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# Refining Tennessee's Criminal Statutes of Limitations

December 2018



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# **Refining Tennessee's Criminal Statutes of Limitations**

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State of Tennessee

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Cliff Lippard, Executive Director

December 12, 2018

The Honorable Randy McNally  
Lt. Governor and Speaker of the Senate

The Honorable Beth Harwell  
Speaker of the House of Representatives

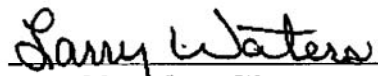
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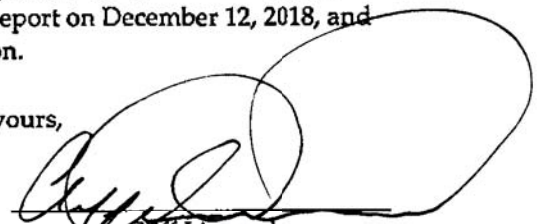
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Ladies and Gentlemen:

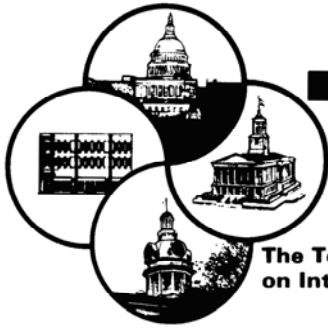
Transmitted herewith is the Commission's report on Tennessee's criminal statutes of limitations pursuant to Public Chapter 849, Acts of 2018, which directed that the study include, but not be limited to, information on the statutes of limitation on the prosecution of sexual offenses. The report includes recommendations on the elimination of the statute of limitation for certain felony child sexual abuse crimes and on the extension or elimination of the statute of limitation for second degree murder. The report also includes a recommendation on clarifying a drafting error found in current state statute, which has the unintentional effect of shortening the statute of limitation for rape offenses committed against minors. The Commission approved the report on December 12, 2018, and is hereby submitted for your consideration.

Respectfully yours,

  
Larry Waters  
Mayor Larry Waters  
Acting Chairman

  
Cliff Lippard  
Executive Director





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## ***MEMORANDUM***

**TO:** Commission Members

**FROM:** Cliff Lippard *Cliff*  
Executive Director

**DATE:** 12 December 2018

**SUBJECT:** Public Chapter 849, Acts of 2018 (Criminal Statute of Limitations)—Final Report for Approval

---

The attached Commission report is submitted for your approval. It was prepared in response to Public Chapter 849, Acts of 2018, which directs the Commission to perform a study on the effectiveness of statutes of limitation on the prosecution of criminal offenses. The Act directed that the study include, but shall not be limited to, information on the effectiveness of statutes of limitation on prosecution of sexual offenses, and requires the Commission to report its findings and recommendations, including any proposed legislation, by January 15, 2019. The motivation for this study stems, in part, from the testimony of a child sexual abuse survivor whose abuser escaped prosecution because of the state's statute of limitation expiring before he reported the crime to law enforcement. Since the draft of this report was presented at the last meeting, an appendix has been added to show how Tennessee's criminal statutes of limitation compare to its surrounding states for selected criminal offenses.

Starting in the early 2000s, many states began eliminating or extending the statutes of limitations for child sexual abuse crimes. Ten states have now fully eliminated statutes of limitation for all felony child sexual abuse crimes, and an additional 31 states have eliminated the statutes of limitation for some but not all felony child sexual abuse crimes. Over the last decade, while Tennessee has not fully eliminated its statutes of limitation for child sexual abuse crimes, it has extended them to either 25 or 15 years after the victim turns 18. And for the most serious child sex crimes—child rape and aggravated child rape—the state eliminated the statute of limitation in 2014, but placed a condition on its elimination: the victim must notify law enforcement or the district



attorney of the crime within three years after it occurs, if not, the limitation period otherwise in place would apply. Although the legislative intent was for the age-of-majority-plus-25 limitation period to remain in effect for child rape and aggravated child rape crimes not reported within three years, an apparent drafting error in the bill resulted in the statute of limitation for those crimes not reported within three years reverting to the shorter period of 15 years from the date of offense, which is used for other Class A felonies. **The report recommends that at a minimum, Tennessee law should be amended to clarify a drafting error found at Tennessee Code Annotated, Section 40-2-101(h)(2) and (i)(2), which has the unintentional effect of shortening the statute of limitation for child rape and aggravated child rape offenses if the victim does not report the crime within three years of the offense.**

Further, recognizing the special circumstances of child sexual abuse and the legitimate reasons why a complaint often is not made until many years after the abuse, **the report recommends that Tennessee should fully eliminate the statute of limitation for Class A and B felony child sexual abuse crimes and consider extending or eliminating the statute of limitation for other child sexual abuse crimes.** [Text edited to reflect amended recommendations made by Commission members at the December 12, 2018, meeting.]

The report also notes that prosecutors argue that Tennessee's current 15 year statute of limitation for second degree murder has prevented them from prosecuting "cold case" murders for which evidence of the premeditation element necessary for first degree murder is unavailable. First degree murder has no statute of limitation in Tennessee. Unlike Tennessee, 48 states have no statute of limitations for second degree murder. **The report recommends that the state may want to consider either extending or eliminating the statute of limitation for second degree murder.**

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## Summary and Recommendations: Refining Tennessee's Criminal Statutes of Limitations

Statutes of limitations, which are deadlines for bringing a legal action, have been part of the American legal system since its beginning. In the criminal law context, statutes of limitation establish periods within which prosecution can be commenced. After the relevant statutes of limitations period expires, the state can no longer bring charges, even if more than enough evidence of the perpetrator's guilt is later obtained.

The time limits for prosecution that statutes of limitations establish vary significantly both by state and by the type of criminal offense. The limits are a matter of legislative choice and represent efforts to balance the competing interests of protecting defendants from wrongful charges while maintaining public safety and finding justice for victims. There is no science for calculating the precise duration that most fairly balances these interests for each crime, according to legal scholars.<sup>1</sup> But in general, crimes that are considered more serious—as reflected in their corresponding punishments—have longer statutes of limitations periods. For example, first degree premeditated murder, commonly considered the most heinous crime, has historically been exempted from any statutes of limitations. In contrast to first degree murder, prosecutors have noted that the current 15 year statute of limitation for second degree murder in Tennessee has prevented them from prosecuting older “cold case” murders for which evidence of the premeditation element necessary for first degree murder is unavailable. Unlike Tennessee, 48 states have no statute of limitations for second degree murder. **The state may want to consider either extending or eliminating the statute of limitation for second degree murder.**

Survivors of child sexual abuse and their advocates have urged legislatures in many states to similarly eliminate or at least extend statutes of limitations for child sexual abuse crimes, which occur at shockingly high rates and have lifelong effects on survivors.<sup>2</sup> Prompted by testimony of a child sexual abuse survivor whose abuser escaped prosecution because of the state's statute of limitation, the Tennessee General Assembly passed Public Chapter 849, Acts of 2018, which directed the Commission to perform a study on Tennessee's criminal statutes of limitations and specified that the study include information on the effect of statutes of limitations on the prosecution of sexual offenses (appendix A).

Historically, justifications for criminal statutes of limitations emphasize the need to ensure “the accuracy of convictions,” according to working papers from 1970 of the National Commission on Reform of Federal Criminal

In the criminal law context, statutes of limitation establish periods within which prosecution can be commenced.

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<sup>1</sup> Powell 2008.

<sup>2</sup> Hamilton 2012.

Ten states have now fully eliminated statutes of limitation for all felony child sexual abuse crimes, and an additional 31 states have eliminated the statutes of limitation for some but not all felony child sexual abuse crimes.

Laws. As discussed in these papers, the need for statutes of limitations “comes from the ideas that prompt investigation and prosecution insures that conviction or acquittal is a reliable result and not the product of faded memory or unavailable evidence; that ancient wrongs ought not to be resurrected except in some cases of concealment of the offense or identity of the offender; and that community security and economy in allocation of enforcement resources require that most effort be concentrated on recent wrongs.”<sup>3</sup> These justifications continue to be echoed by stakeholders today, including defense attorneys and the American Civil Liberties Union, who express concern that if limitation periods are eliminated for child sexual abuse crimes, then the accused could be forced to defend themselves from very old charges of abuse after evidence showing their innocence is no longer available or has deteriorated.

But regardless of the existence of a criminal statute of limitation, defendants retain all substantive and procedural rights to protect against accusations of crimes from the distant past without evidence. For a variety of reasons, including insufficient evidence and unreported crimes, studies show that only a small percentage of child sexual abuse is ultimately prosecuted.<sup>4</sup> For those prosecuted, any case must ultimately be proven beyond a reasonable doubt by the state, and for this reason, cases initiated after long periods will inevitably be rare and carefully selected. As for criminal acts for which the statute of limitation has already expired, the US Supreme Court ruled in 2003 that states cannot retroactively revive the statute of limitation to allow prosecution because of the US Constitution’s prohibition on ex post facto laws.

Moreover, research shows that child sexual abuse often causes severe psychological trauma and that children often do not disclose child sexual abuse immediately after the abuse occurs. In fact, many victims do not disclose the abuse until later in life, if they disclose at all.<sup>5</sup> There are numerous examples of child sexual abuse victims reporting the abuse as an older adult, only to find out that the statute of limitation in place when the crime was committed prevents any prosecution, even if there is more than enough evidence to successfully prosecute the case.

Starting in the early 2000s, many states began eliminating or extending the statutes of limitations for child sexual abuse crimes. Ten states have now fully eliminated statutes of limitation for all felony child sexual abuse crimes, and an additional 31 states have eliminated the statutes of limitation for some but not all felony child sexual abuse crimes. Over the last decade, while Tennessee has not fully eliminated its statutes of limitation for child sexual abuse crimes, it has extended them to either 25

<sup>3</sup> National Commission on Reform of Federal Criminal Laws 1970.

<sup>4</sup> Snyder 2000.

<sup>5</sup> Townsend 2016.

or 15 years after the victim turns 18. And for the most serious sex crimes—rape offenses committed against minors—the state eliminated the statute of limitation in 2014, but placed a condition on its elimination: the victim must notify law enforcement or the district attorney of the crime within three years after it occurs; if not, the limitation period otherwise in place would apply. Although the legislative intent was for the age-of-majority-plus-25 limitation period to remain in effect for rapes of minors not reported within three years, an apparent drafting error in the bill resulted in the statute of limitation for those crimes not reported within three years reverting to the shorter periods of 15 years for a Class A felony and 8 years for a Class B felony.

Two other states have also eliminated statutes of limitations for child sex abuse crimes if certain conditions are met, but they have adopted different criteria than Tennessee. In Oregon and Massachusetts, specified serious felony sexual abuse crimes are exempt from existing statutes of limitation only if prosecutors obtain corroborating evidence of the crime. While Oregon's law specifies the types of corroborating evidence necessary to satisfy conditions for its exemption, Massachusetts' law provides only that to qualify for its exemption such evidence "be admissible during trial" and "not consist exclusively of the opinions of mental health professionals."

**Recognizing the special circumstances of child sexual abuse and the legitimate reasons why a complaint often cannot be made until many years after the abuse,**

- **Tennessee should fully eliminate the statute of limitation for Class A and B felony child sexual abuse crimes and consider extending or eliminating the statute of limitation for other child sexual abuse crimes; and**
- **At a minimum, Tennessee law should be amended to clarify the drafting error found at Tennessee Code Annotated, Section 40-2-101(h)(2) and (i)(2), which has the unintentional effect of shortening the statute of limitation for rape offenses committed against minors.<sup>6</sup>**

At a minimum, Tennessee law should be amended to clarify the drafting error found at Tennessee Code Annotated, Section 40-2-101(h)(2) and (i)(2), which has the unintentional effect of shortening the statute of limitation for rape offenses committed against minors.

