

Prior to March 18<sup>th</sup>, 1995, the governing statute for all of the listed crimes was UTAH CODE ANN. 76-1-302, which set out a statute of limitations of four years from the date of the crime.

In 2003, the DNA exception to the statute of limitations was enacted, which allows prosecution if the perpetrator is unknown, but DNA evidence collected at a later date makes the person identifiable. UTAH CODE ANN. 76-1-302(2). This exception does not apply if the statute of limitations has run as of May 5, 2003 and no charges have been filed. *Id.* The prosecution has one year from the date of discovery of the perpetrator's identity to file charges. *Id.* at (3)

The following table sets out the applicable statute of limitations for various crimes. In general, a crime is chargeable under a statute of limitations which was put in effect at the time the Defendant was still subject to prosecution from the previous statute of limitations. This can occur multiple times.

"4 years" means that the standard statute of limitations applies; and that the prosecution has 4 years from the date of the offense to file charges

"4 years rpt" means that the prosecution has 4 years from the date of the first report of the offense to law enforcement to file charges.

"8/4 rpt" means that the prosecution has 8 years from the date of the offense to file charges, if the charges are filed within 4 years of the first report of the offense

"No limit" means that UTAH CODE ANN. 76-1-301, which removes all time restrictions, was amended to incorporate the listed crime.

	3/18/1995	4/29/1996	5/6/2002	5/5/2003	5/2/2005	5/5/2008
Child Abuse Homicide	4 years	→	No limit	→	→	→
Aggravated Kidnapping	4 years	→	No limit	→	→	→
Child Kidnapping	4 years	→	No limit	→	→	→
Rape	4 years	→	→	8/4 rpt	→	No limit
Rape of a Child	4 years	→ 4 years rpt	→	→	8/4 rpt	No limit
Object Rape	4 years	→	→	→	→	No limit
Object Rape of a Child	4 years	→ 4 years rpt	→	→	8/4 rpt	No limit
Forcible Sodomy	4 years	→	→	→	→	No limit
Sodomy of a Child	4 years	→ 4 years rpt	→	→	→	No limit
Sexual Abuse of a Child	4 years	→ 4 years rpt	→	→	→	No limit
Aggravated Sexual Abuse of a Child	4 years	→ 4 years rpt	→	4 years rpt	→	No limit
Aggravated Sexual Assault	4 years	→	→	→	8/4 rpt	No limit
Forcible Sexual Abuse	4 years	→	→	→	8/4 rpt	→
DNA Exception, 76-1-302				See Code	→	→

On 3/18/1995, the Utah Code was amended to create a 4 years from report requirement for Sodomy of, Sexual Abuse of, Object Rape of, and Rape of a Child. (HB 109)

On 4/29/1996, the Utah Code was amended to create a 4 years from report requirement for Aggravated Sexual Abuse of a Child. (HB 242)

On 5/6/2002, the Utah Code was amended to remove all statutes of limitation from Child Abuse Homicide, Aggravated Kidnapping, and Child Kidnapping. (HB 39)

On 5/5/2003, the Utah Code was amended to create the DNA exception. (SB 116)

On 5/2/2005, the Utah Code was amended to create 8/4 requirements for Rape, Object Rape, Forcible Sodomy, Aggravated Sexual Assault, and Forcible Sexual Abuse. (SB 177)

On 5/5/2008, the Utah Code was amended to remove all statutes of limitation from any first degree felony sex offense and Sexual Abuse of a Child. (HB 13)

Of the listed offenses, only Forcible Sexual Abuse still has a statute of limitations, that limitation is an 8/4 requirement.

## FOR WHOM THE BELLS TOLLS

**A brief exploration of the statute of limitations and how it applies to child sex offenses.**

Every detective, attorney and case worker has likely been forced to accept their own ignorance. One area in which our mental capacity seems easily taxed is when we need to determine if the Statute of Limitations "SOL" has run on a particular case. This brief article seeks to illuminate this dark corner of our minds and give us one less thing to not know. This is not the last, or only word on the subject of SOL law but humbly aims to 1) allow professionals to understand the important dates in computing SOL, 2) explain when a report is a report for purposes of computing the SOL, 3) understand SOL law as applied to defendant's who leave the state.

### **1) Years that matter.**

Some years matter more than others. For example, the year 2000 was important because it marked the beginning of a new century and signaled certain death to all computers who could not handle the possibility of a date that did not start with 1900. In SOL law the following years mean a lot more than others. 1983, 1991, 1996, 2003, 2005, 2008, 2009. I will briefly explain what these years mean and how they impact the SOL for sex offenses.

- a) **1983.** In addition to being a year in which a river of flood water ran down State Street in Salt Lake City, 1983 was also the first year sex offenses were given a different set of SOL rules than other criminal offenses. Prior to 1983 all child sex offenses were subject to a 4 year SOL from the time of the incident. The 1983 legislature determined that child sex offenses needed to be prosecuted within *one year of a report*, but no longer than *8 years after the alleged incident*. This language applied to the following offense: Rape of a Child, Object Rape of a Child, Sodomy on Child, Sexual Abuse of a Child.
- b) **1991.** In addition to being the year in which the USSR was formally dissolved, 1991 marked a sea change in SOL law in Utah. The legislature now determined that the child sex cases could be initiated *within 4 years of a report to law enforcement* and there was *no longer an 8 year SOL that begin to toll when the abuse occurred*. This law applied to the following offense: Rape of a Child, Object Rape of a Child, Sodomy on a Child, Sexual Abuse of a Child.

changes this year is that we can add Incest to Forcible Sexual Abuse as crimes with an 8 year SOL so long as they are reported within 4 years of occurring.

