

Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

Senate Bill 1 (as enrolled)  
Sponsor: Senator Shirley Johnson  
Senate Committee: Judiciary  
House Committee: Criminal Justice

**PUBLIC ACT 6 of 2001**

Date Completed: 5-7-01

**RATIONALE**

The increasing availability, use, and reliability of DNA evidence have raised questions about whether traditional statutes of limitations for some crimes are appropriate, particularly in the prosecution of sex offenses in which DNA evidence is available but no suspect has been identified. It has been suggested, for example, that a person who commits first-degree criminal sexual conduct (CSC) should never escape prosecution due merely to the passage of time, and that an unknown suspect in a lower-degree CSC case whose DNA was collected and profiled should not avoid criminal charges because a certain number of years have passed without the perpetrator's being identified by name. While most crimes have a six-year statute of limitations under Michigan law, there is no limitations period for a charge of murder, and a handful of other serious offenses carry a 10-year limitations period. Some people believe that first-degree CSC violations and explosives offenses that cause a death should not be subject to a statute of limitations; that the limitations period for several other offenses, including lower-degree CSC violations, should be extended to 10 years; and that the statute of limitations should be delayed in a sex-crime case in which DNA evidence is available but the perpetrator has not yet been identified. (See **BACKGROUND** for further information on DNA analysis and the degrees of CSC offenses.)

**CONTENT**

**The bill amended the Code of Criminal Procedure to do all of the following:**

**-- Eliminate the statute of limitations for both first-degree criminal sexual**

**conduct and an explosives offense punishable by imprisonment for life.**

**-- Delay the limitations period until after a suspect is identified by DNA evidence, and otherwise revise the statute of limitations, for other degrees of CSC and involvement in or possession of child sexually abusive activity or material.**

**-- Add attempted murder, manslaughter, and first-degree home invasion to the crimes for which the limitations period is 10 years.**

The bill also includes a statement of legislative intent.

Under the Code, except for specified offenses, all indictments must be filed within six years after the offense is committed. The bill provides that an indictment may be found and filed at any time for murder (as previously provided), as well as for first-degree CSC or a violation of Chapter XXXIII of the Michigan Penal Code ("Explosives, Bombs, and Harmful Devices") that is punishable by imprisonment for life.

Previously, if an alleged victim was under 18 at the time of an offense, an indictment could be filed within six years after the commission of the offense or by the alleged victim's 21st birthday, whichever was later, for involvement in or possession of child sexually abusive activity or material; first-, second-, third-, or fourth-degree CSC; or assault with intent to commit CSC. Under the bill, an indictment for any of those offenses (except first-degree CSC) may be found and filed within 10 years after the offense is committed or by the alleged victim's 21st birthday, whichever is

later, regardless of the victim's age at the time of the offense. If, however, evidence of the violation is obtained and it contains DNA that is determined to be from an unidentified individual, an indictment against that individual for the violation may be filed at any time after the offense is committed. After that individual is identified, however, an indictment must be filed within 10 years or by the alleged victim's 21st birthday, whichever is later. (Under the bill, "identified" means that the individual's legal name is known and he or she has been determined to be the source of the DNA.)

Under the Code, the limitations period is 10 years for kidnapping, extortion, assault with intent to commit murder, and conspiracy to commit murder. Under the bill, the 10-year period also applies to attempted murder, manslaughter, and first-degree home invasion.

The bill states: "The legislature intends that the extension or tolling, as applicable, of the limitations period provided in this amendatory act shall apply to any of those violations for which the limitations period has not expired at the time this amendatory act takes effect."

MCL 767.24

## **BACKGROUND**

### **DNA Analysis**

Human cells that contain a nucleus, such as those found in hair and skin, hold chromosomes that contain an essential component of all living matter known as deoxyribonucleic acid, or DNA. DNA is the complex molecule that houses genetic instructions and transmits hereditary patterns. The genetic code, found in a DNA molecule, is made up of long strands that transmit instructions for general human characteristics, such as arms and legs, and shorter sequences (called "markers") that give instructions for characteristics that distinguish individuals from each other. Except in the case of identical twins, each person's genetic code is unique to that individual.

