

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 1444 of the Regular Session

1 State of Arkansas As Engrossed: H1/22/09 H1/30/09 H2/06/09 S2/17/09 S4/6/09

2 87th General Assembly

A Bill

3 Regular Session, 2009

HOUSE BILL 1058

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5 By: Representative D. Creekmore

6 By: Senators Broadway, H. Wilkins

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For An Act To Be Entitled

10 AN ACT TO MODIFY THE STATUTE OF LIMITATIONS FOR
11 THE OFFENSE OF RAPE WHEN IDENTIFIED GENETIC
12 INFORMATION IS PRESENT; AND FOR OTHER PURPOSES.

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Subtitle

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AN ACT TO MODIFY THE STATUTE OF
LIMITATIONS FOR THE OFFENSE OF RAPE WHEN
IDENTIFIED GENETIC INFORMATION IS
PRESENT.

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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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22 SECTION 1. Arkansas Code § 5-1-109 is amended to read as follows:

23 5-1-109. Statute of limitations.

24 (a) A prosecution for murder may be commenced at any time.

25 (b) Except as otherwise provided in this section, a prosecution for
26 another offense shall be commenced within the following periods of limitation
27 after the offense's commission:

28 (1)(A) Class Y felony or Class A felony, six (6) years.

29 (B) However, for rape, § 5-14-103, ~~the period of~~
30 ~~limitation may be extended to fifteen (15) years during which extended time a~~
31 ~~prosecution for rape may be commenced if based upon forensic deoxyribonucleic~~
32 ~~acid (DNA) testing or another test that may become available through an~~
33 ~~advance in technology;~~ the period of limitation is eliminated if biological
34 evidence of the alleged perpetrator is identified that is capable of
35 producing a deoxyribonucleic acid (DNA) profile;



1 (2) *Class B felony, Class C felony, Class D felony, or an*
2 *unclassified felony, three (3) years; and*

3 (3) *Misdemeanor or violation, one (1) year.*

4 (c) *If the period prescribed in subsection (b) of this section has*
5 *expired, a prosecution may nevertheless be commenced for:*

6 (1) *Any offense involving either fraud or breach of a fiduciary*
7 *obligation, within one (1) year after the offense is discovered or should*
8 *reasonably have been discovered by an aggrieved party or by a person who has*
9 *a legal duty to represent an aggrieved party and who is himself or herself*
10 *not a party to the offense; and*

11 (2)(A) *Any offense that is concealed involving felonious conduct*
12 *in office by a public servant at any time within five (5) years after he or*
13 *she leaves public office or employment or within five (5) years after the*
14 *offense is discovered or should reasonably have been discovered, whichever is*
15 *sooner.*

16 (B) *However, in no event does this subdivision (c)(2) extend*
17 *the period of limitation by more than ten (10) years after the commission of*
18 *the offense.*

19 (d) *A defendant may be convicted of any offense included in the*
20 *offense charged, notwithstanding that the period of limitation has expired*
21 *for the included offense, if as to the offense charged the period of*
22 *limitation has not expired or there is no period of limitation, and there is*
23 *sufficient evidence to sustain a conviction for the offense charged.*

24 (e)(1) *For the purposes of this section, an offense is committed*
25 *either when:*

26 (A) *Every element occurs; or*

27 (B) *If a legislative purpose to prohibit a continuing*
28 *course of conduct plainly appears, at the time the course of conduct or the*
29 *defendant's complicity in the course of conduct is terminated.*

30 (2) *Time starts to run on the day after the offense is*
31 *committed.*

32 (f) *A prosecution is commenced when an arrest warrant or other process*
33 *is issued based on an indictment, information, or other charging instrument*
34 *if the arrest warrant or other process is sought to be executed without*
35 *unreasonable delay.*

36 (g) *The period of limitation does not run:*

1 (1)(A) During any time when the accused is continually absent
2 from the state or has no reasonably ascertainable place of abode or work
3 within the state.

4 (B) However, in no event does this subdivision (g)(1)
5 extend the period of limitation otherwise applicable by more than three (3)
6 years; or

7 (2) During any period when a prosecution against the accused for
8 the same conduct is pending in this state.

9 (h) If the period prescribed in subsection (b) of this section has
10 expired, a prosecution may nevertheless be commenced for a violation of the
11 following offenses if, when the alleged violation occurred, the offense was
12 committed against a minor, the violation has not previously been reported to
13 a law enforcement agency or prosecuting attorney, and the period prescribed
14 in subsection (b) of this section has not expired since the victim has
15 reached eighteen (18) years of age:

16 (1) Battery in the first degree, § 5-13-201;

17 (2) Battery in the second degree, § 5-13-202;

18 (3) Aggravated assault, § 5-13-204;

19 (4) Terroristic threatening in the first degree, § 5-13-301;

20 (5) Kidnapping, § 5-11-102;

21 (6) False imprisonment in the first degree, § 5-11-103;

22 (7) Permanent detention or restraint, § 5-11-106;

23 (8) Rape, § 5-14-103;

24 (9) Sexual assault in the first degree, § 5-14-124;

25 (10) Sexual assault in the second degree, § 5-14-125;

26 (11) Sexual assault in the third degree, § 5-14-126;

27 (12) Sexual assault in the fourth degree, § 5-14-127;

28 (13) Incest, § 5-26-202;

29 (14) Endangering the welfare of a minor in the first degree, §
30 5-27-205;

31 (15) Permitting abuse of a minor, § 5-27-221(a)(1) and (3);

32 (16) Engaging children in sexually explicit conduct for use in
33 visual or print medium, § 5-27-303;

34 (17) Transportation of minors for prohibited sexual conduct, §
35 5-27-305;

36 (18) Employing or consenting to the use of a child in a sexual

1 performance, § 5-27-402;

2 (19) Producing, directing, or promoting a sexual performance by
3 a child, § 5-27-403;

4 (20) Computer child pornography, § 5-27-603;

5 (21) Computer exploitation of a child in the first degree, § 5-
6 27-605; and

7 (22) Criminal attempt, criminal solicitation, or criminal
8 conspiracy to commit any offense listed in this subsection, §§ 5-3-201, 5-3-
9 202, 5-3-301, and 5-3-401.

10 (i) If there is biological evidence connecting a person with the
11 commission of an offense and that person's identity is unknown, the
12 prosecution is commenced if an indictment or information is filed against the
13 unknown person and the indictment contains the genetic information of the
14 unknown person and the genetic information is accepted to be likely to be
15 applicable only to the unknown person.

16 (j) When deoxyribonucleic acid (DNA) testing implicates a person
17 previously identified through a search of the State DNA Data Base or National
18 DNA Index System, ~~no~~ a statute of limitation that would otherwise shall not
19 preclude prosecution of the offense precludes the prosecution until a period
20 of time following the implication of the person by deoxyribonucleic acid
21 (DNA) testing has elapsed that is equal to the otherwise applicable
22 limitation period.

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24 /s/ D. Creekmore

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26 **APPROVED: 4/10/2009**
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