

## 2007 DRAFTING REQUEST

### Bill

Received: **08/30/2007**

Received By: **rnelson2**

Wanted: **As time permits**

Identical to LRB:

For: **Scott Suder (608) 267-0280**

By/Representing: **Luke**

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

Drafter: **rnelson2**

May Contact:

Addl. Drafters:

Subject: **Courts - limitations**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Suder@legis.wisconsin.gov**

Carbon copy (CC:) to:

---

### Pre Topic:

No specific pre topic given

---

### Topic:

Statute of limitations for child abuse

---

### Instructions:

See Attached

---

### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/P1	rnelson2 09/07/2007	bkraft 09/07/2007	nnatzke 09/10/2007	_____	sbasford 09/10/2007		
/P2	rnelson2 10/10/2007	bkraft 10/11/2007	pgreensl 10/11/2007	_____	sbasford 10/11/2007		
/P3	rnelson2 10/22/2007	bkraft 10/22/2007	nnatzke 10/22/2007	_____	mbarman 10/22/2007		

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/1	nelson2 11/28/2007	csicilia 11/28/2007	rschluet 11/28/2007	_____	mbarman 11/28/2007	cduerst 11/29/2007	

FE Sent For: *NONE*

**<END>**

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/P3	rnelson2 10/22/2007	bkraft 10/22/2007	nmatzke 10/22/2007	_____	mbarman 10/22/2007		

1 cjs 11/28/07  
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/P2	rnelson2 10/10/2007	bkraft 10/11/2007	pgreensl 10/11/2007	_____	sbasford 10/11/2007		

FE Sent For:

*1/P3 bjk 10/22 nwn nwn/pg 10/22*

<END>

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Addl. Drafters:

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Extra Copies: *BAB*

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/P1	rnelson2 09/07/2007	bkraft 09/07/2007	nmatzke 09/10/2007	<del>10/11</del>	sbasford 09/10/2007		

FE Sent For:

*/P2 bjk 10/11 10/11 P8*  
*P8/NN*  
**<END>**



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/?	rnelson2	/PI bjk 9/7	nwn 9/10	<u>nwn</u> <u>9/10</u>			
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FE Sent For:

<END>

**Nelson, Robert P.**

---

**From:** Hurley, Peggy  
**Sent:** Wednesday, August 29, 2007 3:36 PM  
**To:** Duerst, Christina  
**Cc:** Nelson, Robert P.  
**Subject:** RE: Drafting request

I just did!

---

**From:** Duerst, Christina  
**Sent:** Wednesday, August 29, 2007 3:36 PM  
**To:** Hurley, Peggy  
**Subject:** RE: Drafting request

Ok, should I forward it to him or did you?  
Thank you!

---

**From:** Hurley, Peggy  
**Sent:** Wednesday, August 29, 2007 3:35 PM  
**To:** Duerst, Christina  
**Subject:** RE: Drafting request

Hi Christina!

I think this one belongs to Bob - he does civil procedure.

P

*Look at  
pgs. 492 (4)*

---

**From:** Duerst, Christina  
**Sent:** Wednesday, August 29, 2007 3:32 PM  
**To:** Hurley, Peggy  
**Subject:** FW: Drafting request

---

**From:** Hilgemann, Luke  
**Sent:** Wednesday, August 29, 2007 3:21 PM  
**To:** LRB.Legal  
**Subject:** Drafting request

Rep. Suder would like to draft legislation to eliminate the statute of limitations on civil legal actions for sexual abuse of a child.

Here is the language we found from similar legislation in neighboring states.

Subd. 1: Any cause of action against any person or entity that is a cause of damages relating to the sexual abuse of anyone under 18, including but not limited to causes of action for sexual assault and negligence, may be commenced at anytime.

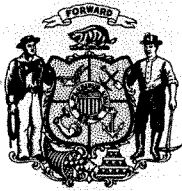
Subd. 2: Notwithstanding any other provision of law, a victim's causes of action, as described in Subdivision 1, which were barred by any previous statute of limitation are hereby revived and that victim has three years after the enactment of this law to commence any cause of action for damages against any person or entity relating to the sexual abuse of that victim before the age of 18.

Please feel free to call us with any questions.

Thank you!

