

**1999 DRAFTING REQUEST**

**Bill**

Received: **08/30/1999**

Received By: **olsenje**

Wanted: **Soon**

Identical to LRB:

For: **Scott Walker (608) 266-9180**

By/Representing: **Missy**

This file may be shown to any legislator: **NO**

Drafter: **olsenje**

May Contact:

Alt. Drafters:

Subject: **Criminal Law - sexual assault**

Extra Copies: **MGD**

**Pre Topic:**

No specific pre topic given

**Topic:**

Statute of limitations for first and second degree sexual assault

**Instructions:**

See Attached

**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>
/1	olsenje 09/10/1999	chanaman 09/10/1999	martykr 09/10/1999	_____	lrb_docadmin 09/10/1999	lrb_docadmin 09/23/1999	

FE Sent For:

<END>

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FE Sent For:							

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**From:** Walker, Scott  
**Sent:** Thursday, September 02, 1999 2:03 PM  
**To:** Olsen, Jefren  
**Cc:** Gilbert, Melissa  
**Subject:** Stat

Jeffren,

Thank you for working on our bill to remove the statute of limitations in first and second degree sexual assault. Florida has similar legislation, but limits it to cases where the crime is reported within 72 hours. We do not want a time limit.

Our interest in this legislation comes from working with Milwaukee County Assistant District Attorney Norm Gahn. Attached is a story about some warrants that Norm worked on that might be of interest to you:

## **Novel warrant IDs suspect only by DNA**

### **Databank evidence used to charge 'John Doe' in rape**

**By David Doege**

**of the Journal Sentinel staff**

*Last Updated: Sept. 1, 1999*

With time running out to identify a three-time rapist before the statute of limitations expires, authorities Wednesday filed a futuristic arrest warrant charging an assailant who is known only by his genetic profile.

In what is believed to be the first such effort in the nation, police and a prosecutor filed first-degree sexual assault and kidnapping charges in the warrant and a criminal complaint that identify the assailant only by DNA profiles found at five "genetic locations."

Using a DNA databank at the State Crime Laboratory, authorities determined that the same assailant was responsible for three unsolved 1993 rapes.

But with the statute of limitations already expired for two of the attacks and authorities soon to bump up against the time limit for the third assault, they presented the unusual warrant and complaint to a judge for his approval Wednesday.

With Circuit Judge John J. DiMotto's signature on the warrant, authorities believe they have stopped the statute of limitations clock so the assailant can be prosecuted if he is identified in the future.

And, as the prosecutor and lead detective were still stapling together copies of the first-of-its-kind complaint, they vowed that others like it would follow.

"We've got several more cases like this that have been identified, and we will be filing them," said Assistant District Attorney Norman Gahn. "This will be litigated someday, no doubt.

"But this way it's been put into the system, so we will preserve jurisdiction."

The step by Gahn, a nationally known expert in the use of DNA evidence in courtrooms, and by the crime laboratory, which also is gaining national recognition for processing genetic evidence, enhances a reputation that Wisconsin already had as a leader in the use of DNA genetic fingerprinting.

Daniel D. Blinka, an associate professor at Marquette University Law School, called the case "extraordinary."

"What it indicates is that DNA evidence has come of age in the courtroom," Blinka said. "It's another step toward eventually saying: 'This is the perpetrator. This is his genetic fingerprint. No one else in the world has it.' "

Blinka added, though, "This is going to raise some interesting, thick legal issues down the road, such as whether this is reliable identifying information."

But, he said, "if this case is not issued like it was and the statute runs and expires, there will be no argument later."

Ray Dall'Osto, a defense attorney who also is chairman of the Wisconsin Bar Association's criminal law section called the case "creative."

"It's an attempt to stretch the envelope," Dall'Osto said. "But I think there is a question about whether one can extend the statute by filing a legal charge without naming the defendant."

"The law says that if a defendant is not named, he can be designated 'by any description by which he can be identified with reasonable certainty.'

"I think there is a strong ground to challenge this from the defense view."

Dirk Janssen, supervisor of the serology and DNA section of the crime laboratory, said the ability to look for DNA fingerprinting evidence at an increasing number of genetic locations has enabled authorities to attach "a higher degree of certainty" to their contention that they have their man.

"The frequency of someone else having that same profile keeps going down with each location where you find that profile," Janssen said. "If we have five of them together like this, the degree of certainty is very high."

The odds of another person having the same profile as the John Doe charged Wednesday range from 1 in 1.96 billion to 1 in 7.25 billion, depending on race, according to the complaint.

Odds that incredible, in turn, make it possible for Gahn to file a complaint such as the one he issued Wednesday.

"I can't say I've heard of another case this specific involving three victims," Gahn said.

Wednesday's development was rooted in work begun months ago by Gahn and Milwaukee police Detective Lori Gagliano as they watched time slipping away from investigators who were trying to solve tough old rape cases in which the victims could not identify their assailants.

"Lori and the Police Department have been very aggressive on these cases," Gahn said.

The state's DNA databanking law took effect in August 1993, when authorities began collecting oral cell swabs from more than 9,000 convicted sex offenders for placement in the crime laboratory's database.

Last summer, authorities began comparing DNA profiles from evidence in unsolved crimes to the profiles in the laboratory's offender database.

Unsolved crime profiles are kept in a casework index when no matches are found in the offender index.

"We routinely compare samples in the casework index with the offender index," Janssen said.

