

2007 DRAFTING REQUEST

Bill

Received: 11/28/2007

Received By: rnelson2

Wanted: Today

Identical to LRB:

For: Julie Lassa (608) 266-3123

By/Representing: Jessica

This file may be shown to any legislator: NO

Drafter: rnelson2

May Contact:

Addl. Drafters:

Subject: Courts - limitations

Extra Copies:

Submit via email: YES

Requester's email: Sen.Lassa@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Statute of limitations for sexual contact with a child

Instructions:

See Attached - companion to -3112

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rnelson2 11/28/2007	csicilia 11/28/2007		_____			
/1			rschlue 11/28/2007	_____	mbarman 11/28/2007	cduerst 11/28/2007	

FE Sent For:

none

<END>

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By/Representing: **Jessica**

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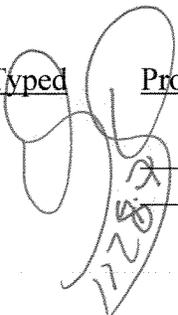
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/?	rnelson2	1 ejs 11/28/07					

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<END>



State of Wisconsin
2007 - 2008 LEGISLATURE

3535/1
LRB-8112/1
RPN:bjk/nwn
T cjs
slays

2007 BILL

SAV

Rego Cat

1 AN ACT *to renumber and amend* 893.587; and *to create* 893.587 (1) and
2 893.587 (3) of the statutes; **relating to:** the statute of limitations for sexual
3 ~~assault of a child.~~ *contact with*

Ins
anal →

Analysis by the Legislative Reference Bureau

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4 SECTION 1. 893.587 of the statutes is renumbered 893.587 (2) and amended to
5 read:
6 893.587 (2) An action to recover damages against any person for injury caused
7 by an act that would constitute a violation of s. 948.02, 948.025, 948.06, 948.085, or
8 948.095 an adult's sexual contact with anyone under the age of 18 or by an act
9 committed by an adult that would create a cause of action under s. 895.442 shall may
10 be commenced before the injured party reaches the age of 35 years or be barred at
11 any time.

2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3112/1ins
RPN:bjk:nwn

insert anl:

Under current law, the time a person has to bring an action (the statute of limitations) ~~after being injured as the result of being sexually assaulted or subject to incest as a child, or as the result of sexual contact of a person under the age of 18~~ by a member of the clergy, is anytime before the injured party reaches the age of 35.

This bill removes the time limit for bringing those actions and expands this unlimited time period to include an injury resulting from any sexual contact with a child but only if committed by an adult or by an adult member of the clergy. The bill also revives any cause of action that was barred by the present statute of limitations and allows an injured party to bring that action for his or her injury within 3 years after the effective date of the bill.

as a child

for an injury resulting from

from being subject to

three

In addition, the bill applies this unlimited time period to a broader range of actions. Under the bill, there is no limit on the time a person has to bring an action for injury resulting from being subject to any sexual contact by an adult or by an adult member of the clergy.

as a child

Duerst, Christina

From: Kelly, Jessica
Sent: Wednesday, November 28, 2007 2:03 PM
To: LRB.Legal
Subject: Draft Review: LRB 07-3535/1 Topic: Statute of limitations for sexual contact with a child

Importance: High

Please Jacket LRB 07-3535/1 for the SENATE.

Nelson, Robert P.

From: Kelly, Jessica
Sent: Wednesday, December 12, 2007 4:31 PM
To: Nelson, Robert P.
Cc: 'William Berndt'; Hilgemann, Luke
Subject: Memo for file on Child Victim's Act

Attachments: NAPSAC Hamilton Wisconsin Window Constitutionality.doc

Bob,

Could you please place a copy in the drafting instruction file for both LRBs 3112 and 3535?



NAPSAC Hamilton
Wisconsin Wind...

Jessica Ford Kelly
Office of Senator Julie Lassa
State Capitol, Room 323 - South
P.O. Box 7882
Madison, WI 53707-7882
608-266-3123
1-800-925-7491 toll-free
608-267-6797

Window Legislation Is Constitutional in Wisconsin

Marci A. Hamilton
Visiting Professor Princeton University
Program for Law and Public Affairs
Hamilton02@aol.com (215) 353-8984

Retroactive "window" legislation is constitutional under federal and Wisconsin constitutional law where:

(1) The legislative intent to make the law retroactive is express; and (2) the law affects procedural rights; or substantive rights, where the public interest in identifying child predators and empowering child sex abuse victims outweighs the interests of the defendants responsible for the abuse.

Window Legislation Is Constitutional Under Wisconsin Law

- Under Wisconsin law "retroactive legislation is presumed constitutional. It is the challenger's burden to overcome that presumption, by demonstrating the statute's unconstitutionality beyond a reasonable doubt." In re Paternity of John R.B. v. Dorian H., 690 N.W.2d 849, 855-856 (2005) (internal citations omitted).
- A retroactive law affecting only procedural issues is constitutional. Neiman v. Am. Nat'l Prop. and Cas. Co., 613 N.W.2d 160, 164-65 (2000). (Even if the retroactive law affects substantive rights, it might still be constitutional).
- The legislative intent must be express. Neiman, 613 N.W.2d at 164; In re Paternity of John R.B., 690 N.W.2d at 856-857 (citing Martin v. Richards, 531 N.W.2d 70 (1995)); City of Madison v. Town of Madison, 377 N.W.2d 221, 224 (Ct. App. 1985).

Even if a statute is substantive and a "vested" right is impaired by its retroactive application, if the public interest served by the retroactive application outweighs the private interest, then the statute is constitutional. Neiman, 613 N.W.2d at 164 ("merely identifying a substantive, or vested, property right is not dispositive for due process purposes"); In re Paternity of John R.B., 690 N.W.2d at 857.

Window Legislation Is Constitutional Under Federal Law

- Retroactive civil legislation is constitutional where the language is explicit that the law is to be made retroactive. Landgraf v. USI Film Prods., 511 U.S. 244, 267-68 (1994); Republic of Austria v. Altmann, 124 S. Ct. 2240, 2250 (2004) ("[T]he antiretroactivity presumption is just that—a presumption, rather than a constitutional command"); Chase Sec. Corp. v. Donaldson, 325 U.S. 304, 311-12 (1945).
- Only criminal retroactive laws are unconstitutional. The Constitution draws a distinction between the revival of civil causes of action, which is permissible when express, and criminal causes of action, which is not permitted. Landgraf, 511 U.S. at 253 ("The *Ex Post Facto* Clause flatly prohibits retroactive application of penal legislation."); Stogner v. California, 539 U.S. 607, 610 (2003).
- The only path open for the state of Wisconsin to identify the vast majority of child predators, whose identities have been kept secret by short statutes of limitation law, and to provide child sex abuse victims a day in court is through a civil window, because the Constitution explicitly and clearly forbids legislatures from reviving criminal liability to those who have committed, fostered and hidden child abuse.