Assembly Hearing Slip

(Please print plainly)

Date: 10/14/99

Bill No. Or Subject: AB 497

(Name): Rep Scott Walker

(Street Address or Route Number):

(City & Zip Code): 14th AD

(Representing):

Speaking *in favor:*	☑
Speaking *against:*	☐
Registering *in favor:*	☐
Registering *against:*	☐
Speaking for *information only;* Neither for nor against:	☐

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 10/14/99

Bill No. Or Subject: AB 497

(Name): S Waxman

(Street Address or Route Number): Capitol

(City & Zip Code): Jeff

(Representing):

Speaking *in favor:*	☑
Speaking *against:*	☐
Registering *in favor:*	☐
Registering *against:*	☐
Speaking for *information only;* Neither for nor against:	☐

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 10-14-99

Bill No. Or Subject: AB497

(Name): Cheri Dubiel

(Street Address or Route Number): 1600 Williamson St.

(City & Zip Code): Madison, 53703

(Representing): WI Coalition Against Sexual Assault

Speaking *in favor:*	☒
Speaking *against:*	☐
Registering *in favor:*	☐
Registering *against:*	☐
Speaking for *information only;* Neither for nor against:	☐

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 10/14/99

Bill No. AB 497
Or
Subject

P. Sloane Gmam
(Name)

128 E. Olin Ave
(Street Address or Route Number)

Madison, WI 53703
(City & Zip Code)

Rape Crisis Ctr.
(Representing)

Speaking *in favor:*	☐
Speaking *against:*	☐
Registering *in favor:*	☒
Registering *against:*	☐
Speaking for *information only;* Neither for nor against:	☐

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 10/14/99

Bill No. AB497
Or
Subject

LON NEWMAN
(Name)

1111 N 10th ST
(Street Address or Route Number)

WAUSAU, WI 54403
(City & Zip Code)

(Representing)

Speaking *in favor:*	☐
Speaking *against:*	☐
Registering *in favor:*	☒
Registering *against:*	☐
Speaking for *information only;* Neither for nor against:	☐

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

ASSEMBLY COMMITTEE ON CORRECTIONS AND THE COURTS

AGENDA

Thursday, October 14, 1999
10 AM – Room 225 NW

I. Call to Order

II. Roll Call

III. Public Hearing

A. AB 497 *(Walker/Wasserman/Darling)* time limits for prosecution of certain crimes of sexual assault.

B. AB 519 *(Walker)* construction and operation of private prisons, requiring the exercise of rule-making authority and making an appropriation.

IV. Executive Session

AB 544—

A. Introduction of **LRB 3712/1** *(Committee)* lease and operation of correctional facilities and making an appropriation.

V. Announcements

A. Next meeting – Oct. 20

VI. Adjournment

ASSEMBLY COMMITTEE ON CORRECTIONS AND THE COURTS

AGENDA

Wednesday, October 20, 1999
11 AM – North Hearing Room

I. Call to Order

II. Roll Call

III. Public Hearing

A. AB 544 *(Committee)* the lease and operation of correctional facilities and making an appropriation.

IV. Executive Session

A. AB 497 *(Walker/Wasserman/Darling)* time limits for prosecution of certain crimes of sexual assault.

B. AB 519 *(Walker)* construction and operation of private prisons, requiring the exercise of rule-making authority and making an appropriation.

V. Announcements

A. Next meeting – Oct. 27

VI. Adjournment

Vote Record

Assembly Committee on Corrections and the Courts

Date: 10/20/97
Moved by: Suder
Seconded by: Coggs
AB: 497
Clearinghouse Rule:
AB: SB: Appointment:
AJR: SJR: Other:
A: SR:

A/S Amdt:
A/S Amdt: to A/S Amdt:
A/S Sub Amdt:
A/S Amdt: to A/S Sub Amdt:
A/S Amdt: to A/S Amdt: to A/S Sub Amdt:

Be recommended for:
- [X] Passage
- [ ] Introduction
- [ ] Adoption
- [ ] Rejection
- [ ] Indefinite Postponement
- [ ] Tabling
- [ ] Concurrence
- [ ] Nonconcurrence
- [ ] Confirmation

Committee Member	Aye	No	Absent	Not Voting
Rep. Scott Walker, Chair	X			
Rep. Robert Goetsch	X			
Rep. Scott Suder	X			
Rep. Carol Owens	X			
Rep. Tim Hoven			X	
Rep. Eugene Hahn	X			
Rep. Mark Gundrum			X	
Rep. Larry Balow	X			
Rep. G. Spencer Coggs	X			
Rep. Mark Pocan	X			
Rep. Tony Staskunas		X		
Rep. David Travis	X			
Totals:	9	1	2	

- [ ] Motion Carried
- [ ] Motion Failed

Milwaukee Journal Sentinel August 31, 1999

DNA tests prompt sex crimes bill

Lawmaker urges removal of time limits for prosecuting assault cases

By Dennis Chaptman
of the Journal Sentinel staff

Madison — Wisconsin should lift the six-year statute of limitations on first- and second-degree sexual assault because of advances in DNA testing, state Rep. Scott Walker said.

The Wauwatosa Republican said Monday that he plans to introduce legislation that would eliminate the statute of limitations, the period during which crime suspects can be prosecuted. The legislation would give assault victims a broader ability to take advantage of new DNA testing and state DNA registries, Walker said.

DNA testing led to the recent conviction of a sex offender who raped a Milwaukee County woman during a 1993 home invasion after locking her boyfriend in the trunk of her car.

Amos N. Branigan, 29, pleaded guilty on Aug. 2 to three counts of first-degree sexual assault after a DNA sample linked him to the crime. Branigan was already serving a 54-year prison sentence for second-degree sexual assault of a child and other counts.

Prosecutors linked Branigan to the case using DNA samples in offender and victim indexes.

For the past six years, state authorities have collected oral cell swabs from convicted sex offenders. And they have collected body fluid samples from unsolved alleged rapes in a victim index.

Six states — Florida, Indiana, Mississippi, New Jersey, New Mexico and South Dakota — set no statute of limitations on the most serious types of sexual assaults, regardless of the victim's age, Walker said. Another 11 states place no limit on the prosecution of most crimes against children, he said.

Wrangling dooms bill on sex case time limit

WSJ
5/4/2000

By J.R. Ross
Associated Press

Proponents of a bill to extend the statute of limitations on some sex offenses said Wednesday it got lost in political wrangling.

The bill would lift the six-year statute of limitations when DNA evidence is available and is used within a year of pinpointing a suspect.

It also would lift the time limit for using genetic testing to prove a convict's innocence.

But negotiations on the bill early this week failed to produce a compromise and the Senate did not schedule it for a vote Tuesday.

That left little chance the bill could become law this year, at least without an extraordinary session of the Legislature.

It might mean supporters could have to wait until the next session, which begins in January.

Keith Findley, co-director of the Wisconsin Innocence Project, said the legislation is badly needed because it would preserve biological evidence in crime cases.

It also would help convicts who could use DNA evidence to exonerate themselves, even if they can't afford the testing themselves.

"I just thought we might have reached a compromise that all sides could live with," Findley said. "I'm really not quite sure what happened in the end. We just sort of ran out of time on it."

Becky Westerfelt, executive director with the Rape Crisis Center in Madison, said it made sense to change the statute of limitations to keep up with scientific advances with DNA testing.

"It just seems like a noncontroversial issue to me," she said. "I think you could argue I don't always see the other side but I don't see the downside to this."

After the Assembly passed the bill, 99-0, earlier this year, the Senate added an amendment changing some requirements to keep a case open past the statute of limitations.

The Assembly countered with an amendment stripping the Senate's amendment and work began on a compromise between the two versions.

When that didn't pan out, the bickering began.

SHELDON
WASSERMAN
STATE REPRESENTATIVE

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____ IN RESPONSE TO YOUR RECENT REQUEST.

____ I THOUGHT YOU MIGHT BE INTERESTED IN THE ENCLOSED MATERIAL.

____ OTHER Sorry for the delay! Hope this helps.

WISCONSIN
STATE
ASSEMBLY

SHELDON
WASSERMAN
STATE REPRESENTATIVE

January 20, 2000

Senator Gary George, Chair
Senate Committee on Judiciary and Consumer Affairs
Room 118-South, State Capitol

Dear Senator George:

I am writing regarding a proposal that I feel should be scheduled for a public hearing as soon as possible. Assembly Bill 497, relating to time limits for prosecution of certain crimes of sexual assault, was referred to the Committee on Judiciary and Consumer Affairs on November 4, 1999.

Assembly Bill 497 is of particular importance to me personally. In my job as a physician, I commonly encounter and counsel women who have been sexually assaulted. Studies have documented that rape causes life-long complications in victims, ranging from chronic pain to increased incidence of surgeries to a host of deep psychological problems. It is one of the most heinous and most rapidly growing crimes in our society. We must do everything we can to strengthen our laws and use every technological advance to help rape victims bring their attackers to justice.

One way that we in Wisconsin can assist in making this possible is by passing Assembly Bill 497. In its current form, it would remove the statute of limitations on the admission of DNA evidence in cases of sexual assault. DNA evidence is 99.99% reliable; it must be collected within one or two days; and it provides irrefutable proof against rapists who may now escape prosecution due to the current 6-year statute of limitations.

Wrongly accused criminals are being released from prison based on DNA test results with no statute of limitations on the admission of evidence. We must also extend this option to victims whose assailants cannot be apprehended within a given period of time. If DNA evidence is present and conclusive, regardless of how long ago a rape occurred, then we must legally have the ability to convict the offender.

I respectfully ask that Assembly Bill 497 be placed on the calendar for the public hearing that you have scheduled for January 25, 2000. I urge swift deliberation and a committee vote.

Thank you for your consideration. Please feel free to contact me anytime should you have questions or comments.

