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# TO THE SURVIVORS OF CHILDHOOD SEXUAL ABUSE- WHENEVER YOU'RE READY: ELIMINATING THE CRIMINAL STATUTE OF LIMITATIONS ON CHILDHOOD SEXUAL ASSAULT CRIMES IN LIGHT OF PENNSYLVANIA'S CATHOLIC DIOCESES GRAND JURY INVESTIGATION

Rebecca Schultz

*University of Richmond - School of Law*

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TO THE SURVIVORS OF CHILDHOOD SEXUAL ABUSE-  
WHENEVER YOU'RE READY: ELIMINATING THE CRIMINAL  
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CATHOLIC DIOCESES GRAND JURY INVESTIGATION

*Rebecca Schultz\**

\* Rebecca Schultz is a member of the class of 2020 at the University of Richmond School of Law and a survivor of childhood sexual abuse. She would like to thank the entire *Richmond Public Interest Law Review* for all their help in preparing this article for publication, Professor Laura Webb for introducing her to legal writing, MaryAnn Grover for her wonderful advice on organization, and Professor Julie McConnell for advising her on the topic of this comment. Finally, she would also like to thank her incredible partner William Sansalone for always supporting her, believing in her, and being her best friend.

## ABSTRACT

*It is exceptionally difficult for many survivors of sexual assault to come forward to tell their story. This is particularly the case where the perpetrator is someone in a position of power who the survivor trusted. The statute of limitations for cases of childhood sexual abuse can serve as another barrier preventing survivors from coming forward because it prevents any semblance of justice for those individuals. This is currently most evident in states like Pennsylvania that still impose a statute of limitations on crimes of sexually assaulting children. Pennsylvania is reeling from its most recent Catholic clergy sex abuse scandal, but such scandals are, unfortunately, not new to the Church and not new to Pennsylvania. In Pennsylvania, the church administrations, occasionally in conjunction with local prosecutors, engaged in efforts to cover up such instances of abuse. These efforts, when combined with restrictive statute of limitations in the state and the other impediments to survivors reporting their sexual assault, often mean that survivors are unable to have their day in court when they feel prepared to do so. As many states across the country move towards the elimination of their statute of limitations for the sexual abuse of minors, it is incumbent upon Pennsylvania to do the same, and to make such changes retroactive so the survivors of sexual abuse by clergy members can receive justice and ensure no other child is abused and dehumanized in the way they were.*

## INTRODUCTION

It is not about age, gender, political affiliation,<sup>1</sup> religion, nationality, social status, wealth, race, or geography – sexual assault is a cultural phenomenon borne of a sense of entitlement to another's person. The shame that stems from surviving such a traumatic event can prevent victims from speaking out for years—often decades. Many states have acknowledged the hardships placed on persons who have survived childhood sexual assault by removing the criminal statutes of limitations to allow the prosecution of sex-related crimes to commence at any time.<sup>2</sup>

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<sup>1</sup> See Anna Oseran, *The Jury in the Comments Section*, JEZEBEL (Oct. 10, 2017), <http://jezebel.com/the-jury-in-the-comments-section-1818521870> (reflecting the reluctance of some individuals to accept that members of their own political affiliation can be perpetrators).

<sup>2</sup> AG Madigan Wants to Lift Statute of Limitations on Child Sex Crimes, CAPITOL FAX (Mar. 8, 2017), <http://www.capitolfax.com/2017/03/08-ag-madigan-wants-to-lift-statute-of-limitations-on-child-sex-crimes/>.

Currently, Pennsylvania is one of few states that still imposes time limitations on bringing criminal claims for childhood sexual assault.<sup>3</sup> The current law allows criminal allegations to be brought until the victim's fiftieth birthday, but this new amendment (which increased the age from thirty to fifty) does not apply retroactively to persons who were previously barred by the prior enactment of this law.<sup>4</sup>

The vulnerabilities a sexual assault survivor feels in bringing their claim are often multiplied when their assault occurred in youth. One can never know when a survivor will be ready to share their story or to participate in a criminal case. Many victims fear not being believed or being made to feel ashamed—as if the assault was the child's fault.

In the Catholic Pennsylvanian dioceses, when church members made internal reports about the sexual abuse of minors, certain perpetrators were merely moved to other localities, rather than being removed from the priesthood.<sup>5</sup> This enabled perpetrators to victimize multiple minors.<sup>6</sup> Prosecutors refused to pursue criminal recourse, preferring to refer an accused priest or clergy member to church-run psychiatric treatment centers.<sup>7</sup> Thus, prosecutors enabled perpetrators to receive “treatment” for their propensity to sexually victimize minors. This practice often resulted in the perpetrator moving from one parish to another, inevitably having access to additional youth throughout his career and committing additional assaults.<sup>8</sup>

Years later, upon being informed that several other persons were assaulted by their specific assaulter, victims are barred from bringing criminal charges against those who contributed to some of the most traumatizing moments of their lives because they are over fifty-years-old.<sup>9</sup> Not only does the statute of limitations prevent a prior victim from finding justice, it also

<sup>3</sup> Kristin E. Rodgers, *Childhood Sexual Abuse: Perceptions on Tolling the Statute of Limitations*, 8 J. CONTEMP. HEALTH L. & POL'Y 309, 332 n. 171 (1992) (citing Jessica E. Mindlin, *Child Sexual Abuse and Criminal Statutes of Limitations: A Model for Reform*, 65 WASH. L. REV. 189, 191 n. 15 (1990)).

<sup>4</sup> 2005 Pa. Laws 179 (amending 42 PA. CONS. STAT. § 5552(c)(3) (2018)).

<sup>5</sup> Tara Isabella Burton, *Scathing Report Reveals 300 Pennsylvania Catholic Priests Sexually Abused Over 1,000 Children*, VOX (Oct. 19, 2018), <http://www.vox.com/2018/8/15/17689994/catholic-sex-abuse-priest-crisis-pennsylvania-report>.

<sup>6</sup> *Id.*

<sup>7</sup> See Report 1 of the 40th Statewide Investigating Grand Jury at 3, 4, CP-02-MD-571-2016 (Allegheny Cty. C.P. 2018) [hereinafter Allegheny Grand Jury Report] (explaining that prosecutors forewent prosecution and instead let Church officials decide how to address these issues).

<sup>8</sup> See Burton, *supra* note 5.

<sup>9</sup> See Corky Siemaszko, *Inside the Fight to Change Statute of Limitations Laws in Pennsylvania*, NBC NEWS (Aug. 21, 2018), <http://nbcnews.com/news/us-news/inside-fight-change-statute-limitations-laws-pennsylvania-n902196>.

enables harm to future children that could be prevented by righteous prosecution.<sup>10</sup> Many legislators in Pennsylvania are currently seeking to eliminate the criminal statute of limitations as doing so would hopefully protect more children from harm.<sup>11</sup>

This article proposes that Pennsylvania eliminate the statute of limitations for criminal prosecution of the sexual assault of minors or crimes assisting in the sexual assault of minors. Part I discusses the purposes for statutes of limitations, generally. It also describes some approaches to statutes of limitations for sexual assaults used elsewhere. Part II provides a historical overview of the Catholic dioceses Scandal in Pennsylvania that became widely known upon the publication of the 2003 and 2018 Grand Jury Reports. It also specifically describes the problems identified in the 2018 Grand Jury Report. Part III identifies the issues with Pennsylvania's current law. Finally, Part IV discusses the implications of removing the statute of limitations for sex crimes committed against minors.

## I. THE STATUTE OF LIMITATIONS FOR SEXUAL ASSAULTS

This section of the article will describe the purposes of statutes of limitations. Then, it will discuss the different approaches that states have taken in implementing statutes of limitations for sex-related crimes.

### A. The Purpose of the Statute of Limitations

A statute of limitations is any law that bars claims after a set amount of time passes following an injury.<sup>12</sup> Statutes of limitations serve as an enforcement mechanism preventing claimants from delaying in filing charges, as protection against diminishing evidence for defendants who are not on notice of potential claims against them, and as a mechanism to prevent cruelty against a defendant by disallowing claimants to bring a claim that has been long-dormant.<sup>13</sup>

<sup>10</sup> Brad Hoylman, *In Letter to Catholics Worldwide, the Pope Says the Lord Stands with Survivors of Childhood Sexual Assault, but New York Senate Republicans Do Not*, N.Y. ST. SENATE (Aug. 21, 2018), <https://www.nysenate.gov/newsroom/press-releases/brad-hoylman/pope-asks-12-billion-catholics-stand-survivors-csa-and-help>.

<sup>11</sup> See *Statute of Limitations*, PA FAM. SUPPORT ALLIANCE, <http://www.pafsa.org/About-Us/Understanding-Child-Abuse-Neglect-in-Pennsylvania/Statute-of-Limitations> (last visited Jan. 7, 2019).

<sup>12</sup> *Statute of Limitations*, CORNELL L. SCH. LEGAL INFO. INST., [https://www.law.cornell.edu/wex/statute\\_of\\_limitations](https://www.law.cornell.edu/wex/statute_of_limitations).

