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## Judiciary Committee

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### HB 1089

**Title:** An act relating to the statute of limitations on certain sex offenses.

**Brief Description:** Removing the statute of limitations for sex offenses.

**Sponsors:** Representatives Ahern, Miloscia, Benson, O'Brien, McDonald, Sullivan, Sump, Pearson, Hunt, Schindler, Lovick, Chase, Cairnes, Anderson, Nixon, Schoesler, Skinner, Sehlin, Bailey, Upthegrove, Haigh and Alexander.

Brief Summary of Bill
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| <ul style="list-style-type: none"><li>· Removes the statute of limitations for criminal prosecution of any sex offense.</li></ul> |
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**Hearing Date:** 2/7/03

**Staff:** Bill Perry (786-7123).

#### Background:

Most crimes are subject to a statute of limitations. At common law, there were no periods of limitations on the prosecution of crimes. Legislatures have enacted statutes of limitations for various reasons, including concern about the reliability of evidence and the ability of an accused person to mount a defense after many years. The periods of limitations for different crimes vary in length. They may also vary as to "tolling" provisions that determine when a period of limitations is running.

Generally, the more serious a crime is, the longer the statute of limitations will be. Some crimes have their own specific statutes of limitations, but the default statute of limitations provides the following periods:

- Felonies - three years;
- Gross Misdemeanors - two years; and
- Misdemeanors - one year.

All statutes of limitations are tolled "when the person charged is not usually and publicly resident within this state." Generally, statutes of limitations begin to run at the time of the commission of the crime. However, some statutes of limitations do not begin to run until

after the crime has been discovered, or until after some other specified event has occurred.

A few crimes have no period of limitation, and prosecution for them may be brought at any time. These crimes are all felonies that result in a death. They include:

- Murder;
- Homicide by Abuse;
- Arson (where a death results);
- Vehicular Homicide;
- Vehicular Assault (where a death results); and
- Hit-and-Run (where a death results).

Sex offenses have a complex statute of limitations. Sex offenses range from First Degree Rape, which is a class A felony, to Allowing a Minor on Premises (where there is a live erotic performance), which is a gross misdemeanor. Some examples follow:

- First and Second Degree Rape:
  - A. If the crime is reported within one year of commission, and:
    - 1. The victim is 14 or older, then 10 years from commission; or
    - 2. The victim is under 14, then 10 years from commission or three years after the victim's 18th birthday, whichever is later.
  - B. If the crime is not reported within one year of commission, and:
    - 1. The victim is 14 or older, then seven years from commission; or
    - 2. The victim is under 14, then seven years from commission or three years after the victim's 18th birthday, whichever is later.
- Rape of a Child in the First or Second Degree: Seven years from commission or three years after the victim's 18th birthday.
- Third Degree Rape and Third Degree Rape of a Child: Three years from commission.
- Voyeurism: Two years after discovery.
- Sexual Misconduct with a Minor in the Second Degree: Two years from commission.

Whenever the Legislature amends a statute of limitations by lengthening it, the issue arises as to whether the new period applies to crimes committed before the effective date of the new statute. Case law in this state indicates that it *will* apply to a prior crime if the prior period of limitations has not expired. A decision from 1987, State v. Hodgson, upheld the application of an extended sex crimes statute of limitations where the prosecution was for a crime committed before the new act became effective, but where the old statute of limitations had not yet expired by that date. However, the decision suggests that a new statute of limitations could not be used to "revive" a prosecution where the original period of limitation had already run on the crime. Quoting Judge Learned Hand, the State Supreme Court said that it seems "unfair and dishonest" to change the rules once a pursuit appears to have ended. However, "while the chase is on, it does not shock us to have it extended beyond the time first set, or, if it does, the stake forgives it."

### **Summary of Bill:**

The statute of limitations for sex offenses is removed. Any sex offense may be prosecuted at any time after its commission.

**Appropriation:** None.

**Fiscal Note:** Preliminary fiscal note available.

**Effective Date:** The bill takes effect ninety days after adjournment of session in which bill is passed.