<sup>6</sup> This includes Tennessee Code Annotated, Sections 39-13-522, 39-13-531, 39-13-502, and 39-13-503.





## Overview of Criminal Statutes of Limitations

Statutes of limitations have been part of the American legal system since its creation. In the criminal law context, statutes of limitations are defined as legislatively created laws that establish time limits within which a prosecution can be commenced after a crime is committed. After the expiration of the period designated by the statute of limitations, there is an absolute bar to the prosecution of the criminal offense, even if more than enough evidence of one's guilt is later obtained. The justification for the existence of criminal statutes of limitations centers on "ensuring the accuracy of convictions, and comes from the ideas that prompt investigation and prosecution insures that conviction or acquittal is a reliable result and not the product of faded memory or unavailable evidence; that ancient wrongs ought not to be resurrected except in some cases of concealment of the offense or identity of the offender; and that community security and economy in allocation of enforcement resources require that most effort be concentrated on recent wrongs."<sup>7</sup>

Criminal statutes of limitations vary significantly among the states and by type of criminal offense, but, in general, crimes that are considered more serious—as reflected in the corresponding punishments—have longer statutes of limitations periods. Legal scholars have noted that any duration selected for a limitations period will necessarily be somewhat arbitrary. There is no science for calculating the precise duration that most fairly balances the relevant competing interests for each crime, nor is it even clear that such duration exists.<sup>8</sup> First degree murder, which involves premeditation and is commonly considered the most heinous crime, has historically been exempted from having any statutes of limitations in all states.<sup>9</sup> Starting in the early 2000s, many states also began eliminating the statutes of limitations for child sexual abuse crimes, which occur at shockingly high rates and have lifelong negative effects on its survivors.<sup>10</sup> The rationale behind the elimination of the statutes of limitations for child sexual abuse crimes, apart from it being a very serious crime, is that many victims of child sexual abuse do not disclose the crime to law enforcement until well into adulthood, if ever. Thus, many victims report the child sexual abuse after the expiration of the statute of limitation, denying many child sexual abuse victims any chance of pursuing criminal accountability for the abuser.

Following an increased understanding of the effects of child sexual abuse crimes and the legitimate reasons for delayed disclosure by victims to law enforcement, the majority of states, unlike Tennessee, have now

Criminal statutes of limitations vary significantly among the states and by type of criminal offense, but, in general, crimes that are considered more serious—as reflected in the corresponding punishments—have longer statutes of limitations periods.

<sup>7</sup> National Commission on Reform of Federal Criminal Laws 1970.

<sup>8</sup> Powell 2008.

<sup>9</sup> Tennessee Code Annotated, Section 39-13-202.

<sup>10</sup> Burgess 2013.

Statutes of limitations reflect a legislative judgment regarding the balance between the competing interests of protecting the defendant from wrongful charges while maintaining public safety and finding justice for the victim.

eliminated the statutes of limitations on most child sexual abuse crimes. As numerous news articles illustrate, when statutes of limitations exist for child sexual abuse crimes, the following situation inevitably occurs: an adult overcomes the trauma of child sexual abuse and finds the courage to report to law enforcement the sexual abuse that they suffered many years before as a child, only to discover that the deadline to prosecute the offender has expired. Prompted by a victim's testimony of the same fact pattern, the Tennessee General Assembly passed Public Chapter 849, Acts of 2018, which directed the Commission to perform a study on Tennessee's criminal statutes of limitations and specified that the study shall include information on the effectiveness of statutes of limitations on the prosecution of sexual offenses (appendix A).

### ***Purpose of Criminal Statutes of Limitations***

Statutes of limitations reflect a legislative judgment regarding the balance between the competing interests of protecting the defendant from wrongful charges while maintaining public safety and finding justice for the victim. In the criminal justice system, they exist to protect the defendant against unfair prosecutions after evidence has deteriorated and memories have faded and to provide an incentive for efficient prosecutorial action in criminal cases.<sup>11</sup> They are by definition arbitrary, and their operation does not discriminate between the just and the unjust claim or the avoidable and unavoidable delay. Statutes of limitations are legislative acts of grace that reflect a policy of extending forgiveness and amnesty to the offender over time.<sup>12</sup> Another reason for statutes of limitation is that society's need for retribution diminishes with time. This reason becomes less persuasive when dealing with crimes as serious as murder and rape.<sup>13</sup>

For very heinous crimes, most states have now decided that the benefits of statutes of limitations are outweighed by other considerations, such as the need to find justice for the victim and society's interest in identifying rapists and murderers. The notion that offenders of particularly heinous crimes should escape criminal accountability and punishment and proceed with their lives as though nothing happened because a certain amount of time has passed runs afoul of societal ideas of justice. There is a view that a radical wrong cannot be forgiven and that "it should be punished whenever it is discovered, even decades after the event." There are crimes that are beyond human understanding, and they are not subject to forgiveness or to exemption from punishment.<sup>14</sup> Criminal statutes of limitation are, in

<sup>11</sup> State v. McCloud, 310 S.W.3d 851 (Tenn. Crim. App. 2009) and State v. Nielsen, 44 S.W.3d 496, 499 (Tenn. 2001).

<sup>12</sup> Kitai-Sangero 2013.

<sup>13</sup> Ochoa & Wistrich 1997.

<sup>14</sup> Kitai-Sangero 2013.

part, based on the decrease of the public outrage toward the commission of the crime over time. According to one legal scholar,

Levels of public outrage may justify the connection between the length of differing periods of limitations and the seriousness of the offense. The lapse of a substantial period of time may heal wounds and blunt public interest in pursuing justice for long past offenses. There is normally no public interest in reviving old occurrences when less serious offenses are involved. The attitude of 'let bygones be bygones' does not fit, however, the public sense of justice in regard to extremely serious crimes.<sup>15</sup>

### Safeguards Exist in the Criminal Justice Process

Regardless of the existence of a criminal statute of limitation, it is important to note that the defendant retains all substantive and procedural rights to protect against accusations of crimes from the distant past without evidence. Some stakeholders have raised concerns that the elimination of statutes of limitations would increase false accusations and lead to wrongful convictions.<sup>16</sup> But, studies show that child sexual abuse false accusations are rare,<sup>17</sup> and no evidence has been found to show that the extension or elimination of statutes of limitations leads to an increase in false accusations or wrongful convictions.

Without additional corroborating evidence, a single accusation of a decades old child sexual abuse crime would be unlikely to lead to a successful prosecution. Of the small percentage of child sex crimes that are reported, only a small number will actually be prosecuted. According to one study, on average, 86% of reported sexual assaults to law enforcement are never even referred to prosecutors.<sup>18</sup> Where law enforcement has chosen to not refer a claim of alleged child sexual abuse, 81% cited an insufficiency of evidence as their reason.<sup>19</sup>

For those referred to prosecutors, any case must ultimately be proven beyond a reasonable doubt by the state, and for this reason, cases initiated after long periods will inevitably be rare and carefully selected.<sup>20</sup> Moreover, without a grand jury finding probable cause, there can be no felony prosecution in Tennessee. The grand jury's purpose is to provide a safeguard against arbitrary or overzealous prosecution by reviewing evidence obtained by the prosecutor and deciding whether probable cause

Regardless of the existence of a criminal statute of limitation, it is important to note that the defendant retains all substantive and procedural rights to protect against false accusations of crimes from the distant past.

<sup>15</sup> Ibid.

<sup>16</sup> TACIR staff survey of Tennessee Public Defenders regarding criminal statutes of limitations.

<sup>17</sup> Bala, Lee, and McNamara 2001; and National Children's Advocacy Center 2017.

<sup>18</sup> Campbell 2012.

<sup>19</sup> Walsh 2008.

<sup>20</sup> Telephone interview with Aaron Knott, Attorney, Oregon Attorney General, June 28, 2018.

There are no constitutional requirements or court rulings that mandate having criminal statutes of limitations. In fact, some states have no criminal statutes of limitations for any felony crimes.

exists that the accused committed the crime. Even if a grand jury indicts a defendant, prosecutors still have broad discretion to decline a case if they decide there is not enough evidence to prove the case beyond a reasonable doubt. Prosecutors in Tennessee who responded to TACIR staff's survey have indicated that the majority of child sexual abuse complaints do not have sufficient evidence for prosecution.<sup>21</sup> Studies on prosecutors' discretionary charging decisions show that prosecutors attempt to avoid uncertainty by dropping cases when conviction seems unlikely and are more likely to bring charges if the crime is serious, the evidence is strong, the suspect is culpable, and the victim is credible and blameless.<sup>22</sup> Furthermore, prosecutors have an ethical obligation to not prosecute a criminal charge they know is not supported by probable cause.<sup>23</sup>

***Constitutional considerations: States cannot retroactively change the law to allow the prosecution of a criminal act that is already barred by an expired statute of limitation.***

While statutes of limitations have existed in the American legal system since its beginning, there are no constitutional requirements or court rulings that mandate having criminal statutes of limitations; they are solely a matter of legislative choice. Accordingly, the time periods in these statutes can be changed at the will of the legislature or can be eliminated entirely.<sup>24</sup> In fact, some states have no criminal statutes of limitations for any felony crimes.<sup>25</sup> If a state amends its existing laws on criminal statutes of limitations, however, there are some constitutional considerations, including the prohibition against ex post facto laws.

Both the Federal and Tennessee Constitutions prohibit ex post facto laws. The United States Constitution has two clauses containing the prohibition, one aimed at Congress<sup>26</sup> and the other aimed at the states,<sup>27</sup> which provides that no state shall pass any ex post facto law. Article 1, Section 11, of Tennessee's Constitution states that "laws made for the punishment of acts committed previous to the existence of such laws, and by them only declared criminal, are contrary to the principles of a free Government; wherefore no ex post facto law shall be made." In 2003, the United States Supreme Court held in a 5-4 opinion that a state cannot revive a criminal claim that is time-barred. Laws that attempt to revive an expired statute

<sup>21</sup> Five elected district attorneys responded to a TACIR staff survey regarding criminal statutes of limitations and child sexual abuse prosecution.

<sup>22</sup> Spohn 2002.

<sup>23</sup> Tennessee Rules of Professional Conduct, Rule 3.8: Special Responsibilities of a Prosecutor.

<sup>24</sup> Adlestein 1995.

<sup>25</sup> Kentucky, North Carolina, South Carolina, West Virginia, and Wyoming do not have any statutes of limitations on felony crimes.

<sup>26</sup> US Constitution Article I, Section 9, Clause 3.

<sup>27</sup> US Constitution Article I, Section 10, Clause 1.

of limitations violate the ex post facto clause of the constitution.<sup>28</sup> In other words, a state cannot permit the prosecution of an offense for which the statute of limitation had previously expired by later reviving the expired statute of limitation. The Court reasoned that the features of the law produce the kind of retroactivity that the Constitution forbids by inflicting punishment where the party was not, by law, liable to any punishment. For example, assume that John commits a crime against Jane, but Jane does not report the crime for many years until after the statute of limitations has expired. The legislature cannot enact a new law that would allow the state more time to prosecute John for that specific offense.

As long as the new statute of limitations law does not “revive” an expired statute of limitations, then it is constitutional under both the Tennessee and US constitutions. It should be noted that prior to 2016, based on state court precedent, Tennessee provided broader ex post facto protections than the federal constitution and did not allow the retroactive extension of unexpired criminal statutes of limitations, whereas the federal government and most other states did.<sup>29</sup> In 2016, the Tennessee Supreme Court specifically overruled its prior holding on ex post facto laws and held that “the ex post facto clause of the Tennessee Constitution has the same definition and scope as the federal ex post facto clause.”<sup>30</sup> In other words, if a new Tennessee law were to extend a statute of limitation for a certain crime, it could now apply to both future crimes and also past crimes for which the statutes of limitation had not already expired.

Past cases have considered how the US Constitution’s Due Process and Speedy Trial Clauses affect criminal statutes of limitations. Statutes of limitations apply to the time period before criminal proceedings are started while the right to a speedy trial applies to the length of time between the start of criminal proceedings and cases going to trial. The US Constitution’s Sixth Amendment’s Speedy Trial Clause provides that in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial. On its face, the protection of the amendment is activated only when a criminal prosecution has begun and extends only to those persons who have been accused in the course of that prosecution. The US Supreme Court has held that the Speedy Trial Clause therefore does not offer the defendant any protection against pre-indictment delay.<sup>31</sup> Before indictment, the statutes of limitation, and in extreme circumstances, the Due Process Clauses, protect the accused from unreasonable delays. The Due Process Clauses may be implicated when a crime has no statute of

As long as the new statute of limitations law does not “revive” an expired statute of limitations, then it is constitutional under both the Tennessee and US constitutions.

<sup>28</sup> *Stogner v. California*, United States Supreme Court, 539 U.S. 607 (2003) and US Constitution Article I, Section 10, Clause 1.

<sup>29</sup> *Miller v. State*, 584 S.W.2d 758 (Tenn. 1979) and Tennessee Attorney General Opinion (April 3, 2006), Opinion No. 06-058.

<sup>30</sup> *State v. Pruitt*, 510 S.W.3d 398 (Tenn. 2016).

<sup>31</sup> *United States v. Marion*, 404 U.S. 307, (1971).

Since 2013, prosecutors can identify a suspect by DNA profile in a warrant or indictment when their name is unknown so that prosecution can be considered commenced before the statute of limitations expires.

limitations or when the period of limitation has not run. Extraordinary circumstances may trigger due process implications.<sup>32</sup> The US Supreme Court in *United States v. Marion* observed that even “the Government concedes that the Due Process Clause of the Fifth Amendment would require dismissal of an indictment if it were shown at trial that the pre-indictment delay caused substantial prejudice to [a defendant’s] rights to a fair trial and that the delay was an intentional device to gain tactical advantage over the accused.”<sup>33</sup>

### ***Tennessee’s Current Criminal Statutes of Limitations***

Tennessee’s law on criminal statutes of limitations provides that the prosecution of an alleged criminal must be commenced within a fixed number of years after the crime was committed. The commencement of prosecution, for purposes of meeting the limitations period, includes several actions, such as the issuing of a warrant or through a grand jury indictment. Since 2013, a prosecution is also considered commenced for purposes of the limitations period if an indictment or warrant is issued identifying the offender by DNA profile.<sup>34</sup> Known as “John Doe warrants,” this law allows prosecutors to identify a suspect by DNA profile in a warrant or indictment when their name is unknown so that prosecution can be considered commenced before the statute of limitations expires. Later, once law enforcement determines the name of the defendant, a superseding indictment can be issued.

Tennessee’s general criminal statutes of limitations periods are based on the level of the crime:

- 15 years for a Class A felony,
- 8 years for a Class B felony,
- 4 years for a Class C or Class D felony,
- 2 years for a Class E felony,<sup>35</sup> and
- 1 year for misdemeanors.<sup>36</sup>

However, there are exceptions to the aforementioned general statutes of limitations for first degree murder, which has no statute of limitation, and for sex crimes committed against children, which have longer statutes of limitation periods. See appendix B.

<sup>32</sup> Doyle 2017.

<sup>33</sup> *United States v. Marion*, 404 U.S. 307, 1971); and *United States v. Gouveia*, 467 U.S. 180, (1984).

<sup>34</sup> Tennessee Code Annotated, Section 40-2-104; and *State v. Burdick*, 395 S.W.3d 120, (Tenn. 2012).

<sup>35</sup> Tennessee Code Annotated, Section 40-2-101(b).

<sup>36</sup> Tennessee Code Annotated, Section 40-2-102.



## Time Limits to Prosecute Child Sex Abuse

Several exceptions to Tennessee's general statute of limitations have been created over the last two decades for child sexual abuse crimes. In recognition of the legitimate reasons why a child victim often does not report the crime until adulthood, the state has lengthened, but not eliminated, the statute of limitations period for the various child sex criminal offenses listed in Tennessee Code Annotated. Child victim advocates have suggested that the statute of limitation periods for these crimes should be eliminated.<sup>37</sup>

## Child Sexual Abuse and Delayed Disclosure

The rationale for expanding or eliminating the statutes of limitations for child sexual abuse crimes comes from research showing that a relatively large percentage of child sexual abuse victims do not report the crime until well into adulthood. While counter-intuitive to some, research shows that victims of child sexual abuse often do not disclose the sexual abuse until much later in life, if they disclose at all.<sup>38</sup> According to some studies, only one-third of victims discloses in childhood and another one-third never discloses the abuse; the remaining one-third discloses in adulthood, with age 48 as the median age of disclosure of child sexual abuse.<sup>39</sup> For those victims of child sexual abuse who do find the courage to disclose the crime to law enforcement later as adults, statutes of limitations can block any hope of seeing the offender held responsible.

According to experts, the reasons for delayed disclosure by victims of child sexual abuse are specific to each individual but often involve issues that result from the severe psychological trauma of the sexual abuse. Victims often internalize the ugliness of child abuse for years because they fail to understand exactly what happened to them or how to judge it. They need maturity to comprehend the situation.<sup>40</sup> According to Marci Hamilton, a nationally recognized expert on child sexual abuse statutes of limitations,

the real problem here is that children who are sexually abused cannot comprehend what is happening to them. Until a child reaches puberty and some understanding of sexuality emerges, an abused young child might sense something is wrong but cannot understand that what happened is, in fact, sex. Nor can he or she fully comprehend just how monstrous the experience was. They likely feel shame and horror but not because they

While counter-intuitive to some, research shows that victims of child sexual abuse often do not disclose the sexual abuse until much later in life, if they disclose at all.

<sup>37</sup> Rape, Abuse & Incest National Network 2015.

<sup>38</sup> Townsend 2016.

<sup>39</sup> Telephone interview with Marci Hamilton, CEO and academic director, CHILD USA, Fox Professor of Practice University of Pennsylvania, April 17, 2018; and Hamilton 2018.

<sup>40</sup> Hamilton 2018.



Recognizing the special circumstances of child sexual abuse and the legitimate reasons why a complaint often is not made until many years after the abuse, most states have eliminated the statutes of limitation for many child sexual abuse crimes.

can intellectually or spiritually assess the crime for what it is. The reality is that it often takes decades for a child sex abuse survivor to come forward to family, friends, a spouse, or the authorities.<sup>41</sup>

While the abuse is occurring, reporting is at odds with surviving. A child suffering at the hands of a sexual abuser often disengages from the anxiety by dissociating him or herself from the trauma.<sup>42</sup> Reporting the abuse goes against the victim's rational survival response by forcing the child to acknowledge and confront the reality she must dissociate herself from in order to survive. According to experts, at first, hidden memories that can't be consciously accessed may protect the individual from the emotional pain of recalling the event. But eventually those suppressed memories can cause debilitating psychological problems, such as anxiety, depression, post-traumatic stress disorder, or dissociative disorders. Recognizing the special circumstances of child sexual abuse and the legitimate reasons why a complaint often is not made until many years after the abuse, most states have eliminated the statutes of limitation for many child sexual abuse crimes.

### **Extension—Instead of Elimination—of the Statute of Limitations for Child Sexual Abuse Crimes Prevents Some Victims from Seeing Justice.**

Recent events in Pennsylvania illustrate the reasoning behind eliminating, compared to only extending, the statute of limitations for child sexual abuse crimes. In 2018, a Pennsylvania statewide investigating grand jury report was issued following the broadest inquiry in US history into child sexual abuse in the Catholic Church. The report found that simply extending the statute of limitation for child sexual abuse is not enough; it should be eliminated, as the majority of other states have done.<sup>43</sup> Pennsylvania, similar to Tennessee, has extended, but not eliminated, the statutes of limitations for child sexual abuse crimes.<sup>44</sup> The Pennsylvania grand jury's 18-month investigation identified over 1,000 victims of child sexual abuse and heard testimony from many victims. The report details numerous horrific sex crimes committed against children. However, as the report notes, "almost every instance of abuse we found is too old to be prosecuted."<sup>45</sup> The grand jury's report states that "if we lived in New Jersey, or Delaware, or New York or Maryland, we would today be issuing a presentment charging

<sup>41</sup> Hamilton 2012.

<sup>42</sup> Burgess 2013.

<sup>43</sup> Investigating Grand Jury 2018.

<sup>44</sup> Pennsylvania Consolidated Statutes, Title 42, Part 6, Chapter 55, Section 5552.

<sup>45</sup> Investigating Grand Jury 2018.

dozens of priests. But because we happen to live here instead, the number is two. Not something for Pennsylvania to be proud of.”<sup>46</sup>

The Pennsylvania grand jury's first recommendation in the over 800-page report is to eliminate the statute of limitations for child sexual abuse and provided justification for why longer statutes of limitation are not enough:

We ask the Pennsylvania legislature to stop shielding child sexual predators behind the criminal statute of limitations. Thanks to a recent amendment, the current law permits victims to come forward until age 50. That's better than it was before, but still not good enough; we should just get rid of it. We heard from plenty of victims who are now in their 50's, 60's, 70's, and even one who was 83 years old. We want future victims to know they will always have the force of the criminal law behind them, no matter how long they live. And we want future child predators to know they should always be looking over their shoulder—no matter how long they live. No piece of legislation can predict the point at which a victim of child sex abuse will find the strength to come forward.<sup>47</sup>

Following similar rationales, the majority of other states have been prompted to simply eliminate the statute of limitations on most child sexual abuse crimes instead of only extending them.

However, some stakeholders, including defense attorneys and the American Civil Liberties Union (ACLU), are opposed to eliminating the statute of limitation for child sexual abuse crimes. According to ACLU Executive Director Monica Hopkins-Maxwell in testimony regarding the elimination of the statutes of limitations of all felony sexual offenses before the Washington DC Council Committee on Judiciary and Public Safety,

statutes of limitations are a critical component of the American criminal justice system. They serve the vital purpose of “protecting individuals from having to defend themselves against charges when the basic facts may have become obscured by the passage of time and to minimize the danger of official punishment because of acts in the far distant past.” They allow both the prosecution and the defense to present a case before the evidence gets stale and they help ensure that individuals accused of a crime have a fair opportunity to defend themselves. As more time lapses between an alleged commission of a crime and the

<sup>46</sup> Ibid at page 308.

<sup>47</sup> Ibid.

Defense attorneys and the American Civil Liberties Union (ACLU) are opposed to eliminating the statute of limitation for child sexual abuse crimes because as time passes after an alleged crime, it becomes increasingly difficult for the accused to prepare a meaningful defense and provide evidence of their innocence.

prosecution, it becomes increasingly difficult, if not impossible, for the accused to prepare a meaningful defense and provide exculpatory evidence—memories fail, witnesses die, and records are lost.<sup>48</sup>

**Longer Statutes of Limitations Exist for Child Sex Crimes in Tennessee.**

For most sex crimes committed against children, the current statute of limitation period in Tennessee is somewhere between 10 to 25 years after the victim reaches 18 years of age. See table 1.

**Table 1. Tennessee’s Statute of Limitations on Child Sexual Abuse Criminal Offenses**

Child Sexual Abuse Criminal Offenses	Felony Class	Tennessee Code Annotated Citation	Current Statute of Limitations
Aggravated rape of a child (3 years or less in age)	A	39-13-531	None if reported to law enforcement within 3 years; otherwise 15 years
Rape of a child (over 3 years and up to 12 years of age)	A	39-13-522	None if reported to law enforcement within 3 years; otherwise 15 years
Aggravated rape (victim ages 13 and above)	A	39-13-502	None if reported to law enforcement within 3 years; otherwise 15 years
Trafficking for a commercial sex act	A or B	39-13-309	Age 18 + 15 years (victim age at deadline: 33)
Rape (victim ages 13 and above)	B	39-13-503	None if reported to law enforcement within 3 years; otherwise 8 years
Aggravated sexual battery (against child less than 18)	B	39-13-504	Age 18 + 25 years (age 43)
Especially aggravated sexual exploitation of a minor	B	39-17-1005	Age 18 + 25 years (age 43)
Aggravated sexual exploitation of a minor	B or C	39-17-1004	Age 18 + 25 years (age 43)
Sexual exploitation of minor	B,C, or D	39-17-1003	Age 18 + 25 years (age 43)
Statutory rape by an authority figure	B	39-13-532	Age 18 + 25 years (age 43)
Offense of soliciting sexual exploitation of a minor—Exploitation of a minor by electronic means	B, C, or E	39-13-529	Age 18+15 years (age 33)
Incest (against a child less than 18)	C	39-15-302	Age 18 + 25 years (age 43)
Sexual battery by an authority figure	C	39-13-527	Age 18 + 25 years (age 43)
Aggravated statutory rape (victim age 13 to 17 and offender is at least 10 years older)	D	39-13-506(c)	Age 18 +15 years (age 33)
Employment of minors in distribution of obscene material	E	39-17-902(b)	Age 18 + 25 years (age 43)
Sexual battery (against child less than 18)	E	39-13-505	Age 18 + 25 years (age 43)

Source: TACIR staff review of Tennessee Code Annotated.

<sup>48</sup> Hopkins-Maxwell 2017.

### *Unintentional Shortening of the Statute of Limitations for Child Rape*

In 2014, responding to a significant backlog of untested rape kits in Memphis, members of the Tennessee General Assembly introduced a bill that would have simply eliminated the statute of limitations for rape offenses.<sup>49</sup> However, before the bill was passed it was amended in committee to provide that the statutes of limitations for the crimes of aggravated rape, rape, aggravated rape of a child, and rape of a child would be eliminated only if the victim notifies law enforcement or the office of the district attorney within three years of the alleged offense. If the victim did not meet the three-year notification provision, then the new law stated that “prosecution shall be commenced within the times otherwise provided by this section.”<sup>50</sup> In other words, the statute of limitations already in place for those rape offenses would apply if the three-year notification condition was not met. The statute of limitations for prosecuting rape offenses committed against minors had previously been extended beyond the limit for other Class A and B felonies to allow 25 years after the victim reaches the age of 18. Although the legislative intent was for the age-of-majority-plus-25 limitation period to remain in effect for rape offenses committed against minors not reported within three years, an apparent drafting error in the bill resulted in the statute of limitation for those crimes not reported within three years reverting to the shorter periods of 15 years for a Class A felony and 8 years for a Class B felony.<sup>51</sup>

The following example illustrates the issue: if a 5-year old child is raped in 2015, and does not notify authorities within the first 3 years, then she would have until age 20 to report the crime and for the prosecution to be commenced;<sup>52</sup> whereas under the previous statute of limitation, the child rape victim would have until age 43 (i.e., 25 years after turning 18) to report the crime and for prosecution to be commenced. A review of the committee hearings on the bill and interviews of stakeholders indicate that the shortening of the statutes of limitations for rape offenses committed against minors for those victims that did not report within the first three years was not the intent of the law.

### **Cost of Extending or Eliminating Statutes of Limitation for Certain Child Sexual Abuse Crimes**

It is difficult to accurately estimate the cost of extending or eliminating the statutes of limitations for any crime because information is not collected on

<sup>49</sup> Public Chapter 836, Acts of 2014.

<sup>50</sup> Tennessee Code Annotated, Section 40-2-101(l)(1) and (2).

<sup>51</sup> Note that the rape offenses committed against minors include Tennessee Code Annotated, Sections 39-13-522, 39-13-531, 39-13-502, and 39-13-503.

<sup>52</sup> Note that the rape of a five-year old victim would fall under Tennessee Code Annotated, Section 39-13-522, which is a Class A felony; while the rape of a 13-year old victim, for example, would fall under Tennessee Code Annotated, Section 39-13-503, which is a Class B felony. See table 1 for more information.

Fiscal notes for prior legislation indicate that the cost of extending or eliminating child sexual abuse statutes of limitations would be either insignificant or relatively small.

the number of people who report crimes after the expiration of the statute of limitations, and it is unknown how many cases would be prosecuted if not for an expired statute of limitations. When criminal statutes of limitations are extended or eliminated for a crime, in theory, more people could be prosecuted and incarcerated for those offenses. When a statute of limitation is eliminated for a crime for which the limitation period has already been lengthened, there would be less of an effect on cost. For example, if the state were to eliminate the statute of limitations for a crime that currently has a statute of limitations period of 25 years after the victim turns 18 years of age, the expected number of additional prosecutions and incarcerations would be much less than if the state eliminated the statute of limitations for a crime that only had a 4-year limitations period. Moreover, the elimination of statutes of limitations for crimes that already have lengthy limitation periods would only be adding the possibility of the state prosecuting much older crimes, which typically have less evidence, are much harder to prosecute, and therefore are less likely to be prosecuted.<sup>53</sup>

Fiscal notes for prior legislation indicate that the cost of extending or eliminating child sexual abuse statutes of limitations would be either insignificant or relatively small. For example, a fiscal memorandum on a 2014 bill that would have originally simply eliminated the statute of limitation for all rape offenses was determined to be insignificant.<sup>54</sup> The cost estimates from individual groups affected by proposed statute of limitation legislation varies. Generally, the Tennessee Department of Correction estimates a modest increase in their costs. Tennessee's district attorneys and public defenders typically estimate an increase in costs since they think additional attorneys could be required in the future. Tennessee's Administrative Office of the Courts has estimated that its costs would not increase as a result of any of these bills.<sup>55</sup>

### Other States' Criminal Statutes of Limitations

The national trend is to eliminate the criminal statutes of limitations on most child sexual abuse crimes based on the aforementioned research showing that child sexual abuse victims often, for understandable reasons, delay reporting the abuse until much later in adulthood. The majority of states have now eliminated most felony child sexual abuse crime statutes of limitation. In general, 10 states have eliminated the statute of limitation for all felony child sexual abuse crimes; 31 states have eliminated the statute of limitation for some but not all felony child sexual abuse crimes; and 9 states have a statute of limitation on all felony child sexual abuse crimes.<sup>56</sup>

<sup>53</sup> Walsh 2008.

<sup>54</sup> Fiscal Memorandum on Amendment 013203 for Senate Bill 2084, House Bill 2188, of 2014.

<sup>55</sup> Ibid.

<sup>56</sup> Note that Tennessee has eliminated the statute of limitation for rape offenses committed against minors but only if reported within the first three years after the crime.





Oregon passed a law in 2016 that eliminated the statute of limitations for certain serious sex crimes but requires specified types of corroborating evidence for a prosecution brought more than 12 years after the victim turns 18.

Building on Massachusetts' example, Oregon passed a law in 2016 that eliminated the statute of limitations for certain serious sex crimes but requires specified types of corroborating evidence for a prosecution brought more than 12 years after the victim turns 18.<sup>58</sup> Charges can now be filed in Oregon at any time if either DNA evidence points to a suspect or the prosecuting attorney obtains other corroborating evidence of the sex crime.<sup>59</sup> Oregon's law (appendix D) requires that the other corroborating evidence consist of at least one of the following:

- Physical evidence, including but not limited to audio, video or other electronic recordings, text messages, guest book logs, telephone recordings and photographs
- A confession, made by the defendant, to the crime the victim reported
- An oral statement, made by the victim to another person in temporal proximity to the commission of the crime, corroborating the victim's report of the crime to a law enforcement agency
- A written statement, created by the victim in temporal proximity to the commission of the crime and subsequently delivered to another person or to a law enforcement agency, corroborating the victim's report of the crime to a law enforcement agency
- A report made by a different victim to a law enforcement agency, made either before or after the victim's report, alleging that the defendant committed another crime of the same or similar character such that the two crimes could be charged in the same charging instrument<sup>60</sup>

According to Oregon State Senator Floyd Prozanski, who chairs the Senate Judiciary Committee, he favored this approach over doing away with a statute of limitations entirely, based on concerns that having no statute of limitations could lead to improper prosecutions. "As a safeguard for justice, we felt we needed to have some parameters," Prozanski said. Brenda Tracy, an Oregon rape survivor who has lobbied for an extension to the statute of limitations for rape and other sexual offenses, said the proposed bill essentially opens the gate for old crimes to be prosecuted as long as there's evidence to support it. "I feel like this is the next best thing to eliminating the statute of limitations entirely," Tracy said. "This is closer. It's better than what we have."<sup>61</sup>

<sup>58</sup> Oregon Annotated Statutes, Section 131.125, Subsection 12.

<sup>59</sup> Oregon's corroborating evidence exception that eliminates the statute of limitation applies to the crimes of rape in the first degree, sodomy in the first degree, unlawful sexual penetration in the first degree, or sexual abuse in the first degree. See Subsection 12 of Oregon Annotated Statutes, Section 131.125.

<sup>60</sup> Ibid.

