



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 3

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

FROM: Larry Konopacki, Staff Attorney

RE: Statutes of Limitations for Prosecution of Sexual Assault of a Child in Other States

DATE: November 8, 2006

This memorandum describes the statutes that toll, extend, or eliminate statutes of limitations (SOLs) for charging criminal sex-related offenses against children for the states surrounding Wisconsin and reports the SOLs in additional states as compiled by the National Center for Victims of Crime. Also included is a link to a website created by the National District Attorneys Association which provides detailed information on SOLs for sex-related crimes against children for all 50 states and the five U.S. territories.

SURROUNDING STATES

Minnesota

Minn. Stat. Ann. § 628.26 – A prosecution for criminal sexual conduct in the first, second, third, or fourth degree must generally be commenced within **nine years** after the commission of the offense, if the victim was under the age of 18 years at the time of the offense. If the victim failed to report the offense within this limitation period, the prosecution may be commenced within **three years** after the offense was reported to law enforcement authorities.

For violations of criminal sexual conduct in the first, second, and third degree, prosecution may be commenced **at any time** after commission of the offense, if physical evidence is collected and preserved that is capable of being tested for its DNA characteristics. Generally, limitation periods in Minnesota are tolled while physical evidence relating to an offense undergoes DNA analysis.

Iowa

Iowa Code § 802.2 - 802.2 Sexual Abuse -- First, Second, Or Third Degree. A prosecution for sexual abuse in the first, second, or third degree committed on or with a person who is under the age of 18 must be commenced within **10 years** after the victim attains 18 years of age, or if the identity of the person against whom the prosecution is sought is established through the use of a DNA profile, a prosecution must commence within **three years** from the date the identity of the person is identified by the person's DNA profile, whichever is later. "Identified" means a person's legal name is known and the person has been determined to be the source of the DNA.

Illinois

720 Ill. Comp. Stat. Ann. 5/3-5 – General Limitations. Prosecutions must generally be commenced within three years after the commission of the offense if it is a felony, or within one year and six months after its commission if it is a misdemeanor. Any offense involving sexual conduct¹ or sexual penetration² in which the DNA profile of the offender is obtained and entered into a DNA database within 10 years after the commission of the offense and the identity of the offender is unknown after a diligent investigation by law enforcement authorities, may be commenced **at any time**. This applies if either: (a) the victim reported the offense to law enforcement authorities within **two years** after the commission of the offense unless a longer period for reporting the offense to law enforcement authorities is provided in Section 3-6; or (b) the victim is murdered during the course of the offense or within two years after the commission of the offense.

720 Ill. Comp. Stat. Ann. 5/3-6 - Extended Limitations. The general period within which a prosecution must be commenced is extended in the following circumstances (generally, the longest applicable limitation period applies):

- When the victim is under 18 years of age at the time of the offense, a prosecution for criminal sexual assault, aggravated criminal sexual assault, predatory criminal sexual assault of a child, or aggravated criminal sexual abuse or a prosecution for failure of a person who is required to report one of these offenses under the Abused and Neglected Child Reporting Act may be commenced within **20 years** after the child victim attains 18 years of age. [720 Ill. Comp. Stat. Ann. 5/3-6 (j).]

¹ "Sexual conduct" means any intentional or knowing touching or fondling by the victim or the accused, either directly or through clothing, of the sex organs, anus, or breast of the victim or the accused, or any part of the body of a child under 13 years of age, or any transfer or transmission of semen by the accused upon any part of the clothed or unclothed body of the victim, for the purpose of sexual gratification or arousal of the victim or the accused. [720 Ill. Comp. Stat. Ann. 5/12-12 (e).]

² "Sexual penetration" means any contact, however slight, between the sex organ or anus of one person by an object, the sex organ, mouth, or anus of another person, or any intrusion, however slight, of any part of the body of one person or of any animal or object into the sex organ or anus of another person, including but not limited to cunnilingus, fellatio, or anal penetration. Evidence of emission of semen is not required to prove sexual penetration. [720 Ill. Comp. Stat. Ann. 5/12-12 (f).]

