



State of Wisconsin  
2005 - 2006 LEGISLATURE

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**ASSEMBLY SUBSTITUTE AMENDMENT 1,  
TO 2005 ASSEMBLY BILL 489**

September 7, 2005 - Offered by COMMITTEE ON CRIMINAL JUSTICE AND HOMELAND SECURITY.

1 **AN ACT** *to repeal* 939.74 (2d) (c); *to renumber* 939.74 (2) (a); *to amend* 939.74  
2 (1), 939.74 (2) (c) and 939.74 (2d) (b); *to repeal and recreate* 939.74 (2) (intro.);  
3 and *to create* 939.74 (2d) (d) of the statutes; **relating to:** the statute of  
4 limitations for certain felonies involving DNA evidence.

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

In general, a criminal prosecution must be commenced within three years after the offense, if the offense is a misdemeanor, or within six years after the offense, if the offense is a felony. Prosecutors have significantly longer periods of time in which to begin a prosecution for second-degree reckless homicide, for physical abuse of a child, and for certain child sex offenses. In addition, there is no limitation period at all for first-degree or second-degree intentional homicide, first-degree reckless homicide, or felony murder (causing the death of a person while committing one of several specified felonies). A prosecution for one of those offenses may occur at any time.

Current law also provides for extending an applicable limitation period under certain circumstances. One such provision relates to cases of first-degree or second-degree sexual assault. Another relates to cases of first-degree or second-degree sexual assault of a child or repeated sexual assault of a child. Both of those provisions require the state to have biological material that establishes a deoxyribonucleic acid (DNA) profile for the offender before the normal deadline for

commencing the prosecution. If, even with that material, the state is unable to establish the identity of the offender before that deadline, but it later uses the DNA to identify that person, the prosecution may be commenced within one year after that identification.

This bill makes the law described in the previous paragraph applicable to all felonies under chapter 940 or 948 of the statutes (which cover crimes against life and bodily security and crimes against children, respectively) except for those that have no limitation period. Under the bill, if the state has biological material that establishes a DNA profile for a person committing such a felony before the normal deadline for commencing the prosecution but is unable to use the DNA to identify that person until after the deadline, the prosecution may be commenced within one year after that identification.

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

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

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

7           **SECTION 2.** 939.74 (2) (intro.) of the statutes is repealed and recreated to read:

8           939.74 (2) (intro.) Unless sub. (2d) applies:

9           **SECTION 3.** 939.74 (2) (a) of the statutes is renumbered 939.74 (2r).

10          **SECTION 4.** 939.74 (2) (c) of the statutes is amended to read:

11          939.74 (2) (c) A prosecution for violation of s. 948.02, 948.025, 948.03 (2) (a),  
12 948.05, 948.06, 948.07 (1), (2), (3), or (4), 948.075, 948.08, or 948.095 shall be  
13 commenced before the victim reaches the age of 45 years or be barred, ~~except as~~  
14 provided in sub. (2d) (c).

15          **SECTION 5.** 939.74 (2d) (b) of the statutes is amended to read:

