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RAINN's Recommendations for Effective Criminal Sex Crime Statutes of Limitations

Every 68 seconds an American is sexually assaulted, and every nine 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 25 out of every 1,000 rapists will end up in prison.

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 sexual predator off the streets. States must critically evaluate their statutes of limitations so that, when victims choose to report, the criminal justice system addresses the harm and holds perpetrators 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 ensuring the availability of the evidence. When crafting state laws that balance these interests, it's imperative to consider the fact that altering a criminal statute of limitation 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, 50 years, or never, 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. Some estimates

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indicate that 60–80% of child sexual assault victims wait until adulthood before disclosing their abuse.¹ 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 trust the system to do something about it. 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. 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 –if they have not already done so– by eliminating and reforming their sex offense criminal statutes of limitations.

Recalibrating the Analysis

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. For another, constitutional and evidentiary rules protect against unreliable testimony.

¹ Alaggia R. (2010). An ecological analysis of child sexual abuse disclosure: considerations for child and adolescent mental health. *Journal of the Canadian Academy of Child and Adolescent Psychiatry = Journal de l'Académie canadienne de psychiatrie de l'enfant et de l'adolescent*, 19(1), 32–39.

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2809444/>

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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. In many situations, the cases brought involve defendants who have multiple victims who finally are able to come forward.

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 manipulated nonconsensual content, child sexual abuse materials (CSAM), and sexual extortion via electronic means. For each new crime, a decision regarding the applicable statute of limitations must be made.

Eliminating Time Limitations on Prosecution is Constitutional

Statutes of limitations are actions taken by legislatures to establish a time within which an action must be filed. Historically, there was “no general statute of limitations applicable to criminal proceedings.”² The United States Supreme Court observed that statutes of limitations

“are by definition arbitrary, and their operation does not discriminate between the just and the unjust claim, or the voidable and unavoidable delay. They have come into the law not through the judicial process but through legislation. They represent a public policy about the privilege to litigate. Their shelter has never been regarded as what is now called a ‘fundamental’ right or what used to be called a ‘natural’ right of the individual.”³

² 1 Chitty, A Practical Treatise On The Criminal Law 160 (1819)

³ *Chase Sec. Corp. v. Donaldson*, 325 U.S. 304, 314 (1945)

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Statutes of limitations are the result of weighing different considerations when drawing these arbitrary lines. On one side is the desire “to spare the courts from litigation of stale claims, and the citizen from being put to his defense after memories have faded, witnesses have died or disappeared, and evidence has been lost.”⁴ But weighing against those concerns is giving access to the courts for those citizens who have been seriously harmed, recognizing that the trauma inflicted may delay the disclosure by the victim⁵, and the real possibility that the community may still be at risk. Members of Congress have reexamined these factors in light of the data surrounding rape and other sexual offenses, and now many of those offenses no longer have a statute of limitations.”⁶

Removing the procedural bar of a statute of limitation does not remove substantive protections for a defendant. First, any criminal prosecution requires proof beyond a reasonable doubt. Just as a defendant may be concerned with witness memories and lost evidence, a victim has those same concerns, and those evidentiary issues may serve to defeat the high burden placed upon the state to bring charges. Second, the *Ex Post Facto* Clauses of the federal constitution prohibit new laws that retroactively extend the criminal statutes of limitations, if those time periods have already expired.⁷ Any defendant who retained evidence of their innocence, but destroyed that evidence once the statute of limitation expired, would not be subject to prosecution. Third, the defendant may be protected under the Due Process Clause of the Fifth Amendment⁸ if the defendant can show that the delay “caused substantial prejudice to the [defendants]’ rights to a fair trial and that the delay was

⁴ *Chase Sec. Corp. v. Donaldson*, 325 U.S. 304, 314 (1945)

⁵ *see United States v. Briggs*, 592 U.S. 69, 77, 141 S. Ct. 467, 473, 208 L. Ed. 2d 318 (2020)

⁶ *see United States v. Briggs*, 592 U.S. 69, 77, 141 S. Ct. 467, 473, 208 L. Ed. 2d 318 (2020)

⁷ *Stogner v. California*, 539 U.S. 607, 611 (2003)

⁸ The Court has held the Sixth Amendment right to a speedy trial and the Fourteenth Amendment right to due process do not apply to in context of statutes of limitations. *United States v. Lovasco*, 431 U.S. 783, 796 (1977); *United States v. Marion*, 404 U.S. 307, 324 (1971)

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an intentional device to gain tactical advantage over the accused.”⁹ Because of the protections inherent in the criminal justice system and the constitution, any value in maintaining statutes of limitations are outweighed by the benefits to increasing access to justice for survivors of violent crimes.

