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## Criminal Statutes of Limitations

This information brief provides an overview of criminal statutes of limitations in general and describes Minnesota's criminal statute of limitations.

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## Background

Most states provide certain limitations periods in which a criminal prosecution must be commenced.<sup>1</sup> These limitations periods, which are contained in statutes, are usually called statutes of limitations. In general, limitations periods are longer for more serious offenses.<sup>2</sup> In some states, there are no limitations periods for the most serious offenses.<sup>3</sup>

Statutes of limitations provide a nonexculpatory defense to a criminal defendant; accordingly, even if the accused is guilty, the statute of limitations will prevent a conviction if an action is not timely commenced.<sup>4</sup>

The legislature can eliminate or change a criminal statute of limitations, subject to retroactivity concerns.

The legislature cannot expand a criminal statute of limitation for a crime for which the existing statute of limitations has already expired. Such an application constitutes an *ex post facto* law (punishing an act after it is committed) and is constitutionally barred. The legislature, however, may apply an extended limitations period to a crime committed before the enactment of the extension, if the limitations period for that crime has not run.<sup>5</sup>

## Policy Considerations

Scholars and commentators have identified various policy arguments supporting and opposing criminal statutes of limitations. Supporters of criminal statutes of limitations argue the following:

- ▶ There is less need for a criminal sanction against a person who demonstrates rehabilitation by remaining law-abiding for some time.<sup>6</sup>

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<sup>1</sup> See ROBINSON, PAUL H., CRIMINAL LAW DEFENSES, 462 (1984); *see also* 21 Am. Jur. 2d § 291 (observing that “statutes of limitation have been enacted to limit the time for commencement of most criminal proceedings”).

<sup>2</sup> See ROBINSON, *supra* note 1, at 463.

<sup>3</sup> See *id.*; *see also* 21 Am. Jur. 2d § 291 (noting that, “[a]s a general rule, the limitations are made applicable to all or most misdemeanors, and to some felonies, whereas murder is generally excepted; but sometimes all felonies are excepted.”).

<sup>4</sup> See ROBINSON, *supra* note 1, at 465.

<sup>5</sup> See *Falter v. U.S.*, 23 F.2d 420, 425 (2d Cir. 1928), *cert. denied*, 277 U.S. 590, *superceded by stat. as stated in U.S. v. Roselli*, 1993 U.S. Dist. LEXIS 18749 (N.D.N.Y. Dec. 30, 1993); *see also* 21 Am. Jur. 2d § 294 (stating that “where a statute extends the period of limitation, the extension applies to offenses not barred at the time of the passage of the act, so that prosecution may be commenced at any time within the newly established period.”).

<sup>6</sup> See ROBINSON, *supra* note 1, at 466; *see also* Note, *Barrier to Prosecution*, *supra* note 5, at 634 (stating that “...those persons who have committed crimes in the distant past and have not repeated their errors are apparently self-rehabilitated and as a result seem to offer little cause for fear as to their future conduct. The pursuit of only more recent criminals is consistent with that aim of criminal law which seeks to rehabilitate wrongdoers and serves to free the citizen from vexatious fear of prosecution for old crimes.”).

- ▶ In the interest of fairness, a prosecution should be based on recent—and more reliable—evidence.<sup>7</sup>
- ▶ Statutes of limitations encourage law enforcement and prosecutors to act in a timely fashion in apprehending and bringing wrongdoers to justice.<sup>8</sup>
- ▶ Statutes of limitations grant repose (closure) to a wrongdoer, which may be appropriate when a focus on the past does not serve current interests.<sup>9</sup>
- ▶ “[S]tatutes of limitations foster...a more stable and forward-looking society.”<sup>10</sup> As time goes by, society’s interest in retribution may lessen, and it is more appropriate to focus the state’s attention on dealing with recent criminal activity.

Opponents of criminal statute of limitations argue the following:

- ▶ The practical realities of the criminal justice system, such as rules of evidence to prevent admission of unreliable evidence, will prevent prosecution and/or convictions on evidence that is stale and possibly unreliable.<sup>11</sup>
- ▶ For some crimes, society’s interest in retribution and justice will exceed the time period provided in the statute of limitations.<sup>12</sup>
- ▶ If the certainty of punishment is reduced, the law does not effectively deter an individual from crime.<sup>13</sup>
- ▶ Even if an individual offender is reformed, society may still have an interest in punishment and general deterrence of crime.<sup>14</sup>

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<sup>7</sup> See Adlestein, Alan L., *Conflict of the Criminal Statute of Limitations with Lesser Offenses at Trial*, 37 William and Mary L. Rev. 199, 262 (1995); see also Note, *Barrier to Prosecution*, *supra* note 5, at 632 (observing that, “prosecution [should] be based on evidence that is reasonably fresh and therefore more trustworthy than evidence with a probative value which has grown weaker as man’s ability to remember has become impaired”); 21 Am. Jur. 2d § 291 (“Statutes of limitations on criminal prosecutions are designed to protect individuals from having to defend themselves against charges when the basic facts may become obscured by the passage of time....”).

