

RAINN's Recommendations for Effective Sex Crime Statutes of Limitations

Every 98 seconds an American is sexually assaulted, and every eight minutes, authorities find evidence that a child in America has been the victim of sexual abuse. More than two-thirds of these crimes are never reported to police and only six out of every 1,000 perpetrators will end up in prison. In fact, sex offenders are less likely to go to prison than those who commit crimes of assault and battery or robbery.

We can, and must, do better for the hundreds of women, men, and children who are sexually assaulted each day. Under the current system, arbitrary or archaic statutes of limitations may limit victims' access to justice and the state's ability to take a rapist off the streets. States must critically evaluate their statutes of limitations and do all they can to ensure more victims chose to report, and more perpetrators can be held accountable. This guide is intended to support lawmakers' efforts to do so.

The Need for Reform

Statutes of limitations are a complex area of law. However, the underlying principles are not. States must balance two important interests: protecting citizens from the harms of sexual violence and upholding the due process rights of the accused. When crafting state laws that balance these interests, it's imperative to consider the fact that altering a statute of limitations does not change, in any way, the burden of proof required to convict a defendant. No matter whether a statute of limitation for a sex crime is five, 10, or 50 years, prosecutors must still provide evidence that proves guilt beyond a reasonable doubt. Statutes of limitations do not eliminate that burden nor make it easier to convict someone.

The need for criminal statutes of limitations reform has never been clearer. As our understanding of sexual violence evolves, so too does our understanding of its effects. For some, a delayed decision to report is the product of the very real and devastating physical and psychological [effects of the crime](#). A 2010 National Institutes of Health (NIH) study found that 80 percent of people who were sexually abused as children waited until adulthood before disclosing their abuse. Many victims cite a lack of trust in the system as a reason for their decision not to report.

We have a responsibility to create a system in which more victims choose to report because they believe it is in their best interest. This will serve states' overall public safety interests, and support efforts to hold perpetrators of sexual assault—who are often serial criminals—accountable.

As the nation’s largest anti-sexual violence organization, [RAINN](#) took a critical eye to the national landscape of criminal statutes of limitations for sex offenses.¹ In some states, lawmakers have, laudably, eliminated the statute of limitations for their most serious sex offenses. In other states, a victim who decides to report later in life, or even a few years after an incident occurs, could be prohibited from pursuing criminal justice because of an arbitrary deadline, such as a specific birthday.

We cannot hold back prosecutors who are ready and willing to work to achieve justice for more victims and hold perpetrators accountable. We must act to ensure that states are able to prosecute serious sex crimes by—if they have not already done so—eliminating and reforming their sex offense criminal statutes of limitations.

A Complicated Area of Law

Historical arguments in favor of strict, short statutes of limitations persist. Some are concerned that a longer statute of limitations forces the accused to defend against claims based on fading memories or the testimony of a deceased or otherwise unavailable witness. Such concerns are increasingly unfounded. For one thing, advancements in technology have yielded new forms of evidence, including DNA, cell phone video and audio recordings. These types of evidence, when properly stored, do not, unlike memories, erode over time.

Opponents of the extension or elimination of criminal statutes of limitations have also cited a fear that change will lead to an opening of the floodgates, inundating courts with new cases. Evidence doesn’t support this. States that have eliminated their statutes of limitations or expanded them have not lamented an undue burden on the courts. This makes sense: prosecutors will only pursue cases where they are apt to meet the high burden of proof. Moreover, such a drain on courts is unlikely given the historically low reporting rates for sex offenses.

Finally, the emergence of new technologies has led to the establishment of new crimes of sexual violence, further complicating statutes of limitations. Our legal system has been forced to play catch up as states legislate on topics including revenge porn, online sexual exploitation, sexual extortion via electronic means, and the electronic dissemination of child pornography. For each new crime, a decision regarding the applicable statute of limitations must be made.

¹ This paper reflects the status of states laws as of March, 2017.

² Any requirement which modifies a sex crime statute of limitations—either by increasing or decreasing the time

RAINN's Recommendations

RAINN offers the following recommendations to policymakers to ensure state statutes of limitations for sex offenses reflect best practices and afford the best chance for justice. This is not an exhaustive list of considerations, but it highlights components of effective statutes of limitations:

1. Eliminate the criminal statutes of limitations for the state's most serious, felony-level sex crimes.
2. Eliminate reporting provisions that can create arbitrary and harmful barriers to justice for victims and system actors working for public safety.²
3. Create an exception for forensic DNA evidence.³
4. Eliminate the criminal statutes of limitations for felony sex crimes committed against children.