- Prosecution for any offense involving sexual conduct or sexual penetration, where the victim and defendant are family members, may be commenced within **one year** of the victim attaining the age of 18 years. [720 Ill. Comp. Stat. Ann. 5/3-6 (c).]
- Prosecution for child pornography, indecent solicitation of a child, soliciting for a juvenile prostitute, juvenile pimping, or exploitation of a child may be commenced within **one year** of the victim attaining the age of 18 years. However, the time period for prosecution may not expire sooner than **three years** after the commission of the offense. When the victim is under 18 years of age, a prosecution for criminal sexual abuse may be commenced within **one year** of the victim attaining the age of 18 years. However, the time period for prosecution may not expire sooner than **three years** after the commission of the offense. [720 Ill. Comp. Stat. Ann. 5/3-6 (d).]
- Prosecution for any offense involving sexual conduct or sexual penetration, where the defendant was within a professional or fiduciary relationship or a purported professional or fiduciary relationship with the victim at the time of the commission of the offense, may be commenced within **one year** after the discovery of the offense by the victim. [720 Ill. Comp. Stat. Ann. 5/3-6 (e).]
- Prosecution for criminal sexual assault, aggravated criminal sexual assault, or aggravated criminal sexual abuse may be commenced within **10 years** of the commission of the offense if the victim reported the offense to law enforcement authorities within **three years** after the commission of the offense. [720 Ill. Comp. Stat. Ann. 5/3-6 (i).]

Indiana

Ind. Code § 35-41-4-2 - Periods of Limitation. A prosecution for a Class A felony may be commenced **at any time**. A prosecution for a Class B, C, or D felony must generally be commenced within **five years** after the commission of the offense and a prosecution for a misdemeanor must generally be commenced within **two years** after the commission of the offense. Sex-related crimes against children in Indiana include offenses in these penalty categories. [IC 35-42-4.]

A prosecution for a Class B or C felony may be commenced more than **five years** after the commission of the offense if the prosecution is commenced within **one year** after the state first discovers evidence sufficient to charge the offender with the offense through DNA analysis, or within **one year** after the state could have discovered evidence sufficient to charge the offender with the offense through DNA analysis by the exercise of due diligence, whichever is earlier.

A prosecution for the following offenses must be commenced before the date that the alleged victim of the offense reaches **age 31**: child molesting; vicarious sexual gratification; child solicitation; child seduction; and incest.

Michigan

Mich. Comp. Laws § 767.24 – A prosecution for criminal sexual conduct in the first degree that is punishable by life imprisonment may be commenced **at any time**. A prosecution for a violation or attempted violation of criminal sexual conduct in the second, third, or fourth degree, or assault with

intent to commit criminal sexual conduct may generally be commenced within **10 years** after the offense is committed or by the alleged victim's 21st birthday, whichever is later. However, if evidence of the violation is obtained and that evidence contains human DNA that is determined to be from an unidentified individual, a prosecution against that individual for the violation may be commenced within **10 years** after the individual is identified³ or by the alleged victim's 21st birthday, whichever is later.

NATIONAL CENTER FOR VICTIMS OF CRIME

The National Center for Victims of Crime reports the following information with respect to SOLs for prosecution of sex-related crimes against children:

- **In 11 states, there is no SOLs for the prosecution of most or all sex offenses against children:** Alabama, Alaska, Kentucky, Maine, Maryland, North Carolina, Rhode Island, South Carolina, Virginia, West Virginia, and Wyoming.
- **In six states, there is no SOLs for prosecutions of the most serious forms of sexual assault, regardless of the age of the victim:** Florida, Indiana, Mississippi, New Jersey, New Mexico, and South Dakota.
- Most other states have statutory or common law extensions of the SOLs for child sexual offenses.

(www.ncvc.org, as posted October 6, 2006.)

NATIONAL DISTRICT ATTORNEYS ASSOCIATION

The website of the National District Attorneys Association lists SOLs that toll, extend or eliminate time limitations for charging criminal offenses relating specifically to child victims for all 50 states and the five U.S. territories at:

http://www.ndaa.org/pdf/ncpca_statute_removing_limitation_offenses_against_children.pdf
(information current through June, 2005.)

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³ "Identified" means the individual's legal name is known and he or she has been determined to be the source of the DNA.