Sincerely,

Sheldon A. Wasserman, M.D.
State Representative
22nd Assembly District

SW/so

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WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701–2536
Telephone: (608) 266–1304
Fax: (608) 266–3830
Email: leg.council@legis.state.wi.us

DATE: April 28, 2000

TO: REPRESENTATIVE SCOTT WALKER

FROM: Ronald Sklansky, Senior Staff Attorney, and Anne Sappenfield, Staff Attorney

SUBJECT: 1999 Assembly Bill 497, Relating to Time Limits for Prosecution of Certain Crimes of Sexual Assault and Post Conviction Motions for Testing of Certain Evidence, as Amended by Senate Substitute Amendment 1 to the Bill

This memorandum, prepared at your request, summarizes the major substantive provisions of 1999 Assembly Bill 497, relating to preservation and maintenance of certain evidence, time limits for prosecution of certain crimes of sexual assault and post conviction motions for testing of certain evidence, as amended by Senate Substitute Amendment 1 to the bill. This description describes the Senate amendment as amended by Assembly Amendment 1 to the Senate amendment.

Assembly Bill 497 was introduced by you and others; cosponsored by Senator Darling and others on October 5, 1999. The bill passed the Assembly as amended by Assembly Substitute Amendment 1 on November 3, 1999. The Senate passed the bill as amended by Senate Substitute Amendment 1 on March 28, 2000. On March 30, 2000, the Assembly concurred in the bill as amended by Senate Substitute Amendment 1 and also adopted Assembly Amendment 1 to the Senate substitute amendment. The bill is currently in the Senate.

A. STATUTE OF LIMITATION

1. Current Law

Section 939.74 (1), Stats., generally provides that, after the commission of a misdemeanor or after the commission of a felony, a criminal prosecution must begin within three years or six years, respectively. Exceptions to this general rule include the following:

a. A prosecution may begin at any time for the crime of first-degree intentional homicide, first-degree reckless homicide or felony murder.

b. When a person lawfully has obtained possession of property and then misappropriated it, a prosecution may begin within one year after discovery of the loss by the victim, but in no case may the general statute of limitation be extended by more than five years.

c. A prosecution for the following crimes must begin before the victim reaches the age of 31 years: sexual assault of a child, engaging in repeated acts of sexual assault of the same child, intentionally causing great bodily harm to a child, sexual exploitation of a child, incest with a child, various forms of child enticement, soliciting a child for prosecution and sexual assault of a student by a school instructional staff person.

d. A prosecution for the following crimes must begin before the victim reaches the age of 26 years: intentionally causing bodily harm to a child, intentionally causing bodily harm to a child by conduct which creates a high probability of great bodily harm, causing mental harm to a child and causing bodily or mental harm to a child through child enticement.

e. A criminal prosecution for racketeering activity may begin at any time within six years after the criminal violation terminates or the cause of action accrues.

[See s. 939.74 (1) and (2), Stats.]

2. The Bill

As passed by the Senate, the bill amends current law by providing that, after the general time periods for beginning a misdemeanor or felony prosecution have expired, the state may use DNA evidence of a perpetrator of certain crimes to begin a criminal prosecution under certain circumstances. The bill's provisions apply in a case of first- or second-degree sexual assault against an adult or child, or in a case of repeated acts of sexual assault of the same child, in which DNA evidence of a person believed to be the perpetrator did not result in a probable identification of the perpetrator prior to the time in which a prosecution should have been commenced. The bill provides that in such a situation the state may, before the prosecutorial time periods have expired, request the circuit court in the county in which the violation is believed to have been committed to determine whether there is probable cause to believe that the DNA evidence is evidence of the identification of the perpetrator. The request for a hearing and the hearing itself must be *ex parte*. The court must make a written record of the proceeding that will remain secret unless a prosecution for the violation is begun, in which case the record will be made available to the state and any defendant in the prosecution.

The bill further provides that if the state has DNA evidence and a court has found that there is probable cause to believe that the evidence will identify the perpetrator of the specified crime, a prosecution for the violation may be commenced within one year after a comparison of the DNA evidence relating to the violation results in a probable identification of the person.

Assembly Amendment 1 to Senate Substitute Amendment 1 to the bill affects the above provision. Specifically, the amendment deletes the circuit court determination of whether there is probable cause to believe that evidence of a DNA profile is evidence of the identification of a person who committed a violation. Instead, under the amendment, a prosecution for a violation of first- or second-degree sexual assault, first- or second-degree sexual assault of a child or

b. When a person lawfully has obtained possession of property and then misappropriated it, a prosecution may begin within one year after discovery of the loss by the victim, but in no case may the general statute of limitation be extended by more than five years.

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engaging in repeated acts of sexual assault of a child may be commenced within one year after a comparison of the DNA profile evidence relating to the violation results in a probable identification of the person, if the state has evidence of a DNA profile of a person who committed the violation but comparisons of the evidence to DNA profiles of known persons that were made before the statute of limitations expired did not result in a probable identification of the person.

B. PRESERVATION OF EVIDENCE

The bill generally provides that the state crime laboratories, the courts, law enforcement agencies and district attorneys must preserve physical evidence that includes any biological material collected in connection with a criminal action or a juvenile delinquency proceeding until every person in custody as a result of the criminal action or delinquency proceeding has reached his or her discharge date. The term "custody" is defined to mean actual custody of a person under a sentence of imprisonment; custody of a probationer, parolee or person on extended supervision; actual or constructive custody of a person under a juvenile dispositional order; supervision of a person, whether in institutional care or on conditional release, pursuant to a commitment order; and supervision of a sexually violent offender under ch. 980, Stats. The term "discharge date" means the date on which a person is released or discharged from custody including release from custody under all consecutive sentences of imprisonment.

Biological material may be destroyed before the release from custody if all of the following apply:

1. Notice of intent to destroy is sent to all persons who remain in custody and to either the attorney of record for each person in custody or the state public defender.

2. A notified person, within 90 days after receiving the notice, does not file a motion for testing of the biological material or submits a written request to preserve the evidence.

3. No other provision of federal or state law requires preservation of the biological material.

If the holder of the biological material receives a written request to preserve the evidence, the evidence must be preserved until the discharge date of the person who made the request.

C. MOTION FOR POST CONVICTION DNA TESTING OF CERTAIN EVIDENCE

1. Making the Motion

Current statutes impose various time limits on post conviction motions and appeals of criminal convictions. The bill creates a special provision for a motion for post conviction DNA testing of evidence. At any time after being convicted of a crime, adjudicated delinquent or found not guilty by reason of mental disease or defect, a person may make a motion in the court where the judgment was rendered for an order requiring forensic DNA testing of evidence to which all of the following apply:

a. The evidence is relevant to the investigation or prosecution that resulted in the judgment.

b. The evidence is in the actual or constructive possession of a government agency.

c. The evidence has not previously been subjected to forensic DNA testing or, if the evidence has previously been tested, it may now be subjected to another test using a scientific technique that was either not used during the previous testing or not available at the time of the previous testing and that provides a reasonable likelihood of more accurate and probative results.

The person who makes the motion for testing must notify the district attorney's office and, in turn, the court in which the motion is made also must notify the district attorney's office. However, failure by a person making the motion to notify the district attorney's office does not deprive the court of jurisdiction and is not grounds for dismissal of the motion. Further, the clerk of the circuit court must send a copy of the motion and a notice of hearing on the motion to the victim of the crime.

When the district attorney first receives notice of the motion, he or she must take all actions necessary to ensure that all biological material collected in connection with the investigation or prosecution of the case and that remains in actual or constructive custody of a government agency is preserved pending completion of the proceedings relating to the motion.

2. Judicial Procedure

A court in which the motion is made must order forensic DNA testing if all of the following apply:

a. The person making the motion claims that he or she is innocent.

b. The court determines either that the chain of custody of the evidence to be tested establishes that the evidence has not been tampered with, replaced or altered in any material respect or, if the chain of custody cannot establish the integrity of the evidence, that the testing itself can establish the integrity of the evidence.

c. The court determines that the testing may produce noncumulative evidence that is relevant to the person's assertion of actual innocence.

If the court does not order testing, it must determine the disposition of the evidence that the motion seeks to have tested and, if the evidence is to be preserved, by whom and for how long. Similarly, the court also must determine the disposition of the evidence if the testing is unfavorable to the person making the motion. However, if the results of the testing are favorable to the person making the motion, the court must schedule a hearing to determine the appropriate relief to be granted. The court may enter any order that serves the interests of justice, including any of the following:

a. An order setting aside or vacating the judgment.

a. The evidence is relevant to the investigation or prosecution that resulted in the judgment.

b. The evidence is in the actual or constructive possession of a government agency.

c. The evidence has not previously been subjected to forensic DNA testing or, if the evidence has previously been tested, it may now be subjected to another test using a scientific technique that was either not used during the previous testing or not available at the time of the previous testing and that provides a reasonable likelihood of more accurate and probative results.

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c. The court determines that the testing may produce noncumulative evidence that is relevant to the person's assertion of actual innocence.

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a. An order setting aside or vacating the judgment.

b. An order granting a new trial or fact-finding hearing.

c. An order granting the person a new sentencing hearing, commitment hearing or dispositional hearing.

d. An order discharging the person from custody.

e. An order specifying the disposition of any evidence that remains after the completion of testing.

If a person has been committed after serving a sentence for the commission of certain sexually violent acts, and the criminal judgment is reversed, set aside or vacated, the committed person may make a motion for post conviction relief. If the sexually violent offense was the only reason for the commitment, the court must vacate the commitment or discharge the person. In all other cases (other convictions stand or other reasons for the commitment exist), the court must determine whether a new commitment trial should be held because the result of the trial probably would be changed.

3. Indigency

A court considering a motion for forensic DNA testing by a person who is not represented by counsel must, if the person claims or appears to be indigent, refer the person to the state public defender for determination of indigency and appointment of counsel. If the court determines that a person is indigent, the court must order the costs of testing to be paid for from an appropriation created in the bill. (No dollar amounts are placed in this appropriation line.) A court must find indigency if any of the following apply:

a. The person was referred to the state public defender and was found to be indigent.

b. The person was referred to the state public defender but was found not to be indigent, and the court determines that the person does not possess the financial resources to pay the costs of testing.

c. The person was not referred to the state public defender and the court determines that the person does not possess the financial resources to pay the costs of testing.