The warrant issued Wednesday, the complaint says, concerns matching evidence in the casework index from three unsolved attacks:

### **Feb. 8, 1993**

A teenage girl in the 500 block of E. Burleigh St. was threatened by a man who grabbed her, raped her and robbed her of her coat before fleeing.

### **April 18, 1993**

A woman walking in the 1700 block of W. Atkinson Ave. was grabbed from behind by a man who held a knife to her throat and threatened to "slice" her. After raping the woman, the assailant fled with her necklace.

### **Nov. 9, 1993**

A teenage girl walking in the 5400 block of N. 35th St. was grabbed from behind by a man who threatened to stab her. After raping the girl, the assailant robbed her of \$6 and fled.

The complaint charges the John Doe only with the November 1993 attack, for which the statute of limitations would have been reached at midnight Nov. 8. Under state law, prosecution of felonies other than sexual assault of a child and homicide must begin within six years.

Although no match for the assaults has been found in the crime laboratory's offender index to date, the casework DNA samples from the three attacks will continue to be compared to the offender database on a monthly basis, Gahn said.

If the rapist were convicted of a new sexual assault, his sample would be added to the offender index, which continues to grow.

Samples in the state's databases also are periodically compared with those in a national index kept by the FBI. About 15 states submit samples to the national index.

Gahn noted that if Wisconsin's offender index is broadened, as some have proposed, the assailant could someday be identified even if he does not commit a new sex offense or wind up in the national index.

"Now, in these kinds of cases there is hope that we did not have in the past," Gahn said.

For the time being, though, the assailant will continue to be known only as "John Doe, unknown male" with matching DNA "at genetic locations D1S7, D2S44, D5S110, D10S28 and D17S79."

Appeared in the Milwaukee Journal Sentinel on Sept. 2, 1999.

Thank you,

Scott Walker



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-3531/1

JEO:.....

CMH

*D. Note by Tues 9/14*

**1999 BILL**

1 *regen cut*  
AN ACT ...; relating to: time limits for prosecution of certain crimes of sexual  
2 assault.

***Analysis by the Legislative Reference Bureau***

Under current law, the time limit for commencing a prosecution for a crime is generally six years for a felony and three years for a misdemeanor, as measured from the date that the criminal act was committed. One of the exceptions to the general rule is for certain homicide offenses, which have no time limit; thus, prosecution for the offense may be commenced at any time. In addition, current law provides that for some serious crimes against children (such as sexual assault of a child, repeated acts of sexual assault of a child, incest with a child, sexual exploitation of a child and certain kinds of physical abuse) a prosecution may be commenced any time before the victim reaches 31 years of age.

This bill eliminates the time limit on prosecutions for first and second degree sexual assault, first and second degree sexual assault of a child and repeated acts of sexual assault of a child. Thus, under the bill, a prosecution for these crimes may be commenced at any time.

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

3 SECTION 1. 939.74 (2) (a) of the statutes is amended to read:

**BILL**

**SECTION 1**

✓ ✓

1 939.74 (2) (a) A prosecution under s. 940.01, 940.02 ~~or~~, 940.03, 940.225 (1) or  
2 (2), 948.02 (1) or (2) or 948.025 may be commenced at any time.

History: 1981 c. 280; 1985 a. 275; 1987 a. 332, 380, 399, 403; 1989 a. 121; 1991 a. 269; 1993 a. 219, 227, 486; 1995 a. 456; 1997 a. 237.

3 **SECTION 2.** 939.74 (2) (c) of the statutes is amended to read:

4 939.74 (2) (c) A prosecution for violation of s. ~~948.02, 948.025~~, 948.03 (2) (a),  
5 948.05, 948.06, 948.07 (1), (2), (3) or (4), 948.08 or 948.095 shall be commenced before  
6 the victim reaches the age of 31 years or be barred.

History: 1981 c. 280; 1985 a. 275; 1987 a. 332, 380, 399, 403; 1989 a. 121; 1991 a. 269; 1993 a. 219, 227, 486; 1995 a. 456; 1997 a. 237.

7 **SECTION 3. Initial applicability.**

8 (1) This act first applies to offenses not barred from prosecution on the effective  
9 date of this subsection.

10 (END)



**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-3531/1dn

JEO:.....

*cmj*

✓  
In addition to covering first and second degree sexual assault under s. 940.225 (1) and (2), stats., this draft covers first and second degree sexual assault of a child under s. 948.02 (1) and (2), stats., and repeated acts of sexual assault of a child under s. 948.025, stats. Is that your intent?

Jefren E. Olsen  
Legislative Attorney  
Phone: (608) 266-8906  
E-mail: Jefren.Olsen@legis.state.wi.us

**SUBMITTAL  
FORM**

**LEGISLATIVE REFERENCE BUREAU  
Legal Section Telephone: 266-3561  
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 09/10/1999

To: Representative Walker

Relating to LRB drafting number: LRB-3531

**Topic**

Statute of limitations for first and second degree sexual assault

**Subject(s)**

Criminal Law - sexual assault

1. **JACKET** the draft for introduction \_\_\_\_\_

in the Senate \_\_\_ or the Assembly  (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached \_\_\_\_\_.

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction \_\_\_\_\_.

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Jefren E. Olsen, Legislative Attorney  
Telephone: (608) 266-8906

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-3531/1dn  
JEO:cmh:km

September 10, 1999

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Legislative Attorney  
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