Genetic testing was first developed in England in the early 1980s. Originally, crime laboratories relied primarily on "restrictive fragment length polymorphism" (RFLP)

testing, which requires a comparatively large quantity (100,000 or more cells) of good quality DNA. Most laboratories now are shifting to tests based on the "polymerase chain reaction" (PCR) method, a kind of molecular copying technique that can generate reliable data from extremely small samples of DNA (50 to 100 cells).

Several basic steps are performed during DNA testing regardless of the type of test being done. The general procedure includes: 1) the isolation of the DNA from an evidence sample containing DNA of unknown origin and, generally at a later time, the isolation of DNA from a sample (e.g., blood) obtained from a known individual; 2) the processing of the DNA so that test results may be obtained; 3) the determination of the DNA test results (or types) from specific regions of the DNA; and 4) the comparison and interpretation of the test results from the unknown and known samples to determine whether the known individual is not the source of the DNA or is included as a possible source of the DNA ("Postconviction DNA Testing: Recommendations for Handling Requests", by the Working Group on Postconviction Issues of the National Commission on the Future of DNA Evidence).

### **Degrees of Criminal Sexual Conduct**

First- and third-degree CSC involve "sexual penetration", while second- and fourth-degree CSC involve "sexual contact" (as those terms are defined in the Code).

**First- and Second-Degree CSC.** Criminal sexual conduct in the first-degree occurs if a person engages in sexual penetration with another person and any of the circumstances described below exist. Criminal sexual conduct in the second degree occurs when a person engages in sexual contact with another person and any of the following circumstances exist:

- The other person is under 13 years old.
- The other person is at least 13 but less than 16 and the actor is a member of the same household as the victim, is related to the victim by blood or affinity to the fourth degree, or is in a position of authority over the victim and used that authority to coerce the victim to submit.
- Sexual penetration or contact, as

applicable, occurs under circumstances involving the commission of any other felony.

- The actor is aided and abetted by one or more other people and either: 1) knows or has reason to know the victim is mentally incapable, mentally incapacitated, or physically helpless, or 2) uses "force or coercion" to accomplish the sexual penetration.
- The actor is armed with a weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a weapon.
- The actor causes personal injury to the victim and force or coercion is used to accomplish the penetration or sexual contact.
- The actor causes personal injury to the victim, and the actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.
- The other person is mentally incapable, mentally disabled, mentally incapacitated, or physically helpless and the actor either: 1) is related to the victim by blood or affinity to the fourth degree, or 2) is in a position of authority over the victim and used that authority to coerce the victim to submit.

In addition, second-degree CSC occurs if a person engages in sexual contact with another person and any of the following circumstances exist:

- The other person is under the jurisdiction of the Department of Corrections (DOC) and the actor is a DOC employee, contractual employee, or volunteer who knows that the other person is under the DOC's jurisdiction.
- The other person is under DOC jurisdiction and the actor is an employee or contractual employee of, or a volunteer with, a private vendor that operates a youth correctional facility and who knows that the other person is under the DOC's jurisdiction.
- The other person is a prisoner or probationer under the jurisdiction of a county for purposes of imprisonment or a work program or other probationary program, and the actor is an employee or contractual employee of, or a volunteer with, the county or the DOC who knows that the other person is under the county's

jurisdiction.

- The actor knows or has reason to know that a court has detained the victim while the victim is awaiting trial or hearing, or committed the victim to a juvenile facility, and the actor is an employee or contractual employee of, or a volunteer with, the facility in which the victim is detained or committed.

First-degree CSC is a felony punishable by imprisonment for life or for any term of years. Second-degree CSC is a felony punishable by up to 15 years' imprisonment.

Third- and Fourth-Degree CSC. Criminal sexual conduct in the third-degree occurs if a person engages in sexual penetration with another person and any of the circumstances described below exist. Criminal sexual conduct in the fourth degree occurs if a person engages in sexual contact with another person and any of the following circumstances exist:

- The other person is at least 13 but under 16. (For fourth-degree CSC, the actor also must be at least five years older than the other person.)
- Force or coercion is used to accomplish the sexual penetration or contact, as applicable.
- The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.
- The other person is related to the actor by blood or affinity to the third-degree and the sexual penetration or contact occurs under circumstances not otherwise prohibited. (This provision does not apply if both people are lawfully married to each other at the time of the alleged violation.)

