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## RAINN's Recommendations for Effective Civil Sex Crime Statutes of Limitations

Survivors of sexual assault cannot access justice in many states. As such, rapists get away with rape. Arbitrary time limits block survivors from pursuing claims against rapists and the institutions which chose to protect them. These statutes allow abusers and enablers of sexual assault to evade justice and continue their abuse. Survivors and offenders deserve their day in court. The law often currently fails to give them that. By amending the civil statutes of limitations for sex crimes, your state can begin to show survivors that they are the priority, not the perpetrator.

We can, and must, do better for the hundreds of women, men, and children who are sexually assaulted each day. Every 68 seconds an American is sexually assaulted, and every nine minutes, authorities find evidence that a child in America has been the victim of sexual abuse. More than two-thirds of these crimes are never reported to police and only 25 out of every 1,000 rapists will end up in prison. Under the current system, arbitrary and archaic statutes of limitations limit victims' access to justice. By failing to extend the statutes of limitation past the point of disclosure, the law specifically benefits repeat abusers and those who exert continued control over their victims.

Eliminating these barriers allows your state to identify hidden predators and the institutions that endanger the public by protecting them. Holding offenders accountable allows the cost of the harm to shift from the victim and taxpayer to those who cause abuse. You can show survivors that rapists do not get away with their crime in your state. Below we offer arguments for why and how to change your state's civil statute of limitations, along with sample statutory text.

### The Need for Reform

Statutes of limitations are a complex area of law. However, the underlying principles are not. States must balance two important interests: protecting citizens from the

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harms of sexual violence and ensuring fair trials for all participants. When crafting state laws that balance these interests, it's imperative to consider the fact that altering a statute of limitations does not change, in any way, the burden on the plaintiff to provide evidence and the burden of proof required to secure relief. Whether the length of a civil statute of limitation for a sex crime is as short as five years or as long as 100 years, the burden will always be on the plaintiff to prove their case and the rules of evidence and court procedure remain the same. Statutes of limitations do not change the burden nor make it easier to succeed on a civil claim.

The need for civil statutes of limitations reform reflects an improved understanding of sexual violence and its effects. For some victims, choosing not to report or to delay reporting the incident is the product of the very real and devastating physical and psychological effects of the crime. Inaction discourages survivors from reporting abuse, encourages institutions to hide abuse, and allows abusers to escape and potentially cause further harm.

Whereas providing survivors access to justice, whenever they are able to report, can help ameliorate these barriers. Addressing civil statutes of limitations increases survivor's trust in the system, shifts the costs from the harm caused from victims and taxpayers to the abuser, and holds accountable the organizations who were complicit in the abuse. Removing arbitrary time limits alerts perpetrators and enablers that they cannot simply wait out a clock to avoid responsibility. This will serve states' overall public safety interests, and support efforts to hold perpetrators of sexual assault—who are often serial criminals—accountable.

## **Understanding through Examples**

While statutes of limitations are unlikely to deter a perpetrator from committing sexual assault, they do create incentives to cover up the crime until the statute of limitation has passed. Take the situation of C.G., who was sexually abused at age 9 by her father, a former ecclesiastical leader, who had confessed to the abuse to other church leaders. When C.G. finally came forward as an adult, a lawyer from her church “would employ the risk management playbook that has helped the church

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keep child sexual abuse cases secret.”<sup>1</sup> Efforts by the church included discouraging the ecclesiastical leader who took the confession from testifying and offering the victim “hundreds of thousands of dollars in exchange for a confidentiality agreement and a pledge...to destroy their recordings of the meetings.” Such actions effectively prevented the victim from seeking justice for the abuse and allowed the abuser to continue his practice as a local dentist.