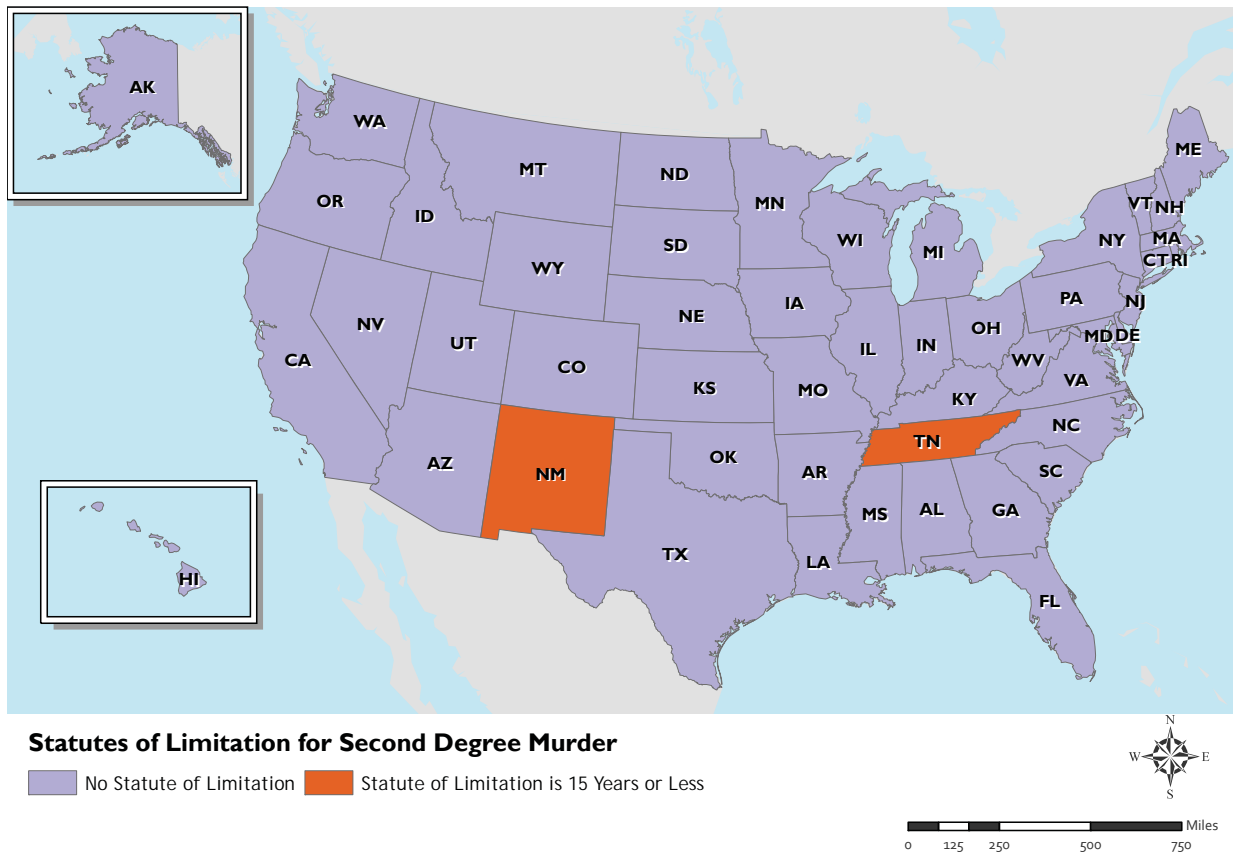
<sup>61</sup> Bernstein 2016.



## Murder, Premeditation, and the Statutes of Limitation

Tennessee law provides that a “person may be prosecuted, tried and punished for an offense punishable with death or by imprisonment in the penitentiary during life, at any time after the offense is committed.”<sup>62</sup> Under present law, first degree murder is the only crime punishable by death or life imprisonment, and thus has no statute of limitation. In contrast, second degree murder, a Class A felony, has a 15-year statute of limitation.<sup>63</sup> Some district attorney generals have noted that the shorter 15-year limitations period for second degree murder has blocked their attempts to prosecute homicide “cold cases” for which they have evidence to prove that the defendant killed the victim but not enough evidence to show that the killing was premeditated.<sup>64</sup> Without evidence of premeditation,<sup>65</sup> an element of first degree murder, prosecutors are barred from attempting to find justice for victims of “cold case” murders not solved within 15 years.<sup>66</sup> In comparison, as map 2 shows, 48 states have no statute of limitation on the prosecution of second degree murder.

Map 2. Statutes of Limitation for Second Degree Murder



Source: TACIR staff analysis of other states' laws on second degree murder statutes of limitation.

<sup>62</sup> Tennessee Code Annotated, Section 40-2-101(a).

<sup>63</sup> Tennessee Code Annotated, Section 39-13-210.

<sup>64</sup> Interview with Stephen Crump, district attorney, 10<sup>th</sup> Judicial District, May 9, 2018; and telephone interview with Neal Pinkston, district attorney, 11<sup>th</sup> Judicial District, May 15, 2018.

<sup>65</sup> Tennessee Code Annotated, Section 39-13-202(d) defines premeditation as “an act done after the exercise of reflection and judgment.” “Premeditation” means that the intent to kill must have been formed prior to the act itself. It is not necessary that the purpose to kill preexist in the mind of the accused for any definite period of time.

<sup>66</sup> Tennessee Code Annotated, Section 39-13-202.



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## Persons Interviewed

Terry Ashe, Executive Director  
Tennessee Sheriffs' Association

Joseph Atnip, Public Defender  
Tennessee's 27<sup>th</sup> Judicial District

Susan Blake, Prosecutors Advisory Council  
Office of the Kentucky Attorney General

Tom Castelli, Legal Director  
American Civil Liberties Union of Tennessee

Donna Coulter  
Abuse Survivor

Stephen Crump, District Attorney  
Tennessee's 10<sup>th</sup> Judicial District

Maggi Duncan, Executive Director  
Tennessee Association of Chiefs of Police

Jerry Estes, Executive Director  
Tennessee District Attorneys General Conference

Patrick Frogge, Executive Director  
Tennessee District Public Defenders Conference

Marci A. Hamilton, Law Professor  
University of Pennsylvania  
CEO at CHILD USA

Jeffrey Harmon, Public Defender  
Tennessee's 12<sup>th</sup> Judicial District

Senator Bill Ketron  
District 13, Murfreesboro

Aaron Knott, Legislative Director  
Oregon Attorney General  
Oregon Department of Justice

Jeff Long, Sheriff  
Williamson County

Neal Pinkston, District Attorney  
Tennessee's 11<sup>th</sup> Judicial District

Representative Mike Sparks  
District 49, Smyrna

Thomas Tigue, Chief Deputy Attorney  
Tennessee Office of Legal Services of the General  
Assembly

Kathy Walsh, Executive Director  
Tennessee Coalition to End Domestic and Sexual  
Violence



## Appendix A: Public Chapter 849, Acts of 2018



# *State of Tennessee*

## **PUBLIC CHAPTER NO. 849**

**SENATE BILL NO. 2538**

**By Ketron**

Substituted for: House Bill No. 2536

By Sparks, Hardaway

AN ACT to amend Tennessee Code Annotated, Title 39 and Title 40, relative to statutes of limitation on prosecution for criminal offenses.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. (a) The Tennessee advisory commission on intergovernmental relations (TACIR) is directed to perform a study on the effectiveness of statutes of limitation on prosecution for criminal offenses. The study shall include, but shall not be limited to, information on the effectiveness of statutes of limitation on prosecution of sexual offenses. The study may include comparisons of Tennessee statutes of limitation on prosecution of criminal offenses to neighboring states.

(b) TACIR shall report its findings and recommendations, including any proposed legislation, by January 15, 2019.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.

SENATE BILL NO. 2538

PASSED: April 12, 2018

  
RANDY McNALLY  
SPEAKER OF THE SENATE

  
BETH HARWELL, SPEAKER  
HOUSE OF REPRESENTATIVES

APPROVED this 26<sup>th</sup> day of April 2018

  
BILL HASLAM, GOVERNOR



## Appendix B: Tennessee Code Annotated, Section 40-2-101

### Tenn. Code Ann. § 40-2-101

Current through 2017 Regular Session (Chapter 493).

***Tennessee Code Annotated > Title 40 Criminal Procedure > Chapter 2  
Limitation of Prosecutions***

#### **40-2-101. Felonies.**

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- (a) A person may be prosecuted, tried and punished for an offense punishable with death or by imprisonment in the penitentiary during life, at any time after the offense is committed.
- (b) Prosecution for a felony offense shall begin within:
  - (1) Fifteen (15) years for a Class A felony;
  - (2) Eight (8) years for a Class B felony;
  - (3) Four (4) years for a Class C or Class D felony; and
  - (4) Two (2) years for a Class E felony.
- (c) Notwithstanding subsections (a) and (b), offenses arising under the revenue laws of the state shall be commenced within the three (3) years following the commission of the offense, except that the period of limitation of prosecution shall be six (6) years in the following instances:
  - (1) Offenses involving the defrauding or attempting to defraud the state of Tennessee or any agency of the state, whether by conspiracy or not, and in any manner;
  - (2) The offense of willfully attempting in any manner to evade or defeat any tax or the payment of a tax;
  - (3) The offense of willfully aiding or abetting, or procuring, counseling or advising, the preparation or presentation under, or in connection with, any matter arising under the revenue laws of the state, or a false or fraudulent return, affidavit, claim or document, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present the return, affidavit, claim or document; and
  - (4) The offense of willfully failing to pay any tax, or make any return at the time or times required by law or regulation.
- (d) Notwithstanding the provisions of subdivision (b)(3) to the contrary, prosecution for the offense of arson as prohibited by § 39-14-301 shall commence within eight (8) years from the date the offense occurs.
- (e) Prosecutions for any offense committed against a child prior to July 1, 1997, that constitutes a criminal offense under § 39-2-601 [repealed], § 39-2-603 [repealed], § 39-2-604 [repealed], § 39-2-606 [repealed], § 39-2-607 [repealed], § 39-2-608 [repealed], § 39-2-612 [repealed], § 39-4-306 [repealed], § 39-4-307 [repealed], § 39-6-1137 [repealed], or § 39-6-1138 [repealed], or under §§ 39-13-502 -- 39-13-505, § 39-15-302 or § 39-17-902 shall commence no later than the date the child attains the age of majority or within four (4) years after the commission of the offense, whichever occurs later; provided, that pursuant to subsection (a), an offense punishable by life imprisonment may be prosecuted at any time after the offense has been committed.

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- (f)** For offenses committed prior to November 1, 1989, the limitation of prosecution in effect at that time shall govern.
- (g)**
- (1)** Prosecutions for any offense committed against a child on or after July 1, 1997, that constitutes a criminal offense under § 39-17-902 shall commence no later than the date the child reaches twenty-one (21) years of age; provided, that if subsection (a) or (b) provides a longer period of time within which prosecution may be brought than this subsection (g), the applicable provision of subsection (a) or (b) shall prevail.
  - (2)** Prosecutions for any offense committed against a child on or after July 1, 1997, but prior to June 20, 2006, that constitutes a criminal offense under §§ 39-13-502 -- 39-13-505, § 39-13-522 or § 39-15-302 shall commence no later than the date the child reaches twenty-one (21) years of age; provided, that if subsection (a) or (b) provides a longer period of time within which prosecution may be brought than this subsection (g), the applicable provision of subsection (a) or (b) shall prevail.
- (h)**
- (1)** A person may be prosecuted, tried and punished for any offense committed against a child on or after June 20, 2006, that constitutes a criminal offense under § 39-13-504, § 39-13-505, § 39-13-527 or § 39-15-302, no later than twenty-five (25) years from the date the child becomes eighteen (18) years of age.
  - (2)** A person may be prosecuted, tried and punished for any offense committed against a child on or after June 20, 2006, but prior to July 1, 2014, that constitutes a criminal offense under § 39-13-502, § 39-13-503 or § 39-13-522 no later than twenty-five (25) years from the date the child becomes eighteen (18) years of age.
- (i)**
- (1)** A person may be prosecuted, tried and punished for any offense committed against a child on or after July 1, 2007, that constitutes a criminal offense under § 39-13-532, no later than twenty-five (25) years from the date the child becomes eighteen (18) years of age.
  - (2)** A person may be prosecuted, tried and punished for any offense committed against a child on or after July 1, 2007, but prior to July 1, 2014, that constitutes a criminal offense under § 39-13-531, no later than twenty-five (25) years from the date the child becomes eighteen (18) years of age.
- (j)** A person may be prosecuted, tried and punished for any offense committed against a child on or after July 1, 2012, that constitutes a criminal offense under § 39-17-902, § 39-17-1003, § 39-17-1004, or § 39-17-1005, no later than twenty-five (25) years from the date the child becomes eighteen (18) years of age.
- (k)**
- (1)** A person may be prosecuted, tried and punished for any offense committed against a child on or after July 1, 2013, that constitutes a criminal offense under § 39-13-309 or § 39-13-529, no later than fifteen (15) years from the date the child becomes eighteen (18) years of age.
  - (2)** A person may be prosecuted, tried, and punished for any offense committed against a child on or after July 1, 2013, that constitutes a criminal offense under § 39-13-514 no later than ten (10) years from the date the child becomes eighteen (18) years of age.
  - (3)**

