

Statutes of Limitation

Statutes of limitation (SOLs) specify the time within which a criminal prosecution or a civil action must commence or be lost. SOLs for criminal and civil actions differ.

CRIMINAL STATUTES OF LIMITATION

The SOL clock for crimes typically starts running when a crime occurs, and prosecution must commence within a specified period of time after the clock starts ticking. The SOL stops running during any time that the defendant is not a resident of Wisconsin. There are specialized SOLs for many sex crimes and the current state of the law is as follows:*

Crime	Statute of Limitation	Wisconsin Statute
1st Degree Sexual Assault of a Child	No SOL	948.02(1)
Repeated Acts of SA of the same child for 948.025(1)(a),(b),(c), or (d) offenses	No SOL	948.025(1)(a),(b),(c), or (d)
1st Degree Sexual Assault	No SOL	940.225(1)
2nd Degree Sexual Assault of a Child	Victim reaches age 45	948.02(2)
Repeated Acts of Sexual Assault of a Child for 948.025(1)(e) Offenses	Victim reaches age 45	948.025(1)(e)
Sexual Exploitation of a Child	Victim reaches age 45	948.05
Incest with a Child	Victm reaches age 45	948.06
Four of the Six Acts of Child Enticement	Victim reaches age 45	948.07
Soliciting a Child for Prostitution	Victim reaches age 45	948.08
Sexual Assault of a Student by a School Staff Person	Victim reaches age 45	948.095
Sexual Assault of a Child Placed in Substitute Care	Victim reaches age 45	948.085
Use of a Computer to Facilitate a Child Sex Crime	Victim reaches age 45	948.075
Trafficking of a Child	Victim reaches age 45	948.051
Patronizing a Child	Victim reaches age 45	948.081
Two of the Six Acts of Child Enticement	Victem reaches age 26	948.07
2nd Degree Sexual Assault	10 years	940.225(2)
3rd Degree Sexual Assault	10 years	940.225(3)
Causing a Child to View or Listen to Sexual Activity	6 years	948.055
Sexual Exploitation by a Therapist (SOL can be longer than 6 years in certain situations)	6 years	940.22
Adult Exposing Genitals or Pubic Area	6 years*	948.10(1)(a)
4th Degree Sexual Assault	3 years	940.225(3m)
Sexual Intercourse with a Child 16 or Over	3 years	948.09
Underage Sexual Activity	3 years	948.093
Minor Exposing Genitals or Pubic Area	3 years	948.10(1)(b)(1)

***Except:** If at the time of the violation, the actor had not attained the age of 19 years and was not more than 4 years older than the child. In such a case, the actor is guilty of a Class A misdemeanor and the statute of limitations is 3 years. Wis. Stat. 948.10(1)(b)(2).

DNA EVIDENCE: The SOL may be extended for all of the above crimes if:

- 1.) The state obtains a DNA sample within the applicable SOL, and 2.) The state, within this SOL, attempts to obtain and is unable to obtain a match or “hit” after comparing the profile to existing DNA databases.
- If the DNA sample is later matched to a known person, the State may commence prosecution of that person for the original violation.
- If the state obtains a DNA sample for 1st degree SA before the SOL has expired and later obtains a match, prosecution of the identified person may be commenced at any time after DNA identification.
- For all other crimes specified above and any other felony under Wis. Stat. ch. 940 or 948, if the State obtains a DNA sample within the applicable SOL and later identifies a match, the State may commence prosecution of that person within 12 months of the identification or within the applicable SOL, whichever is latest.

PAST ABUSE

Some cases of past abuse may still be prosecuted today. It is beyond the scope of this fact sheet to provide enough information to allow an exact determination of whether a SOL for past abuse currently prevents prosecution. The district attorney (DA) is the best person to ask whether the SOL has expired for a particular crime. DAs may decline prosecution even when prosecution is not barred by the SOL. Lack of evidence and a long passage of time could lead a DA to believe that a crime cannot be proven beyond a reasonable doubt.

Specialized SOLs were established for some crimes against children on July 1, 1989 that allowed prosecution until the victim reached age 21 or six years had passed since the crime, whichever was later. The legislature extended the SOL to allow prosecution until victims reached the age of 26 on April 22, 1994, until victims reached the age of 31 on June 16, 1998, and until victims reached the age of 45 on May 1, 2004. However, these changes did not extend SOLs for all of these crimes each time, and as new crimes were added to the statutes, only some of these received specialized SOLs. The most recent change in the law completely eliminated SOLs for, 1st degree sexual assault of a child and several acts described in the crime of repeated acts of sexual assault of the same child on April 20, 2006.

Since 1989, all of the extensions described above, including the most recent change eliminating the SOLs for some crimes, applied to all crimes for which the SOL had not expired when the new SOL went into effect. In other words, if you were the victim of a crime for which the SOL has been extended, that extension would apply if, on the day the new law went into effect, the previous SOL had not expired.

CIVIL STATUTES OF LIMITATIONS

Victims can also bring a civil action against a perpetrator for a sexual assault. In the civil court system, a sexual assault is a type of “intentional tort.” Civil actions for intentional torts committed against adults must be commenced within three years of the act. Other types of claims, such as sexual harassment, have different SOLs, and victims should always consult with a private attorney to determine what types of actions may be pursued based on a particular set of facts. SOLs for civil actions based on the sexual assault of a child are complex. The current SOLs for sexual assaults that would constitute 1st or 2nd degree sexual assault of a child, repeated acts of sexual assault of the same child, incest with a child, sexual assault of a student by school instructional staff, sexual assault of a child in substitute care, or sexual exploitation by a member of the clergy allow an action to

be commenced until the victim reaches age 35. The version described above became effective on May 1, 2004 and changed the way that SOLs are calculated in these civil actions. Victims wishing to pursue a civil action based on an assault that occurred prior to May 1, 2004 should contact a private attorney to determine whether the old or new way of calculating SOLs would apply.

Victims of any age who are sexual exploited by a therapist may also have a longer time within which to file a civil action and may wish to contact a private attorney to learn about their options.

SOLs are constantly changing. Courts can also interpret SOLs in ways that limit or broaden the statutory limitation period.

WCASA is a membership agency comprised of organizations and individuals working to end sexual violence in Wisconsin. Among these are the 60 sexual assault service provider (SASP) agencies throughout the state that offer support, advocacy and information to victims of sexual assault and their families. For information sheets on other topics and for more information about sexual assault, please visit our website. This sheet may be reproduced in its original format only.

This information does not constitute legal advice.

Please note that this is an abridged information sheet; the statutes have not been printed in their entirety due to space restrictions.