In addition, fourth-degree CSC occurs if the actor is a mental health professional and the sexual contact takes place during or within two years after the period in which the victim is his or her client or patient and not his or her spouse.

Third-degree CSC is a felony punishable by up to 15 years' imprisonment. Fourth-degree CSC is a misdemeanor punishable by up to two years' imprisonment, a maximum fine of \$500, or both.

Assault With Intent. Assault with intent to commit CSC involving sexual penetration is a felony punishable by up to 10 years' imprisonment. Assault with intent to commit second-degree CSC is a felony punishable by up to five years' imprisonment.

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

Due to the seriousness of the offense and its long-lasting and devastating effect on victims, first-degree CSC should not have a limitations period after which the perpetrator may escape prosecution. The emotional trauma of rape can be life-altering and a victim may never fully recover from the pain, fear, and humiliation of being attacked. The offenders should not be able to avoid being prosecuted based solely on the passage of time.

In addition, 1998 amendments to Chapter XXXIII of the Michigan Penal Code established a graduated penalty system for various explosives offenses. Penalties for offenses that cause a death were increased to imprisonment for life without opportunity for parole, the same as for first-degree murder. Since murder cases have no statute of limitations, violations of Chapter XXXIII that are punishable by life imprisonment also should not be subject to a limitations period.

### **Supporting Argument**

Evidence in sex crime cases often can include DNA samples left by a perpetrator in the form of hair, tissue, saliva, or other bodily fluids. Recent technological progress in genetic testing has made DNA evidence a predominant forensic technique for identifying criminals. When a biological sample is left at a crime scene or on a victim, DNA testing can compare that sample with one taken from a suspect. If the test result is conclusive, it can serve to confirm his or her guilt. With the increased effectiveness of DNA collection and profiling techniques, a rapist's genetic identity can be secured to a virtual certainty even though the person's name may be unknown. Since DNA evidence is very reliable, there is little reason to continue to limit the period during which a prosecution can be pursued in a sex-crime case in which DNA evidence is available.

One reason for statutes of limitations is to guarantee that defendants have a fair and reasonable opportunity to defend themselves before evidence has been diminished or tainted by time. Now, however, DNA evidence can be collected, examined, and stored without losing its validity over time. Although the bill does not entirely remove the statute of limitations for most CSC cases or for child sexually abusive activity or material cases, by tolling the limitations period until a DNA profile can be matched with a suspect, the bill recognizes technological advances that render those statutes of limitations unnecessary.

**Response:** DNA profiling should not be viewed as a trump card or panacea for all unsolved criminal cases in which it is collected. While DNA, like fingerprints, can place a person at a particular scene, it cannot describe the circumstances under which the person was there. Furthermore, DNA evidence requires particularly careful handling by crime scene experts and proper police storage facilities if it is to have any probative value.

### **Supporting Argument**

By eliminating the limitations period for first-degree CSC and tolling it when DNA evidence is obtained in other CSC cases, the bill will prevent criminals from getting away with heinous crimes just because a number of years have passed since the offense. A recent case in Genesee County provides an example.

According to testimony of the Genesee County Prosecuting Attorney, in 1999 a man who attacked and raped two children was convicted of rape and attempted murder. As a result of DNA evidence secured in this case, a prior unsolved kidnapping and sexual assault case that occurred in 1993 was solved. In the earlier case, DNA evidence of an unidentified assailant had been collected. The DNA evidence from that case matched DNA evidence collected in the 1999 case. The Genesee County prosecutor charged the perpetrator with kidnapping and CSC in the 1993 case, but the rape charge was dismissed because more than six years had passed since the offense was committed. (Since kidnapping has a 10-year limitations period, the prosecutor was able to level that charge.) If the bill had been in effect, the offender would have had to face charges of CSC as well as kidnapping.