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- (A)** A person may be prosecuted, tried, and punished for any offense committed against a child on or after July 1, 2013, but prior to July 1, 2015, that constitutes a criminal offense under § 39-13-515 no later than ten (10) years from the date the child becomes eighteen (18) years of age.
- (B)** A person may be prosecuted, tried, and punished for any offense committed against a child on or after July 1, 2015, that constitutes a criminal offense under § 39-13-515 no later than twenty-five (25) years from the date the child becomes eighteen (18) years of age.
- (l) (1)** Notwithstanding subsections (b), (g), (h) and (i) to the contrary, a person may be prosecuted, tried and punished for an act that constitutes the offense of aggravated rape, as prohibited by § 39-13-502, rape, as prohibited by § 39-13-503, rape of a child as prohibited by § 39-13-522 or aggravated rape of a child as prohibited by § 39-13-531 at any time after the commission of the offense if:
- (A)** The victim notifies law enforcement or the office of the district attorney general of the offense within three (3) years of the offense; and
- (B)** The offense is committed:
- (i)** On or after July 1, 2014; or
- (ii)** Prior to July 1, 2014, unless prosecution for the offense is barred because the applicable time limitation set out in this section for prosecution of the offense expired prior to July 1, 2014.
- (2)** If subdivision (l)(1) does not apply to the specified offenses, prosecution shall be commenced within the times otherwise provided by this section.
- (m)** A person may be prosecuted, tried, and punished for any offense committed against a child on or after July 1, 2016, that constitutes the offense of aggravated statutory rape under § 39-13-506(c), no later than fifteen (15) years from the date the child becomes eighteen (18) years of age.
- (n)** Notwithstanding subsection (b), prosecutions for any offense committed on or after July 1, 2016, that constitutes the offense of aggravated child abuse, or aggravated child neglect or endangerment, under § 39-15-402, shall commence by the later of:
- (1)** Ten (10) years after the child reaches eighteen (18) years of age; or
- (2)** The time within which prosecution must be commenced pursuant to subsection (b).

## History

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Code 1932, §§ 11481-11483; Acts 1977, ch. 62, § 1; T.C.A. (orig. ed.), §§ 40-201 -- 40-203; Acts 1985, ch. 478, § 21; 1990, ch. 980, § 17; 1997, ch. 214, §§ 1, 2; 1998, ch. 962, § 1; 2006, ch. 927, § 1; 2007, ch. 594, § 5; 2012, ch. 1027, § 1; 2013, ch. 416, § 1; 2014, ch. 836, §§ 1, 2; 2015, ch. 310, § 1; 2016, ch. 958, § 1; 2016, ch. 1032, § 1.

Annotations

## Notes

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### Compiler's Notes.

Tenn. Code Ann. § 40-2-101

Sections under title 39, chs. 2, 4 and 6, referred to in this section, were repealed by Acts 1989, ch. 591, effective November 1, 1989.

For the Preamble to the act regarding criminal penalties, procedure and sentencing, please refer to Acts 2007, ch. 594.

Pursuant to Article III, Section 18 of the Constitution of Tennessee, Acts 2014, ch. 836 took effect on April 28, 2014.

**Amendments.**

The 2012 amendment added (j).

The 2013 amendment added (k).

The 2014 amendment, designated former (g) as present (g)(2) and added (g)(1); in (g)(2), inserted "but prior to June 20, 2006," and substituted "§§ 39-13-502 -- 39-13-505, § 39-13-522 or § 39-15-302" for "§§ 39-13-502 -- 39-13-505, § 39-13-522, § 39-15-302 or § 39-17-902"; in (h), added (2) and substituted "criminal offense under § 39-13-504, § 39-13-505," for "criminal offense under §§ 39-13-502 -- 39-13-505, § 39-13-522," in (1); in (i), added (2) and deleted "§ 39-13-531 or" preceding "§ 39-13-532"; and added (l).

The 2015 amendment, in (k), deleted "or § 39-13-515" following "§ 39-13-514" in (2) and added (3).

The 2016 amendment by ch. 958 added (m).

The 2016 amendment by ch. 1032 added (n).

**Effective Dates.**

Acts 2012, ch. 1027, § 2. July 1, 2012.

Acts 2013, ch. 416, § 3. July 1, 2013.

Acts 2014, ch. 836, § 4. April 28, 2014. [See the Compiler's Notes.]

Acts 2015, ch. 310, § 2. July 1, 2015.

Acts 2016, ch. 958, § 2. July 1, 2016.

Acts 2016, ch. 1032, § 2. July 1, 2016.

**Case Notes**

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1. Construction.
2. Pleading Limitations.
3. Allegations of Indictment.
4. Return of Indictment.
5. Concealment of Crime.
6. Prosecution Untimely.
7. Waiver of Defense.
8. Competence of Counsel.
9. Purpose.
10. Statute of Limitations.

## Tenn. Code Ann. § 40-2-101

**1. Indictment.****2. Pleading.****1. Construction.**

The applicable punishment for determining the appropriate statute of limitations is the maximum punishment available for an offense. *State v. Ricci*, 914 S.W.2d 475, 1996 Tenn. LEXIS 63 (Tenn. 1996).

Application of the pre-1989 statute of limitations and prosecution of defendants for securities law violations committed in 1988 did not violate constitutional ex post facto provisions or due process since the applicable limitations were not changed by the 1990 amendment which established limitation periods consistent with the Criminal Sentencing Reform Act of 1989, § 40-35-101 et seq. *State v. Ricci*, 914 S.W.2d 475, 1996 Tenn. LEXIS 63 (Tenn. 1996).

**2. Pleading Limitations.**

The failure on the part of trial counsel to raise the statute of limitations on behalf of the defendant represented a deficiency in performance of a constitutional nature; and because prejudice resulted, the defendant's post-conviction motion based upon a claim of ineffective assistance of counsel was granted. *Morgan v. State*, 847 S.W.2d 538, 1992 Tenn. Crim. App. LEXIS 731 (Tenn. Crim. App. 1992).

**3. Allegations of Indictment.**

Where an indictment or presentment shows upon its face, or by stipulation, that the applicable statute of limitations has expired, the instrument must allege facts which demonstrate that the statute was tolled for a sufficient period of time to avoid the bar of the statute of limitations. *State v. Davidson*, 816 S.W.2d 316, 1991 Tenn. LEXIS 320 (Tenn. 1991), rehearing denied, 1991 Tenn. LEXIS 424 .

Where there is a statute of limitations that bars prosecution of the offenses charged, there should be a sufficiently definite averment of time in the indictment to show that the offense was committed within the statute of limitations. *State v. Kennedy*, 10 S.W.3d 280, 1999 Tenn. Crim. App. LEXIS 569 (Tenn. Crim. App. 1999).

It was no error to let the State amend an indictment to allege a new ground for tolling the statute of limitations applicable to second-degree murder because (1) defendant consented to the amendment, and, (2) if defendant did not consent, jeopardy had not attached, no new crime was charged, and defendant's substantial right was not prejudiced, as the State could have obtained a superseding indictment. *State v. Hollingsworth*, -- S.W.3d --, 2017 Tenn. Crim. App. LEXIS 17 (Tenn. Crim. App. Jan. 11, 2017).

**4. Return of Indictment.**

Because an amendment of the date did not charge an additional crime, the court looked to the date the indictment was returned in order to determine whether the amended date fell within the statute of limitations. *State v. Kennedy*, 10 S.W.3d 280, 1999 Tenn. Crim. App. LEXIS 569 (Tenn. Crim. App. 1999).

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**5. Concealment of Crime.**

If coercion against a minor victim of sexual abuse could amount to concealment of the crime so as to toll the running of the statute of limitations, the time frame for the coercion constituting the concealment would need to be alleged. *State v. Davidson*, 816 S.W.2d 316, 1991 Tenn. LEXIS 320 (Tenn. 1991), rehearing denied, 1991 Tenn. LEXIS 424 .

If the tolling is triggered by concealment, the statute would begin to run when the concealment ceased. *State v. Davidson*, 816 S.W.2d 316, 1991 Tenn. LEXIS 320 (Tenn. 1991), rehearing denied, 1991 Tenn. LEXIS 424 .

**6. Prosecution Untimely.**

Institution of incest charges was not timely. *State v. Henry*, 834 S.W.2d 273, 1992 Tenn. LEXIS 361 (Tenn. 1992).

Defendant's 1988 indictments on three counts of aggravated rape, aggravated sexual battery, and use of a minor for obscene purposes all occurred more than four years after the offenses; as there was no evidence of concealment, including threats to the victims on the part of defendant, the proof was inadequate to support a tolling of the statutes of limitation, depriving the trial court of subject-matter jurisdiction. *Morgan v. State*, 847 S.W.2d 538, 1992 Tenn. Crim. App. LEXIS 731 (Tenn. Crim. App. 1992).

A conviction for a time-barred crime clearly violates the constitutional rights of an accused. *Morgan v. State*, 847 S.W.2d 538, 1992 Tenn. Crim. App. LEXIS 731 (Tenn. Crim. App. 1992).

**7. Waiver of Defense.**

Although the statute of limitations is waivable, rather than jurisdictional, a waiver by the defendant must be knowingly and voluntarily entered. While the protection against prosecution provided by a statute of limitations may not rise to the level of a fundamental right, the right is sufficiently substantial to justify application of the same standard used in determining whether there has been an effective waiver as to fundamental rights. *State v. Pearson*, 858 S.W.2d 879, 1993 Tenn. LEXIS 240 (Tenn. 1993).

**8. Competence of Counsel.**

Defense counsel's failure to object to the jury instructions regarding the law of aggravated rape did not constitute ineffective assistance of counsel; at the time defendant committed the offense (August 1978 -- May 1979), the offense of aggravated rape did not exist, and this instruction was an accurate statement of the law as it existed at the time the indictment was returned. *Overton v. State*, 874 S.W.2d 6, 1994 Tenn. LEXIS 94 (Tenn. 1994).

**9. Purpose.**

The statute of limitations serves two primary purposes: to avoid the use of stale evidence and to provide an incentive for swift governmental action in criminal cases. *State v. Pearson*, 858 S.W.2d 879, 1993 Tenn. LEXIS 240 (Tenn. 1993).

**10. Statute of Limitations.**

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Defendant's contention that the prosecution of the forgery and official misconduct offenses was barred by the statute of limitations was without merit under T.C.A. §§ 39-14-114(c), 39-16-402(d) (now (e)) and 40-2-101(b)(4) because each count charged in the reindictment for which defendant was convicted corresponded with a count charged in the original indictment. The conviction counts in the reindictment did not charge any new offenses. *State v. Davis*, -- S.W.3d --, 2011 Tenn. Crim. App. LEXIS 120 (Tenn. Crim. App. Feb. 18, 2011).

Defendant's prosecution for sexual battery, in violation of T.C.A. §§ 39-13-504, 39-13-505, was commenced within the applicable statute of limitations under T.C.A. § 40-2-101(g) where the state established by a preponderance of the evidence, as required under T.C.A. § 39-11-201(f), that the victim was a minor at the time of the offense and that the prosecution was commenced before she turned 21. *State v. Doane*, 393 S.W.3d 721, 2011 Tenn. Crim. App. LEXIS 503 (Tenn. Crim. App. July 6, 2011).