Too many accounts in recent years demonstrate instances where victims have come forward to report their experiences, only to learn that the perpetrator had multiple victims and that organizations had covered up the abuse. Many examples involve individuals as well as major institutions that intentionally chose to protect themselves over protecting the victims. Within sports, Larry Nassar abused hundreds of gymnasts, and the educational and sport organizations that he worked for are alleged to have failed to protect the victims.<sup>2</sup> Medical institutions have been known to protect doctors who deceive and abuse patients, such as Columbia University and now-convicted sex offender Robert Hadden.<sup>3</sup> Educational institutions have also long blocked the path to justice for survivors of abuse in schools, as the case of the forced indigenous children schools across the nation illustrates<sup>4</sup>. All of these abuses lasted for decades, and in each situation, the perpetrator and the organizations that enabled the abuse invoked the statutes of limitations to try and avoid responsibility.

As the nation's largest anti-sexual violence organization, RAINN champions eliminating arbitrary statutes of limitations that force victims to carry the burden of the abuse that individuals and organizations have perpetrated. In some states, lawmakers have eliminated the *criminal* statutes of limitations for their most serious sex offenses. And more than 22 U.S. States, Territories and the federal government have completely eliminated the civil statutes of limitations for at least some of their

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<sup>1</sup><https://apnews.com/article/mormon-church-investigation-child-sex-abuse-9c301f750725c0f06344f948690caf16>

<sup>2</sup> <https://apnews.com/article/80397768657e48d29d39fbdff911896> ;

<https://apnews.com/article/michigan-sexual-assault-bill-larry-nassar-9f3dee6250cc18629d3cb5e8542ec0f8>

<sup>3</sup> <https://www.newsweek.com/300-patients-sue-columbia-doctors-sexual-abuse-1832067>

<sup>4</sup> <https://www.reuters.com/investigates/special-report/usa-native-americans-schools/>

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most serious sex offenses.<sup>5</sup> However, states need to reform their civil statutes of limitations to allow all victims of sexual abuse to shift the economic burden of their abuse to the perpetrators or enablers of the abuse, whenever the evidence is available and sufficient to prove the abuse.

## **Recalibrating the Analysis**

Historical arguments in favor of strict, short statutes of limitations have not changed in hundreds of years, despite changes to courts and the availability of new information about sexual abuse. The main purpose of statutes of limitations is to encourage plaintiffs to diligently pursue their claims. For this reason, most statutes of limitations begin to run when the plaintiff realizes they have been harmed. While this reasoning makes sense in the context of contract disputes or medical malpractice injuries, it does not recognize the realities victims of sexual abuse face in bringing a cause of action.

Approximately 1 in 5 victims of child sexual abuse never disclose their experiences to anyone, and of those who do disclose, only 10% disclose to legal authorities.<sup>6</sup> Disclosure of child sexual abuse is “a complex and lifelong process, with current trends showing that [child sexual abuse] disclosures are too often delayed until adulthood.”<sup>7</sup> How and when a victim chooses to disclose child sexual abuse depends on “individual, familial, contextual, and cultural factors.”<sup>8</sup> In one study of child sexual abuse survivors, over half first disclosed at age 50 or older.<sup>9</sup>

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<sup>5</sup> <https://childusa.org/2024sol/>

<sup>6</sup> Delayed Disclosure Child USA 2024 Factsheet, A Comprehensive Report on Delayed Disclosure in Cases of Child Sexual Abuse, Insights, Implications, and Pathways Forward, <https://childusa.org/wp-content/uploads/2024/06/Delayed-Disclosure-2024.pdf>

<sup>7</sup> Alaggia, R., Collin-Vézina, D., & Lateef, R. (2019). Facilitators and Barriers to Child Sexual Abuse (CSA) Disclosures: A Research Update (2000–2016). *Trauma, Violence, & Abuse*, 20(2), 260–283. <https://doi.org/10.1177/1524838017697312>  
<https://journals.sagepub.com/doi/full/10.1177/1524838017697312>