If I can be of any further assistance in this matter, please feel free to contact me.

RS:AS:jal:wu:tlu;rv;wu;ksm

939.72 No conviction of both inchoate and completed crime. A person shall not be convicted under both:

(1) Section 939.30, 948.35 or 948.36 for solicitation and s. 939.05 as a party to a crime which is the objective of the solicitation; or

(2) Section 939.31 for conspiracy and s. 939.05 as a party to a crime which is the objective of the conspiracy; or

(3) Section 939.32 for attempt and the section defining the completed crime.

History: 1991 a. 153.

Sub. (3) does not bar convictions for murder and attempted murder where defendant shot at one but killed another. Austin v. State, 86 W (2d) 213, 271 NW (2d) 668 (1978).

Sub. (3) does not bar convictions for possession of burglarious tools and burglary arising out of single transaction. Dumas v. State, 90 W (2d) 518, 280 NW (2d) 310 (Ct. App. 1979).

939.73 Criminal penalty permitted only on conviction. A penalty for the commission of a crime may be imposed only after the actor has been duly convicted in a court of competent jurisdiction.

939.74 Time limitations on prosecutions. (1) Except as provided in sub. (2), and s. 946.88 (1), prosecution for a felony must be commenced within 6 years and prosecution for a misdemeanor or for adultery within 3 years after the commission thereof. Within the meaning of this section, a prosecution has commenced when a warrant or summons is issued, an indictment is found, or an information is filed.

(2) Notwithstanding that the time limitation under sub. (1) has expired:

(a) A prosecution under s. 940.01, 940.02 or 940.03 may be commenced at any time.

(b) A prosecution for theft against one who obtained possession of the property lawfully and subsequently misappropriated it may be commenced within one year after discovery of the loss by the aggrieved party, but in no case shall this provision extend the time limitation in sub. (1) by more than 5 years.

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

(cm) A prosecution for violation of s. 948.03 (2) (b) or (c), (3) or (4), 948.04 or 948.07 (5) or (6) shall be commenced before the victim reaches the age of 26 years or be barred.

(3) In computing the time limited by this section, the time during which the actor was not publicly a resident within this state or during which a prosecution against the actor for the same act was pending shall not be included. A prosecution is pending when a warrant or a summons has been issued, an indictment has been found, or an information has been filed.

(4) In computing the time limited by this section, the time during which an alleged victim under s. 940.22 (2) is unable to seek the issuance of a complaint under s. 968.02 due to the effects of the sexual contact or due to any threats, instructions or statements from the therapist shall not be included.

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.

Plea of guilty admits facts charged but not the crime and therefore does not raise issue of statute of limitations. State v. Pohlhammer, 78 W (2d) 516, 254 NW (2d) 478.

See note to 971.08, citing State v. Pohlhammer, 82 W (2d) 1, 260 NW (2d) 678.

Sub. (3) tolls running of statute of limitation during period in which defendant not state resident and violates neither privileges and immunities clause nor protection clause of U.S. constitution. State v. Sher, 149 W (2d) 1, 437 NW (2d) (1989).

Person is not "publicly a resident within this state" under sub. (3) when living side state but retaining state residence for voting and tax purposes. State v. Whi 160 W (2d) 260, 466 NW (2d) 193 (Ct. App. 1990).

An arrest warrant is issued for purposes of sub. (1) when it is signed by a judge intent that it be executed and leaves the possession of the judge. That the warr never executed is irrelevant. State v. Mueller, 201 W (2d) 121, 549 NW (2d) 45 App. 1996).

Plaintiff's allegations of defendant district attorney's bad faith presented no im iment to application of general principle prohibiting federal court interference pending state prosecutions where the only factual assertion in support of claim the district attorney's delay in completing prosecution, and there were no alleged which could support any conclusion other than that the district attorney acted consistently with state statutes and constitution. Smith v. McCann, 381 F Su 1027.

939.75 Death or harm to an unborn child. (1) In this sec tion and ss. 939.24 (1), 939.25 (1), 940.01 (1) (b), 940.02 (1m) 940.05 (2g) and (2h), 940.06 (2), 940.08 (2), 940.09 (1) (c) to (e) (1b) and (1g) (c) and (d), 940.10 (2), 940.195, 940.23 (1) (b) and (2) (b), 940.24 (2) and 940.25 (1) (c) to (e) and (1b), "unborn child" means any individual of the human species from fertilization until birth that is gestating inside a woman.

(2) (a) In this subsection, "induced abortion" means the use of any instrument, medicine, drug or other substance or device in a medical procedure with the intent to terminate the pregnancy of a woman and with an intent other than to increase the probability of a live birth, to preserve the life or health of the infant after live birth or to remove a dead fetus.

(b) Sections 940.01 (1) (b), 940.02 (1m), 940.05 (2g) and (2h), 940.06 (2), 940.08 (2), 940.09 (1) (c) to (e) and (1g) (c) and (d), 940.10 (2), 940.195, 940.23 (1) (b) and (2) (b), 940.24 (2) and 940.25 (1) (c) to (e) do not apply to any of the following:

1. An act committed during an induced abortion. This subdivision does not limit the applicability of ss. 940.04, 940.13, 940.15 and 940.16 to an induced abortion.

2. An act that is committed in accordance with the usual and customary standards of medical practice during diagnostic testing or therapeutic treatment performed by, or under the supervision of, a physician licensed under ch. 448.

2h. An act by any health care provider, as defined in s. 155.01 (7), that is in accordance with a pregnant woman's power of attorney for health care instrument under ch. 155 or in accordance with a decision of a health care agent who is acting under a pregnant woman's power of attorney for health care instrument under ch. 155.

3. An act by a woman who is pregnant with an unborn child that results in the death of or great bodily harm, substantial bodily harm or bodily harm to that unborn child.

4. The prescription, dispensation or administration by any person lawfully authorized to do so and the use by a woman of any medicine, drug or device that is used as a method of birth control or is intended to prevent pregnancy.

(3) When the existence of an exception under sub. (2) has been placed in issue by the trial evidence, the state must prove beyond a reasonable doubt that the facts constituting the exception do not exist in order to sustain a finding of guilt under s. 940.01 (1) (b), 940.02 (1m), 940.05 (2g), 940.06 (2), 940.08 (2), 940.09 (1) (c) to (e) or (1g) (c) or (d), 940.10 (2), 940.195, 940.23 (1) (b) or (2) (b), 940.24 (2) or 940.25 (1) (c) to (e).

History: 1997 a. 295.

(6) Sections 961.01 (6) and (9) and 961.49, relating to delivering and distributing controlled substances or controlled substance analogs to children.

(7) Section 444.09 (4), relating to boxing.

History: 1987 a. 332; 1989 a. 31; 1993 a. 27; 1995 a. 448.

948.02 Sexual assault of a child. (1) FIRST DEGREE SEXUAL ASSAULT. Whoever has sexual contact or sexual intercourse with a person who has not attained the age of 13 years is guilty of a Class B felony.

(2) SECOND DEGREE SEXUAL ASSAULT. Whoever has sexual contact or sexual intercourse with a person who has not attained the age of 16 years is guilty of a Class BC felony.

(3) FAILURE TO ACT. A person responsible for the welfare of a child who has not attained the age of 16 years is guilty of a Class C felony if that person has knowledge that another person intends to have, is having or has had sexual intercourse or sexual contact with the child, is physically and emotionally capable of taking action which will prevent the intercourse or contact from taking place or being repeated, fails to take that action and the failure to act exposes the child to an unreasonable risk that intercourse or contact may occur between the child and the other person or facilitates the intercourse or contact that does occur between the child and the other person.

(3m) PENALTY ENHANCEMENT; SEXUAL ASSAULT BY CERTAIN PERSONS. If a person violates sub. (1) or (2) and the person is responsible for the welfare of the child who is the victim of the violation, the maximum term of imprisonment may be increased by not more than 5 years.

(4) MARRIAGE NOT A BAR TO PROSECUTION. A defendant shall not be presumed to be incapable of violating this section because of marriage to the complainant.

(5) DEATH OF VICTIM. This section applies whether a victim is dead or alive at the time of the sexual contact or sexual intercourse.

History: 1987 a. 332; 1989 a. 31; 1995 a. 14, 69.

Limits relating to expert testimony regarding child sex abuse victims discussed. State v. Hernandez, 192 W (2d) 251, 531 NW (2d) 348 (Ct. App. 1995).

The criminalization under sub. (2) of consensual sexual relations with a child under 16 does not violate the defendant's constitutionally protected privacy rights. State v. Fisher, 211 W (2d) 664, 565 NW (2d) 565 (Ct. App. 1997).

Second degree sexual assault under sub. (2) is a lesser included offense of first degree sexual assault under sub. (1). State v. Moua, 215 W (2d) 510, 573 NW (2d) 210 (Ct. App. 1997).

948.025 Engaging in repeated acts of sexual assault of the same child. (1) Whoever commits 3 or more violations under s. 948.02 (1) or (2) within a specified period of time involving the same child is guilty of a Class B felony.

(2) If an action under sub. (1) is tried to a jury, in order to find the defendant guilty the members of the jury must unanimously agree that at least 3 violations occurred within the time period applicable under sub. (1) but need not agree on which acts constitute the requisite number.

(2m) If a person violates sub. (1) and the person is responsible for the welfare of the child who is the victim of the violation, the maximum term of imprisonment may be increased by not more than 5 years.

(3) The state may not charge in the same action a defendant with a violation of this section and with a felony violation involving the same child under ch. 944 or a violation involving the same child under s. 948.02, 948.05, 948.06, 948.07, 948.08, 948.10, 948.11 or 948.12, unless the other violation occurred outside of the time period applicable under sub. (1). This subsection does not prohibit a conviction for an included crime under s. 939.66 when the defendant is charged with a violation of this section.

