



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.

1 **AN ACT** *to renumber* 939.74 (2) (a); *to amend* 939.74 (1), 939.74 (2) (c) and
2 946.88 (1); *to repeal and recreate* 939.74 (2) (intro.); and *to create* 939.74 (2d)
3 (d) and 939.74 (2m) of the statutes; **relating to:** the statute of limitations for
4 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

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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:

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:

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) (d) of the statutes is created.

16 939.74 (2d) (d) This subsection does not apply in cases in which sub. (2m)
17 applies.

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

