

1-1-2014

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### Recommended Citation

Victoria Carmona, *Opposing Viewpoints: Criminal Statutes of Limitations in Childhood Sexual Abuse Cases*, 34 CHILD. LEGAL RTS. J. 330 (2014).

Available at: <http://lawcommons.luc.edu/clrj/vol34/iss3/8>

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## **Opposing Viewpoints: Criminal Statutes of Limitations in Childhood Sexual Abuse Cases**

*By Victoria Carmona Fehr*

The statute of limitations for childhood sexual abuse allegations prescribes a set length of time in which criminal charges can be brought against a defendant. This time frame may begin to run following the commission of the crime or when the crime was discovered, depending on the jurisdiction. Much controversy surrounds whether or not there should be limitations to the length of time within which charges can be brought and what the extent of such limitations should be. Nationally, there is still no consensus as to the ideal limitation period or applicable exceptions. At issue is the relative importance of a defendant's right to be free from stale claims, juxtaposed with the victim's right to seek redress.

In comparison to many other states' criminal statutes, Illinois favors fewer restrictions with regard to the statute of limitations for child sex abuse. In 1986, Illinois extended the statute of limitations for child victims of sex crimes to one year after attaining the age of majority, eighteen; meaning, a case could be charged at any time before the victim turned nineteen, even if the abuse occurred years before.

Originally, this change first extended only to cases in which the victim and offender were family members, but the statute was soon modified to include all child victims, regardless of whether or not there was a familial relationship. The statute was further clarified to include that when the victim is a minor, the statute of limitations would not expire sooner than three years after the commission of the offense.

In 2000, this one-year limitations period was changed to ten years, extending cases of criminal sexual assault, aggravated criminal sexual assault, predatory criminal sexual assault of a child, or aggravated criminal sexual abuse until the victim's 28th birthday. In 2002 an additional reporting requirement was removed, which had been required if the victim was not a family member. The law was changed in 2003 yet again, and this time it extended the limitation to twenty years, allowing for prosecution to occur up until the victim turns thirty-eight years old.

### **In Favor of No or Few Limitations**

For statute of limitations purposes with regard to child sexual abuse in Illinois and some jurisdictions, the period in which prosecution must occur is measured from the time the crime is committed, not when it is discovered. Other jurisdictions follow a different type of statute, where "[u]nder the continuing crime theory the statute of limitations does not begin to run until every element of the crime is completed." Several jurisdictions have applied the discovery rule to the prosecutions of child sexual abuse cases on the basis that there exists "a breach of fiduciary obligation between the victim and accused." Under the theory of the discovery rule, the limitation period does not begin to run until the plaintiff discovered or in the exercise of diligence should have discovered all of the facts essential to the cause of action.

However, the discovery rule “should be adopted only when the risk of stale claims is outweighed by the unfairness of precluding justified causes of action.” Some states, including Alabama, Kentucky, and Rhode Island have no statute of limitations with concern to felonious child sexual abuse offenses—prosecution may thus be brought at any time. Other states are still silent on the issue, implying that prosecution may commence at any time. The underlying rationale for not providing a limitation to prosecution for certain crimes is that the interest of the state in prosecuting those crimes outweighs the benefits derived from the implementation of a limitation period.

Part of the reasoning for extending or eliminating the statute of limitations is that victims may be too young at the time of the abuse to report it, and often do not report the abuse until after a statute has run out. Proponents of eliminating the statute of limitations include many victims and their families, victim's rights groups, and some prosecutors. In general, the trend of the legislature has also been in favor of eliminating limitations or extending the time frame for reporting, in large part due to societal upset in response to high-profile cases of abuse.

The trauma of sexual abuse may also leave victims suppressing their memory, where the statute of limitations “may have lapsed by the time the abuse comes to light.” Those against imposing limitations often cite medical studies on memory loss, a common feature to psychological trauma, which may prevent a victim from remembering the abuse until later in life - thus preventing more timely legal action from taking place. As a result, victims can be left without a remedy, and without a sense of justice.

Courts have recognized a State's interest in “safeguarding the physical and psychological well-being of a minor” as a compelling interest. In addition, “the high rate of recidivism among child abusers further enhances the position that there should be no statute of limitations for this offense.” Some jurisdictions, such as Minnesota, have begun to implement the delayed discovery rule. This rule of law suspends the statute of limitations for a child sex abuse cause of action until the time when the victim recognizes that the abuse caused his or her injuries.

#### **In Favor of Limitations**

The opportunity for legal redress varies in direct proportion to the length and accrual date of the limitations period. Statutes of limitations safeguard the accused against stale claims by discouraging victims from sleeping on their rights. Statutes of limitations are imposed in both civil and criminal actions to assist the courts in their pursuit of the truth by barring stale claims and to protect potential defendants from the protracted fear of litigation. Proponents of such limitations include many judges, defense attorneys, and legislators. Some prosecutors may be in favor of limitations, especially in cases where a significant time lapse between the alleged crime and the charges has eroded the availability and reliability of evidence. Defense attorneys favor limitations for similar reasons, where those accused are likely unable to mount a substantive defense when time has substantially limited the availability of evidence.

In defining the parameters of limitations, jurisdictions should take into consideration several factors, including: 1) questioning whether relevant evidence will become stale, lost, or destroyed; 2) recognizing the need for judicial economy; 3) addressing “the possibility of continuing ‘blackmail’ by potential plaintiffs”; 4)

determining whether there will be an unfairness to potential defendants who may be required to defend themselves long after the alleged act; and 5) acknowledging the need for “self-reformation by potential defendants.”

In the context of child sexual abuse the state is powerless to prosecute the offender until the state is informed of the offense. The statute of limitations serves in large part to limit the circumstances under which guilt can be found and is intended to preserve the accuracy and basic integrity of the adjudicatory process in criminal proceedings. The statute of limitations serves as a buffer, preventing the expenditure of judicial resources where logically, evidentiary items such as testimony and documents, have disappeared, grown stale, or been destroyed and can no longer perform the necessary evidentiary function.

Those accused of a crime hold vested rights as part of our judicial system. This analysis of “substantive vested rights” is important to understanding the time-barred approach with concern to statutory limitations to prosecution. For example, in Alaska, the Court of Appeals held that a criminal statute of limitations vests a substantive right in the defendant and that statute of limitations were procedural and could not be extended.

When jurisdictions do change existing statutes of limitations, this frequently creates an agonizing dilemma for the judiciary in applying the revised limitations period, especially where the legislature fails to expressly dictate its intentions as to the revised statute's application. Even with changes to the statute of limitations, offenses whose prosecution was time-barred at the time of the law's enactment are unconstitutional *ex post facto*. The legislation may run afoul of constitutional *ex post facto* prohibitions when applied in accordance with legislative dictates.

### Conclusion

The range in the length of the statutory limitation periods illustrates the different mode of evaluation of the individual factors utilized by various state legislatures. Some states have rationalized the statute of limitations based on the type of offense, with a longer limitation period for a more serious offense and a shorter limitation period for a lesser offense. In either case, limitations on prosecutions must strike an even balance between the respective rights of the alleged victim and the accused in child sexual assault cases. Although most victims, their families, and law enforcement argue for no limitations, proponents for each argument both in favor and against may be part of the legislature, attorneys, and judges who remain split on balancing the victim's rights with a fair justice system.

Despite what any viewpoint on the limitations and time restraints of prosecuting child sexual abuse may offer, all can agree that such abuse hurts our children and our society. A balance must be found to assist victims of abuse, as well as ensure a fair system of justice. If we could prevent the abuse of children, we would have no need for a discussion on such limitations.

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