**LUKE HILGEMANN**

*Office of State Representative Scott Suder  
Wisconsin's 69th Assembly District  
608.267.0280 ~ 888.534.0069 (toll-free)*



bjk

✓ PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SA ✓  
X-ref ✓

D-note

gen. cat.

1 AN ACT ...; relating to: the statute of limitations for sexual assault of a child. ✓

*Analysis by the Legislative Reference Bureau*

This is a preliminary draft. An analysis will be provided in a later version. ✓

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

2 SECTION 1. 893.587 of the statutes is renumbered 893.587 (1) and amended to  
3 read:

4 ✓ 893.587 (1) An action to recover damages for injury caused by an act that would  
5 constitute a violation of s. 948.02, 948.025, 948.06, 948.085, or 948.095 or would  
6 create a cause of action under s. 895.442 shall may be commenced before the injured  
7 party reaches the age of 35 years or be barred at any time. plain

\* NOTE: NOTE: This section is shown as affected by two acts of the 2005 Wisconsin legislature and as merged by the revisor under s. 13.93 (2) (c). NOTE:

History: 1987 a. 332; 2001 a. 16; 2003 a. 279; 2005 a. 155, 277; s. 13.93 (2) (c).

8 SECTION 2. 893.587 (2) of the statutes is created to read:

9 ✓ 893.587 (2) A cause of action described under sub. (1) that was barred by a  
10 statute of limitations in effect before the effective date of this subsection... [revisor

U  
Δ

1 inserts date], is revived and an injured person who was barred from bringing such  
2 an action because of the statute of limitations has three years after the effective date  
3 of this subsection.... [revisor inserts date], to commence an action described under  
4 sub. (1).  
5

(END)

D-note

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

LRB-3112/P1dn

RPN:.....

Lbjk

Date

As you may be aware, the Wisconsin Supreme Court has held in the past that a statute of limitations extinguishes both the right and the remedy for the wrongdoing. The court has gone on to say that retroactive extension of the period of a statute of limitation amounts to a taking of a right without due process, and is thus unconstitutional. See Doe v. Archdiocese of Milwaukee, 211 Wis. 2d 312, (1997). This bill may be found unconstitutional by the court for that reason, but I cannot say with certainty that the court will find this bill unconstitutional.

Robert P. Nelson  
Senior Legislative Attorney  
Phone: (608) 267-7511  
E-mail: robert.nelson@legis.wisconsin.gov

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

LRB-3112/P1dn  
RPN:bjk:nwn

September 10, 2007

As you may be aware, the Wisconsin Supreme Court has held in the past that a statute of limitations extinguishes both the right and the remedy for the wrongdoing. The court has gone on to say that retroactive extension of the period of a statute of limitation amounts to a taking of a right without due process, and is thus unconstitutional. See *Doe v. Archdiocese of Milwaukee*, 211 Wis. 2d 312, (1997). This bill may be found unconstitutional by the court for that reason, but I cannot say with certainty that the court will find this bill unconstitutional.

Robert P. Nelson  
Senior Legislative Attorney  
Phone: (608) 267-7511  
E-mail: [robert.nelson@legis.wisconsin.gov](mailto:robert.nelson@legis.wisconsin.gov)

-3112 10/2 Meeting w/  
 734 NW 2d 827 Lassa + Suder Aids  
 and Bill Berndt  
 and Mike Finnegan

236 W 2d 411  
 284 W 2d 307

090 NW 2d 899 \*\*  
~~279 W 2d 378~~? 279 W 2d 378

Problem with 16-15 consent  
 sex versus 16-5 sex

Mike will give some idea of  
 how to fix this problem.

Jessica's law may have answer

Another issue is how to deal  
 w/ "employers"

Needed by 10/16.

Mike will send stuff



## Window Legislation Is Constitutional in Wisconsin

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

---

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

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

### Window Legislation Is Constitutional Under Wisconsin Law

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

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

## Window Legislation Is Constitutional Under Federal Law

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

**Nelson, Robert P.**

---

**From:** William Berndt [wberndt@sbcglobal.net]  
**Sent:** Tuesday, October 09, 2007 1:58 PM  
**To:** Nelson, Robert P.  
**Cc:** Emerson, Anne; Kelly, Jessica; mgfinnegan@hotmail.com  
**Subject:** bill language for Child Victims Act  
**Attachments:** NAPSAC DRAFT WIS Legislation 10-09-07.doc

Bob, Anne, and Jessica,

Attached is language that Mike Finnegan drafted.