<sup>13</sup> *What is a Statute of Limitations and What is the Purpose of It?*, CHILINA L. FIRM (July 16, 2017), <https://chilinalaw.com/2017/07/statute-limitations-purpose/>.

Barring claimants from litigating cases against defendants after a certain amount of time has passed promotes the goal of litigation finality. The public has an interest in litigation finality because people need to move on with their lives at some point.<sup>14</sup> Finality also prevents the clogging of the court system with multiple filings at the expense of other cases.<sup>15</sup> Sometimes, there is an inference that claims for which victims did not timely pursue redress must not have represented the kind of harm that would make one want to pursue a remedy.<sup>16</sup> Therefore, pursuing such low-harm claims might be a waste of public resources<sup>17</sup>—again, at the expense of other ongoing cases.<sup>18</sup>

Encouraging potential plaintiffs and the government to bring suit soon after their injury occurs ensures the fundamental fairness of trials because it protects the defendant's ability to prepare her defense.<sup>19</sup> Ensuring that convictions are based on reliable evidence that has not deteriorated over time underlies the criminal justice system's goal of making sure no innocent persons are wrongly convicted.<sup>20</sup> When charges are not brought within a reasonable amount of time, the chance of losing exculpatory evidence increases.<sup>21</sup> States are understandably concerned with the chance of witnesses' memories fading, losing physical evidence, and the disappearance of testimonial evidence.<sup>22</sup> Because of this fear, states enacted time limitations on when an injured party can bring a claim for certain crimes.<sup>23</sup>

<sup>14</sup> Andrew King, *Justice Thomas Refuses to Ride in Doc Brown's Delorean*, MIMESIS L. (Apr. 22, 2016), <http://mimesislaw.com/fault-lines/justice-thomas-refuses-to-ride-in-doc-browns-delorean/9062>.

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

<sup>16</sup> Andrew King, *Statutes of Limitations Ensure Due Process*, MIMESIS L. (Nov. 11, 2016), <http://mimesislaw.com/fault-lines/statutes-of-limitations-ensure-due-process/14160>.

<sup>17</sup> See Tyler T. Ochoa & Andrew J. Wistrich, *The Puzzling Purposes of Statutes of Limitations*, 28 PAC. L.J. 453, 497 (1997).

<sup>18</sup> King, *supra* note 14.

<sup>19</sup> See Ochoa & Wistrich, *supra* note 18, at 483–84.

<sup>20</sup> See *Causes of Wrongful Convictions*, UNIV. MICH. SCH. L. INNOCENCE CLINIC, <https://www.law.umich.edu/clinical/innocenceclinic/Pages/wrongfulconvictions.aspx> (last visited Jan. 13, 2019) (discussing the importance of reliable evidence to the goal of avoiding wrongful convictions).

<sup>21</sup> See *Barker v. Wingo*, 407 U.S. 514, 532 (1972) (explaining that the speedy trial right was designed to protect the defendant by limiting the possibility that the defendant will be impaired and expressing how the inability of a defendant to adequately prepare his case skews the fairness of the entire system – for example, if a witness dies or disappears).

<sup>22</sup> *Eliminating the Statute of Limitations: The Effects of Child Sexual Abuse Last a Lifetime—So Why Don't Victim's Rights?*, KEEP KIDS SAFE, <http://keepkidssafe.org/eliminate-molestation-statutes-of-limitations/> (last visited Jan. 13, 2019).

<sup>23</sup> See *id.*

The statute of limitations also serves a merciful function. If a defendant has been living in the open for a sufficient length of time without re-offending and the government has failed to prosecute them within that period, society has determined that the suspected individual should be allowed to live their “reformed” life free from the possibility of prosecution and trial.<sup>24</sup> Preventing prosecution of long-dormant claims allows potential defendants to move on with their lives and protects people from being constantly amenable to “crimes from their youth.”<sup>25</sup>

However, the federal government and most states impose no time limit on murder charges.<sup>26</sup> Because of the seriousness of the crime, the advancements made in technology and forensics, and society’s interest in convicting the correct criminal and exonerating wrongly convicted individuals, murder has no statute of limitations.<sup>27</sup> Based on similar reasoning, many states have also eliminated the statute of limitations for sexual offenses or, at least, created DNA exceptions that allow the statute of limitations to be extended upon the discovery of new DNA evidence.<sup>28</sup> Additionally, states and the federal government often enact tolling provisions that allow the statute of limitations to be suspended for a claimant who was unaware of their harm until recently or where the wrongdoer acted in such a way to prevent the injured party from bringing charges,<sup>29</sup> such as by fleeing the state.<sup>30</sup>

<sup>24</sup> *Time Limits for Charges: State Criminal Statute of Limitations*, FINDLAW, <https://criminal.findlaw.com/criminal-law-basics/time-limits-for-charges-state-criminal-statutes-of-limitations.html> (last visited Jan. 13, 2019) [hereinafter *Time Limits for Charges*].

<sup>25</sup> *Id.*

<sup>26</sup> Brett Snider, *Is There a Statute of Limitations on Murder?*, FINDLAW BLOG (May 28, 2014), <https://blogs.findlaw.com/blotter/2014/05/is-there-a-statute-of-limitations-on-murder.html>.

<sup>27</sup> Ambrosio Rodriguez, *Why Is There No Statute of Statute Limitations for Murder in California?* (May 4, 2018), <https://www.aerlawgroup.com/homicide/why-is-there-no-statute-of-limitations-for-murder-in-california.html>; *Details on State Criminal Statute of Limitations*, FINDLAW, <https://statelaws.findlaw.com/criminal-laws/details-on-state-criminal-statute-of-limitations.html> (last visited Jan. 20, 2019).

<sup>28</sup> See BRITTANY ERICKSEN & ILSE KNECHT, NAT’L CTR. FOR VICTIMS OF CRIME, STATUTES OF LIMITATIONS FOR SEXUAL ASSAULT: A STATE BY STATE COMPARISON 2–22 (Aug. 21, 2013), <https://victimsofcrime.org/docs/DNA%20Resource%20Center/sol-for-sexual-assault-check-chart---final---copy.pdf> (listing states with DNA exceptions).

<sup>29</sup> King, *supra* note 16.

<sup>30</sup> *Time Limits for Charges*, *supra* note 24.

## B. The Statute of Limitations for Sex Crimes

Statutes of limitations have evolved tremendously as courts have increasingly sought to rely on forms of evidence that do not erode over time.<sup>31</sup> DNA, audio recordings, video recordings, emails, texts, and other digital communications play an important role in the investigation and prosecution of sexual violence crimes.<sup>32</sup> States have also reformed their statutes of limitations for sex-related crimes, as society has come to better understand the physical, emotional, and psychological effects that sexual violence has on victims.<sup>33</sup> Importantly, understanding the effects of sexual abuse on victims has informed many states as to why victims of sexual-related crimes do not always report the crime immediately after its occurrence.<sup>34</sup>

Many factors contribute to a victim's long delay in filing criminal or civil charges against their perpetrator.<sup>35</sup> Because of this, forty-one states have abolished the statute of limitations for crimes relating to the sexual assault of minors.<sup>36</sup> Child USA, a Philadelphia think tank dedicated to ending child abuse and neglect, rates Pennsylvania's relevant laws among the worst in the country in protecting children.<sup>37</sup> In Pennsylvania, victims can bring criminal complaints until they are fifty-years-old and civil complaints until their thirtieth birthday.<sup>38</sup>

On the other hand, Delaware earned a perfect score under Child USA's ranking after eliminating the civil and criminal statutes of limitations for the sexual assault of minors and opening a two-year window for past victims to bring cases.<sup>39</sup> The window allowed victims who would have been deemed too old under the statute that was in place at the time of their sexual assault

<sup>31</sup> *Understanding Statutes of Limitations for Sex Crimes*, RAINN, <https://www.rainn.org/articles/statutes-limitations-sex-crimes> (last visited Jan. 19, 2019).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Adult Survivors of Child Sexual Abuse*, RAINN, <https://www.rainn.org/articles/adult-survivors-child-sexual-abuse> (last visited Jan. 19, 2019) (explaining that "[m]any perpetrators of sexual abuse are in a position of trust or responsible for the child's care, such as a family member, teacher, clergy member, or coach." Additionally, survivors may experience "feelings of guilt, shame, and blame" and some "have tried to tell an adult and were met with resistance or felt there was no one they could trust.").

<sup>36</sup> Michelle Merlin & Carole Thompson, *How Other States' Lawmakers Have Dealt With Sex Abuse Legislation, and Why Pennsylvania's May Be Behind*, MORNING CALL (Sept. 8, 2018), <https://www.mcall.com/news/breaking/mc-nws-priest-sex-abuse-bills-20180827-story.html>.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

to file charges within two years of the window's commencement. Delaware attributed its new legislation to the discovery of an abusive pediatrician who was convicted of abusing over one-hundred children.<sup>40</sup> Many survivors of childhood sex-related crimes hope that Pennsylvania will make the same move in light of the hundreds of claimed cases of sexual abuse in each of the dioceses of the state. Efforts made to reform Pennsylvania legislation will be discussed in Part II of this article.

