



2009 ASSEMBLY BILL 514

October 23, 2009 - Introduced by Representatives STASKUNAS, JORGENSEN, PARISI, KERKMAN, SUDER, WOOD, TURNER, ROYS, CULLEN, GUNDERSON, BERCEAU, POPE-ROBERTS, SINICKI, A. OTT, KNODL, HRAYCHUCK and BALLWEG, cosponsored by Senators RISSER, A. LASEE, OLSEN, COGGS and KEDZIE. Referred to Committee on Criminal Justice.

1 **AN ACT to repeal** 939.74 (2d) (d); **to amend** 939.74 (2) (c), 939.74 (2) (cm), 939.74
2 (2) (d) and 939.74 (2d) (c); **to repeal and recreate** 939.74 (2d) (b); and **to create**
3 939.74 (2d) (e) of the statutes; **relating to:** time limitations for commencing
4 prosecution of crimes.

Analysis by the Legislative Reference Bureau

Extending time period for commencing prosecution of certain offenses when DNA evidence is available

Under current law, the state generally must commence prosecution of a felony within six years of the offense and a misdemeanor within three years of the offense and if it does not, prosecution is barred. However, the following exceptions to this general rule apply: 1) there is no time limitation for commencing prosecution of first-degree or second-degree intentional homicide, first-degree reckless homicide, felony murder, or certain sexual assaults of a child; 2) prosecution of second-degree reckless homicide may be commenced within 15 years of the offense; 3) prosecution of certain sexual, enticement, abuse, or trafficking offenses against a child are extended until the victim of the offense reaches either age 24, 26, or 45, depending on the offense; and 4) if the state collects deoxyribonucleic acid (DNA) evidence in connection with certain sexual assaults or sexual assaults of a child before the applicable time period for commencing prosecution of the assault expires, but cannot match the DNA evidence with a known person until after the time period for commencing prosecution of the assault expires, the time period for commencing

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prosecution of the person who is the source of the DNA for the assault is extended. In addition, the time period for commencing prosecution of crimes that are related to the assault may be extended as well. 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.

The specific provisions for extending the time for commencing prosecution in cases in which the state collects DNA evidence are as follows:

1. **First degree sexual assault:** Under 2005 Wisconsin Act 276, if the state collects DNA evidence in connection with a first-degree sexual assault before the time for commencing prosecution of the first-degree sexual assault expires, the state may commence prosecution of the first-degree sexual assault at any time after making a DNA match. Under 2005 Wisconsin Act 60, the state may also commence prosecution for a crime that is related to the first-degree sexual assault within 12 months after making a DNA match.

2. **Second-degree sexual assault:** Under 2005 Wisconsin Acts 60 and 276, if the state collects DNA evidence in connection with a second-degree sexual assault before the time for commencing prosecution of the second-degree sexual assault expires, the state may commence prosecution of the second-degree sexual assault within 12 months after making a DNA match. Under 2005 Wisconsin Act 60, the state may also commence prosecution of a crime that is related to the second-degree sexual assault within 12 months after making a DNA match.

3. **Sexual assault of a child:** Under current law, if the state collects DNA evidence in connection with a second-degree sexual assault of a child or a Class C felony repeated sexual assault of the same child (second-degree or Class C felony sexual assault of a child), the state may commence prosecution of the second-degree or Class C felony sexual assault of a child, or a crime that is related to the second-degree or Class C felony sexual assault of a child, within 12 months after making the DNA match. Additionally, if the state collects DNA evidence in connection with a first-degree or second-degree sexual assault of a child or a Class A, B, or C felony repeated sexual assault of the same child before the time for commencing prosecution of a crime that is related to the sexual assault or repeated sexual assault of a child expires, the state may commence prosecution of the related crime within 12 months after making a DNA match.

This bill extends application of the DNA evidence exception to time limits for commencing prosecution. Under the bill, if the state collects DNA evidence in connection with a crime against life or bodily security or a crime against children before the time for commencing prosecution of the felony expires, the state may commence prosecution of the felony, or a crime that is related to the felony, within 12 months after making a DNA match. In addition, the bill provides that if the state collects DNA evidence of a crime for which there is no time limit for commencing prosecution (first-degree or second-degree intentional homicide, first-degree reckless homicide, felony murder, or certain sexual assaults of a child) within six years after commission of that crime, the state may commence prosecution of a crime that is related to that crime, within 12 months after making a DNA match.