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 sex crimes.
2. Eliminate reporting requirements that place additional responsibilities on victims and create arbitrary and harmful barriers to justice.
3. Ensure current DNA exception statutes allow for prosecution of crimes supported by DNA evidence, including delayed testing.
4. Eliminate the criminal statutes of limitations for 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 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.

⁹ *United States v. Marion*, 404 U.S. 307, 324 (1971)

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Sexual offenses against children are one of the most heinous crimes in our communities. Yet in most states, they have eliminated statutes of limitations for murder, but not for sex crimes.

As one governor commented, sexual assault is “violence of the most personal and devastating kind, as brutal in its own right as murder...It deserves not only harsh punishment but our very best – and unswerving – effort to bring the perpetrators to justice.”¹⁰

RAINN Recommends:

Eliminate the criminal statute of limitations for sex crimes. As states have come to realize the lifelong harms these crimes inflict on survivors and communities, many have removed statutes of limitations in a piecemeal manner, which arbitrarily allows some sex offenders to escape accountability and forecloses access to justice and resources for victims. Instead, states should eliminate any statutes of limitations for sex offenses and allow access to justice to be governed by evidence and not arbitrary time limits.

Sample Statutory Language:

States that have eliminated statutes of limitations have taken different approaches. Some states list each and every statute that is exempt, but this can be confusing and require constant updating. Instead, RAINN recommends incorporating a definition that encompasses all sex crimes. This can be done within the statute itself, such as:

“A prosecution for any offense involving sexual conduct or sexual penetration, as defined by [code section] may be commenced at any time.”¹¹

¹⁰ *Should Statute of Limitations Be Abolished*, June 19, 2018, Governor Jodi Rell, <https://www.nytimes.com/2018/06/19/magazine/should-statutes-of-limitations-for-rape-be-abolished.html>

¹¹720 ILCS 5/3-5 (Illinois)

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Another approach is to incorporate a statute that lists the sexual offenses for the jurisdiction. For example, every state has made a legislative determination that sex offenders pose a risk to the community, and require them to register. Definitions of “sexual offense” or “sexual offender” in registration statutes can be referenced.

“A prosecution for any unlawful sexual offense may be commenced at any time. ‘Sexual offenses’ include, but are not limited to, all offenses for which registration is required under [code section]”

Some states have eliminated statutes of limitations for sex offenses by eliminating *all* criminal statutes of limitations.¹² This is accomplished by a repeal of any statutes that reference a time limit to bring a prosecution for criminal offenses. Since statutes of limitations are legislatively created, if a limit does not exist in statute, then survivors can seek justice at any time.

Other states have eliminated statutes of limitations for their most serious offenses, including sex crimes, by eliminating criminal statutes of limitations for all felonies.¹³ Their statutes of limitations only reference misdemeanor offenses or contain exemption language for felonies, such as

“Except as otherwise expressly provided, the prosecution of a felony is not subject to a period of limitation and may be commenced at any time.”¹⁴

Does your state penalize victims who are unable to report by requiring immediate reporting?

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

¹² Wyoming and South Carolina

¹³ Md.Code Ann., Cts & Jud. Proc. § 5-106 (Maryland); N.C.Gen.Stat. § 15-1 (North Carolina); Va. Code Ann. § 19.2-8 (Virginia); W.Va. § 61-11-9 (West Virginia); K.R.S. 500.050 (Kentucky)

¹⁴ K.R.S. 500.050 (Kentucky)

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against a perpetrator if a victim doesn't report within a set period of time. For example, in Florida¹⁵, they have eliminated the statute of limitations for first or second degree sexual battery offenses involving adult victims, but only if the victim reported it within 72 hours. Allowing a survivor access to justice only if they are in the minority of those who immediately report does not protect victims or the community.

Does your state DNA exception allow for prosecution of cold cases or repeat offenders?