**Response:** It may not be necessary to toll the statute of limitations when DNA evidence

is collected in order to secure an indictment against an unidentified perpetrator. Filing charges against a person based on his or her DNA, even when the person's name has not been identified, may be an alternative. According to an article that appeared in the *Lansing State Journal* ("DNA strategy opens new road to justice--or Pandora's box", January 7, 2001), a rapist was recently indicted in California one day before the statute of limitations on the case expired. The indictment was not against a named defendant, but against the genetic code of a DNA sample taken six years earlier from a rape victim. A later report ("Ruling upholds arrest based on DNA", *Lansing State Journal*, February 24, 2001) revealed that the suspect was identified through a match with a profile in California's sex-offender DNA database and a court upheld the arrest even though it occurred one month after the state's six-year statute of limitations expired. Limitations periods could be met with the use of such "John Doe" indictments, identifying the defendant by his or her DNA profile. If the person who fit that profile were later identified by name as in the recent California case, then he or she could be prosecuted because the charges were filed before the limitations period ran.

### **Supporting Argument**

Like the other offenses that warrant a longer-than-usual period of limitations, criminal sexual conduct and sexually abusive activity involving a child also are egregious enough to demand a longer statute of limitations. In addition, it is not at all unusual for a victim of rape or child sexual abuse to delay reporting the crime for various reasons (e.g., shame, humiliation, fear, or filiation with the perpetrator). By allowing an indictment for first-degree CSC at any time and for other CSC offenses and involvement in child sexually abusive activity or material within 10 years of the offense or by the victim's 21st birthday, the bill recognizes the serious and sensitive nature of those crimes and provides for more investigative time to solve the crime and prosecute the offender.

### **Opposing Argument**

Statutes of limitations are a bedrock of America's legal system. They exist to provide a balance in the criminal justice system and enable defendants to meet the charges against them. As more time passes, it

becomes more difficult for a defendant to mount an effective defense as memories fade, witnesses move on or pass away, and physical evidence is misplaced or destroyed. While the use of DNA evidence can be a powerful prosecutorial tool, the State should be wary of radically adjusting the law's time-honored protections for the accused in criminal cases. The statute of limitations has a strong role to play in preserving defendants' due process rights.

**Response:** First-degree CSC and causing a death by an explosives offense are, like murder, extremely egregious violations of law. People who commit those crimes do not deserve the protection from prosecution that is afforded by the passage of time. In addition, the bill did not eliminate the statute of limitations for most CSC violations or for child sexually abusive activity or material cases. It merely lengthened the limitations period to 10 years, in recognition of the seriousness of those offenses, and tolls the statute of limitations when DNA evidence is obtained until the DNA profile identifies a particular individual.

Legislative Analyst: P. Affholter

### **FISCAL IMPACT**

Senate Bill 1 will have an indeterminate fiscal impact on State and local government.

There are no data available to indicate how many more offenders will be convicted each year as a result of extending the statute of limitations for these crimes or basing the limitation for prosecution of the crime on the discovery of DNA evidence. Crimes for which the statute of limitation changed are shown in Table 1, with the number of offenders convicted in 1998 and the average minimum sentence (less minimum sentences of life) for offenders serving a term of incarceration in 1998. Assuming that two additional individuals a year are convicted of each of these offenses as a result of these changes to the statute and serve a term of imprisonment equal to the average minimum sentence, the costs of incarceration to the State will increase \$2,734,000, given an average annual cost of \$22,000.

Table 1

Crime	1998 Number of Conviction	1998 Average Minimum Sentence (Years)
Criminal Sexual Conduct, 1 <sup>st</sup> Degree	322	15.7
Criminal Sexual Conduct, 2 <sup>nd</sup> Degree	633	5.4
Criminal Sexual Conduct, 3 <sup>rd</sup> Degree	382	5.7
Criminal Sexual Conduct, 4 <sup>th</sup> Degree	533	1.5
Assault with Intent to Commit Criminal Sexual Conduct	133	3.9
Child Abusive Commercial Activity	27	7.5
1 <sup>st</sup> Degree Home Invasion	416	3.1
Manslaughter	113	7.2
Attempted murder	2	7.3
Explosive offenses (MCL 750.200 to 750.212A)	26	1.9-15

Fiscal Analyst: K. Firestone

A0102\sl1ea

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.