Defendant's conviction for attempted aggravated rape was not barred by the statute of limitations, T.C.A. § 40-2-101(b)(1)-(2), because the John Doe arrest warrant and DNA profile commenced the prosecution against defendant in a timely fashion and tolled the statute of limitations until he was identified and apprehended; a John Doe warrant coupled with a DNA profile of an unknown suspected offender obtained before the expiration of the applicable statute of limitations may validly commence a criminal prosecution and toll the statute of limitations. *State v. Burdick*, -- S.W.3d --, 2011 Tenn. Crim. App. LEXIS 886 (Tenn. Crim. App. Dec. 2, 2011), *aff'd*, 395 S.W.3d 120, 2012 Tenn. LEXIS 903 (Tenn. Dec. 18, 2012).

Prosecution for attempted aggravated rape was properly and timely commenced with in the eight-year statute of limitations for attempted aggravated rape, T.C.A. § 40-2-101(b)(1)-(2), by the filing of the "John Doe" arrest warrant because The "John Doe" designation in the warrant, coupled with the detailed DNA profile of the assailant, identified defendant with "reasonable certainty" as required by the Fourth Amendment, Tenn. Const. art. I, § 7, T.C.A. § 40-6-208, and Tenn. R. Crim. P. 4(c)(1)(B). *State v. Burdick*, 395 S.W.3d 120, 2012 Tenn. LEXIS 903 (Tenn. Dec. 18, 2012).

Issuance of the state warrant three weeks before the expiration of the statute of limitations, listing "John Doe" along with defendant's DNA profile, was sufficient to toll the statute of limitations pursuant to T.C.A. § 40-2-101(b)(2). *State v. Davison*, -- S.W.3d --, 2012 Tenn. Crim. App. LEXIS 706 (Tenn. Crim. App. Sept. 5, 2012).

Because the deputy court clerk's testimony established her as a neutral and detached person who was capable of making a probable cause determination as she evinced a common sense understanding of probable cause and a clear understanding of her duty with regard to issuing an arrest warrant, the arrest warrant issued was valid and commenced the prosecution for aggravated burglary in a timely fashion. *State v. Fryar*, -- S.W.3d --, 2013 Tenn. Crim. App. LEXIS 484 (Tenn. Crim. App. June 7, 2013), *appeal denied*, -- S.W.3d --, 2013 Tenn. LEXIS 875 (Tenn. Oct. 23, 2013).

Defendant's re-indictment for conspiracy to commit first degree premeditated murder was not time-barred because defendant's initial indictment for the crime tolled the statute until the State agreed to nolle prosequi the charge. *State v. Blair*, -- S.W.3d --, 2015 Tenn. Crim. App. LEXIS 549 (Tenn. Crim. App. July 9, 2015).

Trial court erred in dismissing defendant's re-indictment for rape of a child and aggravated sexual battery based on a violation of defendant's due process and speedy trial rights, because defendant's constitutional right to a speedy trial was not implicated, the prosecution commenced within the applicable statutory periods, the length of the delay, between 7 and 12 years, was not excessive, the bulk of the delay was attributable to the victim's reluctance to come forward and changing memory, factors not within the control of either the State or defendant, and defendant's inability to call certain



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witnesses due to death or failure to locate did not demonstrate actual prejudice. *State v. Beaty*, -- S.W.3d --, 2016 Tenn. Crim. App. LEXIS 606 (Tenn. Crim. App. Aug. 16, 2016).

### **Decisions Under Prior Law**

#### **1. Indictment.**

Indictment for voluntary manslaughter filed in 1933 was barred where state had filed prior indictment on same case in 1919 and had not prosecuted the voluntary manslaughter indictment even though defendant had been in custody of state for 12 years. *Smith v. State*, 168 Tenn. 265, 77 S.W.2d 450, 1934 Tenn. LEXIS 50 (1935).

Addition of words in indictment which would prevent the running of the limitation of the former section following the words "against the peace and dignity of the state" did not invalidate indictment as being contrary to the provisions of Tenn. Const., art. VI, § 12 that the indictment end with the above quoted words, substantial compliance with such constitutional provision being sufficient. *Burton v. State*, 214 Tenn. 9, 377 S.W.2d 900, 1964 Tenn. LEXIS 441 (1964).

Where indictment was returned within period of limitation so that prosecution was commenced, trial of accused, for assault with intent to commit murder more than four years after date of commission of offense was not barred by statute. *State ex rel. Lewis v. State*, 1 Tenn. Crim. App. 535, 447 S.W.2d 42, 1969 Tenn. Crim. App. LEXIS 289 (Tenn. Crim. App. 1969).

Indictment for concealing stolen property which did not state the month and day in 1971 when the offense was committed was not defective, since the indictment was returned April 4, 1972, well before the expiration of the applicable statute of limitations. *Prince v. State*, 529 S.W.2d 729, 1975 Tenn. Crim. App. LEXIS 287 (Tenn. Crim. App. 1975).

#### **2. Pleading.**

It is not necessary for the defendant to plead the defense afforded by the former section specially, but he can avail himself of it under his plea of not guilty by establishing a defense by proof on the trial. *State v. Landis*, 177 Tenn. 304, 145 S.W.2d 1032, 1940 Tenn. LEXIS 39 (1941).

## **Opinion Notes**

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### **Attorney General Opinions.**

Statute of limitations of aggravated gambling promotion, OAG 99-127 (6/29/99).

A prosecution for the sale of beer to minors must commence within 12 months if a Class A misdemeanor and within two years if a Class E felony, OAG 01-062 (4/20/01).

## **Research References & Practice Aids**

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### **Cross-References.**

Penalties for Class A, B, C, D, and E felonies, § 40-35-111.

Transfer from juvenile court, sentence of death prohibited, § 37-1-134.

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**Section to Section References.**

This chapter is referred to in § 39-11-201.

This section is referred to in § 62-13-313.

**Textbooks.**

Tennessee Criminal Practice and Procedure (Raybin), § 16.82.

Tennessee Jurisprudence, 18 Tenn. Juris., Limitations of Actions, § 18.

**Law Reviews.**

Defending Life in Tennessee Death Penalty Cases (Roy B. Herron), 51 Tenn. L. Rev. 681 (1984).

**Collateral References.**

Conviction of lesser offense, against which statute of limitations has run, where statute has not run against offense with which defendant is charged. 47 A.L.R.2d 887.

Relation back of amended pleading substituting true name of defendant for fictitious name used in earlier pleading so as to avoid bar of limitations. 85 A.L.R.3d 130.

When statute of limitations begins to run against action for conversion of property by theft. 79 A.L.R.3d 847.

When statute of limitations begins to run against criminal prosecution for embezzlement, fraud, false pretenses, or similar crimes. 77 A.L.R.3d 689.

When statute of limitations begins to run on charge of obstructing justice or on conspiring to do so. 77 A.L.R.3d 725.

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## Appendix C: Comparison of the Criminal Statutes of Limitations for Tennessee and its Neighboring States

	TN	AL	AR	GA	KY	MO	MS	NC	VA
<b>First Degree Murder</b>	No Limit	No Limit	No Limit	No Limit	No Limit	No Limit	No Limit	No Limit	No Limit
<b>Second Degree Murder</b>	15 Years	No Limit	No Limit	No Limit	No Limit	No Limit	No Limit	No Limit	No Limit
<b>Rape of a Child</b>	If reported within 3 years, no limit; if not, 15 years	No Limit	No Limit	No Limit	No Limit	No Limit	No Limit	No Limit	No Limit
<b>Rape of an Adult</b>	If reported within 3 years, no limit; if not, 8 years	No Limit	6 Years; but no limit if DNA evidence exists	15 Years; but no limit if DNA evidence exists	No Limit	No Limit	No Limit	No Limit	No Limit
<b>Sexual Battery of a Child</b>	25 years after the child turns 18	No Limit	No Limit	No Limit	No Limit	No Limit	No Limit	No Limit	No Limit
<b>Sexual Battery of an Adult</b>	2 Years	No Limit	3 Years	2 Years	No Limit	1 Year	2 Years	No Limit	No Limit
<b>Voluntary Manslaughter</b>	4 Years	No Limit	3 Years	4 Years	No Limit	3 Years	No Limit	No Limit	No Limit
<b>Burglary</b>	2 to 4 Years	5 Years	3 Years	4 Years	No Limit	3 Years	No Limit	No Limit	No Limit

	TN	AL	AR	GA	KY	MO	MS	NC	VA
<b>Robbery</b>	4 Years	No Limit	3 Years	4 Years	No Limit	3 Years	No Limit	No Limit	No Limit
<b>Arson</b>	8 Years	No Limit	10 Years	4 Years	No Limit	5 Years	No Limit	No Limit	No Limit

Source: TACIR staff analysis of other states' laws on selected criminal statutes of limitations.

## Appendix D: Oregon Annotated Statutes, Section 131.125

### ORS § 131.125

The Oregon Annotated Statutes is updated with emergency legislation through Chapters 1-50, 52-59, 62-71 and 73-92. of the 2018 Legislative Session. Some sections may have multiple variants due to amendment by multiple acts. Revision and codification by the Legislative Counsel are updated as available, see ORS 173.111 et seq. For sections pending codification by the Legislative Counsel, see Newly Added Sections in the Table of Contents.

**LexisNexis® Oregon Annotated Statutes > Title 14 Procedure in Criminal Matters Generally (Chs. 131 – 153) > Chapter 131- Preliminary Provisions; Limitations; Jurisdiction; Venue; Criminal Forfeiture; Crime Prevention (§§ 131.005 – 131.920) > Time Limitations (§§ 131.105 – 131.155)**

### 131.125 Time limitations.

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**(1)**A prosecution for aggravated murder, murder, attempted murder or aggravated murder, conspiracy or solicitation to commit aggravated murder or murder or any degree of manslaughter may be commenced at any time after the commission of the attempt, conspiracy or solicitation to commit aggravated murder or murder, or the death of the person killed.

**(2)**A prosecution for any of the following felonies may be commenced within 12 years after the commission of the crime or, if the victim at the time of the crime was under 18 years of age, anytime before the victim attains 30 years of age:

- (a)**Rape in the first degree under ORS 163.375.
- (b)**Sodomy in the first degree under ORS 163.405.
- (c)**Unlawful sexual penetration in the first degree under ORS 163.411.
- (d)**Sexual abuse in the first degree under ORS 163.427.

**(3)**A prosecution for any of the following felonies may be commenced within six years after the commission of the crime or, if the victim at the time of the crime was under 18 years of age, anytime before the victim attains 30 years of age or within 12 years after the offense is reported to a law enforcement agency or the Department of Human Services, whichever occurs first:

- (a)**Strangulation under ORS 163.187 (4).
- (b)**Criminal mistreatment in the first degree under ORS 163.205.
- (c)**Rape in the third degree under ORS 163.355.
- (d)**Rape in the second degree under ORS 163.365.
- (e)**Sodomy in the third degree under ORS 163.385.
- (f)**Sodomy in the second degree under ORS 163.395.
- (g)**Unlawful sexual penetration in the second degree under ORS 163.408.
- (h)**Sexual abuse in the second degree under ORS 163.425.
- (i)**Using a child in a display of sexual conduct under ORS 163.670.
- (j)**Encouraging child sexual abuse in the first degree under ORS 163.684.
- (k)**Incest under ORS 163.525.

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- (L)**Promoting prostitution under ORS 167.012.
- (m)**Compelling prostitution under ORS 167.017.
- (n)**Luring a minor under ORS 167.057.