**Staying Alive.** It is important to remember a case may survive for a long time as long as the SOL triggers have not been pulled. For example, if a twelve year old were molested by her uncle in 1989 but disclosed today for the first time we could file her case. Here is how that works. In 1989 the applicable law was the one year after report but not more than 8 years after occurrence. The incident was not reported so we are only concerned about the 8 years after the incident rule. In 1991, only two years after this incident the law was changed, this change eliminated the 8 year SOL. As a result this case stayed alive and was now subject to the new 4 years after report rule. Since no report occurred, this case survived the SOL changes that occurred in 1996, 2004, 2005, 2008, 2009, and therefore did not run afoul of the SOL when it was finally reported in 2013.

## 2) When is a Report a Report?

The SOL law prior to 2008 indicated that a prosecution must commence within 4 years of a report to law enforcement. What constitutes a “report” has become the subject of some confusion. The Utah Supreme Court case of *State v. Green*, 2005 UT 9, 108 P.3d 710 provides professionals with some helpful guidelines to aid in making this determination.

Thomas Green was Utah’s most famous living polygamist before Warren Jeffs grabbed the spotlight. He was prosecuted and convicted for Rape of Child, because he had married and impregnated his 13 year old bride. *Id.* at ¶2–3. The actual marriage and sexual offense related thereto were committed in 1985, the prosecution was not commenced until 2000. *Id.* at ¶1–3. On appeal, Mr. Green asserted that because some DCFS workers and law enforcement officers had responded to the home and because vital record statistics had been gathered on the homes occupants a “report” had been generated and the SOL had run. The Supreme Court disagreed, and in so doing helped define the terms “offense”, and “report”.

The *Green* Court held that “mere clues that criminal conduct has occurred is not enough” to indicate that an offense has been reported. *Id.* at ¶43. For example, it would appear that being alerted to possible sexual offenses would not constitute a report if nothing more than suspicion instigated the investigation. The Court goes on to indicate that for an offense to have been reported “implies a degree of articulation of criminal conduct sufficient to permit a law enforcement agency to conclude what was done and who did it without additional investigation or analysis.” *Id.*

- c) 1996. In addition to being the year the Spice Girls had their first number one hit, 1996 was also a year that saw some minor changes to SOL law. The only change that occurred this year was that now the crime of Aggravated Sexual Abuse of a Child ASAC was also subject to the *4 years after report* to law enforcement rule.
- d) 2003. In addition to being the year that marked 100 years of Harley Davidson motorcycles 2003 also marked another change to SOL law. This is the year that DNA becomes a part of the SOL picture. If at the time of the crime the perpetrator is unknown and DNA subsequently identifies the defendant the prosecution *may commence at any time*. There is effectively no SOL, however, the prosecution must commence *within one year of the defendant being identified* by DNA evidence. This rule applies to: Rape, Rape of a Child, Object Rape, Object Rape of a Child, Sodomy on Child, Forcible Sodomy, Sexual Abuse of a Child, Forcible Sexual Abuse Aggravated Sexual Abuse of a Child, Aggravated Sexual Assault, Sexual exploitation of a Minor, and a host of other violent non-sex offenses. NOTE: if the SOL had already run out on May 5, 2003, this section will not revive the case.
- e) 2005. In addition to being the year Michael Jackson was acquitted of child molestation charges 2005 changed the SOL pertaining to adult sex crimes. This SOL change provided *up to 8 years for the commencement of certain adult sex offense* as long as a report has *been made within 4 years of the offense to a law enforcement agency*. This change applied to: Rape, Object Rape, Forcible Sodomy, Forcible Sexual Abuse, Aggravated Sexual Assault.
- f) 2008. In addition to being the year that the Detroit Lions went (0-16), 2008 also ushered in a big tweak to the SOL laws. Now *all child sex offenses may be commenced at any time*. No more 4 years after report rule. In addition, a number of adult sex offenses were no longer subject to the SOL. This new change applied to the following: Rape, Rape of a Child, Object Rape, Object Rape of a Child, Forcible Sodomy, Sodomy on a Child, Sexual Abuse of a Child, Agg Sexual Abuse of a Child, Agg Sexual Assault. NOTE: Forcible Sexual abuse is still subject to the 2005 rule.
- g) 2009. In addition to being the year that Slovakia finally gave up the fight, adopted the Euro and became a member of the Eurozone, 2009 saw minor changes in SOL law. All that really

In addition to the abovementioned general principles the Court provides a three part test for evaluating whether information qualifies as a “report of the offense.” To constitute a report there must be: “(1) a discrete and identifiable oral or written communication, (2) that is intended to notify a law enforcement agency that a crime has been committed and (3) that actually communicates information bearing on the elements of crime as would place the law enforcement agency on actual notice that a crime has been committed.” *Id.* at ¶46.

By applying the above stated test we can gain some understanding about whether a “report” for purposes of SOL analysis has been made. *Green* also makes an important finding regarding the meaning of the term “law enforcement agency.” The Court determined that DCFS, while it does share some investigatory functions with law enforcement agencies, is not a law enforcement agency for purposes of tolling the SOL. *Id.* at ¶50. The SOL will only begin to run once a police agency begins to investigate and even then only if the “report of the offense” test has been satisfied.

### 3) Out of State Sorrow: there is no place like home.

Utah Code section 76-1-304 reads in pertinent part.

**The period of limitation does not run against any defendant during any period of time in which the defendant is out of the state following the commission of an offense.**

This simple rule has the ability to save cases that would otherwise fail because the SOL has run. For example, because of this section one could prosecute a pedophile who raped a child in 1982 but then fled to California and remained there until 2013. This law should remind detectives and attorneys to track a defendant’s living history on any cases where SOL may be a close call.