<sup>8</sup> See Adlestein, *supra* note 8, at 262; see also Note, *Barrier to Prosecution*, *supra* note 5, at 633 (“It has been suggested that statutes of limitations also aid the state in checking upon its officials by requiring vigilance on their part in discovering law-violators and bringing them to justice as speedily as possible”).

<sup>9</sup> See ROBINSON, *supra* note 1, at 466.

<sup>10</sup> *Id.* (citing Model Penal Code § 1.07, Comment 16 (tent. Draft No. 5, 1956)).

<sup>11</sup> ROBINSON, *supra* note 1, at 466.

<sup>12</sup> See ROBINSON, *supra* note 1, at 465; see also Note, *Barrier to Prosecution*, *supra* note 5, at 634 (suggesting that an alternative to limitation statutes would be to grant discretion to the prosecutor to prohibit or discontinue prosecution if the interest of justice so required, thus allowing prosecution of some individuals who otherwise would have been safe from prosecution due to the expiration of the statutory period).

<sup>13</sup> See Note, *Barrier to Prosecution*, *supra* note 5, at 634.

<sup>14</sup> See ROBINSON, *supra* note 1, at 466.

## Current Limitations Periods

Criminal Statute of Limitations ( <a href="#">Minn. Stat. § 628.26</a> )	
Any crime resulting in the death of the victim	<b>No</b> statute of limitation
Kidnapping	<b>No</b> statute of limitation
Labor trafficking <b>if the victim was under the age of 18</b>	<b>No</b> statute of limitation
Sex offense (first, second, or third degree) or sex trafficking <i>if physical evidence is collected and preserved that is capable of being tested for its DNA characteristics</i>	<b>No</b> statute of limitation
Sex offense (first, second, third, or fourth degree) or sex trafficking <b>against a victim under 18 years of age if DNA evidence is <u>not</u> collected and preserved that is capable of being tested for its DNA characteristics</b>	The later of <b>nine years</b> after commission of offense <b>or three years</b> after the offense was reported to law enforcement
Sex offense (first, second, or third degree) or sex trafficking <b>against a victim 18 years old or older if DNA evidence is <u>not</u> collected and preserved that is capable of being tested for its DNA characteristics</b>	<b>Nine years</b> after commission of offense
Labor trafficking <b>if the victim was 18 years or older</b>	<b>Six years</b> after commission of offense
Bribery of or by a public official	<b>Six years</b> after commission of offense
Medical Assistance fraud or theft	<b>Six years</b> after commission of offense
Certain thefts, identity theft, check forgeries, credit card frauds, and financial exploitation of vulnerable adults (where value of property or services stolen exceeds \$35,000, and for identity theft, if eight or more victims were involved)	<b>Five years</b> after commission of offense
Hazardous and infectious waste crimes, except violations relating to false material statements, representations, or omissions	<b>Five years</b> after commission of offense
Arson in the first, second, or third degree	<b>Five years</b> after commission of offense
All other crimes	<b>Three years</b> after commission of offense
<p><b>Section 628.26</b> has been amended numerous times over the years. The different amendments to the law have different enactment clauses that vary the application of the statute. For example, in 2009, there were two amendments to this section. The amendment to paragraph (e) is effective August 1, 2009, and applies to crimes committed on or after that date, as well as to crimes committed before that date if the limitations period did not expire before August 1, 2009. See <a href="#">Laws 2009, ch. 59</a>, art. 5, § 20. The amendment to paragraph (h) is effective August 1, 2009, and applies only to crimes committed on or after that date. See <a href="#">Laws 2009, ch. 119</a>, § 18.</p>	

The running of all of these statutes of limitations is suspended (i.e., tolled) during the following:

- ▶ any period of time during which the defendant did not usually reside within Minnesota
- ▶ any period during which the defendant participated in a pretrial diversion program relating to the offense
- ▶ any period during which physical evidence relating to the offense was undergoing DNA analysis, unless the defendant demonstrates that the prosecuting or law enforcement agency purposefully delayed the DNA analysis procedure in order to gain an unfair advantage<sup>15</sup>

## Practical Application

The general rule is that a statute of limitations begins to run when a crime is complete.<sup>16</sup> A crime is complete when every element of the offense is satisfied.<sup>17</sup> “Absent a statute providing otherwise, a period of limitation runs without interruption from the time the offense is committed until the prosecution is commenced.”<sup>18</sup>

Some courts have recognized that, when an offense is a continuing one, the period of limitation does not begin to run until after the defendant’s activities end.<sup>19</sup>

A “continuous offense” or “continuing offense” is a continuous, unlawful act or series of acts set in motion by a single impulse and operated by unintermittent force; it is a breach of criminal law, not terminated by a single act or fact, but subsisting for a definite period and intended to cover or apply to successive similar obligations or occurrences.<sup>20</sup>

In *Toussie v. United States*, the U.S. Supreme Court considered whether failure to register for the draft was a continuing violation that would extend the statute of limitations for the offense.<sup>21</sup> The

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<sup>15</sup> Minn. Stat. § 628.26.

