

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.

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

4

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;

36 (2) Class B felony, Class C felony, Class D felony, or an



1 unclassified felony, three (3) years; and

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

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

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

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

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

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

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

25 (A) Every element occurs; or

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

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

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

35 (g) The period of limitation does not run:

36 (1)(A) During any time when the accused is continually absent

1 from the state or has no reasonably ascertainable place of abode or work  
2 within the state.

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

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

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

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

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

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

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

19 (5) Kidnapping, § 5-11-102;

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

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

22 (8) Rape, § 5-14-103;

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

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

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

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

27 (13) Incest, § 5-26-202;

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

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

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

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

35 (18) Employing or consenting to the use of a child in a sexual  
36 performance, § 5-27-402;

- 1           (19) Producing, directing, or promoting a sexual performance by
- 2 a child, § 5-27-403;
- 3           (20) Computer child pornography, § 5-27-603;
- 4           (21) Computer exploitation of a child in the first degree, § 5-
- 5 27-605; and
- 6           (22) Criminal attempt, criminal solicitation, or criminal
- 7 conspiracy to commit any offense listed in this subsection, §§ 5-3-201, 5-3-
- 8 202, 5-3-301, and 5-3-401.

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

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

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23   /s/ D. Creekmore

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