History: 1993 a. 227; 1995 a. 14.

Sub. (2) is constitutional. The right to a unanimous jury verdict is fulfilled by the requirement the a continuous course of conduct be found. State v. Molitor, 210 W (2d) 416, 565 NW (2d) 248 (Ct. App. 1997).

948.03 Physical abuse of a child. (1) DEFINITIONS. In this section, "recklessly" means conduct which creates a situation of unreasonable risk of harm to and demonstrates a conscious disregard for the safety of the child.

(2) INTENTIONAL CAUSATION OF BODILY HARM. (a) Whoever intentionally causes great bodily harm to a child is guilty of a C felony.

(b) Whoever intentionally causes bodily harm to a child is guilty of a Class D felony.

(c) Whoever intentionally causes bodily harm to a child by conduct which creates a high probability of great bodily harm is guilty of a Class C felony.

(3) RECKLESS CAUSATION OF BODILY HARM. (a) Whoever recklessly causes great bodily harm to a child is guilty of a Class felony.

(b) Whoever recklessly causes bodily harm to a child is guilty of a Class E felony.

(c) Whoever recklessly causes bodily harm to a child by conduct which creates a high probability of great bodily harm is guilty of a Class D felony.

(4) FAILING TO ACT TO PREVENT BODILY HARM. (a) A person responsible for the child's welfare is guilty of a Class C felony if that person has knowledge that another person intends to cause is causing or has intentionally or recklessly caused great bodily harm to the child and is physically and emotionally capable of taking action which will prevent the bodily harm from occurring or being repeated, fails to take that action and the failure to act exposes the child to an unreasonable risk of great bodily harm by the other person or facilitates the great bodily harm to the child that is caused by the other person.

(b) A person responsible for the child's welfare is guilty of a Class D felony if that person has knowledge that another person intends to cause, is causing or has intentionally or recklessly caused bodily harm to the child and is physically and emotionally capable of taking action which will prevent the bodily harm from occurring or being repeated, fails to take that action and the failure to act exposes the child to an unreasonable risk of bodily harm by the other person or facilitates the bodily harm to the child that is caused by the other person.

(5) PENALTY ENHANCEMENT; ABUSE BY CERTAIN PERSONS. If a person violates sub. (2) or (3) and the person is responsible for the welfare of the child who is the victim of the violation, the maximum term of imprisonment may be increased by not more than 5 years.

(6) TREATMENT THROUGH PRAYER. A person is not guilty of an offense under this section solely because he or she provides a child with treatment by spiritual means through prayer alone for healing in accordance with the religious method of healing permitted under s. 48.981 (3) (c) 4. or 448.03 (6) in lieu of medical or surgical treatment.

History: 1987 a. 332.

To obtain a conviction for aiding and abetting a violation of sub. (2) or (3) the state must prove conduct which as a matter of objective fact aids another in executing the crime. State v. Rundle, 176 W (2d) 985, 500 NW (2d) 916 (Ct. App. 1993).

A live–in boyfriend can be a person responsible for the welfare of a child under sub. (5) if he was used by the child's legal guardian as a caretaker for the child. State v. Sostre, 198 W (2d) 409, 542 NW (2d) 774 (1996).

948.04 Causing mental harm to a child. (1) Whoever is exercising temporary or permanent control of a child and causes mental harm to that child by conduct which demonstrates substantial disregard for the mental well–being of the child is guilty of a Class C felony.

(2) A person responsible for the child's welfare is guilty of a Class C felony if that person has knowledge that another person has caused, is causing or will cause mental harm to that child, is physically and emotionally capable of taking action which will prevent the harm, fails to take that action and the failure to act exposes the child to an unreasonable risk of mental harm by the other person or facilitates the mental harm to the child that is caused by the other person.

History: 1987 a. 332.

948.05 Sexual exploitation of a child. **(1)** Whoever does any of the following with knowledge of the character and content of the sexually explicit conduct involving the child is guilty of a Class C felony:

(a) Employs, uses, persuades, induces, entices or coerces any child to engage in sexually explicit conduct for the purpose of photographing, filming, videotaping, recording the sounds of or displaying in any way the conduct.

(b) Photographs, films, videotapes, records the sounds of or displays in any way a child engaged in sexually explicit conduct.

(c) Produces, performs in, profits from, promotes, imports into the state, reproduces, advertises, sells, distributes or possesses with intent to sell or distribute, any undeveloped film, photographic negative, photograph, motion picture, videotape, sound recording or other reproduction of a child engaging in sexually explicit conduct.

(2) A person responsible for a child's welfare who knowingly permits, allows or encourages the child to engage in sexually explicit conduct for a purpose proscribed in sub. (1) (a), (b) or (c) is guilty of a Class C felony.

(3) It is an affirmative defense to prosecution for violation of this section if the defendant had reasonable cause to believe that the child had attained the age of 18 years, and the child exhibited to the defendant, or the defendant's agent or client, a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that the child had attained the age of 18 years. A defendant who raises this affirmative defense has the burden of proving this defense by a preponderance of the evidence.

History: 1987 a. 332.

Term "import" under (1) (c) means bringing in from external source and does not require commercial element or exempt personal use. State v. Bruckner, 151 W (2d) 833, 447 NW (2d) 376 (Ct. App. 1989).

Sub. (3) does not relieve the state of the burden of proving knowledge of age where conduct under sub. (1) (c) occurs outside of the child's presence. State v. Zarnke, 215 W (2d) 71, 572 NW (2d) 491 (Ct. App. 1997).

948.055 Causing a child to view or listen to sexual activity. **(1)** Whoever intentionally causes a child who has not attained 18 years of age to view or listen to sexually explicit conduct may be penalized as provided in sub. (2) if the viewing or listening is for the purpose of sexually arousing or gratifying the actor or humiliating or degrading the child.

(2) Whoever violates sub. (1) is guilty of:

(a) A Class C felony if the child has not attained the age of 13 years.

(b) A Class D felony if the child has attained the age of 13 years but has not attained the age of 18 years.

History: 1987 a. 334; 1989 a. 359; 1993 a. 218 ss. 6, 7; Stats. 1993 s. 948.055; 1995 a. 67.

948.06 Incest with a child. Whoever does any of the following is guilty of a Class BC felony:

(1) Marries or has sexual intercourse or sexual contact with a child he or she knows is related, either by blood or adoption, and the child is related in a degree of kinship closer than 2nd cousin; or

(2) Is a person responsible for the child's welfare and:

(a) Has knowledge that another person related to the child by blood or adoption in a degree of kinship closer than 2nd cousin has had or intends to have sexual intercourse or sexual contact with the child;

(b) Is physically and emotionally capable of taking action that will prevent the intercourse or contact from occurring or being repeated;

(c) Fails to take that action; and

(d) The failure to act exposes the child to an unreasonable risk that intercourse or contact may occur between the child and the other person or facilitates the intercourse or contact that does occur between the child and the other person.

History: 1987 a. 332; 1995 a. 69.

948.07 Child enticement. Whoever, with intent to commit any of the following acts, causes or attempts to cause any child who has not attained the age of 18 years to go into any vehicle, building, room or secluded place is guilty of a Class BC felony:

(1) Having sexual contact or sexual intercourse with the child in violation of s. 948.02 or 948.095.

(2) Causing the child to engage in prostitution.

(3) Exposing a sex organ to the child or causing the child to expose a sex organ in violation of s. 948.10.

(4) Taking a picture or making an audio recording of the child engaging in sexually explicit conduct.

(5) Causing bodily or mental harm to the child.

(6) Giving or selling to the child a controlled substance or controlled substance analog in violation of ch. 961.

History: 1987 a. 332; 1995 a. 67, 69, 448, 456.

The penalty scheme of sub. (3) is not unconstitutionally irrational. That the statute, unlike sub. (1), did not distinguish between victims sixteen years or older and other children victims is a matter for the legislature. State v. Hanson, 182 W (2d) 481, 513 NW (2d) 700 (Ct. App. 1994).

948.08 Soliciting a child for prostitution. Whoever intentionally solicits or causes any child to practice prostitution or establishes any child in a place of prostitution is guilty of a Class BC felony.

History: 1987 a. 332; 1995 a. 69.

948.09 Sexual intercourse with a child age 16 or older. Whoever has sexual intercourse with a child who is not the defendant's spouse and who has attained the age of 16 years is guilty of a Class A misdemeanor.

History: 1987 a. 332.

948.095 Sexual assault of a student by a school instructional staff person. **(1)** In this section:

(a) "School" means a public or private elementary or secondary school.

(b) "School staff" means any person who provides services to a school or a school board, including an employe of a school or a school board and a person who provides services to a school or a school board under a contract.

(2) Whoever has sexual contact or sexual intercourse with a child who has attained the age of 16 years and who is not the defendant's spouse is guilty of a Class D felony if all of the following apply:

(a) The child is enrolled as a student in a school or a school district.

(b) The defendant is a member of the school staff of the school or school district in which the child is enrolled as a student.

History: 1995 a. 456.

948.10 Exposing genitals or pubic area. **(1)** Whoever, for purposes of sexual arousal or sexual gratification, causes a child to expose genitals or pubic area or exposes genitals or pubic area to a child is guilty of a Class A misdemeanor.

(2) Subsection (1) does not apply under any of the following circumstances:

(a) The child is the defendant's spouse.

(b) A mother's breast–feeding of her child.

History: 1987 a. 332; 1989 a. 31; 1995 a. 165.

948.11 Exposing a child to harmful material or harmful descriptions or narrations. **(1)** DEFINITIONS. In this section:

(ag) "Harmful description or narrative account" means any explicit and detailed description or narrative account of sexual excitement, sexually explicit conduct, sadomasochistic abuse, physical torture or brutality that, taken as a whole, is harmful to children.