Below, we offer context and analysis, recommended actions, and an example of statutory text. We recognize that each state's code is unique and complicated. RAINN's policy department can work hand-in-hand with lawmakers and their staff to tailor these recommendations to meet each state's specific needs.

We encourage policymakers, their staff, and those interested in advocating for reform within their state to ask the following questions:

Has your state eliminated the statutes of limitations for all of its most serious (felony-level) sex crimes?

According to the Federal Bureau of Investigation (FBI), a felony sex crime ("rape" by their categorization) is the nation's second-most serious crime, just behind murder. About 10 states have abolished statutes of limitations for all felony sex crimes to allow a perpetrator to be prosecuted at any point, as long as there is enough evidence to win a conviction.⁴ If your state is one of the approximately 40 (including Washington, DC) that still has statutes of limitations for felony sex crimes, at a minimum the time limit should be as long as possible to ensure more victims receive justice and perpetrators are held accountable.

² Any requirement which modifies a sex crime statute of limitations—either by increasing or decreasing the time period—depending on whether a survivor decides to report to law enforcement.

³ A provision which, when triggered, allows for the delay or pausing of a statute of limitation. A majority of states in the U.S. have at least one tolling provision.

⁴ Every state has kept maintained a statute of limitation for some or all of its felony level sex crimes, except the following: North Carolina, South Carolina, Virginia, West Virginia, Maryland, Wyoming, Kentucky. In addition, California has abolished its statutes of limitations for almost every one of its felony-level sex offenses.

In the fall of 2016, California abolished the statute of limitations for nearly every type of sex crime. On its passage, state Sen. Connie Leyva remarked that the bill signaled to every victim, “that they matter and that, regardless of when they are ready to come forward, they will always have an opportunity to seek justice in a court of law. Rapists should never be able to evade legal consequences simply because an arbitrary time limit has expired.”⁵

- **RAINN Recommends:**
 - Eliminate the criminal statute of limitations for the state’s felony-level sex crimes.
- **Sample Statutory Language:**
 - Amend existing law to provide: *A prosecution for any felony-level sex offense may be commenced at any time.*⁶

Does your state reduce sex crime statutes of limitations depending upon when the victim reports?

Society has come to understand how the [physical, emotional, and psychological effects](#) of sexual violence can influence how and when a victim reports a crime. Despite this, some states reduce the amount of time when a charge can be brought against a perpetrator if a victim doesn’t report within a set period of time.

In Washington, for example, if a victim does not report the crime to law enforcement within one year, the window for justice is cut by more than two-thirds—from 10 to three years. This type of law is outdated and runs counter to the public interest. Washington is one of five states that limit survivors’ access to justice in this way.

In Colorado, the state has carved out an exception to its statute of limitations for certain crimes to allow additional time for prosecution when DNA evidence is available. However, victims in Colorado only benefit from that provision if they report a crime within a 10-year window.⁷ Similarly in Connecticut, victims, investigators, and prosecutors only benefit from the state’s DNA exception if the victim reports within five years after the incident.⁸

⁵ CBS Los Angeles, *Brown Signs Bill Revoking California’s 10-Year Statute of Limitation on Rape Cases*, September 28, 2016. Found at <http://losangeles.cbslocal.com/2016/09/28/gov-brown-signs-bill-revoking-californias-10-year-statue-of-limitation-on-rape-cases/>

⁶ Alternatively, each felony-level sex offense can be explicitly mentioned and cited.

⁷ Colo. Rev. Stat. § 16-5-401.

⁸ Conn. Gen. Stat. § 54-193b.

- **RAINN Recommends:**
 - States should ensure that a victim’s decision to report never affects the statute of limitations for any sex offense.
- **Sample Statutory Language:**
 - This can be achieved by striking existing reporting provisions within the state’s sex offense statutes of limitations.⁹ To use Washington State’s statute of limitations as an example:

RCW 9A.04.080 Limitations of actions.

(1) Prosecutions for criminal offenses shall not be commenced after the periods prescribed in this section...

(b) ...the following offenses shall not be prosecuted more than ten years after their commission:

(iii)(A) Violations of RCW 9A.44.040 or 9A.44.050 *if the rape is reported to a law enforcement agency within one year of its commission.*

~~(iii)(B) If a violation of RCW 9A.44.040 or 9A.44.050 is not reported within one year, the rape may not be prosecuted more than three years after its commission...~~

Does your state law include a statutes of limitations DNA exception?¹⁰

DNA evidence has become a routine part of investigating and prosecuting all types of crimes, and is often [an important tool for achieving justice in cases of sexual violence](#). DNA evidence, most often collected through a sexual assault medical forensic exam and preserved as a [rape kit](#), enables law enforcement to effectively pinpoint and pursue charges against an individual. As DNA evidence has strengthened and improved the criminal justice system, states have expanded the ability to apply DNA evidence.