## II. THE PENNSYLVANIA CATHOLIC DIOCESES SCANDAL

The recent publication of the 2018 Grand Jury Report, investigating the Pennsylvania Catholic dioceses' allegations of sexual assault against minors has helped identify several problems with the current statute of limitations law in Pennsylvania.<sup>41</sup> First, this section will give a brief overview of the sexual-assault scandal that has plagued the Pennsylvania Catholic dioceses in recent years. Then, it will identify some of the problems that the Grand Jury found in its investigation. Finally, it will address some of the legislative initiatives that have taken place since the prevalence of childhood sexual abuse in Pennsylvania became a national issue.

### A. A Historical Overview

It all started with one civil lawsuit.<sup>42</sup> Twenty-five plaintiffs alleged sexual abuse claims against Rev. John Geoghan of the Boston Archdiocese.<sup>43</sup> They said that they were children when Geoghan raped them in parishes to which Cardinal Bernard Law transferred him between 1985 and 1993.<sup>44</sup> It is alleged that Geoghan molested more than 100 children during his twenty-eight year-long career.<sup>45</sup> An article written in 2002 about the case against Cardinal Bernard Law highlighted that church leadership was aware of the sexual assaults.<sup>46</sup> Investigations into abuses by clergy members of the Roman Catholic Church ensued shortly after the article was published in the Boston Globe detailing over 600 stories of sexual assault in the Archdiocese

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<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> See Eileen McNamara, *Passing the Buck*, BOS. GLOBE (July 29, 2001), *reposted at Passing the Buck*, BISHOPACCOUNTABILITY.ORG, [http://www.bishop-accountability.org/news5/2001\\_07\\_29\\_McNamara\\_Passing\\_the\\_Buck.htm](http://www.bishop-accountability.org/news5/2001_07_29_McNamara_Passing_the_Buck.htm).

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

of Boston.<sup>47</sup> Because of these investigations, clergy sex abuse became a known national crisis for the Roman Catholic Church.<sup>48</sup>

“...[B]efore the truth can set us free, it must first be revealed,” said Rev. James Martin, a Jesuit priest and editor at America Magazine, in hopes that the recently published Grand Jury Report on sexual assault in the Catholic Church would encourage church leaders to voluntarily open their files on all priests who have been credibly accused.<sup>49</sup> In 2003, amid the growing scandal of clergy abuse in the Roman Catholic Archdiocese of Boston, the Philadelphia District Attorney’s Office impaneled a Grand Jury to investigate the Catholic Archdiocese of Philadelphia.<sup>50</sup> The Grand Jury was tasked with investigating the sexual abuse of minors by clergy.<sup>51</sup> Based in part on previously secret church documents, the Grand Jury found hundreds of documented reports of child sexual abuse by at least sixty-three priests in what it described as “a concerted campaign” by church leaders to cover up abuse and transfer accused priests to other parishes rather than reporting those incidents to the government.<sup>52</sup> Despite its findings, the statute of limitations expired on most of the credible claims that would otherwise be prosecutable.<sup>53</sup>

This Grand Jury Report and investigation came on the heels of the National Conference of Catholic Bishops, in 2002, adopting a national “zero-tolerance” policy, pledging to remove all priests facing credible accusations of sexual assault.<sup>54</sup> At that conference, the bishops also voted 228-4 to commission a one million dollar study that would analyze the culture of the

<sup>47</sup> *Key Reports from Globe’s Spotlight Team on Clergy Sex Abuse*, BOS. GLOBE (Mar. 11, 2016), <https://www.bostonglobe.com/metro/2016/03/11/key-reports-from-globe-spotlight-team-clergy-sex-abuse/s7qc7M3W2nmLs5ULN8ILHJ/story.html>.

<sup>48</sup> *Timeline: Key Dates in the Pennsylvania Church Abuse Scandal*, PITTSBURGH’S ACTION NEWS 4 (Aug. 14, 2018), <https://www.wtae.com/article/key-dates-in-the-pennsylvania-church-abuse-scandal/22729457> [hereinafter *Timeline of PA Scandal*].

<sup>49</sup> Campbell Robertson & Elizabeth Dias, *Justice Department Investigates Pennsylvania Dioceses Accused of Sex Abuse Cover-Up*, N.Y. TIMES (Oct. 18, 2018), <https://www.nytimes.com/2018/10/18/us/church-sex-abuse-investigation-pennsylvania.html>.

<sup>50</sup> Report of the Grand Jury at 2, 6, Misc. No. 03-00-239 (1st D.Pa. Sept. 17, 2003) [hereinafter Philadelphia Grand Jury Report].

<sup>51</sup> *Id.*

<sup>52</sup> *Timeline of PA Scandal*, *supra* note 48.

<sup>53</sup> Philadelphia Grand Jury Report, *supra* note 50, at 6.

<sup>54</sup> Jon Hurdle & Erik Eckholm, *Cardinal’s Aide is Found Guilty in Abuse Case*, N.Y. TIMES (June 22, 2012), <https://www.nytimes.com/2012/06/23/us/philadelphias-msgr-william-j-lynn-is-convicted-of-allowing-abuse.html>.

church to find the roots of the abuses.<sup>55</sup> Years later, in 2011, a second grand jury was impaneled to investigate the Archdiocese again to see if changes had actually taken place since 2003.<sup>56</sup> This report indicated that thirty-seven new priests had been credibly accused of sexual abuse.<sup>57</sup>

In 2012, Monsignor William Lynn of the Philadelphia Archdiocese was convicted of child endangerment for failing to remove accused predators or report them to law enforcement.<sup>58</sup> Evidence showed that, in 1994, he drew up a list of about three dozen active priests who had been credibly accused of sex abuses.<sup>59</sup> Prior to his 2012 trial, a copy of that list was handed over to the court by a lawyer for the Archdiocese, who said it was found in a locked safe.<sup>60</sup> One of those active priests, Rev. Edward V. Avery, had spent six months in a church-run psychiatric center in 1993 after sexually abusing minors.<sup>61</sup> Doctors advised that the priest be kept away from children, but Monsignor Lynn allowed him to reside in a parish rectory.<sup>62</sup>

Six years later, Edward Avery pled guilty to involuntary deviant sexual intercourse and conspiracy to endanger the welfare of a child in relation to the undressing of a ten-year-old altar boy and forcing the boy to perform oral sex.<sup>63</sup> He was sentenced to two-and-a-half to five years in prison.<sup>64</sup> Avery remains in prison, while the retrial of Monsignor Lynn is expected to take place in 2019.<sup>65</sup>

Monsignor Lynn was the first senior official of the Roman Catholic Church in the United States to be convicted of child endangerment.<sup>66</sup> He was released upon appeal after serving a year-and-a-half in prison<sup>67</sup>—not because he did not assist in covering up the crimes, but because the state's

<sup>55</sup> *Catholic Priests Extend 'Zero Tolerance' Policy for Abusive Priests*, CHRISTIAN POST (June 19, 2005), <https://www.christianpost.com/news/catholic-priests-extend-zero-tolerance-policy-for-abusive-priests-3689/>.

<sup>56</sup> Hurdle & Eckholm, *supra* note 54.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Timeline: Philadelphia Archdiocese Trial*, N.Y. TIMES (Dec. 26, 2013), [https://archive.nytimes.com/www.nytimes.com/interactive/2012/06/01/us/priest-trial-timeline.html/#time198\\_6342](https://archive.nytimes.com/www.nytimes.com/interactive/2012/06/01/us/priest-trial-timeline.html/#time198_6342) [hereinafter *Trial Timeline*].

<sup>60</sup> Hurdle & Eckholm, *supra* note 54.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*; *Trial Timeline*, *supra* note 59.

<sup>64</sup> Associated Press, *Ex-Priest Admits Abusing an Altar Boy*, N.Y. TIMES (Mar. 22, 2012), <https://www.nytimes.com/2012/03/23/us/ex-priest-in-philadelphia-admits-abusing-altar-boy.html>.

<sup>65</sup> Aaron Moselle, *Msgr. William Lynn Retrial Expected in 2019*, WHYY (July 9, 2018), <https://whyy.org/articles/msgr-william-lynn-retrial-expected-in-2019/>.

<sup>66</sup> Hurdle & Eckholm, *supra* note 54.

<sup>67</sup> *Timeline of PA Scandal*, *supra* note 48.

child endangerment law at the time applied only to parents and caregivers, not to supervisors. After spending about \$11.6 million since early 2011 on legal fees and internal investigations, the Archdiocese issued a conciliatory statement in 2012, apologizing to “all victims of clerical abuse” and stating that the church has become “a more vigilant guardian of [their] people’s safety.”<sup>68</sup>

In 2018, another Grand Jury was formed.<sup>69</sup> This time the Grand Jury investigated six of Pennsylvania’s eight Catholic dioceses; it did not investigate the Philadelphia Archdiocese or the Altoona-Johnstown Diocese.<sup>70</sup> Despite stating that there are likely thousands more victims whose records were lost or who were too afraid to come forward, the Grand Jury report found over 1000 credible claims of sexual assault against children by over 300 priests over the last seventy years.<sup>71</sup> The Grand Jury also identified the institutional failures that led to the lack of prosecution of allegations of sexual assault of minors in each diocese.