<sup>16</sup> See *Toussie v. United States*, 397 U.S. 112, 115 (1970) (citing *Pendergast v. United States*, 317 U.S. 412, 418 (1943); see also *State v. Danielski*, 348 N.W.2d 352, 355 (Minn. App. 1984), pet. for rev. denied (July 26, 1984) (citing *Toussie*, 397 U.S. 112, 115-116 (1970)).

<sup>17</sup> See e.g., Model Penal Code § 1.06 (4).

<sup>18</sup> 1 CHARLES E. TORCIA, WHARTON’S CRIMINAL LAW, § 96 (15th ed. 1993).

<sup>19</sup> See ROBINSON, *supra* note 1 at 467; see also 21 Am. Jur. 2d § 298 (observing that, “in crimes of this nature, the statute of limitations does not begin to run from the occurrence of the initial act, which may in itself embody all the elements of the crime, but from the occurrence of the most recent act, or until such course of conduct terminates.”).

<sup>20</sup> 21 Am. Jur. 2d § 298.

<sup>21</sup> *Toussie*, 397 U.S. at 122.

Court held that it was not. In reaching this decision, the Court articulated two factors to consider in analyzing whether an offense should be considered a continuing violation. The Court first noted that, in general, a statute of limitations should be liberally interpreted in favor of closure for an accused.<sup>22</sup> Second, the Court stated that where a criminal statute of limitation prescribes a specific limitations period for particular crimes, the particular offense should not be considered a continuing one “unless the explicit language of the substantive criminal statute compels such a conclusion, or the nature of the crime involved is such that Congress must assuredly have intended that it be treated as a continuing one.”<sup>23</sup>

The *Toussie* case has been followed in Minnesota.<sup>24</sup> In *State v. Lawrence*, the Minnesota Supreme Court determined that either concealing or possessing stolen goods is a continuing offense for the purpose of the statute of limitations for the crime of receiving stolen property because the words “concealing” and “possessing” contain “the notion that property is being kept from someone in violation of a duty to return and this duty to return continues.”<sup>25</sup>

## Legislative History: Changes to the Criminal Statute of Limitations Since 1989

The following information summarizes recent changes to the criminal statute of limitations.

**1989—Criminal sexual conduct cases involving minors.** In 1989, the legislature added a unique feature to the limitations period for child sex abuse to allow prosecution long after the offense occurred if the victim did not report the offense within the usual limitations period. This feature was added out of concern that many child sex abuse victims either repress their memories of the offense, are afraid to talk about it, or do not understand until adulthood that the behavior was unlawful. The legislature provided that, in these cases, the offense could be charged anytime within two years after the offense was reported to law enforcement, but not after the victim reached 25 years of age.<sup>26</sup>

**1991—Criminal sexual conduct case involving minors.** The 1991 Legislature extended the limitation period that applies to criminal sexual conduct against a victim under age 18 from two years to three years after the offense was reported to law enforcement authorities and struck

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<sup>22</sup> See *id.* at 115.

<sup>23</sup> *Id.*

<sup>24</sup> See *State v. Lawrence*, 312 N.W.2d 251, 255 (Minn. 1981); see also *Danielski*, 348 N.W.2d at 355.

<sup>25</sup> *Lawrence*, 312 N.W.2d at 253; c.f. *Sargent v. Tahash*, 160 N.W.2d 139, 141 (Minn. 1968) (holding that the crime of child abandonment or desertion is a continuing offense because “the offense is committed not by an overt act but by omission or neglect, and the offense continues so long as the neglect continues without excuse”); *Danielski*, 348 N.W.2d at 356 (holding that criminal sexual acts against a child that involved elements of coercion by one in authority was a continuing violation and the statute of limitations did not begin to run until the child is no longer subject to that authority). But see *State v. French*, 392 N.W.2d 596, 598 (Minn. Ct. App. 1986) (limiting the *Danielski* rule and holding that where the defendant does not control the day-to-day activities of a child victim of criminal sexual conduct, the limitation period is not tolled).