RAINN believes that prosecution of sex crimes should occur whenever there is sufficient evidence to prove guilt beyond a reasonable doubt, regardless of how long it took to obtain it or the type of evidence. In the last few decades, states created DNA exceptions to statutes of limitations, as more and more DNA testing solved older cases. These exceptions “toll” or “pause” the statutes of limitations when DNA evidence is present. However, many of these statutes of limitations were created at a time when DNA evidence was primarily used for identification purposes, and only extend access to justice if the DNA is used for that limited purpose. The overwhelming majority of child sexual abuse¹⁶ and adult sexual violence victims¹⁷ know their perpetrator. Because identity was not an issue, law enforcement frequently did not submit evidence for DNA analysis.

But as technology advances and investigative techniques improve, agencies are realizing that DNA evidence is useful for more than just identification. DNA evidence can corroborate victim accounts of who was present, including the victim. DNA evidence from known perpetrators is also leading investigators and prosecutors to learn of similar offenses committed in other jurisdictions, which can establish

¹⁵ Fla. Stat. § 775.15 (Florida)

¹⁶ Of sexual abuse cases reported to law enforcement, 93% of juvenile victims knew the perpetrator. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Sexual Assault of Young Children as Reported to Law Enforcement (2000)

¹⁷ In 2022, only 22% of rape/sexual assault victims who reported the crime to the police stated that their perpetrator was a stranger, so DNA is not needed in most cases to identify the perpetrator.

<https://ncvs.bjs.ojp.gov/single-year-comparison/crimeType>

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patterns of victimization or prove the intent of offenders, thereby providing the evidence needed to prove the crime beyond a reasonable doubt.¹⁸

RAINN Recommends:

Any DNA exception to the statutes of limitations include instances in which DNA evidence is used to support a prosecution, regardless if it establishes the perpetrator's identity.

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

Approximately 1 in 5 victims of child sexual abuse never disclose their experiences to anyone, and of those who do disclose, only 10% disclose to legal authorities.¹⁹ Disclosure of child sexual abuse is “a complex and lifelong process, with current trends showing that [child sexual abuse] disclosures are too often delayed until adulthood.”²⁰ How and when a victim chooses to disclose child sexual abuse depends on “individual, familial, contextual, and cultural factors.”²¹ In one study of child sexual abuse survivors, over half first disclosed at age 50 or older.²²

¹⁸ Recent study showing that 39% of sexual offenders identified in the FBI's combined DNA Index System (CODIS) were serial offenders. Campbell, R., Feeney, H., Goodman-Williams, R., Sharma, D. B., & Pierce, S. J. (2020). Connecting the dots: Identifying suspected serial sexual offenders through forensic DNA evidence. *Psychology of Violence, 10*(3), 255–267. <https://doi.org/10.1037/vio0000243>; <https://psycnet.apa.org/doiLanding?doi=10.1037%2Fvio0000243>

¹⁹ Delayed Disclosure Child USA 2024 Factsheet, A Comprehensive Report on Delayed Disclosure in Cases of Child Sexual Abuse, Insights, Implications, and Pathways Forward, <https://childusa.org/wp-content/uploads/2024/06/Delayed-Disclosure-2024.pdf>

²⁰ Alaggia, R., Collin-Vézina, D., & Lateef, R. (2019). Facilitators and Barriers to Child Sexual Abuse (CSA) Disclosures: A Research Update (2000–2016). *Trauma, Violence, & Abuse, 20*(2), 260–283. <https://doi.org/10.1177/1524838017697312>
<https://journals.sagepub.com/doi/full/10.1177/1524838017697312>

²¹ *Id.*

²² Delayed Disclosure Child USA 2024 Factsheet, A Comprehensive Report on Delayed Disclosure in Cases of Child Sexual Abuse, Insights, Implications, and Pathways Forward, <https://childusa.org/wp-content/uploads/2024/06/Delayed-Disclosure-2024.pdf>

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RAINN Recommends:

States should eliminate the statutes of limitations for all sex crimes when the abuse occurred while the victim was a minor. 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 some states have determined exemptions on an offense specific basis, RAINN recommends the approach taken by states that have eliminated the statutes of limitations for an offense if the victim was under 18 at the time that the offense occurred.²³

Sample Statutory Language:

“If a victim is younger than 18 years of age at the time the offense was committed, a prosecution for any sexual offense, as defined by [code section] may be commenced at any time.”

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. To schedule a call with someone on RAINN's policy team, email policy@rainn.org.

²³ For example, see Mo. Rev. Stat. § 556.037 (Missouri); § 45-1-205, MCA (Montana); Fla. Stat. § 775.15 (Florida)