(ar) "Harmful material" means:

1. Any picture, photograph, drawing, sculpture, motion picture film or similar visual representation or image of a person or portion of the human body that depicts nudity, sexually explicit

Wisconsin Coalition Against Sexual Assault

Testimony on AB 497

Presented to the Assembly Committee on Corrections and the Courts

October 14, 1999

Good morning Chairperson Walker, and other members of the committee. My name is Cheri Dubiel and I am the Policy Specialist for the Wisconsin Coalition Against Sexual Assault (WCASA). WCASA is a statewide coalition of individuals, agencies, and organizations, including 36 community-based sexual assault service providers, working to end sexual violence in Wisconsin. I am here to represent our coalition in testifying in strong support of AB 497. We also would like to thank Representative Walker for having the courage to introduce this legislation and taking such a strong stand for victims of sexual assault.

Being the victim of a sexual assault is, arguably, the most traumatic ordeal a person can survive in their lifetime. According to the Office of Justice Assistance, an estimated 5881 sexual assaults were reported to law enforcement in Wisconsin in 1997. We should note, though, that few rapes are reported to the police (52% according to DOJ, 59% according to the FBI) for a number of reasons. WCASA supports AB 497 because it allows victims of sexual assault an outlet for the very human need to heal before bringing charges forward.

As a representative of the anti-sexual assault movement, one of the questions I am asked most often is why sexual assault victims do not report their crimes in a timely manner. Many victims see their assault, unlike other violent crimes, as a personal matter. Our sexual selves are our most private and personal parts of who we are. A violation of that part of ourselves has psychological, emotional, and sometimes physical effects that can not be compared. Imagine the fear and shame sexual assault victims face at the thought of their stories becoming public as the result of coming forward to press charges against their perpetrators. Victims are forced to recount humiliating and traumatic events to complete strangers, using words we are taught to be ashamed to say. Contrary to popular belief, the majority of sexual assaults are perpetrated by somebody known to the victim. Most often, perpetrators make threats of reprisal if the victim reports the assault. It may, in fact, be perceived by survivors as more dangerous to come forward and report the crime, than to continue to be a victim of it.

The National Center for Victims of Crime and Crime Victims Research and Treatment Center estimate that nearly one-third of all sexual assault victims experience

post-traumatic stress disorder, which symptoms include denial, psychological numbing, social withdrawal, and exaggerated psychological response. As humans, we are only able to deal with a limited amount of trauma. As a reaction to protect ourselves, our minds may shut down memories of the event and in effect, repress them. Often, it takes a great deal of time and healing for a victim of a sexual assault to feel safe enough to come forward to report their crimes. Because of post-traumatic stress disorder, some victims of sexual assault may not remember the events surrounding their assault until much later in life, especially when their victimization took place as children. Many children who are victimized do not have the sophistication of knowledge about sex to even be able to identify their experiences as a crime. It may take a change in circumstances, like the perpetrator no longer having a significant role in the victim's life, or a child victim growing up and moving away to college, in order for her or him to feel safe enough, physically, to bring charges forward.

It is also important to mention, that victims of sexual assault not only face the fears of making their experience public, but they also face the fears of dealing with an often hostile and antagonistic criminal justice system. Many victims are not equipped to face the re-victimization that often takes place in trying to get the criminal justice system to take their claims seriously.

As a statewide coalition that answers technical assistance calls from victims and workers at sexual assault service providers around the state, some of the most common legal technical assistance questions we receive are related to statutes of limitations.

There has been precedent established in other states to either extend or eliminate the statute of limitations for serious sexual assaults. Eleven states have no time limitation for the prosecution of most sexual offenses against children. Six states have no statute of limitations for the prosecution of serious sexual assaults, regardless of the age of the victim. Currently in Wisconsin, the statute of limitations for serious sexual assaults against children is extended to when the victim reaches age 31. For sexual assaults in chapter 940, those crimes directed to adult victims, the statute of limitations is the same as in other felonies and misdemeanors, six and three years, respectively.

The passage of the Victim Rights Amendment has made Wisconsin a leader in our commitment to victims of crime. We urge the committee to continue and reinforce this commitment by passing AB 497.

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

MAR 0 1 2000

JAMES E. DOYLE
ATTORNEY GENERAL

Burneatta L. Bridge
Deputy Attorney General

Office of Crime Victim Services
Kitty Kocol, Executive Director

123 West Washington Avenue
P.O. Box 7951
Madison, WI 53707-7951
608/264-9497
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V/TTY 608/267-8902

February 25, 2000

Senator Alberta Darling
P. O. Box 7882
Madison, WI 53707-7882

At our quarterly meeting held January 20, 2000 the Wisconsin Crime Victims Council voted to support Assembly Bill 497.

AB 497 acknowledges the advanced identification capabilities that law enforcement now has at its fingertips. When DNA or fingerprint evidence is present, victims should not be cheated out of receiving justice because of time limits on prosecution. Your proposal brings public policy up-to-date with the science of crime fighting. We are curious as to why you choose to limit the application of this concept to the crimes enumerated in the bill. Our discussion led to a few other scenarios where it may be appropriate to eliminate the statute of limitations if DNA or fingerprint evidence has been retrieved.

At any rate, we wanted to convey to you our full support of AB 497. Please contact me or the Council Policy Analyst, Julie Braun, at the Department of Justice (266-1155) if you have any questions or requests related to this support.

Sincerely,

Pete Helein

Pete Helein
President, Crime Victims Council
Tel: 920-832-5534 -- email: pete.helein@appleton.org

cc: Representative Scott Walker

October 4, 1999

Suzy Mortag
7108 County K
Star Lake, WI 54561

Scott Walker
P.O. Box 8953
Madison, Wisconsin 53708

Dear Mr. Walker and Committee,

The statue of limitations on a sexual assault committed against me has run out today.

First I canot begin to tell you of the day to day daymares a rape victim goes through. A smell, a color, the way the light shines in the room and you relive the terror. When you are successful at sleep it's nightmare, after nightmare, you wake up soaking wet and unable to fall asleep again or afraid to. Councelors say that the only way this may end if maybe with time or if there is a closure.

Six long unending years and the date I feared has come and tomorrow will be gone and I the victim will be sentenced to the horror of that night for everyday and night for the rest of my life.

First offficials refused to do anything but through a constant fight of years it almost looked as if I might get my closure. My case went from judge to judge and special prosecutors, I believe over a dozen, finally September 21, 1999 I was assigned what was to be the last special prosecutor. With eight days left he gave it a shot but after all the years the file was scattered and statements lost. He ran out of time and a rapist goes free because of this statue.

Please consider removing the statue of limitations on sexual assault. Just the thought of one more rapist on the streets is scary enough, ask the victims and their families.

Thank You,

Suzy Mortag

Gilbert, Melissa

From: Walker, Scott
Sent: Friday, November 05, 1999 9:10 AM
To: Gilbert, Melissa
Subject: FW: THANK YOU

FYI.
-----Original Message-----
From: Jim Retzlaff [mailto:jretzlaff@hnet.net]
Sent: Thursday, November 04, 1999 7:30 PM
To: Rep.Walker@legis.state.wi.us
Subject: THANK YOU

Dear Representative Walker,

I want to say THANK YOU for introducing Assembly Bill 497. This is but a glimmer of hope for the women who have been sexually assaulted in the past and have feared to come forward.

I was sexually assaulted for 16 years, by my father, just confronting him last January, after 36 years of hiding it and living with it.

I will be following this bill closely.

Respectfully,
Druscilla AlexAndra-Retzlaff
103 Deer Ridge Drive
West Bend WI 53095

Gilbert, Melissa

From: Walker, Scott
Sent: Monday, November 22, 1999 1:48 PM
To: Gilbert, Melissa
Subject: FW: Thank you for your vote!!!!!!!!!!!!!!!!!!

FYI.
-----Original Message-----
From: Walker, Scott
Sent: Monday, November 22, 1999 12:16 PM
To: 'Marlene Tuma'
Subject: RE: Thank you for your vote!!!!!!!!!!!!!!!!!!

Thank you for your note. Messages like yours makes this job worth doing...

> -----Original Message-----
> **From:** Marlene Tuma [mailto:mdgonefishingnet@jrec.com]
> **Sent:** Sunday, November 21, 1999 8:41 PM
> **To:** Rep.Walker@legis.state.wi.us
> **Subject:** Thank you for your vote!!!!!!!!!!!!!!!!!!
>
> Dear Mr Walker,
>
> I am writing to thank you for the input on bill 497. My husband and I both sat in the gallery the full day that this bill went thru the assembly.
> I am a victim of sexual abuse that went on for my entire childhood, and into my early adulthood. It took years for me to speak up, due to the tremendous fear. It was so good to talk but very sad to see that even though he admits to the family what he did, nothing could be done. We wonder if it's still going on, no one will talk. I feel that he should have been punished.
> Thank you for your support, and vote.
> I don't really understand how the system works, but if you or anyone else needs me to talk to encourage the bill to get all the way thru, please let me know.
> I now am talking to the kids at school in hopes that no child will ever feel that fear that I did. I will help any way I can.
> Sincerely,
> Marlene Tuma
> N5731 Cemetery Road
> Ladysmith WI 54848
> mdgonefishingnet@jrec.com

COUNTY OF MILWAUKEE
DISTRICT ATTORNEY'S OFFICE
Inter-Office Communication

DATE : March 30, 2000

TO : State Representative Scott Walker

FROM : Assistant District Attorney Norman Gahn

SUBJECT : Assembly Bill 497

I have some very grave concerns about the substitute amendment to the statute of limitations portion of this bill. It seems to me that the language is simply validating the John Doe warrants based upon a genetic profile that I have been issuing out of Milwaukee County. Obviously, that is a practice that I would hope to someday be able to stop and would not wish upon any other prosecutor. I believe that the original bill was quite simple and quite clear. Basically, it stated that if we develop a DNA profile and there is a "cold hit" from a database, the state will have one year to issue charges notwithstanding the six-year time limitation. The substitute amendment does not make that clear. Furthermore, I'm very concerned about the language calling for ex parte communications with the judge and proceedings that are kept secret. I cannot for the life of me figure out why this is necessary. In fact, this is something that we wish to avoid when dealing with DNA technology. The public has enough concerns about privacy matters involving DNA. We need not promote any suspicions by having ex parte communications in secret proceedings. This makes absolutely no sense to me whatsoever. The substitute amendment does not give a clear or concise statement of what we hope to accomplish with this legislation. We simply want to be able to proceed against a rapist when DNA analysis identifies him, even if the statute of limitations has expired. I encourage you to return to the original legislation or kill this bill in its current form as soon as you can. I cannot speak for all the district attorneys in the State of Wisconsin, the Attorney General's Office nor other law enforcement officials throughout the state, but I feel confident that my objection to the substitute amendment would be well received by them.