#### B. Problems Identified by the Grand Jury

The Grand Jury found several problems with the handling of sex-abuse allegations made against church leaders. Most of those issues fall into the two categories that this section will discuss: (1) church officials in each diocese assisted in hiding reports of sexual assault and failed to take proper actions in preventing future harm and (2) prosecutors who became aware of such allegations failed to file charges against sexual predators, sometimes deferring to the church’s recommendations in handling the crimes.

##### 1. Church Officials’ Assistance in Covering Up Accusations

The 2018 Grand Jury Report stated that “[i]t’s like a playbook for concealing the truth,” when describing the way in which some church officials focused more on preventing scandal than on protecting the victims of sexual abuse.<sup>72</sup> The Report lists seven basic steps in what it viewed as this “playbook,” including (1) using euphemisms rather than saying “rape” or “inappropriate contact;” (2) foregoing genuine investigation, preferring the as-

<sup>68</sup> Hurdle & Eckholm, *supra* note 54.

<sup>69</sup> See Laurie Goodstein & Sharon Otterman, *Catholic Priests Abused 1,000 Children in Pennsylvania, Report Says*, N.Y. TIMES (Aug. 14, 2018), <https://www.nytimes.com/2018/08/14/us/catholic-church-sex-abuse-pennsylvania.html?module=inline>.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> Allegheny Grand Jury Report, *supra* note 7, at 3.

signment of fellow clergy members to determine the credibility of their colleagues; (3) sending accused priests to church-run psychiatric treatment centers; (4) refusing to state honestly why those priests are removed from parishes, if they ever are; (5) continuing to provide housing and living expenses to credibly-accused priests; (6) transferring priests to new locations if his predatory conduct became known to the community; and (7) treating the issue “in house” rather than telling the police.<sup>73</sup>

For example, in the Diocese of Allentown, upon a written confession by a priest that he “sexually molested a boy,” the Diocese responded “that ‘the experience will not necessarily be a horrendous trauma’ for the victim, and that the family should just be given ‘an opportunity to ventilate,’” leaving the priest in unrestricted ministry for many years.<sup>74</sup>

A similar confession took place in the Diocese of Erie, where a priest admitted to assaulting at least a dozen young boys and was later thanked by the bishop for “all that [he has] done for God’s people...,” ignoring the abuses that had taken place.<sup>75</sup> Another priest confessed to anally and orally raping at least fifteen boys as young as seven years old.<sup>76</sup> He also was commended “for the progress he has made” in controlling his “addiction.”<sup>77</sup> Upon his removal years later, the bishop ordered the parish to not say anything about why he had been removed.<sup>78</sup> The Dioceses of Greensburg, Harrisburg, Pittsburgh, and Scranton all committed similar errors, according to the Grand Jury’s findings, which were based on half a million pages of internal diocesan documents.<sup>79</sup> Most of the priests that were subpoenaed before the Grand Jury admitted what they had done.<sup>80</sup> Perhaps if prosecution had commenced sooner there would be fewer victims identified by the Grand Jury today. Unfortunately, some prosecutors chose to let these cases be handled “in-house” by the respective diocese, and years of abuse continued.

## 2. Prosecutors’ Deference to the Church as an Agency

Another issue found in the 2018 Grand Jury Report was that some prosecutors preferred to defer abuse allegations to church officials. In 1964, District Attorney for Beaver County, Robert Masters, was advised about a

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* at 4.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at 4–6.

<sup>80</sup> *Id.* at 4.

priest who molested a number of young boys at his parish.<sup>81</sup> In response, he advised the Diocese that “in order to prevent unfavorable publicity,” he had “halted all investigations into similar incidents involving young boys.”<sup>82</sup> In 2017, the (now) former District Attorney testified that the reason he deferred to the Bishop of the Diocese on a criminal matter was “probably respect for the Bishop...,” and his desired political support of the Diocese.<sup>83</sup>

Father James Gaffney of the Allentown Diocese was called as a witness before the Grand Jury in 2016 and again in 2017.<sup>84</sup> Despite his decades-long history of sexually abusing teenage girls from a parish in Reading, Pennsylvania, and his confession under oath to having sexual contact with one female student and other children as a priest, he was not the target of criminal investigation.<sup>85</sup> In 1980, Gaffney found child pornography in the parish at St. Joseph’s Catholic Church, which depicted Father David Soderlund of the Allentown Diocese masturbating a twelve-year-old boy.<sup>86</sup> The District Attorney of Carbon County promised not to prosecute Father David Soderlund if he agreed to be transferred and receive treatment.<sup>87</sup> After his brief removal, Soderlund returned to ministry.<sup>88</sup> Due to the lack of prosecution of these charges at the time the District Attorney was made aware of the allegations, the evidence of Soderlund’s child pornography was lost.<sup>89</sup> Cases like this have led some legislators to attempt to change the laws to allow the prosecution of sexual offenders to commence at any time or to allow victims to file civil lawsuits for previously time-barred offenses.

### C. Legislative Initiatives to Address Such Abuse

The statute of limitations in Pennsylvania for “major sexual offenses,” including the crimes of rape, statutory sexual assault, involuntary deviate sexual intercourse, sexual assault, aggravated indecent assault, incest, and sexual abuse of children, is twelve years.<sup>90</sup> The relevant exception it provides is:

If the period prescribed in subsection (a), (b) or (b.1) has expired, a prosecution may nevertheless be commenced for:

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<sup>81</sup> *Id.* at 215.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at 215–16.

<sup>84</sup> *Id.* at 328.

<sup>85</sup> *Id.* at 215.

<sup>86</sup> *Id.* at 330.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> 42 PA. CONS. STAT. § 5552(b.1) (2018).

...  
 (3) Any sexual offense committed against a minor who is less than 18 years of age any time up to the later of the period of limitation provided by law after the minor has reached 18 years of age or the date the minor reaches 50 years of age. As used in this paragraph, the term “sexual offense” means a crime under the following provisions of Title 18...<sup>91</sup>

Then, it goes on to list trafficking of individuals, rape, involuntary sexual servitude, statutory sexual assault, endangering the welfare of children, corruption of minors, sexual abuse of children, sexual exploitation of children, and other similar crimes as those that satisfy the definition of “sexual offense.”<sup>92</sup> Unfortunately, it does not help all the potential victims identified by the Grand Jury Report who have credible stories to tell and evidence to support such stories.<sup>93</sup>

The Philadelphia Grand Jury Report from 2003 noted the need for legislative changes when it stated that “by choosing children as targets and trafficking on their trust, [the abuser] was able to prevent or delay reports of their sexual assaults, to the point where applicable statutes of limitations expired.”<sup>94</sup> Additionally, the Grand Jury recommended that Pennsylvania abolish the statute of limitations for sexual offenses against children, noting that several other states have already done so.<sup>95</sup> At the time that the 2003 Philadelphia Grand Jury put forth its Report, the statute of limitations barred any prosecution not commenced within twelve years after the child victim’s eighteenth birthday for involuntary deviate sexual intercourse, rape, statutory sexual assault, sexual assault, aggravated indecent assault, incest, and sexual abuse of children.<sup>96</sup> Therefore, no survivor above the age of thirty could bring charges.<sup>97</sup>

Despite an amendment to Pennsylvania law that allows survivors to bring forward charges until their fiftieth birthday—twenty more years than a survivor had before the 2006 amendment—the law still allows injustice to prevail.<sup>98</sup> The 2018 Grand Jury Report echoes this need for further change:

This grand jury exists because Pennsylvania dioceses routinely hid reports of child sex crimes while the statutes of limitations for those crimes expired. We just do not understand why that should be allowed

<sup>91</sup> *Id.* at § 5552(c).

<sup>92</sup> *Id.* at § 5222(c)(3).

<sup>93</sup> See Allegheny Grand Jury Report, *supra* note 7, at 307.

<sup>94</sup> Philadelphia Grand Jury Report, *supra* note 50, at 1.

<sup>95</sup> *Id.* at 7.

<sup>96</sup> S.B. 212, 185<sup>th</sup> Gen. Assemb., Reg. Sess. (Pa. 2002) (enacted).

<sup>97</sup> See *id.*

<sup>98</sup> See 42 PA. CONS. STAT. § 5222 (2018).

to happen. If child abusers knew they could never become immune for their crimes by outrunning the statute of limitations, maybe there would be less child abuse.

We know our statute of limitations has been extended recently, so that now abusers can potentially be prosecuted until the victim reaches age 50. And that's good. It just doesn't help a lot of the victims we saw. No piece of legislation can predict the point at which a victim of child sex abuse will find that strength to come forward. And no victim can know whether anyone will believe her, or how long she will have to wait for justice.<sup>99</sup>

In response to this scandal and the Grand Jury's findings, Mark Rozzi, a member of the Pennsylvania House of Representatives, proposed legislation to eliminate the statute of limitations on both criminal and civil charges of childhood sexual assault crimes.<sup>100</sup> That bill, while passed by the House, was not brought up for a vote in the Senate.<sup>101</sup> Some support the elimination of the statute of limitations as it pertains to criminal, but not civil, charges.<sup>102</sup> The 2018 Grand Jury Report also requests that Pennsylvania eliminate the criminal statute of limitations for sexually abusing children because in its current form it fails to provide justice or protect future victims.<sup>103</sup>

### III. THE PENNSYLVANIA STATUTE OF LIMITATIONS FAILS VICTIMS

While the policies underlying these statutes of limitations are reasonable—some even commendable—many people agree that these limitations tend to be justified through necessity and convenience rather than logic.<sup>104</sup> Unfortunately, the statute still creates some problems for survivors of sexual assault. The new statute of limitations in Pennsylvania bars criminal claims by those who are over fifty-years-old, preventing anyone who was not ready to tell their story until after that age from pursuing criminal charges.<sup>105</sup> Additionally, the new provisions that allow victims to bring

<sup>99</sup> Allegheny Grand Jury Report, *supra* note 7, at 307.