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

<sup>9</sup> Delayed Disclosure Child USA 2024 Factsheet, A Comprehensive Report on Delayed Disclosure in Cases of Child Sexual Abuse, Insights, Implications, and Pathways Forward, <https://childusa.org/wp-content/uploads/2024/06/Delayed-Disclosure-2024.pdf>

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The factors that hinder child victims from disclosing also prevent disclosure by adult victims of sexual assault. Similar to children, only 21% of adult rape victims report their abuse to police.<sup>10</sup> Of those victims that do report to the police, if the perpetrator was a nonstranger, 90% of the victims reported it to the police after one week or more.<sup>11</sup> Some of the most common reasons victims delay reporting include fear of the criminal justice system and fear of being disbelieved and blamed. This is why it is common for victims to come forward and report after there has been a news report about the perpetrator because victims see they are not alone. The trauma and barriers to reporting that surround sexual violence are different than almost every other injurious behavior, and therefore the access to justice must be different.

Some who oppose the elimination of statutes of limitations argue that a longer statute of limitations forces the accused to defend against claims based on fading memories or the testimony of a deceased or otherwise unavailable witness. However, this is an argument about what constitutes sufficient evidence. Even if a statute of limitations is eliminated, victims still have the burden of production, which means they are required to put forward evidence of their claim. Fading memories and missing witnesses are just as much a barrier to a victim as they are to a defendant in a civil case. In fact, these evidentiary issues may prevent or even defeat a claim by a victim. But a victim who has provided enough evidence to prove their case should not be shut out of justice because of an arbitrary time limit. Further, the opponents' concerns are increasingly unfounded. For one thing, advancements in technology have yielded new forms of evidence, including DNA, cell phone records, video, and audio recordings. For another, procedural and evidentiary rules protect against unreliable testimony.

Opponents of the extension or elimination of civil statutes of limitations have also cited a fear that change will lead to an opening of the floodgates, inundating courts with new cases. But states that have eliminated their statutes of limitations or expanded them have not lamented an undue burden on the courts. This makes

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<sup>10</sup> <https://bjs.ojp.gov/document/cv22.pdf>

<sup>11</sup> [www.nationalguard.mil/portals/31/documents/j1/sapr/sarcvatraining/barriers\\_to\\_credibility.pdf](http://www.nationalguard.mil/portals/31/documents/j1/sapr/sarcvatraining/barriers_to_credibility.pdf)

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sense: The burden of proof on plaintiffs has not changed even if more victims are allowed the possibility of judicial access. Moreover, such a drain on courts is unlikely given the historically low reporting rates for sex offenses. Instead, allowing these cases to go forward shifts the financial burden from the victim and the taxpayer to the perpetrators and enablers.<sup>12</sup>

## **Eliminating Time Limitations on Access to the Courts is Constitutional**

Eliminating statutes of limitations allows victims and the community to seek justice and removes a defendant's ability to avoid accountability by running out the clock. The United States Supreme Court observed that statutes of limitations

“are by definition arbitrary, and their operation does not discriminate between the just and the unjust claim, or the voidable and unavoidable delay. They have come into the law not through the judicial process but through legislation. They represent a public policy about the privilege to litigate. Their shelter has never been regarded as what is now called a ‘fundamental’ right or what used to be called a ‘natural’ right of the individual.”<sup>13</sup>

Therefore, lawmakers can constitutionally eliminate any statutes of limitations for any cause of action. Legislative public policy considerations that have outweighed the concerns with removing statutes of limitations include giving access to the courts for those citizens who have been seriously harmed; recognizing that the trauma inflicted on a victim prevents their disclosure of the crime<sup>14</sup>; serial offenders are still in the community; and that some organizations are more concerned about covering up these crimes than preventing them. Legislatures can decide that statutes of limitations no longer serve the public good.