NG:ss

WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536
Telephone: (608) 266-1304
Fax: (608) 266-3830
Email: leg.council@legis.state.wi.us

DATE: March 24, 2000

TO: SENATOR GARY R. GEORGE

FROM: Ronald Sklansky, Senior Staff Attorney

SUBJECT: Senate Substitute Amendment __ (LRBs0375/4) to 1999 Assembly Bill 497, Relating to Time Limits for Prosecution of Certain Crimes of Sexual Assault and Post Conviction Motions for Testing of Certain Evidence

This memorandum, prepared at your request, summarizes the major substantive provisions of Senate Substitute Amendment __ (LRBs0375/4) to 1999 Assembly Bill 497, relating to preservation and maintenance of certain evidence, time limits for prosecution of certain crimes of sexual assault and post conviction motions for testing of certain evidence.

A. STATUTE OF LIMITATION

1. Current Law

Section 939.74 (1), Stats., generally provides that, after the commission of a misdemeanor or after the commission of a felony, a criminal prosecution must begin within three years or six years, respectively. Exceptions to this general rule include the following:

a. A prosecution may begin at any time for the crime of first-degree intentional homicide, first-degree reckless homicide or felony murder.

b. When a person lawfully has obtained possession of property and then misappropriated it, a prosecution may begin within one year after discovery of the loss by the victim, but in no case may the general statute of limitation be extended by more than five years.

c. A prosecution for the following crimes must begin before the victim reaches the age of 31 years: sexual assault of a child, engaging in repeated acts of sexual assault of the same child, intentionally causing great bodily harm to a child, sexual exploitation of a child, incest with a child, various forms of child enticement, soliciting a child for prosecution and sexual assault of a student by a school instructional staff person.

d. A prosecution for the following crimes must begin before the victim reaches the age of 26 years: intentionally causing bodily harm to a child, intentionally causing bodily harm to a child by conduct which creates a high probability of great bodily harm, causing mental harm to a child and causing bodily or mental harm to a child through child enticement.

e. A criminal prosecution for racketeering activity may begin at any time within six years after the criminal violation terminates or the cause of action accrues.

[See s. 939.74 (1) and (2), Stats.]

2. The Substitute Amendment

The substitute amendment amends current law by providing that, after the general time periods for beginning a misdemeanor or felony prosecution have expired, the state may use DNA evidence of a perpetrator of certain crimes to begin a criminal prosecution under certain circumstances. The substitute amendment's provisions apply in a case of first- or second-degree sexual assault against an adult or child, or in a case of repeated acts of sexual assault of the same child, in which DNA evidence of the perpetrator did not result in a probable identification of the perpetrator prior to the time in which a prosecution should have been commenced. The substitute amendment provides that in such a situation the state may, before the prosecutorial time periods have expired, request the circuit court in the county in which the violation is believed to have been committed to determine whether there is probable cause to believe that the DNA evidence is evidence of the identification of the perpetrator. The request for a hearing and the hearing itself must be *ex parte*. The court must make a written record of the proceeding that will remain secret unless a prosecution for the violation is begun, in which case the record will be made available to the state and any defendant in the prosecution.

The substitute amendment further provides that if the state has DNA evidence and a court has found that there is probable cause to believe that the evidence will identify the perpetrator of the specified crime, a prosecution for the violation may be commenced within one year after a comparison of the DNA evidence relating to the violation results in a probable identification of the person.

B. PRESERVATION OF EVIDENCE

The substitute amendment generally provides that the state crime laboratories, the courts, law enforcement agencies and district attorneys must preserve physical evidence that includes any biological material collected in connection with a criminal action or a juvenile delinquency proceeding until every person in custody as a result of the criminal action or delinquency proceeding has reached his or her discharge date. The term "custody" is defined to mean actual custody of a person under a sentence of imprisonment; custody of a probationer, parolee or person on extended supervision; actual or constructive custody of a person under a juvenile dispositional order; supervision of a person, whether in institutional care or on conditional release, pursuant to a commitment order; and supervision of a sexually violent offender under ch. 980, Stats. The term "discharge date" means the date on which a person is released or discharged from custody including release from custody under all consecutive sentences of imprisonment.

Biological material may be destroyed before the release from custody if all of the following apply:

1. Notice of intent to destroy is sent to all persons who remain in custody and to either the attorney of record for each person in custody or the state public defender.

2. A notified person, within 90 days after receiving the notice, does not file a motion for testing of the biological material or submits a written request to preserve the evidence.

3. No other provision of federal or state law requires preservation of the biological material.

If the holder of the biological material receives a written request to preserve the evidence, the evidence must be preserved until the discharge date of the person who made the request.

C. MOTION FOR POST CONVICTION DNA TESTING OF CERTAIN EVIDENCE

1. Making the Motion

Current statutes impose various time limits on post conviction motions and appeals of criminal convictions. The substitute amendment creates a special provision for a motion for post conviction DNA testing of evidence. At any time after being convicted of a crime, adjudicated delinquent or found not guilty by reason of mental disease or defect, a person may make a motion in the court where the judgment was rendered for an order requiring forensic DNA testing of evidence to which all of the following apply:

a. The evidence is relevant to the investigation or prosecution that resulted in the judgment.

b. The evidence is in the actual or constructive possession of a government agency.

c. The evidence has not previously been subjected to forensic DNA testing or, if the evidence has previously been tested, it may now be subjected to another test using a scientific technique that was not available at the time of the previous testing and that provides a reasonable likelihood of more accurate and probative results.

The person who makes the motion for testing must notify the district attorney's office and, in turn, the court in which the motion is made also must notify the district attorney's office. However, failure by a person making the motion to notify the district attorney's office does not deprive the court of jurisdiction and is not grounds for dismissal of the motion. Further, the clerk of the circuit court must send a copy of the motion and a notice of hearing on the motion to the victim of the crime.

When the district attorney first receives notice of the motion, he or she must take all actions necessary to ensure that all biological material collected in connection with the investigation or prosecution of the case and that remains in actual or constructive custody of a government agency is preserved pending completion of the proceedings relating to the motion.

2. Judicial Procedure

A court in which the motion is made must order forensic DNA testing if all of the following apply:

a. The person making the motion claims that he or she is innocent.

b. The court determines either that the chain of custody of the evidence to be tested establishes that the evidence has not been tampered with, replaced or altered in any material respect or, if the chain of custody cannot establish the integrity of the evidence, that the testing itself can establish the integrity of the evidence.

c. The court determines that the testing may produce noncumulative evidence that is relevant to the person's assertion of actual innocence.

If the court does not order testing, it must determine the disposition of the evidence that the motion seeks to have tested and, if the evidence is to be preserved, by whom and for how long. Similarly, the court also must determine the disposition of the evidence if the testing is unfavorable to the person making the motion. However, if the results of the testing are favorable to the person making the motion, the court must schedule a hearing to determine the appropriate relief to be granted. The court may enter any order that serves the interests of justice, including any of the following:

a. An order setting aside or vacating the judgment.

b. An order granting a new trial or fact-finding hearing.

c. An order granting the person a new sentencing hearing, commitment hearing or dispositional hearing.

d. An order discharging the person from custody.

e. An order specifying the disposition of any evidence that remains after the completion of testing.

If a person has been committed after serving a sentence for the commission of certain sexually violent acts, and the criminal judgment is reversed, set aside or vacated, the committed person may make a motion for post conviction relief. If the sexually violent offense was the only reason for the commitment, the court must vacate the commitment or discharge the person. In all other cases (other convictions stand or other reasons for the commitment exist), the court must determine whether a new commitment trial should be held because the result of the trial probably would be changed.

3. Indigency

A court considering a motion for forensic DNA testing by a person who is not represented by counsel must, if the person claims or appears to be indigent, refer the person to the state public defender for determination of indigency and appointment of counsel. If the court determines that a person is indigent, the court must order the costs of testing to be paid for from an appropriation created in the substitute amendment. (No dollar amounts are placed in this appropriation line.) A court must find indigency if any of the following apply:

a. The person was referred to the state public defender and was found to be indigent.

b. The person was referred to the state public defender but was found not to be indigent, and the court determines that the person does not possess the financial resources to pay the costs of testing.

c. The person was not referred to the state public defender and the court determines that the person does not possess the financial resources to pay the costs of testing.

If I can be of any further assistance in this matter, please feel free to contact me.

RS:wu:jal;rv;wu

WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701–2536
Telephone: (608) 266–1304
Fax: (608) 266–3830
Email: leg.council@legis.state.wi.us

DATE: April 3, 2000

TO: REPRESENTATIVE SCOTT WALKER

FROM: Anne Sappenfield, Staff Attorney

SUBJECT: Time Limits for Prosecution of Certain Crimes of Sexual Assault Under 1999 Assembly Bill 497, Senate Substitute Amendment 1 to the Bill and Assembly Amendment 1 to the Senate Substitute Amendment

This memorandum, prepared at your request, describes 1999 Assembly Bill 497, relating to time limits for prosecution of certain crimes of sexual assault, provisions of Senate Substitute Amendment 1 to the bill that relate to time limits for prosecution and Assembly Amendment 1 to the substitute amendment. Assembly Bill 497 was introduced by you and others; cosponsored by Senator Darling and others on October 5, 1999. The Assembly passed the bill as amended by Assembly Substitute Amendment 1 on November 3, 1999. The Senate concurred in the bill as amended by Senate Substitute Amendment 1 on March 28, 2000. On March 30, 2000, the Assembly concurred in Senate Substitute Amendment 1 as amended by Assembly Amendment 1 to the substitute amendment. The bill is currently in the Senate.

