

# Criminal Statutes of Limitations Delaware

*Last Updated: April 2023*

## Rape, first degree

Question	Answer
What is the statute of limitations for this crime?	This crime is a Class A felony.  1. No statute of limitations for Class A felonies or any attempt to commit Class A felonies.
Statutory citation(s):	1. Citation for the crime: Del. Code Ann. tit. 11, § 773. 2. Citation for the statute of limitations: Del. Code Ann. tit. 11, § 205(a).

## Rape, second degree

Question	Answer
What is the statute of limitations for this crime?	This crime is a Class B felony.  1. No statute of limitation for this crime or any attempt to commit such crime; and 2. No prosecution may be based solely on the memory of the victim that has been recovered through psychotherapy without independent evidence.
Statutory citation(s):	1. Citation for the crime: Del. Code Ann. tit. 11, § 772 2. Citation for the statute of limitations: Del. Code Ann. tit. 11, § 205 (e).

## Rape, third degree

Question	Answer
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What is the statute of limitations for this crime?	This crime is a Class B felony.  1. No statute of limitation for this crime or any attempt to commit such crime; and 2. No prosecution may be based solely on the memory of the victim that has been recovered through psychotherapy without independent evidence.
Statutory citation(s):	1. Citation for the crime: Del. Code Ann. tit. 11, § 771 2. Citation for the statute of limitations: Del. Code Ann. tit. 11, § 205(e).

### **Rape, fourth degree**

Question	Answer
What is the statute of limitations for this crime?	This crime is a Class C felony.  1. No statute of limitation for this crime or any attempt to commit such crime; and 2. No prosecution may be based solely on the memory of the victim that has been recovered through psychotherapy without independent evidence.
Statutory citation(s):	1. Citation for the crime: Del. Code Ann. tit. 11, § 770 2. Citation for the statute of limitations: Del. Code Ann. tit. 11, § 205(e).

### **Unlawful sexual contact, first degree**

Question	Answer
What is the statute of limitations for this crime?	This crime is a Class D felony.  1. No statute of limitation for this crime or any attempt to commit such crime; and 2. No prosecution may be based solely on the memory of the victim that has been recovered through psychotherapy without independent evidence.
Statutory citation(s):	1. Citation for the crime: Del. Code Ann. tit. 11, § 769 2. Citation for the statute of limitations: Del. Code Ann. tit. 11, § 205(e).

## Unlawful sexual contact, second degree

Question	Answer
What is the statute of limitations for this crime?	This crime is a Class F felony.  1. No statute of limitation for this crime or any attempt to commit such crime; and 2. No prosecution may be based solely on the memory of the victim that has been recovered through psychotherapy without independent evidence.
Statutory citation(s):	1. Citation for the crime: Del. Code Ann. tit. 11, § 768. 2. Citation for the statute of limitations: Del. Code Ann. tit. 11, § 205(e).

## Unlawful sexual contact, third degree

Question	Answer
What is the statute of limitations for this crime?	This crime is a Class A misdemeanor.  1. No statute of limitation for this crime or any attempt to commit such crime; and 2. No prosecution may be based solely on the memory of the victim that has been recovered through psychotherapy without independent evidence.
Statutory citation(s):	1. Citation for the crime: Del. Code Ann. tit. 11, § 767. 2. Citation for the statute of limitations: Del. Code Ann. tit. 11, § 205(e).

## Incest

Question	Answer
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What is the statute of limitations for this crime?	<p>This crime is a Class A misdemeanor.</p> <ol style="list-style-type: none"> <li>1. No statute of limitation for this crime or any attempt to commit such crime; and</li> <li>2. No prosecution may be based solely on the memory of the victim that has been recovered through psychotherapy without independent evidence.</li> </ol>
Statutory citation(s):	<ol style="list-style-type: none"> <li>1. Citation for the crime: Del. Code Ann. tit. 11, § 766.</li> <li>2. Citation for the statute of limitations: Del. Code Ann. tit. 11, § 205 (e).</li> </ol>

### **Dangerous crime against a child under 14**

Question	Answer
What is the statute of limitations for this crime?	<p>This crime is a Class B felony. For a second offense, life in prison is a possibility.</p> <ol style="list-style-type: none"> <li>1. No statute of limitation for this crime or any attempt to commit such crime; and</li> <li>2. No prosecution may be based solely on the memory of the victim that has been recovered through psychotherapy without independent evidence.</li> </ol>
Statutory citation(s):	<ol style="list-style-type: none"> <li>1. Citation for the crime: Del. Code Ann. tit. 11, § 777.</li> <li>2. Citation for the statute of limitations: Del. Code Ann. tit. 11, § 205 (e).</li> </ol>

### **Continuous sexual abuse of a child**

Question	Answer
What is the statute of limitations for this crime?	<p>This crime is a Class B felony.</p> <ol style="list-style-type: none"> <li>1. No statute of limitation for this crime or any attempt to commit such crime; and</li> <li>2. No prosecution may be based solely on the memory of the victim that has been recovered through psychotherapy without independent evidence.</li> </ol>
Statutory citation(s):	<ol style="list-style-type: none"> <li>1. Citation for the crime: Del. Code Ann. tit. 11, § 776.</li> <li>2. Citation for the statute of limitations: Del. Code Ann. tit. 11, § 205 (e).</li> </ol>