<sup>100</sup> Siemaszko, *supra* note 9.

<sup>101</sup> Chelsea Koerbler, *Rep. Rozzi Calls on Senate Leadership to Pass Statute of Limitations Reform Including Retroactive Window*, WPMT FOX 43 (Oct. 12, 2018), <https://fox43.com/2018/10/12/rep-rozzi-calls-on-senate-leadership-to-pass-statute-of-limitations-reform-including-retroactive-window/>; Luran A. Little, *State Rep. Mark Rozzi's Amendment to Statute of Limitations Reform Bill Passes House*, READING EAGLE (Sept. 24, 2018), <https://www.readingeagle.com/news/article/state-rep-mark-rozzi-seeks-window-for-justice-for-survivors-of-childhood-sexual-abuse>.

<sup>102</sup> Siemaszko, *supra* note 9.

<sup>103</sup> Allegheny Grand Jury Report, *supra* note 7, at 307.

<sup>104</sup> *Chase Sec. Corp. v. Donaldson*, 325 U.S. 304, 314 (1945).

<sup>105</sup> 42 PA. CONS. STAT. § 5552 (2018).

criminal charges until their fiftieth birthday do not apply retroactively.<sup>106</sup> This means that victims who were assaulted before the 2006 amendment—which only allowed criminal prosecutions up until the victim turned thirty—will be barred by the new statute of limitations.<sup>107</sup>

This part of the article will discuss three separate issues with the current law in Pennsylvania. It will discuss cases that cannot be brought under the current law, regardless of the reliability of the evidence relied upon. Specifically, it will address the current DNA exception and how it does not further the goal of evidence reliability. Then it will discuss problems with not applying the 2006 amendment retroactively to criminal cases. Finally, it will detail the problems with setting time-limits on when criminal charges of childhood sexual assault can be brought.

#### A. Pennsylvania's DNA Exception to the Statute of Limitations is Not the Only Way to Ensure Reliable Evidence is Used for Childhood Sexual Assault Trials

Unlike the statutes of limitations for other conduct, the primary objective for sexual assault statutes of limitations is not to punish late-claimants for failing to come forward sooner or to show mercy to a rehabilitated prior offender. Rather, the purpose appears to be to prevent convictions based on untrustworthy evidence.<sup>108</sup> Therefore, many states have included DNA exceptions in their statute of limitations to allow prosecution to commence within one year of identification of the defendant's DNA.<sup>109</sup> The issue here is that lifting the statute of limitations solely upon identification of DNA evidence prevents convictions based on other trustworthy evidence.

Additionally, while the mercifulness component serves an important policy goal for non-repeat offenders,<sup>110</sup> basing the statute of limitations on a mercifulness purpose creates problems when determining who may be a repeat-offender and who will not. With child sex abuse crimes, it is almost indeterminable who will recidivate.<sup>111</sup> Some studies show low recidivism rates for child sex abuse where recidivism is defined as “re-conviction,” but

<sup>106</sup> *Id.*

<sup>107</sup> *See id.*

<sup>108</sup> *See* ERICKSON & KNECHT, *supra* note 28, at 1.

<sup>109</sup> *Id.*

<sup>110</sup> *Time Limits for Charges, supra* note 24.

<sup>111</sup> *Recidivism: How Often Do Child Molesters Go On To Reoffend?*, LEADERSHIP COUNCIL (2005), <http://www.leadershipcouncil.org/1/res/rcd.html> [hereinafter LEADERSHIP COUNCIL]; *see* Steven Patrick & Robert Marsh, *Recidivism Among Child Sexual Abusers: Initial Results of 13-Year Longitudinal Random Sample*, 18 J. CHILD SEXUAL ABUSE 123, 124, 133 (2009).

these studies lack information on those who are not convicted.<sup>112</sup> It may very well be true that those less-likely to be convicted are [or their victims are] better at hiding their abuse for long periods of time. Furthermore, many reports indicate that far fewer victims come forward than those that do not.<sup>113</sup> Accordingly, using recidivism as a factor in evaluating the likelihood of reoffending is flawed because it can only account for those few offenses that result in convictions.<sup>114</sup> When a crime is inspired by secrecy and shame and enabled by choosing vulnerable victims, chances are low that the offense will be reported, let alone the offender convicted.<sup>115</sup>

#### B. Pennsylvania's Amended Provisions Do Not Apply Retroactively

While the 2006 amendment gives victims more time to file charges, the amendment does not apply retroactively to those who were assaulted prior to its enactment. Those victims are barred by the old statute of limitations that gave a victim until age thirty to file criminal charges.<sup>116</sup> No bill has sought to open a window for criminal claims based on crimes that occurred before 2006. Many discovered victims are in their forties, fifties, sixties, or older.<sup>117</sup> Because their assaults occurred prior to the 2006 amendment, not even those victims in their forties can currently bring charges. Therefore, only two priests of the 300 identified in the 2018 Grand Jury Report are prosecutable.<sup>118</sup> Even if the statute of limitations was eliminated altogether, none of these victims could receive justice unless the new laws applied retroactively.<sup>119</sup>

Although most of the survivors identified in the Grand Jury Report are too old to file criminal charges, Representative Rozzi made plans for those victims to file civil claims for monetary damages.<sup>120</sup> Rozzi's amendment to Senate Bill 261 passed the state House this past September.<sup>121</sup> It would have

<sup>112</sup> Patrick & Marsh, *supra* note 111, at 124, 126.

<sup>113</sup> *Child Sexual Abuse Statistics*, NAT'L CTR. FOR VICTIMS CRIME (2012), <http://victimsofcrime.org/media/reporting-on-child-sexual-abuse/child-sexual-abuse-statistics>.

<sup>114</sup> LEADERSHIP COUNCIL, *supra* note 111; *see* Patrick & Marsh, *supra* note 111, at 124–26.

<sup>115</sup> *See Child Sexual Abuse Statistics*, *supra* note 113.

<sup>116</sup> *See* 42 PA. CONS. STAT. § 5552 (2018).

<sup>117</sup> Allegheny Grand Jury Report, *supra* note 7, at 7.

<sup>118</sup> Patricia Dailey Lewis, *Abuse in the Catholic Church Is More Than A Pa. Problem. How Del. Changed Laws to Protect Victims*, INQUIRER DAILY NEWS (Sept. 18, 2018), <http://www.philly.com/philly/opinion/commentary/statute-of-limitations-child-sexual-abuse-catholic-church-delaware-pennsylvania-20180918.html>.

<sup>119</sup> *See id.*

<sup>120</sup> Little, *supra* note 101; *see* Siemaszko, *supra* note 9.

<sup>121</sup> Little, *supra* note 101.

created a two-year “window to justice” for now-adult victims of childhood sexual abuse who have aged out of their statute of limitations, allowing them to bring civil claims in court.<sup>122</sup> Governor Tom Wolf noted his support for this amendment and asked the General Assembly to “do the right thing and advance these reforms to [his] desk.”<sup>123</sup> However, Rozzi’s proposal was not brought up for a vote in the Senate.<sup>124</sup>

The Pennsylvania Catholic Conference opposes this civil two-year window.<sup>125</sup> Like the New York State Catholic Conference, which admitted its support for the “complete elimination of the criminal statute of limitations for child sexual abuse,” the Pennsylvania Catholic Conference is concerned that the “window” would open up old claims “...going back forever, literally.”<sup>126</sup> They fear the monetary damages could lead them to bankruptcy.<sup>127</sup>

However, allowing the statute of limitations to apply retroactively for *criminal* charges would not require monetary awards; it would merely punish those responsible for contributing to the sexual abuse of minors and prevent future harm. However, applying the law retroactively is not the only hurdle many of the victims identified in the 2018 Grand Jury Report must jump.

### C. Age-Based Limitations

As the 2018 Grand Jury Report confirms, one recurring struggle in prosecuting cases of child victimization is the fact that “many cases go unreported for years.”<sup>128</sup> For the reasons previously discussed, children can remain confused about the incident and afraid of reporting it for many years.<sup>129</sup> If a child does not report their abuse until years later, when the statute of limitations has expired, they have no method for achieving justice or for their case to be heard.<sup>130</sup> As the next section will illustrate, no piece

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> Koerbler, *supra* note 101.

<sup>125</sup> See Siemaszko, *supra* note 9.

