



Hearing on Statutes of Limitations  
Senate Judiciary Committee  
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Good afternoon Chairwoman Baker, Chairman Farnese, and members of the Judiciary Committee. We appreciate the opportunity to speak with you today about issues related to criminal statutes of limitations.

Specifically, we want to discuss what they are, how they work, the legal issues surrounding them, and how they specifically apply in sexual assault cases. We also want to provide some detail about how sexual assault cases are handled and investigated. We hope that the background and technical information we provide will be useful as you collectively review and consider legislation that would, among other things, eliminate the criminal statute of limitations for certain sexual assaults committed against children.

Criminal statutes of limitations set limits for how long charges can be filed against an individual for a criminal act. They are provided for by statute. Our courts have aptly explained that a statute of limitations “limit[s] exposure to criminal prosecution to a certain fixed period of time following the occurrence of” criminal acts.<sup>1</sup> Limitations are “designed to protect individuals from having to defend themselves against charges when the basic facts may have become obscured by the passage of time and to minimize the danger of official punishment because of acts in the far-distant past.”<sup>2</sup> They “are intended to foreclose the potential for *inaccuracy* and *unfairness* that stale evidence and dull memories may occasion in an unduly delayed trial.”<sup>3</sup>

The applicable limitations period typically starts to run when the criminal activity is completed. In other words, if the statute of limitations for a crime were five years, the Commonwealth would have five years from the date the crime occurred to bring charges.

We wanted to provide you a brief summary of many applicable criminal statutes of limitations under Pennsylvania law. In Pennsylvania, summary offenses typically have a statute of limitations of 30 days. Most misdemeanors and some felonies have a limitation period of two years. Many other felonies have a limitation period of five years. There is no criminal statute of limitations for murder, manslaughter, felonies connected to first or second degree murder, conspiracy or solicitation to commit murder, or vehicular manslaughter.<sup>4</sup>

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<sup>1</sup> See *Toussie v. United States*, 397 U.S. 112, 114, 90 S.Ct. 858, 859–60, 25 L.Ed.2d 156 (1970); *United States v. Midgley*, 142 F.3d 174 (3d Cir. 1988).

<sup>2</sup> *Id.* at 114–15, 90 S.Ct. at 860.

<sup>3</sup> See *United States v. Levine*, 658 F.2d 113, 127 (3d Cir.1981)(emphasis in original).

<sup>4</sup> See 42 Pa. C.S. § 5551- 5552.

Sexual assaults are treated differently and already have a longer statute of limitations. Specifically, a prosecution for a “major sexual offense” may be commenced within 12 years after it is committed. A “major sexual offense” constitutes the following crimes:

- Section 3121 (relating to rape).
- Section 3122.1 (relating to statutory sexual assault).
- Section 3123 (relating to involuntary deviate sexual intercourse).
- Section 3124.1 (relating to sexual assault).
- Section 3125 (relating to aggravated indecent assault).
- Section 4302 (relating to incest).
- Section 6312 (relating to sexual abuse of children).<sup>5</sup>

Some events toll (or pause) the applicable statute of limitations. Three examples of things that toll the statute of limitations under Pennsylvania law are set forth in statute. Specifically:

- 1) the accused is continuously absent from this Commonwealth or has no reasonably ascertainable place of abode or work within this Commonwealth.<sup>6</sup>
  - In other words, if a crime is committed, and the person neither lives nor works here and does not return but is discovered years later after the statute has run, that person’s continued absence could toll the statute of limitations.
- 2) a prosecution against the accused for the same conduct is pending in this Commonwealth.<sup>7</sup> Or
- 3) a child is under 18 years of age, where the crime involves injuries to the person of the child caused by the wrongful act, or neglect, or unlawful violence, or negligence of the child's parents or by a person responsible for the child's welfare, or any individual residing in the same home as the child, or a paramour of the child's parent.<sup>8</sup>
  - In other words, if a crime is committed against a child under 18 years of age and involves injuries to the child by an act or by the negligence of the child’s parents or person responsible for the child’s welfare, the statute of limitations may toll. An example might be if a child is abused while under the care of his or her parent but is unable or unwilling to disclose the abuse until after he or she is old enough to leave the home. This is not an uncommon occurrence

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<sup>5</sup> See 42 Pa.C.S. § 5552(b.1). The limitations rules for sexual assaults against minors under 18 years of age are different and will be discussed below.