A majority of states have carved out legal exceptions that enable the statute of limitations to “toll,” or pause, when DNA evidence is present. Generally speaking, states have taken two approaches in this area. The first is to carve out a flat-out exemption to the state’s statute of limitations for a specific sex crime. For example, if there’s DNA evidence that identifies a suspect, the statute of limitations no longer applies.

⁹ As of December 2015, Colorado, Connecticut, Illinois, Utah, Washington all reduce or restrict their sex crime statutes of limitations in some manner when a victim decides not to report.

¹⁰ Seven states have eliminated their statutes of limitation for all felony sex crime. If a state has eliminated its sex crimes statutes of limitations, then there is no longer a need to pause or extend it with a DNA exception provision.

Alternatively, other states carve out a tolling provision to their statutes of limitations that tolls or extends the statute of limitations if DNA evidence is present. Florida has such a DNA exception: when evidence identifies a suspect, Florida’s statute of limitations is extended or suspended for nearly all sex crimes. RAINN supports a suspension of the statute of limitations if DNA evidence is present.

It is important to give critical thought to the length of time a DNA extension grants for pursuing justice—one that is too short does little good to advancing the underlying goal of increasing access to justice. Moreover, many states are grappling to address a backlog of rape kit evidence—commonly called the “rape kit backlog.” When a kit, through no fault of the victim, sits gathering dust on a law enforcement warehouse shelf, a victim is cheated of their opportunity for justice. More and more states are recognizing the backlog of unsubmitted evidence and have taken measures to address it, such as passing “test all kits” mandates. If the statute of limitations has already expired, a victim’s window to the criminal justice system may close before the evidence ever makes it to the crime lab for analysis.

We owe it to victims to provide a reasonable chance at justice. Our recommended approach reflects this and the growing value placed on DNA evidence and the ways it is collected and used to solve crimes.

- **RAINN Recommends:**
 - If a state does not eliminate its felony sex crime statutes of limitations, then the state should include a DNA exception for felony-level sex crimes that allows for the tolling or elimination of the statutes of limitations.¹¹

- **Sample Statutory Language:**
 - *Notwithstanding the time periods described in this section, a prosecution for any felony-level sexual offense¹² may be commenced at any time after the date on which biological matter is collected and subjected to DNA testing, and the results of this test show that the biological matter does not match the victim; or the identity of the person who committed the offense is unknown but DNA evidence is collected that could identify that person at a later date; or the results establish the identity of the accused.*

¹¹ As of December 2015, Alabama, Alaska, Arizona, Washington, D.C., Idaho, Kentucky, Maine, Maryland, Massachusetts, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, North Carolina, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia and Wyoming did not have a DNA exception provision. Note though, that several states had DNA provision bills pending as of December 2015. Further, 7 of the above states have no statutes of limitations for any felony sex crime, lessening the need for a DNA exception provision.

¹² Alternatively, each felony-level sex offense can be explicitly mentioned and cited.

Does your state extend statutes of limitations when the victim was a child?

From 2009-2013, Child Protective Services agencies substantiated, or found strong evidence to indicate that, 63,000 children a year were victims of sexual abuse.¹³ As the short and long-term effects of child sexual abuse come to be better understood, we must update state laws to ensure that victims have appropriate time to recover, come to terms with the abuse, and make an informed decision regarding engaging with the criminal justice system.

While drafting approaches vary greatly, a simple approach some states have taken is to carve out an exception extending the statutes of limitations for a specific crime committed when the victim was a child. For example, in Arkansas, the crime of rape carries a six-year statute of limitations in instances when the victim was an adult. However, if the abuse took place when the victim was a minor, the statute of limitations is waived—that is, extended indefinitely.¹⁴

RAINN Recommends:

- States should eliminate the statutes of limitations for all felony sex crimes when the victim is a minor.¹⁵

Sample Statutory Language:

- Add a new subsection to existing law: *A prosecution for any felony level sex offense¹⁶ may be commenced at any time if, when the alleged violation occurred, the offense was committed against a minor.*

Next Steps

For more information about the laws in your state, please see RAINN's [state law database](#). For additional information about statutes of limitations generally, please visit RAINN's [website](#). For specific policy questions, contact: policy@rainn.org.

¹³ United States Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau. Child Maltreatment Survey, 2013 (2014).

¹⁴ Ark. Code § 5-1-109(a)(1)(D) and § 5-1-109(b)(1)(A).

¹⁵ For a list of states that have abolished their statutes of limitations for all felony sex crimes, see footnote 4.

¹⁶ As an alternative, each felony level sex offense could be explicitly mentioned and cited.