<sup>126</sup> *Id.*

<sup>127</sup> See Aaron Aupperlee, *Dioceses Have Gone Bankrupt After Opening Window to Sex Abuse Lawsuits*, TRIBLIVE (Dec. 29, 2018), <https://triblive.com/news/catholicchurchscandal/14448813-74/dioceses-have-gone-bankrupt-after-opening-window-to-sex-abuse-lawsuits> (comparing Pennsylvania dioceses to others that have gone bankrupt in the wake of statutory changes).

<sup>128</sup> See NAT’L CTR. FOR MISSING & EXPLOITED CHILDREN, *SELECTED STATE LEGISLATION: A GUIDE FOR EFFECTIVE STATE LAWS TO PROTECT CHILDREN* 17 (1985).

<sup>129</sup> *See id.*

<sup>130</sup> *Id.*

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of legislation can predict when a victim of child sex abuse will be ready to come forward.<sup>131</sup>

### 1. Why Victims Don't Come Forward Sooner

When it comes to being sexually assaulted, the fear that victims have of not being believed if they report is high and in many cases, realized.<sup>132</sup> Most assaults occur between people who know one another.<sup>133</sup> Offenders seek out the vulnerable and are more likely to choose victims who have been previously assaulted.<sup>134</sup> Yet, victims who report more than one assault are less likely to be believed.<sup>135</sup> Because it is understood that the more times a person “cries wolf,” the less likely they are to be believed, this adds to the myriad of reasons why assault victims do not always make reports within what society would consider a reasonable amount of time.<sup>136</sup>

While some victims do come forward soon after their assault, there are many reasons why some victims wait.<sup>137</sup> Oftentimes when a victim comes

<sup>131</sup> Allegheny Grand Jury Report, *supra* note 7, at 307.

<sup>132</sup> See Sarah Muller, *Lena Dunham Explains Why Rape Victims Don't Come Forward*, MSNBC (Dec. 10, 2014), <http://www.msnbc.com/msnbc/lena-dunham-explains-why-rape-victims-dont-come-forward>.

<sup>133</sup> Shaila Dewan, *She Didn't Fight Back: 5 (Misguided) Reasons People Doubt Sexual Misconduct Victims*, N.Y. TIMES (Nov. 30, 2017), <https://www.nytimes.com/2017/11/30/us/sexual-harassment-weinstein-women.html>.

<sup>134</sup> *Id.* For a good look at who is targeted more frequently, see Camalot Todd, *Donated Cellphones Give Sexual Assault Victims a Lifeline*, LAS VEGAS SUN (Nov. 7, 2017), <https://lasvegassun.com/news/2017/nov/07/donated-cellphones-sexual-assault-victims/> (explaining the importance of donating cell-phones and service to victims of sexual assault, recognizing that they tend to be the “most vulnerable members of society”); *Child Sexual Abuse Statistics*, *supra* note 113 (noting that “children who do not live with both parents ...[or are] marked by parental discord, divorce, or domestic violence, have a higher risk of being sexually abused” and finding that “[c]hildren who had an experience of rape or attempted rape in their adolescent years were 13.7 times more likely to experience rape or attempted rape in their first year of college”); WHITE HOUSE COUNCIL ON WOMEN & GIRLS, RAPE AND SEXUAL ASSAULT: A RENEWED CALL TO ACTION 1 (2014), [https://www.knowyourix.org/wp-content/uploads/2017/01/sexual\\_assault\\_report\\_1-21-14.pdf](https://www.knowyourix.org/wp-content/uploads/2017/01/sexual_assault_report_1-21-14.pdf) (noting that youth and multiracial, Native American, and African American women are among the most-likely victims. Young people are especially at risk: “nearly half of female survivors were raped before they were 18, and over one-quarter of male survivors were raped before they were 10.” People with disabilities, the LGBT community, prison inmates, undocumented immigrants, and homeless persons are also at higher risk of being sexually assaulted or raped).

<sup>135</sup> Dewan, *supra* note 133.

<sup>136</sup> *Id.*

<sup>137</sup> *When a Youth is Victimized*, NAT'L CTR. FOR VICTIMS CRIME, <http://victimsofcrime.org/help-for-crime-victims/get-help-bulletins-for-crime-victims/when-a-youth-is-victimized> (last visited Jan. 13, 2019); Joan Cook, *Why*

forward, they are faced not only with their own internal battles but must also deal with the repercussions of telling others.<sup>138</sup> They face critiques that range from victim blaming (critiques of their clothing, behavior, dating history, their state of intoxication at the time of the assault, etc.) to distorted definitions of consent.<sup>139</sup> Child sex abuse victims face significant power imbalances between them and their abuser that create many complexities in reporting the crime.<sup>140</sup> For instance, Julianne, one of the victims identified by the Grand Jury Report was raised Catholic and taught to believe that priests are superior to other adults because “they are God in the flesh.”<sup>141</sup> Children are often targeted by someone they know and trust, who has authority over them which makes reporting abuse very difficult.<sup>142</sup>

The National Institute of Justice reported in 2003 that seventy-five percent of adolescents who were sexually assaulted were victimized by someone they knew well.<sup>143</sup> Because of this, it is difficult for many children to come forward as it can be painful for the family to hear or difficult for them to believe the child.<sup>144</sup> Because the victim is often the only witness to the abuse, others may question the sincerity of the child’s testimony.<sup>145</sup> This can result in anger and rejection by the family and community, which not only delays reporting but also increases the likelihood that the child will feel guilt and shame, making it less likely they will report future acts of violence against them.<sup>146</sup>

Among many other societal influences, including belittling questions about actions taken on behalf of the victim,<sup>147</sup> the statute of limitations re-

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*Sex-Assault Victims May Wait Decades to Come Out*, THE HILL (Nov. 15, 2017), <https://thehill.com/opinion/white-house/360574-why-sex-assault-victims-may-wait-decades-to-come-out>; *Effects of Sexual Violence*, RAINN, <https://www.rainn.org/effects-sexual-violence> (last visited Jan. 13, 2018).

<sup>138</sup> *When a Youth is Victimized*, *supra* note 137; Cook, *supra* note 137; *Effects of Sexual Violence*, *supra* note 137.

<sup>139</sup> Petula Dvorak, *Stop Blaming Victims for Sexual Assaults on Campus*, WASH. POST (Feb. 24, 2014), [https://www.washingtonpost.com/local/stop-blaming-victims-for-sexual-assaults-on-campus/2014/02/24/b88efb1e-9d8f-11e3-9ba6-800d1192d08b\\_story.html?utm\\_term=.b4122a47b17e](https://www.washingtonpost.com/local/stop-blaming-victims-for-sexual-assaults-on-campus/2014/02/24/b88efb1e-9d8f-11e3-9ba6-800d1192d08b_story.html?utm_term=.b4122a47b17e); *Sexual Assault and Victim Blaming: the College Experience?*, CHILD TRENDS (Mar. 3, 2014), <https://www.childtrends.org/sexual-assault-and-victim-blaming-the-college-experience>.

<sup>140</sup> *Reporting on Child Sexual Abuse*, NAT’L CTR. FOR VICTIMS CRIME, <http://victimsofcrime.org/media/reporting-on-child-sexual-abuse> (last visited Jan. 13, 2019).

<sup>141</sup> Allegheny Grand Jury Report, *supra* note 7, at 307–08.

<sup>142</sup> *Child Sexual Abuse Statistics*, *supra* note 113.

<sup>143</sup> *Id.*

<sup>144</sup> *Reporting on Child Sexual Abuse*, *supra* note 140.

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> Muller, *supra* note 132.

flects the societal burden that is placed on anyone who was sexually assaulted. One of the key reasons why someone will wait to come forward, perhaps for decades, is their knowledge that their chances of justice are slim, particularly where they did not collect DNA or other physical evidence.<sup>148</sup> To know that one's claim will be made public is a substantial risk; many people are ostracized from their families or must face their perpetrators on a regular basis in the absence of conviction.<sup>149</sup> In some jurisdictions, prosecutors will file perjury charges against victims who have decided to back down, often due to factors such as threats by the perpetrator.<sup>150</sup> Internal factors, such as one's personal refusal to admit what happened, also contribute to victims' delays in reporting.<sup>151</sup> Most states have recognized the myriad of difficulties that survivors of childhood abuse face in reporting their perpetrator and have eliminated the statute of limitations for those reasons.

#### IV. ELIMINATING THE CRIMINAL STATUTE OF LIMITATIONS FOR SEX CRIMES COMMITTED AGAINST CHILDREN

Any purpose served by the criminal statute of limitations in cases of child sexual abuse is heavily outweighed by the need to prosecute credible claims. It is an unnecessary limitation. While some of the goals underlying the statute of limitations are laudable, they should be secondary to the goal of preventing perpetrators from continuing sexual assaults. Convictions, though, must still be based on sufficient evidence, regardless of the amount of time that has passed from an injury's occurrence. Recognizing this, many states have begun to eliminate their statutes of limitations for sex crimes committed against children and to allow evidence reliability to be addressed through the trial proceedings.<sup>152</sup>

<sup>148</sup> Symone Shinton, *Pedophiles Don't Retire: Why the Statute of Limitations on Sex Crimes Against Children Must Be Abolished*, 92 CHI.-KENT L. REV. 317, 343 (2017).