<sup>6</sup> See 42 Pa.C.S. §5554

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

because children often feel unsafe disclosing abuse while still under the control of their abuser.

For felonies and certain sexual offenses, if DNA evidence is obtained and used to identify an otherwise unidentified individual as the perpetrator, a prosecution may be commenced up to one year after the identity is determined, if the statute of limitations has already run.<sup>10</sup>

Moreover, an offense involving fraud, or the breach of a fiduciary duty tolls the applicable statute of limitation for one year, but for no greater than three years. Similarly, an offense committed by a public officer or employee in connection with his or her office may toll the statute of limitations for 5 years, but for no greater than 8 years.<sup>11</sup>

The statute of limitations for a sexual offense committed against a minor less than 18 years of age at the time of the offense applies when the victim turns 50 years old, meaning that the limitation period for child sexual abuse is no less than 12 years, and it can be prosecuted up until that child's 50<sup>th</sup> birthday, whichever allows more time.<sup>12</sup> The specific sexual offenses are:

- Section 3011(b) (relating to trafficking in individuals).
- Section 3012 (relating to involuntary servitude) as it relates to sexual servitude.
- Section 3121 (relating to rape).
- Section 3122.1 (relating to statutory sexual assault).
- Section 3123 (relating to involuntary deviate sexual intercourse).
- Section 3124.1 (relating to sexual assault).
- Section 3125 (relating to aggravated indecent assault).
- Section 3126 (relating to indecent assault).
- Section 3127 (relating to indecent exposure).
- Section 4302 (relating to incest).
- Section 4304 (relating to endangering welfare of children).
- Section 6301 (relating to corruption of minors).
- Section 6312(b) (relating to sexual abuse of children).
- Section 6320 (relating to sexual exploitation of children).

There are additional tolling provisions for human trafficking not involving trafficking of minors (trafficking in minors is covered above). Specifically, in cases involving human trafficking where the victim is not a minor, the limitation is 10 years from date of last

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<sup>10</sup> See 42 Pa.C.S. §5552(c)(1).

<sup>11</sup> See 42 Pa. C.S. §5552 (c)(1) and (2).

<sup>12</sup> See 42 PA. C.S. §5552 (c)(3).

offense; and if the trafficking involves labor servitude and victim was a minor, the limitation is 10 years after the victim reaches 18 years of age. Finally, the limitation for crimes related to certain firearms sales is extended by one year from the time of discovery by law enforcement but no more than an eight year extension.<sup>13</sup>

As a matter of law, any extension of a criminal statute of limitations applies prospectively only. The United States Supreme Court in *Stogner v. California*,<sup>14</sup> rejected a California statute that revived the applicable but expired criminal statute of limitations related to sexual offenses against minors. According to the Court, “a law enacted after expiration of a previously applicable limitations period violates the Ex Post Facto Clause when it is applied to revive a previously time-barred prosecution.”<sup>15</sup> This binding decision applies to criminal limitation periods that have expired. By way of example, this means that if a child was raped 20 years ago but the applicable criminal statute of limitations was 15 years, a law extending the criminal statute of limitations would not expose the perpetrator to criminal charges (absent some applicable tolling provision). It also means that if a child was raped 20 years ago, and a new law were enacted 19 years later extending the criminal statute of limitations for an additional 30 years, the longer statute of limitations would apply because the original limitation period had not yet expired.

We also wanted to provide you some information about investigations regarding sexual assaults. It is important to note that every investigation is different based on the specific circumstances of the case, and different jurisdictions do handle cases differently. Therefore, the information we will be discussing is a more generalized assessment about the way cases are investigated and otherwise handled.