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<sup>12</sup> The estimated tangible and intangible costs for a victim of rape/sexual assault is \$240,776 in 2008 dollars. \$351,754 in today's dollars. See McCollister KE, French MT, Fang H. The cost of crime to society: new crime-specific estimates for policy and program evaluation. *Drug Alcohol Depend.* 2010 Apr 1;108(1-2):98-109. doi: 10.1016/j.drugalcdep.2009.12.002. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2835847/>

<sup>13</sup> *Chase Sec. Corp. v. Donaldson*, 325 U.S. 304, 314 (1945)

<sup>14</sup> see *United States v. Briggs*, 592 U.S. 69, 77, 141 S. Ct. 467, 473, 208 L. Ed. 2d 318 (2020)

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Legislatures can also make it possible for victims to pursue claims where the statute of limitations has already passed without offending the federal constitution. The United States Supreme Court has ruled that retroactive civil statutes of limitations are constitutional under the federal constitution, finding

a state legislature, consistently with the Fourteenth Amendment, may repeal or extend a statute of limitations, even after right of action is barred thereby, restore to the plaintiff his remedy, and divest the defendant of the statutory bar. This has long stood as a statement of the law of the Fourteenth Amendment,...<sup>15</sup>

The majority of states that have considered the issue have found retroactively reviving previously barred civil claims is permitted under their state constitutions as well.<sup>16</sup> As the Louisiana Supreme Court stated in June 2024, “the due process guarantee is protection from arbitrary and unreasonable action”<sup>17</sup> and the legislature had multiple legitimate and compelling reasons for the revival window, including providing victims an opportunity to bring a claim.<sup>18</sup>

## **RAINN’s Recommendations**

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

### 1. Eliminate the civil statutes of limitations for serious sex crimes

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<sup>15</sup> *Chase Sec. Corp. v. Donaldson*, 325 U.S. 304, 311–12, 65 S. Ct. 1137, 1141, 89 L. Ed. 1628 (1945)

<sup>16</sup> See e.g. *A.B. v S.U.* 2023 VT 32, ¶124–25 (Vermont)(identifying Georgia, Connecticut, Delaware, Massachusetts, Montana, California, and New York as some of those states); *but see Mitchell v. Roberts*, 2020 UT 34 (Utah)(finding retroactive statute unconstitutional)

<sup>17</sup> *Bienvenu v. Defendant 1*, 2023-01194 (La. 6/12/24), 386 So. 3d 280, 290–91

<sup>18</sup> The Court also identified other legitimate and compelling interests as identifying hidden perpetrators; shifting the costs of abuse to the perpetrators; and educating the public to prevent future abuse.

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2. Ensure that the statute of limitations applies retroactively
3. Include organizations that enabled sexual abuse offenders to harm victims, so they take on the financial burden and make institutional changes

Below, we offer context and analysis, recommended actions, and an example of statutory text.

We recognize that each state's code is unique and complicated. RAINN's policy department can work hand-in-hand with lawmakers and their staff to tailor these recommendations to meet each state's specific needs.

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

## ***Has your state eliminated the statutes of limitations for all of its most serious sex crimes?***

Eliminating arbitrary or archaic statutes of limitations allows all victims access to justice, shields members of the community from future abuse, identifies hidden predators and the institutions that enable them, and shifts the cost of the harm from the victim and taxpayer to the perpetrators and enablers. Eliminating the civil statute of limitations is constitutional and other rules of evidence and procedure will provide the protection that proponents of statutes of limitations claim are necessary.

### ***RAINN Recommends:***

Eliminating civil statutes of limitations for sex crimes. Both child and adult victims of sexual abuse often delay reporting due to environmental and societal factors that are not present in other crimes. The harm caused by the perpetrator can last a lifetime. All civil statutes of limitations for sex crimes should be eliminated for both children and adult victims, allowing offenders to be held accountable so long as there is sufficient evidence to prove the claims.

