LRB-0054/3 MGD:jld:rs

2005 ASSEMBLY BILL 489

June 14, 2005 - Introduced by Representatives Staskunas, Shilling, Hines, Musser, Lehman, Berceau and Gunderson, cosponsored by Senators Roessler, A. Lasee and Hansen. Referred to Committee on Criminal Justice and Homeland Security.

AN ACT to renumber 939.74 (2) (a); to amend 939.74 (1), 939.74 (2) (c) and 946.88 (1); to repeal and recreate 939.74 (2) (intro.); and to create 939.74 (2d) (d) and 939.74 (2m) of the statutes; relating to: the statute of limitations for felonies in which biological material is left on the victim or at the crime scene.

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

ASSEMBLY BILL 489

18

to identify that person, the prosecution may be commenced within one year after that identification.

This bill eliminates the limitation period any felony in which the offender, while committing the offense, leaves biological material that is evidence of his or her identity on a victim, on clothing worn by the victim, or on any object located at the crime scene. Under the bill, a prosecution for such an offense may occur at any time.

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: $\mathbf{2}$ 939.74 (1) Except as provided in subs. (2) and, (2d), (2m), and (2r) and s. 946.88 3 (1), prosecution for a felony must be commenced within 6 years and prosecution for 4 a misdemeanor or for adultery within 3 years after the commission thereof. Within 5 the meaning of this section, a prosecution has commenced when a warrant or 6 summons 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) or (2m) applies: **Section 3.** 939.74 (2) (a) of the statutes is renumbered 939.74 (2r). 9 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 provided in sub. (2d) (c). 14 15 **Section 5.** 939.74 (2d) (d) of the statutes is created. 939.74 (2d) (d) This subsection does not apply in cases in which sub. (2m) 16 17 applies.

Section 6. 939.74 (2m) of the statutes is created to read:

ASSEMBLY BILL 489

1

 $\mathbf{2}$

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

939.74 (2m) A prosecution for a felony may be commenced at any time if, while committing the offense, biological material that is evidence of the identity of the offender is left on a victim, on clothing worn by the victim, or on any object located at any place at which the offense is committed. In this subsection, "place at which the offense is committed" includes any place where the offender acts or fails to act if the offender's act or failure to act constitutes an element of the offense.

Section 7. 946.88 (1) of the statutes is amended to read:

946.88 (1) —A— <u>Unless s. 939.74 (2m) applies, a criminal or civil action or</u> proceeding under ss. 946.80 to 946.88 may be commenced at any time within 6 years after a violation under ss. 946.80 to 946.88 terminates or the cause of action accrues. If a criminal action or proceeding under ss. 946.80 to 946.88 is brought, or intervened in, to punish, prevent or restrain any such violation, the running of the period of limitations with respect to any civil action or proceeding, including an action or proceeding under s. 946.87, which is based in whole or in part upon any matter complained of in the criminal action or proceeding shall be suspended for 2 years following the termination of the criminal action or proceeding.

SECTION 8. Initial applicability.

(1) This act first applies to any offense the prosecution of which is not barred on the effective date of this subsection.

20 (END)