A. ASSEMBLY BILL 497

Under current statutes of limitation, 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. However, for certain homicide offenses, there is no time limit and prosecution for such an offense may be commenced at any time. Also, 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 and incest with a child, a prosecution may be commenced at any time before the victim reaches 31 years of age.

Assembly Bill 497 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.

B. SENATE SUBSTITUTE AMENDMENT 1 TO THE BILL

Senate Substitute Amendment 1 to the bill affects the time limits for prosecution for certain sex crimes in cases in which there is DNA evidence. The provisions of the substitute amendment apply to cases in which the state has evidence of a DNA profile of a person and the state believes the evidence may identify a person who committed a violation of first- or second-degree sexual assault, first- or second-degree sexual assault of a child or engaging in repeated acts of sexual assault of a child but comparisons of the evidence to DNA profiles of known persons have not resulted in probable identification of the person. In such a case, before the applicable time limit for prosecution has expired, the substitute amendment provides that the state may request the circuit court in the county in which the violation is believed to have been committed to determine whether there is probable cause to believe that the evidence of the DNA profile is evidence of the identification of a person who committed the violation. The substitute amendment defines "DNA profile" to mean any analysis of DNA that results in the identification of an individual's patterned chemical structure of genetic information. The court must make a written record of such a proceeding and the record must remain secret unless a prosecution for the violation is commenced, in which case the record must be made available to both the state and any defendant in that prosecution.

Under the substitute amendment, a prosecution for first- or second-degree sexual assault, first- or second-degree sexual assault of a child or repeated acts of sexual assault with the a child may be commenced within one year after a comparison of DNA profile evidence relating to the violation results in a probable identification of the person if the following conditions exist:

1. The time limit for prosecution under current law for the applicable offense has expired.

2. The state has evidence of a DNA profile of a person and a court has found that there is probable cause to believe that the evidence of the DNA profile is evidence of the identification of a person who committed the violation.

C. ASSEMBLY AMENDMENT 1 TO SENATE SUBSTITUTE AMENDMENT 1

Assembly Amendment 1 deletes the circuit court determination of whether there is probable cause to believe that evidence of a DNA profile is evidence of the identification of a person who committed a violation. Instead, under the amendment, a prosecution for a violation of first- or second-degree sexual assault, first- or second-degree sexual assault of a child or engaging in repeated acts of sexual assault of a child may be commenced within one year after a comparison of the DNA profile evidence relating to the violation results in a probable identification of the person, if the state has evidence of a DNA profile of a person who committed the violation but comparisons of the evidence to DNA profiles of known persons that were made before the statute of limitations expired did not result in a probable identification of the person.

If you have any questions or would like further information on this topic, please feel free to call me at the Legislative Council Staff offices.

AS:ksm:wu;ksm

American Medical Association

Physicians dedicated to the health of America

Facts About Sexual Assault

Incidence

- Sexual assault continues to represent the most rapidly growing violent crime in America. (ref 1)
- Over 700,000 women are sexually assaulted each year. (ref 2)
- It is estimated that fewer than 50% of rapes are reported. (ref 1)
- Approximately 20% of sexual assaults against women are perpetrated by assailants unknown to the victim. The remainder are committed by friends, acquaintances, intimates, and family members. Acquaintance rape is particularly common among adolescent victims. (ref 12)
- Male victims represent five percent of reported sexual assaults. (ref 11)
- Among female rape victims, 61% are under age 18. (ref 3,11)
- At least 20% of adult women, 15% of college women and 12% of adolescent women have experienced some form of sexual abuse or assault during their lifetimes. (ref 4)

Societal Attitudes

- A survey of 6,159 college students enrolled at 32 institutions in the U.S. found: (ref 4)
  - 54% of the women surveyed had been the victims of some form of sexual abuse; more than one in four college-aged women had been the victim of rape or attempted rape;
  - 57% of the assaults occurred on dates;
  - 73% of the assailants and 55% of the victims had used alcohol or other drugs prior to the assault;
  - 25% of the men surveyed admitted some degree of sexually aggressive behavior;
  - 42% of the victims told no one.
- In a survey of high school students, 56% of the girls and 76% of the boys believed forced sex was acceptable under some circumstances. (ref 5)
- A survey of 11-to-14 year-olds found:(ref 5)
  - 51% of the boys and 41% of the girls said forced sex was acceptable if the boy, "spent a lot of money" on the girl;
  - 31% of the boys and 32% of the girls said it was acceptable for a man to rape a woman with past sexual experience;
  - 87% of boys and 79% of girls said sexual assault was acceptable if the man and the woman were married;
  - 65% of the boys and 47% of the girls said it was acceptable for a boy to rape a girl if they had been dating for more than six months.
- In a survey of male college students:
  - 35% anonymously admitted that, under certain circumstances, they would commit rape if they believed they could get away with it.
  - One in 12 admitted to committing acts that met the legal definitions of rape, and 84% of men who committed rape did not label it as rape.(ref 6,7)
- In another survey of college males: (ref 8)
  - 43% of college-aged men admitted to using coercive behavior to have sex, including ignoring a woman's protest, using physical aggression, and forcing intercourse.
  - 15% acknowledged they had committed acquaintance rape; 11% acknowledged using physical restraints to force a woman to have sex.
- Women with a history of rape or attempted rape during adolescence were almost twice as likely to

experience a sexual assault during college, and were three times as likely to be victimized by a husband. (ref 9)

- Sexual assault is reported by 33% to 46% of women who are being physically assaulted by their husbands.(ref 10)

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ACOG EDUCATIONAL BULLETIN

No. 242, November 1997 (Replaces No. 172, September 1992)

Sexual Assault

This Educational Bulletin was developed under the direction of the Committee on Educational Bulletins of the American College of Obstetricians and Gynecologists as an aid to obstetricians and gynecologists. The College wishes to thank Thomas G. Stovall, MD, and Ana Alvarez-Murphy, MD, for his assistance in the development of this bulletin. This document is not to be construed as establishing a standard of practice or dictating an exclusive course of treatment. Rather, it is intended as an educational tool that presents current information on obstetric-gynecologic issues.

Sexual assault may be defined as any sexual act performed by one person on another without the person's consent, although legal definitions vary from state to state. Sexual assault includes genital, anal, or oral penetration by a part of the accused's body or by an object. It may result from force, the threat of force either on the victim or another person, or the victim's inability to give appropriate consent. While the actual incidence of sexual assault in the United States is not known, it appears to be rising. Although most definitions center on forced carnal knowledge without consent of a woman by a man, newer definitions are often gender neutral.

Incidence

In 1994, the U.S. Department of Justice indicated that the annual incidence of sexual assault was 200 per 100,000 persons (1), up from 73 per 100,000 persons in 1987, which accounted for 6% of all violent crimes at that time (2). An American Medical Association report on sexual assault suggests that one in five women is sexually assaulted by the time she is 21 years of age (3). According to the National Crime Victimization Survey, approximately 700,000 women are sexually assaulted every year (1). Victims are often reluctant to report sexual assault because of embarrassment, fear of retribution, feelings of guilt, or simply a lack of knowledge of their rights. It has been reported that as many as 44% of women have been victims of actual or attempted sexual assault at some time in their life, and as many as 50% of these women have been victims on more than one occasion (4). Researchers have noted that of 188 women agreeing to complete a questionnaire at a family medicine residency clinic, 54 (28.7%) reported being a victim of some sort of sexual assault in the past. In this sample, 15% reported being the victim of rape, 8% the victim of attempted rape, and 5.3% the victim of forced sexual contact; 41.4% of the rape victims reported that they had been raped more than once, but only 18.2% sought medical attention and 21% sought counseling (5).

Society has many misconceptions about the victims of sexual assault, particularly those who are female. These misconceptions include the beliefs that women who have been assaulted encouraged the assault by their behavior or dress, that they did not offer sufficient resistance to the assault, and that they were promiscuous. In addition, female victims of sexual assault are often believed to have ulterior motives for pressing charges. Blame is often placed on the woman, despite the fact that she is a victim of a criminal act.

Sexual assault occurs in all age, racial, and socio-economic groups. The very young, the mentally and phys-ically handicapped, and the very old are particularly susceptible.

And victims know this too!

Although the act may be committed by a stranger, it frequently is committed by someone who is known to the victim (6).

Some situations have been defined as variants of sexual assault. One example is "marital rape," which is defined as forced coitus or related sexual acts within a marital relationship without the consent of a partner; it often occurs in conjunction with physical abuse. A second is "date or acquaintance rape." In this situation, the woman may voluntarily participate in sexual play but coitus occurs, often forcibly, without her consent (7). Date rape is frequently not reported because the victim may think that she contributed to the act by participating up to a point or that she will not be believed. In one study, 942 female college students were surveyed with an 85% return rate; 25% of those responding indicated that they had been victims of sexual aggression by an acquaintance at some time beyond the age of 16. Fifty-five percent of these victims indicated that they had been at least somewhat drunk at the time of the sexual aggression, which in some instances led to a higher level of sexual assault (8). Rohyp-nol, known as the "date rape" drug, has been used to di- minish a woman's ability to consent or to remember much of the assault.

All states have statutes criminalizing sexual intercourse with a female younger than a specific age. This is often referred to as statutory rape. Consent of the female is irrelevant in this situation because she is defined, by statute, as being incapable of consenting. Many states also have laws addressing aggravated criminal sexual assault, which have the following attributes: weapons are used; victims' or others' lives are endangered; bodily harm or physical violence is inflicted; the act is committed in relation to another felony; or the victim is older than age 60, physically handicapped, or mentally retarded (9). Physicians should be aware of the laws in their states.