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The bill reconciles 2005 Wisconsin Acts 60 and 276 by providing that: 1) if the state collects DNA evidence in connection with a first-degree sexual assault before the time for commencing prosecution of the first-degree sexual assault expires, the state may commence prosecution of the first-degree sexual assault at any time after making a DNA match, and may commence prosecution of a crime that is related to the first-degree sexual assault within 12 months after making a DNA match; and 2) that if the state collects DNA evidence in connection with a second-degree sexual assault, the state may commence prosecution of the second-degree sexual assault, or a crime that is related to the second-degree sexual assault, within 12 months after making a DNA match.

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

1 **SECTION 1.** 939.74 (2) (c) of the statutes is amended to read:

2 939.74 (2) (c) A prosecution for violation of s. 948.02 (2), 948.025 (1) (b), 948.03
3 (2) (a), 948.05, 948.06, 948.07 (1), (2), (3), or (4), 948.075, 948.08, 948.085, or 948.095
4 shall be commenced before the victim reaches the age of 45 years or be barred, except
5 as provided in sub. (2d) ~~(e)~~.

6 **SECTION 2.** 939.74 (2) (cm) of the statutes is amended to read:

7 939.74 (2) (cm) A prosecution for violation of s. 948.03 (2) (b) or (c), (3) or (4),
8 948.04 or 948.07 (5) or (6) shall be commenced before the victim reaches the age of
9 26 years or be barred, except as provided in sub. (2d).

10 **SECTION 3.** 939.74 (2) (d) of the statutes is amended to read:

11 939.74 (2) (d) A prosecution for a violation of s. 948.051 shall be commenced
12 before the victim reaches the age of 24 or be barred, except as provided in sub. (2d).

13 **SECTION 4.** 939.74 (2d) (b) of the statutes, as affected by 2005 Wisconsin Acts
14 60 and 276, is repealed and recreated to read:

15 939.74 (2d) (b) If, before the time limitation under sub. (1) for commencing
16 prosecution of a violation of s. 940.225 (1) expires, the state collects biological
17 material that is evidence of the identity of the person who committed the violation,

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1 identifies a deoxyribonucleic acid profile from the biological material, and compares
2 the deoxyribonucleic acid profile to deoxyribonucleic acid profiles of known persons,
3 the state may commence prosecution of the person who is the source of the biological
4 material for the violation of s. 940.225 (1) at any time after comparison of the
5 deoxyribonucleic acid profile relating to the violation results in a probable
6 identification of the person and may commence prosecution of the person who is the
7 source of the biological material for a crime that is related to the violation under s.
8 940.225 (1) within 12 months after comparison of the deoxyribonucleic acid profile
9 relating to the violation results in a probable identification of the person.

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

11 939.74 **(2d)** (c) If, before the applicable time limitation under sub. (1) or (2)
12 (am), (c) expired, (cm), or (d) for commencing prosecution of a felony under ch. 940
13 or 948, other than a felony under s. 940.225 (1) or a felony specified in sub. (2) (a),
14 expires, the state collected collects biological material that is evidence of the identity
15 of the person who committed ~~a violation of s. 948.02 (2) or 948.025 (1) (e) the felony,~~
16 ~~the state identified~~ identifies a deoxyribonucleic acid profile from the biological
17 material, and ~~comparisons of that~~ compares the deoxyribonucleic acid profile to
18 deoxyribonucleic acid profiles of known persons ~~did not result in a probable~~
19 ~~identification of the person who is the source of the biological material,~~ the state may
20 commence prosecution of the person who is the source of the biological material for
21 the violation of s. 948.02 (2) or 948.025 (1) (e) felony or a crime that is related to the
22 ~~violation~~ felony or both within 12 months after comparison of the deoxyribonucleic
23 acid profile relating to the ~~violation~~ felony results in a probable identification of the
24 person.

25 **SECTION 6.** 939.74 (2d) (d) of the statutes is repealed.