<sup>26</sup> Laws 1989, ch. 290, art. 4, § 17.

language stating that the indictment or complaint could not occur after the victim reached 25 years of age. The legislature also provided a separate seven-year limitations period to criminal sexual conduct offenses against a victim 18 years of age or older.<sup>27</sup>

**1993—Extension of application of tolling provision for when defendant is absent from state.** In 1993, the legislature provided that *all* limitations periods must exclude any time period during which the defendant was not an inhabitant of or usually resident within the state; prior to this change, the tolling provision applied only to offenses subject to the three-year limitations period.<sup>28</sup>

**1994—Diversion program participants.** In 1994, the legislature added the tolling provision for the time period during which the offender is involved in a diversion program related to the offense.<sup>29</sup>

**1995—Criminal sexual conduct; tolling of limitations period during DNA analysis.** In 1995, the limitation period for criminal sexual conduct offenses was increased from seven to nine years. Also, the legislature added the tolling provision for the time period during which evidence is under DNA analysis.<sup>30</sup>

**2000—Elimination of limitations period for crimes resulting in the death of the victim, kidnapping, and criminal sexual conduct cases where DNA evidence exists.** The 2000 Legislature eliminated the statute of limitations for any crime resulting in the death of the victim and for kidnapping. Prior to this change, the only crime that did not have a statute of limitations was murder. The legislature also eliminated the statute of limitations for first- through third-degree criminal sexual conduct offenses if physical evidence is collected and preserved that is capable of being tested for its DNA characteristics. The legislature retained the existing limitations periods for criminal sexual conduct offenses in which such evidence is not collected and preserved.<sup>31</sup>

**2005—Labor trafficking.** The 2005 Legislature created the crime of labor trafficking. In doing so, the legislature provided that there was no statute of limitations for labor trafficking if the victim was a minor, and a six-year limitations period applies if the victim was an adult.<sup>32</sup>

**2009—Criminal sexual conduct when victim is a minor; financial exploitation of a vulnerable adult.** In 2009, the legislature amended an exception to the statute's general nine-year limitations period for filing a complaint alleging criminal sexual conduct against a minor. The exception had provided that if the *victim* failed to report the offense within nine years of the commission of the offense, the limitations period would be three years after any source reported

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<sup>27</sup> [Laws 1991, ch. 232](#), § 3.

<sup>28</sup> [Laws 1993, ch. 326](#), art. 4, § 36.

<sup>29</sup> [Laws 1994, ch. 636](#), art. 2, § 64.

<sup>30</sup> [Laws 1995, ch. 226](#), art. 2, § 35.

<sup>31</sup> [Laws 2000, ch. 311](#), art. 4, § 9.

<sup>32</sup> [Laws 2005, ch. 136](#), art. 17, §

the offense. The legislature struck the clause providing that the exception would only apply if the victim failed to report the offense. Accordingly, under the 2009 law, the limitations period is the later of nine years after the commission of the offense or three years after reporting of the offense.<sup>33</sup>

As part of an omnibus vulnerable adults bill, the legislature added financial exploitation of a vulnerable adult to paragraph (h)—providing a five-year limitations period for certain theft offenses when the amount stolen exceeds \$35,000—thereby increasing the limitations period from three to five years for this offense.<sup>34</sup>

**2015—Sex trafficking.** Legislation increased the limitations period for sex trafficking offenses by adding the citation to the limitations periods applicable to criminal sexual conduct crimes. Prior to this change, sex trafficking crimes defaulted to the three-year limitations period.<sup>35</sup>

**2016—Identity theft crimes.** The 2016 Legislature extended the limitations period from three to five years for identity theft crimes involving eight or more direct victims or a combined loss of more than \$35,000, placing identity theft in line with other theft crimes.<sup>36</sup>

*For more information about criminal laws, visit the criminal justice area of our website, [www.house.mn/hrd/](http://www.house.mn/hrd/).*

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<sup>33</sup> [Laws 2009, ch. 59](#), art. 5, § 20. See *State v. Krikorian*, WL 68841 (Minn. Ct. App. Jan. 8, 2008). In this case, a victim reported sexual abuse of both himself and his sister. At that time, the language of the statute provided that the “victim” must not have reported the abuse for the exception to be applicable (i.e., allowing a complaint to be filed within three years of the report). Since the victim *did* report within nine years of the offense, the exception did not apply and the state was barred from prosecuting the offense because it did not file the complaint within nine years of the end of the abuse. Because the sister did not report the abuse herself, the exception applied and the state was allowed to prosecute the case because the complaint was filed within three years of the report.

<sup>34</sup> [Laws 2009, ch. 119](#), § 18.

<sup>35</sup> [Laws 2015, ch. 65](#), art. 6, § 21.

<sup>36</sup> [Laws 2016, ch. 121](#).