



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 1

TO: MEMBERS OF THE SPECIAL COMMITTEE ON REVIEW OF CRIMES AGAINST CHILDREN

FROM: Anne Sappenfield, Senior Staff Attorney

RE: Statute of Limitations for Sexual Assault of a Child Prosecutions

DATE: September 21, 2006

This memo discusses current law relating to the statute of limitations for prosecution of sexual assault of a child and options for legislation to resolve conflicts in the current statute. A copy of the statute is attached. A statute of limitations sets forth the time period during which certain legal actions, including criminal prosecutions, may be commenced.

BACKGROUND

General Statute of Limitations

Under prior law, a prosecution for sexual assault of a child could be commenced at any time before the victim reached the age of 45 years. 2005 Wisconsin Act 276 eliminated the statute of limitations for first-degree sexual assault of a child and engaging in repeated acts of first-degree sexual assault of the same child. As amended, current law provides that the general statute of limitations for sexual assault of a child and certain other sex-related crimes against children is as follows:

- A prosecution may be commenced *at any time* for the following offenses: first-degree sexual assault of a child or engaging in repeated acts of sexual assault involving sexual intercourse with a child who is less than 12 years of age or involving sexual intercourse with a child who is less than 16 years of age by use or threat of force or violence.* [s. 939.74 (2) (a), Stats.]

* This section also provides that a prosecution for first- or second-degree intentional homicide, first-degree reckless homicide, or felony murder may be commenced at any time.

- A prosecution may be commenced *before the victim reaches 45 years of age* for the following offenses: second-degree sexual assault of a child, engaging in repeated acts of second-degree sexual assault of the same child, intentionally causing great bodily harm to a child, sexual exploitation of a child, incest with a child, child enticement involving a sex crime, use of a computer to facilitate a child sex crime, soliciting a child for prostitution, sexual assault of a child placed in substitute care, or sexual assault of a child by a school staff person or a person who works or volunteers with children. [s. 939.74 (2) (c), Stats.]

Statute of Limitations if DNA Evidence and No Immediate Match

There is also a statute of limitations provision specific to cases in which there is biological material which provides DNA evidence and that evidence cannot be immediately matched to an individual. When this provision applies, the state may commence a prosecution of the person who is the source of the biological material *within 12 months* after comparison of the DNA profile relating to the violation results in a probable identification of the person. [s. 939.74 (2d) (c), Stats.] This allows prosecution of defendants even if the general statute of limitations has expired.

This provision applies in cases in which all of the following apply:

- The state has collected biological material that is evidence of the identity of the person who committed sexual assault of a child before the time that the general statute of limitations, described above, has expired.
- The state has identified a DNA profile from the biological material.
- Comparisons of that DNA profile to DNA profiles of known persons do not result in a probable identification of the person who is the source of the biological material.

The statute of limitations for cases in which DNA evidence is collected was modified by 2005 Wisconsin Acts 60 and 276. The Revisor of Statutes Bureau has found the provisions, as affected by these acts, to be mutually inconsistent. The acts provide as follows:

- Act 60 continues to apply the 12-month statute of limitations following a probable identification to prosecutions of first- and second-degree sexual assault of a child and any violation of engaging in repeated acts of sexual assault of a child and also permits within that time period prosecution of a crime that is related to the violation. For purposes of this provision, 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 (e.g., kidnapping).
- Act 276 applies the statute of limitations to prosecutions of second-degree sexual assault of a child and engaging in repeated acts of second-degree sexual assault of the same child. This Act does not authorize prosecution of crimes related to the violation for which the statute of limitations has expired.

COMMENT

General Statute of Limitations

Several of the offenses of engaging in repeated acts of sexual assault of the same child are not subject to the statute of limitations prohibiting prosecution after the victim reaches 45 years of age and are also not included in the list of crimes for which the statute of limitations was repealed. This appears to be the result of amendments to the offense of engaging in repeated acts of the same child. Therefore, it appears that for these offenses, a prosecution must be commenced under the general statute of limitation for felonies--within six years after the commission of the offense. [See s. 948.025 (1) (ag) and (ar), Stats., as affected by 2005 Wisconsin Acts 430 and 437.]

Statute of Limitations if DNA Evidence

For the statute of limitations in cases in which DNA evidence is available, referencing first-degree sexual assault of a child is inconsistent with s. 939.74 (2) (a), Stats., under which such a prosecution may be commenced at any time, whether or not there is DNA evidence.

The statutes also contain inconsistencies based upon the inconsistencies in ss. 948.02 and 948.025, Stats., as affected by 2005 Wisconsin Acts 430 and 437. The provisions relating to statutes of limitations will need to be modified to reflect any renumbering within ss. 948.02 and 948.025, Stats.

Finally, as noted above, Act 60 also permits prosecution for crimes related to a sexual assault violation but Act 276 does not.

OPTIONS FOR LEGISLATION

It appears that the following issues should be resolved through legislation:

1. The statute of limitations for first-degree sexual assault of a child. For this issue, should the statutes permit a prosecution for first-degree sexual assault of a child to be commenced pursuant to either of the following:
 - At any time?
 - Before the victim reaches the age of 45 years or, if that statute of limitations has expired, within 12 months of identifying the perpetrator through his or her DNA profile?
2. The statute of limitations for engaging in repeated acts of sexual assault of the same child.
3. The treatment of crimes related to a sexual assault of a child in cases in which DNA evidence identifies the offender:
 - Should prosecution for crimes related to a sexual assault of a child be permitted once DNA evidence identifies the person who committed the sexual assault of a child?

- If a prosecution for a first-degree sexual assault of a child may be commenced at any time, arguably, there is no need to include first-degree sexual assault of a child in the provision allowing for prosecution of a sexual assault once DNA evidence identifies the offender. However, should the prosecutor be permitted to prosecute the defendant for crimes related to a first-degree sexual assault of a child even if the statute of limitations for the related crimes has expired?

AS:ksm

Attachment