When the victim is an adult, many cases begin with a report of a sexual assault that is delayed. In these cases, police sometimes take a statement from the victim. The assigned investigator will determine what, if any, evidence needs to be preserved immediately. The district attorney’s office may be notified and may provide guidance. One important investigative step is to identify and interview witnesses, such as witnesses to whom the victim may have spoken about the assault or have been in the presence of, or witnesses who may have been in the presence of the accused or who may have spoken to the accused. Other investigative steps include executing search warrants, downloading phones, reviewing social media accounts, and examining the crime scene. At the crime scene, detectives will attempt to collect evidence. This may include determining whether

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<sup>13</sup> See 42 Pa. C.S. §5552(c)(4-6).

<sup>14</sup> See 439 U.S. 607 (2003).

<sup>15</sup> *Id.*

there is DNA from the suspect or victim at the scene, as well as determining whether the victim's description of the location is consistent with the actual crime scene. If the crime began in public (by way of example, the suspect and victim met at a bar), detectives might try to obtain video evidence showing the two together, examining the demeanor and interactions between them, whether either or both were intoxicated, or whether anyone put something in the victim's drink. One other technique is to try to obtain an admission from the perpetrator, such as through recorded conversations, text messages, or statements on social media. Depending upon the length of time between the sexual assault and the report of it, physical evidence may be collected and submitted for forensic testing.

In cases where the report is made shortly after the sexual assault, police are dispatched to the location of the assault. The police will ensure that the crime scene and any evidence is secure and that the victim is transported to the hospital for an examination by a sexual assault nurse examiner (SANE). A SANE examiner is a registered nurse or nurse practitioner who has completed specialized training to assist sexual assault victims. A SANE examiner collects all forensic evidence and performs examinations. After the SANE examination, the police will either take a formal statement or make an appointment for the victim to come in at a later date. The timing of the statement will depend largely on whether there is an immediate safety concern or concern for the destruction of evidence. The investigative steps described above are undertaken as well.

When the victim is a child, the investigations are similar, except that the interviews are conducted by a forensic interviewer at a child advocacy center in order ensure, among other things, that the victim is interviewed only once.

Finally, it is important to understand that one of the frequent dynamics in investigating sexual assaults is that victims do not report the sexual assault immediately after they have been victimized. This is true for both child and adult victims. There is no single typical response by a victim, nor is there a correct response by a victim. Victims do not always or even typically come forward right away; their stories are not always consistent; they may even continue to socialize with their perpetrator.

If the case goes to trial, victims should expect that cross-examination may be uncomfortable. When a victim reports that he or she has been raped, the victim has completed a courageous act. Victims sometimes fear their perpetrator, while others feel ashamed or embarrassed. Some contend that law enforcement will not take them seriously, and yet others believe the incident was not a police matter. There are also, very often and especially for children, family dynamics at play. When the perpetrator is a member of the victim's family, members of the victim's family will sometimes take the side of the perpetrator. Significantly, the majority of sexual assaults are never reported.

We have seen how institutions protect perpetrators. The grand jury reports from the Attorney General, as well as the prior reports from the Philadelphia District Attorney's Office, highlighted in great detail the sexual abuse of victims, mostly children; the subsequent coverup and facilitation of abuse by those in positions of power; the reasons why many of the victims of childhood sexual abuse did not report that they had been raped to law enforcement; and, in some cases, why even law enforcement did not necessarily take the reports seriously. In 2017, the Bucks County District Attorney's Office released a similar report about sexual abuse at the Solebury School. And we know that abusers like Harvey Weinstein, Jeffrey Epstein, and Bill Cosby exist. Consider also that according to an article in Sunday's *New York Times*, tech companies reported that there are over 45 million online photos and videos of children being sexually abused. We typically call those images child pornography, but the article's authors make a strong argument why terms like "child sexual abuse imagery" or "child exploitation material" better underscore the crimes and avoid conflating such images with adult pornography.<sup>16</sup>

Thank you again for allowing us to provide information regarding various provisions in Pennsylvania law regarding criminal statutes of limitations, as well as information about how sexual assault investigations are handled. We hope the information is useful to you as you consider legislation that addresses portions of the criminal statutes of limitations in Pennsylvania.

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<sup>16</sup> <https://www.nytimes.com/interactive/2019/09/28/us/child-sex-abuse.html>