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## *Sample Statutory Language:*

*“An action for damages arising out of an alleged incident or incidents that would have constituted a criminal offense under [identify sex offense statutes/chapters], may be filed at any time.”*

*“A civil action brought by any person for recovery of damages for injury suffered as a result of sexual abuse may be commenced at any time after the act alleged to have caused the injury or condition. Sexual abuse is defined as any incident or incidents that would have constituted a criminal offense under [identify statutes/chapters].”*

## ***Does your statute of limitations unequivocally express an intent that it be applied retrospectively?***

It is a general rule that all statutes are to be considered prospective (effective from date of enactment going forward), unless there is express language that the statute is to apply retrospectively.<sup>19</sup> Because a victim should have access to justice whenever there is sufficient evidence to prove their claim, any statutes of limitations should be eliminated. But defendants and those complicit should not be rewarded for suppressing disclosure until after an arbitrary time limit passed.

## *RAINN Recommends:*

Include express language that conveys the intent of the legislature that the elimination of the civil statute of limitations applies to any past claims.

## *Sample Statutory Language:*

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<sup>19</sup> Fullerton-Krueger Lumber Co. v. N. Pac. Ry. Co., 266 U.S. 435, 437, 45 S. Ct. 143, 144, 69 L. Ed. 367 (1925)

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*"This section shall apply retroactively to sex offenses that occurred prior to the effective date of this act, irrespective of any statute of limitations in effect at the time the abuse occurred."*

*"This section shall apply regardless of when acts alleged to have caused an injury or condition occurred and regardless of whether such claims have lapsed or are otherwise barred by time under [insert statute]."*

## ***Does your state allow survivors to seek a civil remedy against persons or organizations that enabled the abuse?***

Organizations or persons that are complicit in the harm to victims from sexual abuse and sexual violence should help pay for the economic damages that are currently being carried by the victim and the taxpayer. It is only through holding these enablers accountable that systemic change can occur to deter future abuse to members of the community. As Professor Amos Guiora noted,

Sex abuse, particularly of children, is a crime which any rational person would wish to prevent. However, when an individual's loyalties and responsibilities to an institution put them at odds with preventing sex abuse, it is far too often the institution which takes precedence. This is the grim phenomenon of institutional complicity. It is a plague which, sadly, permeates institutions of all types, be it a school, hospital, sports team, church, military, or government agency. It also permeates countries as a global issue. I have interviewed dozens of survivors who suffered under an abuser who was protected by an institution. The survivor's expectation of the institution is simple: to be protected. Yet, time after time, these survivors found that it was the good name and reputation of the institution which was protected rather than themselves. Many survivors express that their anger towards those who enabled the abuse is greater than their anger towards the abuser. ... We need to punish enablers who protect the perpetrator. Doing so requires recognizing that two crimes often occur simultaneously, almost symbiotically: the actor's

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crime of commission and the enabler’s crime of omission. Until we recognize the power of the crime of omission, survivors will confront perpetrators who are protected by enablers. The time has come to say, “enough is enough.”<sup>20</sup>

## *RAINN Recommends:*

Eliminating any statutes of limitations carve outs for organizations or persons who had a duty to protect victims of sexual abuse or sexual violence and because they violated that duty, victims were harmed. The harm done to victims by these organizations should not be treated any differently economically than the perpetrators. Further, these organizations should not be allowed to escape responsibility by running out the clock or because they helped cover up the abuse, especially where their conduct contributed to more widespread abuse.

## **Next Steps:**

For more information about the laws in your state, please see RAINN’s state law database. For additional information about statutes of limitations generally, please visit RAINN’s website. To schedule a call with someone on RAINN’s policy team, email [policy@rainn.org](mailto:policy@rainn.org).

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<sup>20</sup> Sexual Assault Enablers, Institutional Complicity, and the Crime of Omission, Submission to the Victorian Parliament Legislative Council Social and Legal Committee, September 2021.  
<https://dc.law.utah.edu/cgi/viewcontent.cgi?article=1310&context=scholarship>