

2007 SENATE BILL 271

September 25, 2007 – Introduced by Senators KAPANKE, ROESSLER, LASSA and OLSEN, cosponsored by Representatives STASKUNAS, ZIEGELBAUER, TURNER, CULLEN, BERCEAU, POPE-ROBERTS, BIES, KESSLER, SHERMAN, ALBERS, HRAYCHUCK, GUNDERSON, SMITH, MUSSER, TOWNSEND and KAUFERT. Referred to Committee on Judiciary and Corrections.

1 **AN ACT** *to repeal* 939.74 (2d) (b) and 939.74 (2d) (c); *to amend* 939.74 (2) (c) and
2 939.74 (2) (cm); and *to create* 939.74 (2d) (bm), 939.74 (2d) (cm) and 939.74 (2d)
3 (d) of the statutes; **relating to:** time limitations for commencing prosecution
4 of crimes.

Analysis by the Legislative Reference Bureau

Extending time period for commencing prosecution of certain offenses when DNA evidence is available

Under current law, the state generally must commence prosecution of a felony within six years of the offense and a misdemeanor within three years of the offense or be barred from prosecuting the offense. However, the following exceptions to this general rule apply: 1) there is no time limitation for commencing prosecution of first- or second-degree intentional homicide, first-degree reckless homicide, felony murder, or certain sexual assaults of a child; 2) prosecution of second-degree intentional homicide may be commenced within 15 years of the offense; 3) prosecution of certain sexual, enticement, or abuse offenses against children are extended until the victim of the offense reaches either age 26 or 45, depending on the offense; and 4) if the state collects DNA evidence in connection with certain sexual assaults or sexual assaults of a child before the applicable time period for commencing prosecution of the assault expires, but cannot match the DNA evidence with a known person until after the time period for commencing prosecution of the assault expires, the time period for commencing prosecution of the person who is the

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source of the DNA for the assault is extended. In addition, the time period for commencing prosecution of crimes that are related to the assault may be extended as well. Crimes are related if they are committed against the same victim, are proximate in time, and are committed with the same intent, purpose, or opportunity so as to be part of the same course of conduct.

This bill provides that if the state collects DNA evidence in connection with any felony that is codified as a crime against life or bodily security or a crime against children, and compares the evidence with DNA profiles of known persons, before the applicable time period for commencing prosecution of the felony expires, the time period for commencing prosecution of the person who is the source of the DNA for the felony, and for any crime that is related to the felony, is extended 12 months from the date on which the DNA match is made.

The bill further provides that if within six years after the commission of a felony listed under exception 1, above, the state collects DNA evidence in connection with the felony and compares the evidence with DNA profiles of known persons, the time period for commencing prosecution of the person who is the source of the DNA for a crime that is related to the felony is extended 12 months from the date on which the DNA match is made.

Reconciliation of 2005 Acts

The 2003 Wisconsin statutes provided that if the state collected DNA evidence in connection with a first- or second-degree sexual assault or first- or second-degree sexual assault of a child but could not match the DNA with a known person until after the time period for commencing prosecution of the assault expired, the time period for commencing the prosecution of the assault was extended 12 months from the date on which the match was made. 2005 Act 60 retained the 12-month extension of the time period for commencing prosecution of the assault and further allowed the state to commence prosecution, during the 12-month extension, of any crime that is related to the assault. Act 276 eliminated time limitations for commencing prosecution of certain first-degree sexual assaults of a child. 2005 Wisconsin Act 276 also eliminated the time limitation for commencing prosecution of first-degree sexual assault in cases in which the state collects DNA evidence in connection with the assault but does not match the DNA evidence to a known person until after the initial time period for prosecuting the assault expires. Act 276 was silent with respect to related crimes.