Psychologic Impact

A woman who is sexually assaulted loses control over her life during the period of the assault. Her integrity and sometimes her life are threatened. She may experience intense anxiety, anger, or fear. After the assault, a "rape-trauma" syndrome often occurs (10, 11). The immediate response (acute phase) may last for hours or days and is characterized by a distortion or paralysis of the individual's coping mechanisms. The outward responses vary from complete loss of emotional control to an apparently well-controlled behavior pattern. The signs may include generalized pain throughout the body; headache; chronic pelvic pain; eating and sleep disturbances; physical symptoms such as vaginal discharge, itching, and rectal pain; and emotional complaints such as depression, anxiety, and mood swings.

The next phase—the delayed (or organization) phase—is characterized by flashbacks, nightmares, and phobias, in addition to gynecologic and menstrual complaints. This phase often occurs months or years after the event and may involve major life adjustments (10, 11).

This rape-trauma syndrome is similar to a grief reaction in many respects. As such, it can only be resolved when the victim has emotionally worked through the trauma and loss of the event and replaced it with other life experiences. The counseling offered to the victim is specific for her current phase.

Assault Assessment Kits

ACOG EDUCATIONAL BULLETIN

No. 252, October 1998

Adolescent Victims of Sexual Assault

Rape is one of the most frequently committed violent crimes in America, and it is one of the most costly to society (1). The National Institute of Justice estimates that one million women in the United States are the victims of rape each year (1). This is substantially higher than some published estimates because of underreporting (2). The National Crime Victimization Survey indicates that approximately 30% of rapes are reported to the police (3), 50% of rape victims tell no one, and only 5% visit a rape crisis center (4). Contrary to the popular, yet inaccurate, notion of rape involving an assailant unknown to the victim, most rape victims know their attacker (3). Many victims are adolescent females and children. In a survey of 11 states and the District of Columbia, 50% of the females who had been raped were under the age of 18, and 16% were under the age of 12 (5). Similarly, the National Victim Center (6) and the Department of Justice (5) report that adolescents have the highest reported rates of sexual assault, more than 50-60% of all cases. Despite the fact that rape constitutes a threat to the health and future of young women in the United States, it has failed to capture national attention as a major public health issue (7).

Definitions

The legal term *rape* has traditionally referred to forced vaginal penetration of a woman by a male assailant. Many states have now abandoned this concept in favor of the gender-neutral term *sexual assault.* The legal definition of criminal sexual assault is any genital, oral, or anal penetration by a part of the accused's body or by an object, using force or without the victim's consent (7). Criminal sexual assault, or rape, is often further stratified to include *acquaintance rape, date rape, statutory rape, child sexual abuse,* and *incest.* Such terms generally describe the age of the victim and her relationship to the abuser. Despite these various classifications of rape, it is important to remember that all are acts of rape.

Acquaintance rape refers to those sexual assaults committed by someone known to the victim, frequently a date, teacher, employer, or family member. Instances in which the perpetrator is related to the victim generally are defined as incest. Although incest refers to sexual intercourse among family members, or those legally barred from marriage (8), this definition has been conceptually broadened to also include step-relatives and parental figures living in the home.

Date rape, which is a subset of acquaintance rape, generally refers to forced or unwanted sexual activity that occurs within a dating relationship. For a significant number of adolescents, however, the classic one-on-one date is no longer the social norm. Instead, an adolescent female may be more likely to socialize with a group at a dance, a party, or another

unsupervised group activity. As such, she may not respond accurately to questions regarding date rape. The classic date rape, however, remains a significant problem on college campuses.

Statutory rape refers to sexual intercourse with a female under a specified age (9). All 50 states and the District of Columbia have laws criminalizing statutory rape. Such laws typically base the severity of the crime on the age of the adolescent victim and the age difference between the adolescent and her assailant. The age at which an adolescent may consent to sexual intercourse varies by state and ranges from 14 to 18 years of age; however, the consent of an adolescent younger than this range is legally irrelevant because she is defined as being incapable of consenting.

Sexual assault occurring in childhood also is defined by most states as child abuse. The National Center on Child Abuse and Neglect defines childhood sexual abuse as "contact or interaction between a child and an adult when the child is being used for the sexual stimulation of that adult or another person" (10). Childhood sexual abuse may be committed by another minor when that person is either significantly older than the victim (often defined as more than 5 years) or when the abuser is in a position of power or control over the child (10).

Prevalence

It is difficult to establish conclusively the prevalence of sexual assault in the adolescent population because victims may be particularly reluctant to report the sexual assault. Embarrassment, fear of retribution, feelings of guilt, and lack of knowledge of their rights are frequently cited reasons for not disclosing victimization. The adolescent victim also may feel that she in some way contributed to the act, or she may not identify what has happened to her as rape because her experience does not fit the popular concept of rape (11). For example, sexual intercourse between younger girls and older men, or when the male is in a position of relative authority over the adolescent victim, may not fit the stereotypical image of rape, but such encounters should not automatically be considered consensual. Instead, they should be considered for inclusion in any assessment of the prevalence of adolescent sexual assault.

More than 75% of adolescent rapes are committed by an acquaintance of the victim; less than 25% are committed by a stranger (6, 12). Studies conducted in high schools and colleges throughout the country indicate that a substantial number of adolescents have experienced some form of sexual assault in dating relationships. The Sexual Experience Survey, administered in 1985 to 6,159 women and men enrolled in 32 higher-education institutions across the United States, revealed that since age 14, 27.5% of college women had experienced an act that meets the legal definition of rape and 7.7% of college men had committed such an act (13). The vast majority of sexual assaults on campuses are committed by boyfriends, friends, or acquaintances of the victims, with more than 50% occurring on dates (14). Acquaintance rape among younger adolescents is frequently incestuous. Using the expanded definition of incest, the United States Bureau of Justice Statistics reports that 20% of rape victims aged 12 to 17 years were attacked by family members (5).

Adolescent Perceptions of Violence

Many teens have not yet developed the necessary skills to recognize and avoid potentially dangerous dating or social situations. Some adolescents may have a distorted perception of violence and may fail to recognize a partner's behavior as violent.

Wisconsin Coalition Against Sexual Assault

To: Melissa Gilbert, Office of Rep. Scott Walker

From: Cheri Dubiel, WCASA

Re: Statute of Limitations for Sexual Assaults

9-21-99

FYI: article in Wausau's daily newspaper

WCASA • 600 Williamson St., Suite N2 • Madison, Wisconsin • 53703 • Voice/TTY (608) 257-1516 • Fax (608) 257-2150

Wausau Daily Herald

Tuesday, September 21, 1999

Opinion

Tom Berger

Editorial Cartoon | Letters to Editor

Remove time limit on charging rapists

Tom Berger
Opinion Editor

Subject: DNA defendants

Lift statute of limitations instead

The defendant is identified thus: "D1S7, D2S44, D5S110, D10S28 and D17S79."

If someone matching that DNA code turns up, a name will be attached and he'll be charged in Milwaukee with rape.

The statute of limitations -- a time limit on bringing charges -- expired on two rapes police think were committed by the same assailant in 1993. Call him by his first name, D1S7.

So a warrant was listed for D1S7's arrest before time ran out Nov. 8 for filing charges on the third crime.

DNA, or deoxyribonucleric acid, is like a genetic fingerprint. Wisconsin collects DNA samples from criminals and unsolved crimes.

The chances of another person having the same DNA profile is D1S7 range from one in 1.96 billion to one in 7.25 billion, according to the complaint.

Marathon County Sheriff Gary Marten has doubts about identifying a criminal solely by his DNA unless "somebody could convince that that

is a singular code." One chance in 1.96 billion to 7.25 billion seems to meet that test, he added.

And a prosecutor in McPherson County, Kan., who might have been the nation's first to use a DNA code to issue an arrest warrant, defended the practice.

"If you can identify a perpetrator by the use of some device that will give you a positive identity, then why not use that?" asked Ty Kaufman.

The Kansas cases are still open. No one has been arrested.

But there are 14 states, including Wisconsin, in the national DNA database. Eventually, D1S7 or another DNA defendant will turn up.

Then the legality of warrants issued by DNA code likely will go to the U.S. Supreme Court.

Even if the court upholds their use, Martin considers DNA one piece of identifying evidence, like a glove left behind or an eyewitness report.

If it were more than that in jurors' eyes, O.J. Simpson -- whose DNA matched a sample taken at the Nicole Simpson and Ronald Goldman murder scene to the same degree of certainty as D1S7's did in Milwaukee -- likely would be in prison.

Maybe the issue is the statute of limitations itself.

In Wisconsin, there's a six-year limit on rape cases. There's no limit for murder. Six states have no limit on the time it takes to bring charges in the most serious sexual assaults; another 11 have no time limit on most crimes against children.

Statutes of limitation exist to enable a suspect to put up a defense, or to get on with life if a charge isn't filed.

"It becomes obviously more difficult to defend against a charge the longer it becomes after the incident," said John Reid, state public defender.

It also gets harder to prosecute. Memories fade. Witnesses die.

It's debatable whether time tips the scale to the prosecution or defense, but it's scary to think rapists go free -- to rape again -- after they've been scientifically and positively identified because time has expired.

Rather than reducing us all to a series of genetic codes, such as D1S7 ..., remove the statute of limitations for select, serious offenses.

The rest of the case, the witnesses and other evidence, still has to convince a jury to get a conviction.

Rep. Scott Walker, R-Wauwatosa, intends to introduce legislation to lift the statute of limitations for first- and second-degree sexual assault.

Pass it, sign it and put it in the book.

It's your turn

Today's editorial says that rather than identifying suspects by their DNA code to avoid the statute of limitations expiring, lift the time limit on serious sex crimes.

A public defender says that would favor prosecutors.

But what do you think?

Is it OK to identify defendants only by a DNA code to get a warrant for their arrest? Should the statute of limitations be removed for sex crimes?

Write to:
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Editorial Cartoon