<sup>149</sup> *Reporting on Child Sexual Abuse*, *supra* note 140.

<sup>150</sup> Njeri Mathis Rutledge, *Turning a Blind Eye: Perjury in Domestic Violence Cases*, 39 N.M.L. REV. 149, 155–56, 168, 174 (2009) (discussing the problem with charging victims with perjury for recanting in domestic violence cases).

<sup>151</sup> Akulikowski, *Common Victim Behaviors of Survivors of Sexual Abuse*, PA. COALITION AGAINST RAPE (Mar. 26, 2013), <https://www.pcar.org/blog/common-victim-behaviors-survivors-sexual-abuse>.

<sup>152</sup> Shinton, *supra* note 148, at 337, 347 (explaining studies show that adults' memories of documented child sexual abuse establish that individuals do in fact accurately record and remember their victimization...[and]...procedural safeguards protect defendants' rights, even at trial through cross-examination and jurors' requiring scientific evidence to establish guilt beyond a reasonable doubt and the amount and strength of evidence against a defendant in a child sexual abuse case directly correlates to the likelihood of a conviction).

This section will address the impact of eliminating the statute of limitations for sex crimes committed against children. First, eliminating the statute of limitations on sexual assault crimes committed against minors will not create convictions based on less-reliable evidence. Second, sexual assault against children is a very serious crime and the statute of limitations should be eliminated for such crimes like it has been for murder. Therefore, eliminating the statute of limitations on sexual assaults of minors will prevent perpetrators from outrunning time limitations on their assaults and prevent future harm to other children by removing predators from places of worship, schools, and other institutions where there is significant contact with youth.

#### A. Eliminating the Statute of Limitations of Sexual Crimes Against Children Will Not Create Convictions Based on Less-Reliable Evidence

Some states concede that the statute of limitations should not bar victims of sexual assault from recovering at any point if certain evidence exists.<sup>153</sup> Preserving evidence and basing convictions on non-faulty evidence is a valid concern in preventing wrongful convictions. However, a court's incorrect application of or admission of evidence should not be the determining factor in whether a victim may bring a claim of sexual assault and obtain discovery to try his or her case. If at trial, there is not enough evidence to convict, the judge should grant a motion to dismiss.<sup>154</sup> There are many cases that may have enough physical or circumstantial evidence to convict but cannot be tried merely due to the statute of limitations. In fact, most criminal convictions are based on circumstantial evidence.<sup>155</sup>

While most states have eliminated the statute of limitations for sexual assault crimes against minors, some still impose a time limit.<sup>156</sup> Some of the states that still use a statute of limitations for sexual crimes against minors have at least included DNA exceptions, revealing those state's recognition of the importance in prosecuting these crimes.<sup>157</sup> Pennsylvania is one of those states.<sup>158</sup> The DNA exception gives one additional year for prosecu-

<sup>153</sup> See, e.g., ARK. CODE ANN. § 5-1-109 (2018).

<sup>154</sup> FED. R. CRIM. P. 29.

<sup>155</sup> *Circumstantial Evidence*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/topic/circumstantial-evidence> (last visited Jan. 13, 2019).

<sup>156</sup> Merlin & Thompson, *supra* note 36.

<sup>157</sup> ERICKSEN & KNECHT, *supra* note 28, at 2–22.

<sup>158</sup> 42 PA. CONS. STAT. § 5552(c.1) (2018).

tion upon the identification of the DNA, if it is believed that the DNA identifies the perpetrator of the assault.<sup>159</sup> Pennsylvania's DNA exception reads:

...if evidence of a misdemeanor sexual offense set forth in subsection (c)(3) or a felony offense is obtained containing human deoxyribonucleic acid (DNA) which is subsequently used to identify an otherwise unidentified individual as the perpetrator of the offense, the prosecution of the offense may be commenced within the period of limitations provided for the offense or one year after the identity of the individual is determined, whichever is later.<sup>160</sup>

However, DNA is not the only form of reliable evidence that can support a trustworthy conviction. There are many other reliable forms of physical evidence, and most criminal convictions are based on circumstantial evidence.<sup>161</sup> Pennsylvania's current statute of limitations bars many trustworthy claimants from having their day in court.<sup>162</sup>

For example, in the file of the Diocese of Greensburg, a complaint was made against Father Edmond Parrakow for sexually abusing a teenage boy in 1985.<sup>163</sup> At that time, Parrakow was serving in various parishes within the Archdiocese of New York.<sup>164</sup> After the abuse allegation was made, Parrakow was sent to receive counseling and underwent an intensive "evaluation" at the St. Bernardine Clinic in Maryland, which led to his referral for in-patient treatment at the Foundation House.<sup>165</sup> The "Foundation House was a facility that provided evaluations and treatment for priests accused of sexual abuse of children or other improper acts."<sup>166</sup> During one of his interviews at Foundation House, Parrakow admitted to having molested approximately thirty-five male children over the previous seventeen years he had served as a priest.<sup>167</sup> He said that he preferred victims around the age of fifteen or sixteen years old and admitted to having engaged in sexual touching, mutual masturbation, mutual fellatio, and mutual anal intercourse.<sup>168</sup> He stated that he "thought that sex with a girl was sinful and that sex with a child was not violating them—it was doing something to them external-

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> *Circumstantial Evidence*, *supra* note 155 (stating that "most criminal convictions are based on circumstantial evidence, although it must be adequate to meet established standards of proof.").

<sup>162</sup> Allegheny Grand Jury Report, *supra* note 7, at 4.

<sup>163</sup> *Id.* at 117.

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> *Id.* at 118.

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

ly.”<sup>169</sup> He was later formally appointed to the Greensburg Diocese where he was appointed Parochial Vicar of St. Pius X Catholic Church in Mount Pleasant, Pennsylvania.<sup>170</sup> He continued to have inappropriate contact with children of the Diocese.<sup>171</sup>

In December of 2017, Parrakow testified before the Grand Jury and admitted that he had molested children as a priest.<sup>172</sup> When asked if he had abused numerous children, Parrakow said, “...I don’t – well, I didn’t keep contact – contact with them, and I didn’t count them. So whatever the Diocese is saying is probably correct.”<sup>173</sup> He told the Grand Jury “that he confessed his crimes to his fellow priests, but admitted he would offend again after he received absolution.”<sup>174</sup> Parrakow told the attorney for the Commonwealth “that he could not be cured of his desires and...was unaware of the ‘serious effects’ of his criminal actions.”<sup>175</sup> “Parrakow is currently employed in a shopping mall in Westmoreland County.”<sup>176</sup> Despite his confessions and the large amount of circumstantial evidence against him, he cannot be prosecuted for his crimes because the statute of limitations has expired for all of his sexual assaults in Pennsylvania.<sup>177</sup>

In the Diocese of Harrisburg, Father Augustine Giella received multiple complaints against him for sexually assaulting young girls.<sup>178</sup> New Jersey police confiscated, from Giella’s residence in New Jersey, young girl’s panties, plastic containers containing pubic hairs identified by initials, twelve vials of urine, soiled panties, sex books, used feminine sanitary products, numerous photographs of girls in sexually explicit positions, and some photos of children urinating.<sup>179</sup> However, the current statute of limitations would prevent his prosecution, had he not died while awaiting trial.<sup>180</sup>

DNA exceptions in statutes of limitations are a good indicator that states are beginning to take the reliability of certain forms of evidence more seriously, allowing only the most trustworthy evidence to be the foundation for convictions. However, DNA evidence is not the only evidence on which a criminal charge of sexual assault outside the statute of limitations should be

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<sup>169</sup> *Id.*

<sup>170</sup> *Id.* at 123.

<sup>171</sup> *Id.* at 125, 127.

<sup>172</sup> *Id.* at 128.

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

<sup>177</sup> *Id.* at 129.

<sup>178</sup> *Id.* at 167.

<sup>179</sup> *Id.*

<sup>180</sup> *Id.* at 169.

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based. The circumstantial evidence from these cases should suffice to try a criminal case, regardless of the years that have passed since the abuse's inception. This type of reasoning underlies many states' recent total bar of a statute of limitations for sexual abuse crimes.<sup>181</sup> However, to eliminate the time limitations for these crimes, some states must first realize the risk in not prosecuting child predators.<sup>182</sup>

#### B. Sexual Assault Against Children is a Very Serious Crime and the Statute of Limitations Should be Eliminated for Such Crimes Like it Has Been for Murder

The statute of limitations serves many important functions for certain crimes, but these limitations do not apply to murder.<sup>183</sup> Like murder, childhood sexual abuse can cause permanent and unrepairable damage to the victim and the community.<sup>184</sup> The effects of childhood sexual abuse often impact a child as he or she develops physically, socially, and emotionally into adulthood and can often last a lifetime.<sup>185</sup>

Victims of childhood sexual assault are "significantly more likely to die from suicide or accidental drug overdose than individuals" who have not suffered childhood sexual assault.<sup>186</sup> Mental health professionals, who work first-hand with childhood sexual abuse survivors, identify numerous factors that contribute to a survivor's increased risk of suicide.<sup>187</sup> They note the manipulation of the child's thinking, the secrecy of the conduct, and the threats as a few factors that contribute to many years—if not a lifetime—of

<sup>181</sup> See Siemazko, *supra* note 9; Haley Sweetland Edwards, *Statute-of-Limitation Laws Can Leave Few Choices for Child Sex-Abuse Victims. That's Why These People Are Trying to Change Them*, TIME (Sept. 13, 2018), <http://time.com/5394927/statute-of-limitations-changes>.

