

## STATUTE OF LIMITATIONS

Statute of limitations consideration must be a very careful and fact-specific analysis for each individual case as there are many factors to consider.

- 45-5-502 Sexual assault
- 45-5-503 Sexual intercourse without consent
- 45-5-504 Indecent exposure
- 45-5-507 Incest
- 45-5-625 Sexual abuse of children
- 45-5-627 Ritual abuse of minor (not enacted until 1993)
- 45-5-704 Sexual servitude
- 45-5-705 Patronizing victim of sexual servitude

**45-1-205. General time limitations.** (1) (a) A prosecution for deliberate, mitigated, or negligent homicide may be commenced at any time.

(b) **Except as provided in subsection (1)(c) or (9), a prosecution for a felony offense under 45-5-502, 45-5-503, 45-5-504, 45-5-507(4) or (5), 45-5-625, or 45-5-627 may be commenced within 10 years after it is committed.**

(c) **A prosecution for an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-507, 45-5-508, 45-5-602, 45-5-603, 45-5-625, 45-5-627, 45-5-704, or 45-5-705 may be commenced at any time if the victim was less than 18 years of age at the time that the offense occurred.**

(2) Except as provided in subsection (7)(b) or as otherwise provided by law, prosecutions for other offenses are subject to the following periods of limitation:

(a) A prosecution for a felony must be commenced within 5 years after it is committed.

(b) A prosecution for a misdemeanor must be commenced within 1 year after it is committed.

(3) The periods prescribed in subsection (2) are extended in a prosecution for theft involving a breach of fiduciary obligation to an aggrieved person as follows:

(a) if the aggrieved person is a minor or incompetent, during the minority or incompetency or within 1 year after the termination of the minority or incompetency.

(b) in any other instance, within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not personally a party to the offense or, in the absence of discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(4) The period prescribed in subsection (2) must be extended in a prosecution for unlawful use of a computer, and prosecution must be brought within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not personally a party to the offense or, in the absence of discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(5) The period prescribed in subsection (2) is extended in a prosecution for misdemeanor fish and wildlife violations under Title 87, and prosecution must be brought within 3 years after an offense is committed.

(6) The period prescribed in subsection (2)(b) is extended in a prosecution for misdemeanor violations of the laws regulating the activities of outfitters and guides under Title 37, chapter 47, and prosecution must be brought within 3 years after an offense is committed.

(7) (a) An offense is committed either when every element occurs or, when the offense is based upon a continuing course of conduct, at the time when the course of conduct is terminated. Time starts to run on the day after the offense is committed.

(b) A prosecution for theft under 45-6-301 may be commenced at any time during the 5 years following the date of the theft, whether or not the offender is in possession of or otherwise exerting unauthorized

control over the property at the time the prosecution is commenced. After the 5-year period ends, a prosecution may be commenced at any time if the offender is still in possession of or otherwise exerting unauthorized control over the property, except that the prosecution must be commenced within 1 year after the investigating officer discovers that the offender still possesses or is otherwise exerting unauthorized control over the property.

(8) A prosecution is commenced either when an indictment is found, or an information or complaint is filed.

**(9) If a suspect is conclusively identified by DNA testing after a time period prescribed in subsection (1)(b) has expired, a prosecution may be commenced within 1 year after the suspect is conclusively identified by DNA testing.**

(10) A prosecution for reckless driving resulting in death may be commenced within 3 years after the offense is committed.

(11) A prosecution of careless driving resulting in death may be commenced within 3 years after the offense is committed.

#### **45-1-206. Periods excluded from limitation.**

The period of limitation does not run during:

(1) any period in which the offender is not usually and publicly resident within this state or is beyond the jurisdiction of this state.

(2) any period in which the offender is a public officer and the offense charged is theft of public funds while in public office; or

(3) a prosecution pending against the offender for the same conduct, even if the indictment, complaint, or information which commences the prosecution is dismissed.

**2007 added: 45-1-205 (9) General time limitations.** If a suspect is conclusively identified by DNA testing after a time period prescribed in subsection (1)(b) or (1)(c) has expired, a prosecution may be commenced within 1 year after the suspect is conclusively identified by DNA testing. \*

\*Subsection (9) does NOT permit or provide for the revival of charges for which the statute of limitations had already expired prior to October 1, 2007. *Tipton v. Mont. Thirteenth Judicial Dist. Court*, 2018 MT 164, 392 Mont. 59, 421 P.3d 780.

*Mordja v. Eleventh Judicial District*, 2008 MT 24, 341 Mont 219 (2008) establishes the following: The Montana Supreme Court held that where a statute of limitations was extended to extend the period in which a criminal offense could be charged, the extended period applied to all offenses not barred at the time of the amendment.

Date of Offense	Calculating Statute of Limitations
Offenses committed on or before 10/01/1989	Date of offense (year) + 5 = SOL expires
Offenses committed on or after 10/01/1989 until 10/01/2001	<p>Adult at time of assault: Date of offense (year) + 5 = Year SOL expires</p> <p>Minor at time of assault: (18 – age at assault) + 5 + year of assault = Year SOL expires</p>
Offenses committed on or after 10/01/2001 until 10/01/2017	<p>Adult at time of assault: Date of offense (year) + 10 = Year SOL expires</p> <p>Minor at time of assault: (18 – age at assault) + 10 + year of assault = Year SOL expires</p>
2007 amendment 45-1-205 (9)	<p>Add one year after suspect is conclusively identified by DNA after the Statute of Limitations has expired.</p> <p>This extension does not apply if SOL expired prior to October 1, 2007. 2007 MT SB 104, which added subsection (9) to MCA 45-1-205 was approved by the Governor on May 8, 2007, but did not include an effective date provision. Pursuant to MCA 1-2-201, since the 2007 legislature was a regular session, the effective date would have been October 1, 2007.</p>
Offenses committed on or after 10/01/2017 until 05/07/2019	<p>Adult at time of assault: Date of offense (year) + 10 = Year SOL expires</p> <p>Minor at time of assault: (18 – age at assault) + 20 + year of assault = Year SOL expires</p>
Offenses committed on or after 05/07/2019 until current	<p>Adult at time of assault: Date of offense (year) + 10 = Year SOL expires</p> <p>Minor at time of assault: May commence prosecution <b>at any time</b> *source HB0640 2019 amendment</p>

*This project was supported by Grant No. 15PBJA-23-GG-02268-SAKI awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Department of Justice's Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the SMART Office. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.*