13 And the title is amended as follows:

14 Delete lines 5 - 7

15 and insert:

16 lewd or lascivious battery or molestation if the
17 victim was younger than 16 years of age at the time of
18 the offense; specifying an exception;



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Governmental Oversight and Accountability, *Chair*
Appropriations Subcommittee on Finance and
Tax, *Vice Chair*
Appropriations
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Banking and Insurance
Commerce and Tourism
Judiciary
Rules

JOINT COMMITTEES:
Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

SENATOR JEREMY RING
29th District

February 17, 2014

Senator Tom Lee
418 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Lee,

I am requesting to be excused from the Senate Judiciary Committee scheduled for February 18th due to conflicts that require me to return home from Tallahassee.

Thank you in advance for considering this request to be excused from the Judiciary Committee on the 18th due to these unforeseen conflicts. Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Jeremy Ring".

Jeremy Ring
Senator District 29

CC: Tom Cibula, Staff Director

REPLY TO:

- 5790 Margate Boulevard, Margate, Florida 33063 (954) 917-1392 FAX: (954) 917-1394
- 405 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

CourtSmart Tag Report

Room: EL 110
Caption: Senate Judiciary

Case:
Judge:

Type:

Started: 2/18/2014 10:01:24 AM
Ends: 2/18/2014 10:37:33 AM Length: 00:36:10

10:01:30 AM Meeting Called to Order
10:01:38 AM CAA called roll
10:01:51 AM SB 494 by Senator Benacquisto
10:03:20 AM Questions or Discussion
10:03:27 AM A731088 by Senator Lee
10:03:44 AM Chairman Lee turned the chair over to Senator Soto, Vice Chair
10:03:57 AM A731088 explained by Senator Lee
10:04:45 AM Questions or debate on A731088
10:05:00 AM A731088 - Favorable
10:05:07 AM Appearance Cards on SB 494 - Speaker as follows:
10:05:37 AM Sheriff Nienhuis - Waived in support
10:06:01 AM Mr. Brian Pitts with Justice-2-Jesus
10:06:14 AM Questions for Mr. Pitts
10:09:37 AM Ms. Ashley Foster - Self
10:13:08 AM Ms. Foster speaking on the bill
10:13:17 AM Questions for Ms. Foster from Senators
10:13:46 AM Mr. Ron Book with Lauren's Kids
10:20:34 AM Chairman Lee asked for any more questions
10:20:49 AM Senator Soto made a statement regarding the time of 3 or 4 years
10:21:18 AM Senator Joyner made a statement regarding the bill
10:21:59 AM Senator Bradley thank Ms. Foster for coming
10:22:43 AM Chairman Lee made a statement regarding the bill
10:24:31 AM Senator Benacquisto closed on SB 494
10:25:32 AM Senator Soto motion to report as a CS - Favorable
10:25:59 AM Roll Called on CS/SB 494
10:26:03 AM SB 494 by Senator Benacquisto - Favorable as a CS
10:26:13 AM SB 162 by Senator Stargel
10:26:27 AM Questions or Debate
10:26:57 AM Appearance Cards on SB 162 as follows:
10:27:16 AM Mr. Pitts with Justice-2-Jesus
10:30:48 AM Questions for Mr. Pitts
10:31:04 AM Ms. Ingnd Delgado - Waive in support
10:31:42 AM Ms. Remeo Jo Uee - Self
10:35:39 AM Questions for Ms. Remeo Jo Uee
10:36:00 AM Questions or Debate on the SB 162
10:36:22 AM Chairman Lee asked Senator Stargel to close on her bill
10:36:38 AM Senator Stargel closing on SB 162
10:36:52 AM Roll Called on SB 162
10:37:01 AM SB 162 by Senator Stargel - Favorable
10:37:23 AM Senator Soto motion to adjourn