<sup>182</sup> Delaware did not eliminate time limitations for sexual abuse until after a doctor had molested over a hundred children. See Merlin & Thompson, *supra* note 36.

<sup>183</sup> *Pennsylvania Must End Statute of Limitations*, TRIBLIVE (Aug. 20, 2018), <https://triblive.com/opinion/editorials/13991749-74/editorial-pennsylvania-must-end-statute-of-limitations>.

<sup>184</sup> See Pa. House Video, *Rozzi: Victims Deserve a Window to Justice*, YOUTUBE (Oct. 18, 2018), <https://www.youtube.com/watch?v=v99rTag7N70&feature=youtu.be>.

<sup>185</sup> See Jon Wertheim, *End Statute of Limitations on Child Sex Crimes*, CNN (Dec. 16, 2011), <https://www.cnn.com/2011/12/16/opinion/wertheim-sandusky-statute-on-sex-crimes/index.html>; Morgan Fletcher, *Quality of Life in Adult Survivors of Childhood Sexual Abuse 1–3* (July 22, 2015) (unpublished Ph.D dissertation, The Chicago School of Professional Psychology) (on file with ProQuest).

<sup>186</sup> Margaret C. Cutajar et al., *Suicide and Fatal Drug Overdose in Child Sexual Abuse Victims: A Historical Cohort Study*, 192 MED. J. AUSTL. 184, 186 (2010).

<sup>187</sup> Adele Ryan McDowell, *The Connection Between Suicide and Childhood Sexual Abuse*, HUFFPOST CAN. (May 17, 2017), [https://www.huffingtonpost.ca/adele-mcdowell/suicide-and-childhood-sexual-abuse\\_b\\_9989128.html](https://www.huffingtonpost.ca/adele-mcdowell/suicide-and-childhood-sexual-abuse_b_9989128.html).

sleepless nights, flashbacks, nightmares and body memories, and triggers that can send a survivor into a well of despair, physical pain, and unrelenting panic and terror.<sup>188</sup>

In 2004, the John Jay Report conducted an investigation of the impacts of and conditions leading to clergy abuse in the United States, describing clergy abuse as having an impact on victims that is “long lasting and may result in sexual depersonalization, depression, sexually acting out, and suicide...”<sup>189</sup> A 2014 study on sexual assault and suicide attempts found that 3.5% of healthy-weight males with no sexual assault history attempted suicide compared with 33.2% of healthy-weight males with sexual assault history.<sup>190</sup> For girls, it found 5.8% of healthy-weight females with no sexual assault history attempted suicide compared with 27.1% of healthy-weight girls with a history of sexual assault.<sup>191</sup> The increase in suicide attempts between sexual assault survivors and non-sexual-assault survivors reflects the unrelenting pain and trauma that tortures adult men and women with the memories of their objectification.<sup>192</sup> Clerical abuse invokes unique forms of torture in the grooming of victims; perpetrators often use God to intimidate the child.<sup>193</sup>

In an effort to persuade Pennsylvania to lift the statute, survivor and gymnast Jessica Howard, who was sexually abused by Team USA Gymnastics doctor, Larry Nassar, spoke on behalf of the victims of Catholic priests.<sup>194</sup> At her speech, families of child sex abuse survivors held signs demanding the legislature, “[p]rosecute the priests, don’t bury their victims,” while advocates and survivors told personal stories of abuse.<sup>195</sup> One father’s son was sexually abused by a priest and later died of a drug over-

<sup>188</sup> *Id.*

<sup>189</sup> JOHN JAY COLL. OF CRIMINAL JUSTICE, *THE NATURE AND SCOPE OF SEXUAL ABUSE OF MINORS BY CATHOLIC PRIESTS AND DEACONS IN THE UNITED STATES 1950-2002*, at 217 (2004).

<sup>190</sup> Laura M. Anderson et al., *Sexual Assault, Overweight, and Suicide Attempts in U.S. Adolescents*, 45 J. AM. ASS’N SUICIDOLOGY 529, 536 (2015); Marcene Robinson-Buffalo, *Sexually Assailed Teens at Greater Risk of Suicide*, FUTURITY (Apr. 6, 2015), <https://www.futurity.org/sexually-assault-boys-suicide-891742/>.

<sup>191</sup> Anderson et al., *supra* note 190, at 536; Robinson-Buffalo, *supra* note 190.

<sup>192</sup> Elizabeth Yore, *Clergy Abuse is Soul Murder*, ONEPETERFIVE (Oct. 17, 2018), <https://onepeterfive.com/clergy-abuse-soul-murder/>.

<sup>193</sup> *Id.*

<sup>194</sup> *Id.*

<sup>195</sup> Sara Hoover, *Survivors of Child Sex Abuse Again Push Pennsylvania to Suspend Statute of Limitations*, WHYY (Sept. 11, 2018), <https://whyy.org/segments/survivors-of-child-sex-abuse-again-push-pa-to-suspend-statute-of-limitations/>.

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dose; he said, "[t]here is no statute of limitations on our grief, misery and pain."<sup>196</sup>

Because an adult who was sexually abused as a child might see their perpetrator in public and has lost significant trust in others, the constant feeling of danger follows them everywhere.<sup>197</sup> They never feel safe.<sup>198</sup> To survive abuse and live to tell one's truth requires tremendous courage and fortitude, and oftentimes psychotherapeutic work that can take decades.<sup>199</sup> Some victims have been deemed "incurable" by doctors, leading them to opt for suicide.<sup>200</sup> This kind of abuse can create shame so deep that it lasts for decades.<sup>201</sup> In fact, right now, many of the victims identified in the Grand Jury proceeding are in their seventies and eighties, unable to have their day in court.<sup>202</sup>

### CONCLUSION

One reason this Grand Jury Report was released was because it was all that could be done. The first sentence of the Grand Jury Report declares, "We...need you to hear this."<sup>203</sup> When victims cannot receive justice through punishment and the prevention of future acts by their perpetrator, all they have is their voice. In the case of child sexual victimization, there should be no statute of limitations. Children are especially susceptible to negative influences, and child abuse can hinder a person's development for the rest of their life.<sup>204</sup> What society loses by continuing to apply statutes of limitations to criminal cases of childhood sexual abuse is the assurance that perpetrators of child sexual abuse will be prevented from continuing to abuse children. The law prevents many survivors from receiving much-deserved justice. What society earns by eliminating the statute of limitations is the opportunity for those victims to receive justice. Allowing survivors to come forward when they are ready just might save lives.<sup>205</sup>

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<sup>196</sup> *Id.*

<sup>197</sup> *Id.*

<sup>198</sup> McDowell, *supra* note 187.

<sup>199</sup> *Id.*

<sup>200</sup> *Id.*

<sup>201</sup> *See id.* (describing one Dutch woman's doctor deeming the side effects of her sexual abuse incurable after she was sexually abused for years, suffered PTSD, anorexia, chronic depression, and hallucinations and then asked for suicide).

<sup>202</sup> *Id.*

<sup>203</sup> Allegheny Grand Jury Report, *supra* note 7, at 1–4.

<sup>204</sup> *Id.* at 1.

<sup>205</sup> Ryan Turk, *Statute of Limitations Disadvantages Abuse Victims*, COLLEGIATE TIMES (Jan. 22, 2014), [www.collegiatetimes.com/opinion/statute-of-limitations-disadvantages-abuse-victims/article\\_7faa4aec-83b8-11e3-bb4d-](http://www.collegiatetimes.com/opinion/statute-of-limitations-disadvantages-abuse-victims/article_7faa4aec-83b8-11e3-bb4d-)

In the fall of 2016, California abolished its statute of limitations for almost every type of sex crime.<sup>206</sup> On its passage, state Senator 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.”<sup>207</sup> Senator Jacqueline Collins of Illinois summed up this issue well when she said, “[w]e are realizing there is no reason not to give a solid case its day in court.”<sup>208</sup> By eliminating the criminal statute of limitations for sex crimes committed against children, the Pennsylvania legislature can create a safer state for children. And for the adult survivors of childhood sexual abuse—they will be given back a bit of control to come forward whenever they’re ready. #MeToo

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<sup>206</sup> S.B. 813, 2016 Leg., Reg. Sess. (Ca. 2016).

<sup>207</sup> *Five Things That Make an Effective Statute of Limitations*, RAINN, <https://www.rainn.org/state-state-guide-statutes-limitations> (last visited Jan. 13, 2019).

<sup>208</sup> *Collins Lauds Law to Aid Sex Crimes’ Victims*, SW NEWS HERALD (Aug. 23, 2013), <http://swnewsherald.com/collins-lauds-law-to-aid-sex-crimes-victims-p3884-1.htm>.