This draft remains silent on the issue of a minor perpetrator. At our meeting we discussed not becoming entangled in the debate on consensual sexual activity between minors. To avoid that debate the bill's language would have to specify adult perpetrator. Be aware, that with this limitation there would be many institutions that would not be as safe as possible. The examples would include daycares with an older child who the daycare knows is dangerous and who molests, and a school with a student who they known molests. Both institutions should have accountability for making sure that these dangerous people do not molest other kids. The second point is that the law, judges and juries do not look favorably on suits involving two children who were in a relationship. In order to get liability the suing child would have to show it was non-consensual. Juries usually do not look favorably on these suits.

That being said, if we all decide that we do want to specify the legislation deals with adult-on-child abuse only, we can simply insert "by an adult" after the words "under 18" in Section 1.

We defined sexual contact with the language in 940.225(5)(b), the sexual assault statute.

We attempted to define "entity", but will need your direction Bob on this point. This issue is important so that there is no ambiguity on the issue of negligent supervision.

Bill

*William F. Berndt*  
Managing Principal  
Riverwood Group, LLC  
715.426.1661  
715.377.6386 (cell)  
[wberndt@sbcglobal.net](mailto:wberndt@sbcglobal.net)

10/09/2007

An Act to amend 893.587 of the statutes; relating to: the safety of children; accountability for childhood sexual abuse; and public health.

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

**Section 1.** 893.587 of the statute is renumbered 893.587 (1) and amended to read:

893.587 (1): Any cause of action against any person or entity that is a cause of damages relating to the sexual contact of anyone under 18, including but not limited to causes of action for sexual assault, negligence or the statutory cause of action created in s. 895.442, may be commenced at anytime.

**Section 2.** 893.587 (2) of the statutes is created to read:

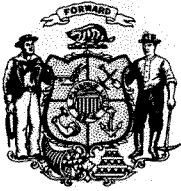
893.587 (2): Notwithstanding any other provision of law, a cause of action described under sub. 1, that was barred by any statute of limitation or any time limit in effect before the effective date of this subsection ... [revisor inserts date], is revived and that cause of action described under sub. 1 may be brought within 3 years of the effective date of this subsection ... [revisor inserts date].

**Section 3.** 893.587 (3) of the statutes is created to read:

893.587 (3): Definitions. In this section:

(a) Entity includes the meaning given to it in s. 181.0103 (8) and the meaning given “business entity” in s. 179.70. It also includes but is not limited to any other entity that has agents who interact with children.

(b) “Sexual contact” has the meaning given in s. 940.225 (5)(b).



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-3112/Pd

RPN:bjk:nwn

3  
e  
stays

Insert

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION ✓

SA ✓

-regen. cat.

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

*Analysis by the Legislative Reference Bureau*

This is a preliminary draft. An analysis will be provided in a later version. ✓

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

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

insert  
1-8

9 SECTION 2. 893.587 (2) of the statutes is created to read:  
10 893.587 (2) A cause of action described under sub. (1) that was barred by a  
11 statute of limitations in effect before the effective date of this subsection .... [revisor

1 inserts date], is revived and ~~an injured person who was barred from bringing such~~  
2 ~~an action because of the statute of limitations has 3 years after the effective date of~~  
3 this subsection .... [revisor inserts date] ~~to commence an action described under sub.~~

4 ~~(1).~~  
5

(END)

2007-2008 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-3112/P2ins  
RPN:bjk:nwn

1 insert 1-8:

2 SECTION 1. 893.587 of the statutes is renumbered 893.587 (2) and amended to  
3 read:

4 893.587 (2) An action to recover damages against any person for injury caused  
5 by an act that would constitute a violation of s. 948.02, 948.025, 948.06, 948.085, or  
6 948.095 sexual contact of anyone under the age of 18 or by an act that would create  
7 a cause of action under s. 895.442 shall may be commenced before the injured party  
8 reaches the age of 35 years or be barred at any time.

\* NOTE: NOTE: This section is shown as affected by two acts of the 2005 Wisconsin legislature and as merged by the revisor under s. 13.93 (2) (c). NOTE:  
History: 1987 a. 332; 2001 a. 16; 2003 a. 279; 2005 a. 155, 277; s. 13.93 (2) (c).