**(4)**A prosecution for any of the following misdemeanors may be commenced within four years after the commission of the crime or, if the victim at the time of the crime was under 18 years of age, anytime before the victim attains 22 years of age or within four years after the offense is reported to a law enforcement agency or the Department of Human Services, whichever occurs first:

- (a)**Strangulation under ORS 163.187 (3).
- (b)**Sexual abuse in the third degree under ORS 163.415.
- (c)**Exhibiting an obscene performance to a minor under ORS 167.075.
- (d)**Displaying obscene materials to minors under ORS 167.080.

**(5)**In the case of crimes described in subsection (3)(i) of this section, the victim is the child engaged in sexual conduct. In the case of the crime described in subsection (3)(k) of this section, the victim is the party to the incest other than the party being prosecuted. In the case of crimes described in subsection (3)(L) and (m) of this section, the victim is the child whose acts of prostitution are promoted or compelled.

**(6)**A prosecution for arson in any degree may be commenced within six years after the commission of the crime.

**(7)**A prosecution for any of the following felonies may be commenced within six years after the commission of the crime if the victim at the time of the crime was 65 years of age or older:

- (a)**Theft in the first degree under ORS 164.055.
- (b)**Aggravated theft in the first degree under ORS 164.057.
- (c)**Extortion under ORS 164.075.
- (d)**Robbery in the third degree under ORS 164.395.
- (e)**Robbery in the second degree under ORS 164.405.
- (f)**Robbery in the first degree under ORS 164.415.
- (g)**Forgery in the first degree under ORS 165.013.
- (h)**Fraudulent use of a credit card under ORS 165.055 (4)(b).
- (i)**Identity theft under ORS 165.800.

**(8)**Except as provided in subsection (9) of this section or as otherwise expressly provided by law, prosecutions for other offenses must be commenced within the following periods of limitations after their commission:

- (a)**For any other felony, three years.
- (b)**For any misdemeanor, two years.
- (c)**For a violation, six months.

**(9)**If the period prescribed in subsection (8) of this section has expired, a prosecution nevertheless may be commenced as follows:

- (a)**If the offense has as a material element either fraud or the breach of a fiduciary obligation, prosecution may be commenced within one year after discovery of the offense by an aggrieved party or by a person who has a legal duty to represent an aggrieved

## ORS § 131.125

party and who is not a party to the offense, but in no case shall the period of limitation otherwise applicable be extended by more than three years;

**(b)**If the offense is based upon misconduct in office by a public officer or employee, prosecution may be commenced at any time while the defendant is in public office or employment or within two years thereafter, but in no case shall the period of limitation otherwise applicable be extended by more than three years; or

**(c)**If the offense is an invasion of personal privacy under ORS 163.700 or 163.701, prosecution may be commenced within one year after discovery of the offense by the person aggrieved by the offense, by a person who has a legal duty to represent the person aggrieved by the offense or by a law enforcement agency, but in no case shall the period of limitation otherwise applicable be extended by more than three years.

**(10)**Notwithstanding subsections (2) and (3) of this section, if the defendant is identified after the period described in subsection (2) or (3) of this section on the basis of DNA (deoxyribonucleic acid) sample comparisons, a prosecution for:

**(a)**Rape in the first degree, sodomy in the first degree, unlawful sexual penetration in the first degree or sexual abuse in the first degree may be commenced at any time after the commission of the crime.

**(b)**Rape in the second degree, sodomy in the second degree or unlawful sexual penetration in the second degree may be commenced within 25 years after the commission of the crime.

**(11)**Notwithstanding subsection (10) of this section, if a prosecution for a felony listed in subsection (10) of this section would otherwise be barred by subsection (2) or (3) of this section, the prosecution must be commenced within two years of the DNA-based identification of the defendant.

**(12)**

**(a)**Notwithstanding subsection (2) of this section, if a prosecuting attorney obtains corroborating evidence of the crimes of rape in the first degree, sodomy in the first degree, unlawful sexual penetration in the first degree or sexual abuse in the first degree, after the period described in subsection (2) of this section, the prosecution may be commenced at any time after the commission of the crime.

**(b)**The corroborating evidence described in paragraph (a) of this subsection must consist of one of the following:

**(A)**Physical evidence other than a DNA sample, including but not limited to audio, video or other electronic recordings, text messages, guest book logs, telephone recordings and photographs.

**(B)**A confession, made by the defendant, to the crime the victim reported.

**(C)**An oral statement, made by the victim to another person in temporal proximity to the commission of the crime, corroborating the victim's report of the crime to a law enforcement agency.

**(D)**A written statement, created by the victim in temporal proximity to the commission of the crime and subsequently delivered to another person or to a law enforcement agency, corroborating the victim's report of the crime to a law enforcement agency.

**(E)**A report made by a different victim to a law enforcement agency, made either before or after the victim's report, alleging that the defendant committed another



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crime of the same or similar character such that the two crimes could be charged in the same charging instrument under ORS 132.560.

**(13)**

**(a)** A prosecuting attorney commencing a prosecution pursuant to subsection (12) of this section shall present any evidence reasonably tending to negate the guilt of the defendant to the grand jury considering the indictment for the offense.

**(b)** The failure to present evidence reasonably tending to negate guilt as required by paragraph (a) of this subsection does not affect the validity of an indictment or prosecution.

## History

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1973 c.836 § 6; 1989 c.831 § 1; 1991 c.386 § 5; 1991 c.388 § 1; 1991 c.830 § 5; 1995 c.768 § 8; 1997 c.427 § 1; 1997 c.697 § 3; 1997 c.850 § 5; 2001 c.375 § 1; 2005 c.252 § 1; 2005 c.839 § 1; 2007 c.840 § 1; 2007 c.869 § 6; 2009 c.585 § 1; 2011 c.666 § 2; 2011 c.681 § 3; 2012 c.70 § 2, effective March 27, 2012; 2015 c.417 § 1, effective January 1, 2016; 2016 c.47 § 5, effective January 1, 2017; 2016 c.120 § 1, effective January 1, 2017.

Annotations

## LexisNexis® Notes

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## Notes

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### Uncodified Provisions

#### Stats 2012 ch. 70 § 2 provides:

The amendments to ORS 131.125 and 411.990 by sections 2 and 3 of this 2012 Act apply to offenses committed before, on or after the effective date of this 2012 Act, but do not operate to revive a prosecution barred by the operation of ORS 131.125 before the effective date of this 2012 Act.

#### Applicability

#### Stats 2016 ch. 120 § 2 provides:

**Sec. 2.** The amendments to ORS 131.125 by section 1 of this 2016 Act apply to offenses committed before, on or after the effective date of this 2016 Act but do not operate to revive a prosecution barred by the operation of ORS 131.125 before the effective date of this 2016 Act.

## Case Notes

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### Criminal Law & Procedure: Criminal Offenses: Property Crimes: General Overview

## ORS § 131.125

Theft convictions were reversed because the charges were brought after the three-year statute of limitations ran; the court rejected the argument the statute of limitation did not begin to run while the stolen property was concealed because the indictment on its face did not allege concealment, much less specify the date within the statute of limitations when any concealment ended. *State v. Nistler*, 268 Ore. App. 470, 342 P.3d 1035, 2015 Ore. App. LEXIS 61 (Or. Ct. App. 2015).

## State Notes

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### SUPPLEMENTARY ANNOTATIONS:

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Note: Section 5 (2), chapter 666, Oregon Laws 2011, provides:

Sec. 5. (2) The amendments to ORS 131.125 by section 2 of this 2011 Act apply to offenses committed before, on or after the effective date of this 2011 Act [January 1, 2012], but do not operate to revive a prosecution barred by the operation of ORS 131.125 before the effective date of this 2011 Act. [ 2011 c.666 § 5(2)]

#### NOTES OF DECISIONS

For purposes of time limitations, "prosecution" refers to criminal action itself rather than filing of accusatory instrument. *Abbott v. Baldwin*, 178 Or App 289, 36 P3d 516 (2001), Sup Ct **review denied**

**See also** annotations under ORS 131.110 in permanent edition.

#### NOTES OF DECISIONS

Where warrant for defendant's arrest for unlawfully obtaining public assistance was executed three years and four months from date of alleged offense and state offered no reason for delay, indictment should have been dismissed. *State v. Barnes*, 66 Or App 896, 676 P2d 344 (1984)

Indictment containing two dates on which purportedly returned, one inside and one outside statute of limitations, does not satisfy statutory requirement that indictment show prosecution was commenced within period of limitation. *State v. Bovee*, 76 Or App 572, 710 P2d 786 (1985), Sup Ct **review denied**

Where defendant pleaded no contest to and was convicted of driving under influence of intoxicants in 1980 and in 1986 sought and was awarded post-conviction relief from that judgment, state's subsequent decision to continue prosecution was not barred by statute of limitations. *State v. Sisneros*, 84 Or App 306, 734 P2d 355 (1987), Sup Ct **review denied**

This section barred prosecution for theft completed more than three years before commencement of prosecution where state produced no evidence that defendant retained some form of interest in or control over the stolen property after possession was given to third-party purchaser, even though final payment was made by third party within three years of filing information. *State v. Bailey*, 94 Or App 767, 767 P2d 114 (1989)

Where Oregon State Bar complained to court in 1985 and 1987 that defendant was violating injunction for unauthorized practice of law by activities beginning in 1981, some of Bar's complaints may have been barred by laches since two years is presumptively reasonable period for initiating

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criminal contempt action for violations of court order. Oregon State Bar v. Wright, 309 Or 37, 785 P2d 340 (1990)

1989 amendments that extended statute of limitations from three to six years for certain offenses did not operate retroactively to revive cases barred from prosecution by operation of prior law. State v. Tyler, 108 Or App 378, 815 P2d 1289 (1991); State v. Cookman, 127 Or App 283, 873 P2d 335 (1994), aff'd 324 Or 19, 920 P2d 1086 (1996)

Amendment of this section that extended statute of limitations for certain misdemeanors from two to four years did not violate constitutional prohibition against *ex post facto* laws when applied to case where two-year period of limitations had not yet expired upon effective date of amendment. State v. Dufort, 111 Or App 515, 827 P2d 192 (1992)

Listing of sexual offense by both description and current ORS number makes described offense charged under former ORS number subject to same statute of limitations as if charged under current ORS number. State v. Sharp, 151 Or App 122, 949 P2d 1230 (1997), Sup Ct **review denied**

Reporting of offense does not occur until actual communication, through oral or written narration, of facts that form basis for offense. State v. Hutchison, 176 Or App 363, 31 P3d 1123 (2001)

"Other governmental agency" means agency with investigative responsibility or having statutory duty to report sexual offense to agency with investigative responsibility. State v. Walker, 192 Or App 535, 86 P3d 690 (2004), Sup Ct **review denied**

Where statute of limitations is extended before statute of limitations applicable at time of offense has expired, application of extended statute of limitations to offense does not constitute *ex post facto* law. State v. Harberts, 198 Or App 546, 108 P3d 1201 (2005), Sup Ct **review denied**

Extended limitation period for commencing prosecution based on misconduct in office by public officer or employee applies only where limitation period under catch-all provision has expired. State v. Tannehill, 341 Or 205, 141 P3d 584 (2006)

Under 1980 version statute, legislature demonstrated clear intent that unlimited statute of limitations applies to aggravated murder. State v. Anthony, 234 Or App 659, 228 P3d 1222 (2010)

General three-year limitation period for charging felony applies to charge of attempted rape. Lamb v. Coursey, 238 Or App 647, 243 P3d 130 (2010), Sup Ct **review denied**

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