## Sexual extortion

Question	Answer
What is the statute of limitations for this crime?	This crime is a Class E felony. <ol style="list-style-type: none"><li>1. No statute of limitation for this crime or any attempt to commit such crime; and</li><li>2. No prosecution may be based solely on the memory of the victim that has been recovered through psychotherapy without independent evidence.</li></ol>
Statutory citation(s):	<ol style="list-style-type: none"><li>1. Citation for the crime: Del. Code Ann. tit. 11, § 774.</li><li>2. Citation for the statute of limitations: Del. Code Ann. tit. 11, § 205 (e).</li></ol>

## Unlawful sexual conduct against a child, by a sex offender

Question	Answer
What is the statute of limitations for this crime?	This crime is classified depending on the classification of the underlying crime which originally required the sex offender to register: <ol style="list-style-type: none"><li>1. If the underlying crime was a misdemeanor, then this crime, unlawful sexual conduct against a child by a sex offender, is a Class G felony, unless child is less than 12 or is less than 18 and has a cognitive disability, then this crime is a Class C felony; or</li><li>2. If underlying crime was a Class C, D, E, F, or G felony, then this crime is one felony higher than the underlying offense, unless child is less than 12 or is less than 18 and has a cognitive disability, then this crime is a Class B felony; or</li><li>3. If the underlying crime was a Class A or B felony, then same felony grade with doubled minimum sentence of imprisonment.</li></ol> The statute of limitations is as follows: <ol style="list-style-type: none"><li>1. No statute of limitation for this crime or any attempt to commit such crime; and</li><li>2. No prosecution may be based solely on the memory of the victim that has been recovered through psychotherapy without independent evidence.</li></ol>

Statutory citation(s):	1. Citation for the crime: Del. Code Ann. tit. 11, § 777a. 2. Citation for the statute of limitations: Del. Code Ann. tit. 11, § 205(e).
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**Sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree**

Question	Answer
What is the statute of limitations for this crime?	<p>This crime is classified depending upon the age of the victim.</p> <ol style="list-style-type: none"> <li>1. If sexual intercourse with a victim less than 16 years of age, then Class A felony; or</li> <li>2. If sexual penetration of a victim than 16 years of age, then Class B felony; or</li> <li>3. If the victim is between 16 and 18 years of age and perpetrator is at least four years older than the child, then Class B felony; or</li> <li>4. If the victim is between 16 and 18 years of age, then Class C felony; or</li> <li>5. If sexual extortion of a victim less than 16 years of age, then Class D felony.</li> </ol> <p>The statute of limitations is as follows:</p> <ol style="list-style-type: none"> <li>1. No statute of limitation for this crime or any attempt to commit such crime; and</li> <li>2. No prosecution may be based solely on the memory of the victim that has been recovered through psychotherapy without independent evidence.</li> </ol>
Statutory citation(s):	1. Citation for the crime: Del. Code Ann. tit. 11, § 778. 2. Citation for the statute of limitations: Del. Code Ann. tit. 11, § 205(e).

**Sexual abuse of a child by a person in a position of trust, authority or supervision in the second degree**

Question	Answer
What is the statute of limitations for this crime?	<p>This crime is classified depending upon the age of the victim.</p> <ol style="list-style-type: none"> <li>1. If sexual contact with a victim less than 16 years of age or forces victim less than 16 years of age to have sexual contact with a third person, then Class D felony; or</li> <li>2. If perpetrator is at least 4 years older than victim under the age of 16 and exposes his or her</li> </ol>

	<p>private areas, then Class F felony; or</p> <p>3. If perpetrator is at least 4 years older than victim under the age of 16 and attempts to induce victim to engage in sexual contact or sexual intercourse, then Class G felony.</p> <p>The statute of limitations is as follows:</p> <p>1. No statute of limitation for this crime or any attempt to commit such crime; and</p> <p>2. No prosecution may be based solely on the memory of the victim that has been recovered through psychotherapy without independent evidence.</p>
Statutory citation(s):	<p>1. Citation for the crime: Del. Code Ann. tit. 11, § 778a.</p> <p>2. Citation for the statute of limitations: Del. Code Ann. tit. 11, § 205(e).</p>

### Are there any exceptions to the statute of limitations laws?

Question	Answer
Exceptions	<ul style="list-style-type: none"> <li>• Del. Code Ann. tit. 11, § 205 Time limitations <ul style="list-style-type: none"> <li>• (i) If the limitation period has expired, a prosecution for any offense in this title may be commenced within 10 years after it is committed if based upon forensic DNA testing.</li> </ul> </li> </ul>

### Anything else I should know?

Question	Answer
Anything else I should know?	<ul style="list-style-type: none"> <li>• For any crime not listed above which is a Class B or C misdemeanor, then prosecution for that offense must commence within two years after the offense was committed.</li> <li>• Limitation period does not run: <ul style="list-style-type: none"> <li>• (h) (1) During any time when the accused is fleeing or hiding from justice so that the accused's identity or whereabouts within or outside the State cannot be ascertained despite a diligent search; or</li> <li>• (h) (2) During any time when the accused has become a fugitive by failing to appear for any court proceeding for which proper notice was provided; or</li> <li>• (h) (3) During any time when a prosecution against the accused for the same conduct has been commenced.</li> </ul> </li> <li>• <i>Cane v. State</i>, 560 A.2d 1063, 1066 (Del. 1989)</li> </ul>

- Defendant may not be prosecuted for, or convicted of, a lesser included offense if at the time the offense is presented to the court its prosecution is time barred, even if the originally charged offense was not time barred.
- *Hoennicke v. State*, 13 A.3d 744, 747 (Del. 2010)
  - Legislative provision for unlimited statute of limitations for certain sexual offenses applies to offenses committed before the provision was passed on June 23, 2003 so long as the previously applicable statute of limitations had not expired by June 23, 2003.