9 SECTION 2. 893.587 (1) of the statutes is created to read:

10 893.587 (1) In this section:

11 (a)

12 SECTION 3. 822.02 (12) of the statutes is amended to read:

13 822.02 (12) "Person" means an individual, corporation, business trust, estate,  
14 trust, partnership, limited liability company, association, joint venture, or  
15 government; governmental subdivision, agency, or instrumentality; public  
16 corporation; or any other legal or commercial entity.

History: 2005 a. 130.

17 (b) "Sexual contact" has the meaning given in s. 940.225 (5) (b).

end of insert 1-8

**Nelson, Robert P.**

**From:** William Berndt [wberndt@sbcglobal.net]  
**Sent:** Friday, October 19, 2007 4:01 PM  
**To:** Nelson, Robert P.  
**Cc:** Emerson, Anne; Kelly, Jessica  
**Subject:** adjustments to Child Victims Act Draft

Bob, Jessica and Anne,

Several suggestions on the Child Victims Act drafting.

To address Sen. Lassa's concern we should add the words "by an adult" or "committed by an adult" after the current draft states "under the age of 18" in Section 1. ✓

We should probably also add "or time limit" after the current draft states "that was barred by a statute of limitations" in Section 3. ✓

There was a recent decision in California that said the window in CA did not apply to public entities because of a notice of claim provision. The Court held that the notice of claim provision was a time limit, not a statute of limitations, and that the statute should have included time limits as well.

Finally, can we title the statute the **Child Victims Act**?

*No - we do not  
name bills.*

Thank you. Please feel to call with any questions.

Bill

*William F. Berndt*  
Managing Principal  
Riverwood Group, LLC  
715.426.1661  
715.377.6386 (cell)  
wberndt@sbcglobal.net





State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-3112/P2

RPN:bjk:pg

Stays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION ✓

SAV ✓

-regen.

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

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

This is a preliminary draft. An analysis will be provided in a later version. ✓

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

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5 read:

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

an adult

an adult's

committed by an adult

1 SECTION 2. 893.587 (1) of the statutes is created to read:

2 893.587 (1) In this section:

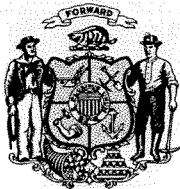
3 (a) "Person" means an individual, corporation, business trust, estate, trust,  
4 partnership, limited liability company, association, joint venture, or government;  
5 governmental subdivision, agency, or instrumentality; public corporation; or any  
6 other legal or commercial entity.

7 (b) "Sexual contact" has the meaning given in s. 940.225 (5) (b).

8 SECTION 3. 893.587 (3) of the statutes is created to read:

9 893.587 (3) A cause of action described under sub. (1) that was barred by a  
10 statute of limitations *or a time limit* in effect before the effective date of this subsection .... [revisor  
11 inserts date], is revived and that cause of action may be commenced within 3 years  
12 after the effective date of this subsection .... [revisor inserts date].

13 (END)



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-3112/P3

RPN:bjk/nwn

stays

fcjs

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SAV

2007 Bill

Roger Car

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

*Analysis by the Legislative Reference Bureau*

*This is a preliminary draft. An analysis will be provided in a later version.*

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

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



2007-2008 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-3112/lins  
RPN:bjk:nwn

insert anl:

for an injury  
resulting from

from being subject to

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

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

as a  
child

3 three

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

**Duerst, Christina**

---

**From:** Hilgemann, Luke  
**Sent:** Wednesday, November 28, 2007 2:09 PM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 07-3112/1 Topic: Statute of limitations for child abuse

Please Jacket LRB 07-3112/1 for the ASSEMBLY.

**Nelson, Robert P.**

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

**Attachments:** NAPSAC Hamilton Wisconsin Window Constitutionality.doc

Bob,

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



NAPSAC Hamilton  
Wisconsin Wind...

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

# Window Legislation Is Constitutional in Wisconsin

Marci A. Hamilton  
Visiting Professor Princeton University  
Program for Law and Public Affairs  
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Retroactive "window" legislation is constitutional under federal and Wisconsin constitutional law where:

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

## Window Legislation Is Constitutional Under Wisconsin Law

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

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

## Window Legislation Is Constitutional Under Federal Law

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