This bill eliminates time limitations for prosecuting certain first-degree sexual assaults of a child. The bill also eliminates time limitations for commencing prosecution of first-degree sexual assault in cases in which the state collects DNA evidence in connection with the assault and compares the DNA evidence with DNA profiles of known persons before the initial time period for commencing prosecution of the assault expires. Finally, the bill provides that the time period for commencing prosecution of a crime that is related to a first- or second-degree sexual assault or to certain sexual assaults of a child is extended 12 months from the date of making a DNA match if the state collects DNA evidence in connection with the assault and

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compares the DNA evidence with DNA profiles of known persons before the initial time period for commencing prosecution of the assault expires.

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

1 **SECTION 1.** 939.74 (2) (c) of the statutes is amended to read:

2 939.74 **(2)** (c) A prosecution for violation of s. 948.02 (2), 948.025 (1) (b), 948.03
3 (2) (a), 948.05, 948.06, 948.07 (1), (2), (3), or (4), 948.075, 948.08, 948.085, or 948.095
4 shall may be commenced before the victim reaches the age of 45 years ~~or be barred,~~
5 ~~except as provided in sub. (2d) (c).~~

6 **SECTION 2.** 939.74 (2) (cm) of the statutes is amended to read:

7 939.74 **(2)** (cm) A prosecution for violation of s. 948.03 (2) (b) or (c), (3) or (4),
8 948.04 or 948.07 (5) or (6) shall may be commenced before the victim reaches the age
9 of 26 years ~~or be barred.~~

10 **SECTION 3.** 939.74 (2d) (b) of the statutes, as affected by 2005 Wisconsin Acts
11 60 and 276, is repealed.

12 **SECTION 4.** 939.74 (2d) (bm) of the statutes is created to read:

13 939.74 **(2d)** (bm) If, before the time limitation under sub. (1) for prosecuting
14 a violation of s. 940.225 (1) expires, the state collects biological material that is
15 evidence of the identity of the person who committed the violation, identifies a
16 deoxyribonucleic acid profile from the biological material, and compares the
17 deoxyribonucleic acid profile to deoxyribonucleic acid profiles of known persons, the
18 state may commence prosecution of the person who is the source of the biological
19 material for the violation of s. 940.225 (1) at any time after comparison of the
20 deoxyribonucleic acid profile relating to the violation results in a probable
21 identification of the person and may commence prosecution of the person who is the

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1 source of the biological material for a crime that is related to the violation under s.
2 940.225 (1) within 12 months after comparison of the deoxyribonucleic acid profile
3 relating to the violation results in a probable identification of the person.

4 **SECTION 5.** 939.74 (2d) (c) of the statutes, as affected by 2005 Wisconsin Acts
5 60 and 276, is repealed.

6 **SECTION 6.** 939.74 (2d) (cm) of the statutes is created to read:

7 939.74 **(2d)** (cm) If, before the applicable time limitation under sub. (1) or (2)
8 (am), (c), or (cm) for commencing prosecution of a felony under ch. 940 or 948, other
9 than a felony under s. 940.225 (1) or a felony specified in sub. (2) (a), expires, the state
10 collects biological material that is evidence of the identity of the person who
11 committed the felony, identifies a deoxyribonucleic acid profile from the biological
12 material, and compares the deoxyribonucleic acid profile to deoxyribonucleic acid
13 profiles of known persons, the state may commence prosecution of the person who
14 is the source of the biological material for the felony, or a crime that is related to the
15 felony, within 12 months after comparison of the deoxyribonucleic acid profile
16 relating to the felony results in a probable identification of the person.

17 **SECTION 7.** 939.74 (2d) (d) of the statutes is created to read:

18 939.74 **(2d)** (d) If, within 6 years after commission of a felony specified under
19 sub. (2) (a), the state collects biological material that is evidence of the person who
20 committed the felony, identifies a deoxyribonucleic acid profile from the biological
21 material, and compares the deoxyribonucleic acid profile to deoxyribonucleic acid
22 profiles of known persons, the state may commence prosecution of the person who
23 is the source of the biological material for a crime that is related to the felony within
24 12 months after comparison of the deoxyribonucleic acid profile relating to the felony
25 results in a probable identification of the person.

