



State of Connecticut

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Testimony of
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Raised Bill No. 7085
An Act Concerning The Statute Of Limitations for Prosecution Of Certain Sexual
Offenses Using DNA Evidence

Judiciary Committee Public Hearing
February 23, 2007

Consistent with its position in the past, the Office of Chief Public Defender would urge this committee not to support *H.B. 7085, An Act Concerning The Statute Of Limitations for Prosecution Of Certain Sexual Offenses Using DNA Evidence*. The proposed bill would eliminate the statute of limitations for the offenses of C.G.S. §53a-70, *Sexual Assault in the first degree, Class B or A felony*; C.G.S. §53a-70a, *Aggravated Sexual assault in the first degree, Class B or A felony*; C.G.S. §53a-70b, *Sexual assault in spousal or cohabiting relationship, Class B felony*; C.G.S. §53a-71, *Sexual Assault in the second degree, Class C or B felony*; C.G.S. §53a-72a, *Sexual Assault in the third degree, Class D or C felony*; and, C.G.S. §53a-72b, *Sexual Assault in the third degree with a firearm, Class C or B felony*.

The Office of Chief Public Defender is concerned that without a limitation period, evidence may be unable to be located, destroyed or may deteriorate. In addition, memories of witnesses fade and sometimes no longer exist. It may be difficult or impossible to locate witnesses who may have moved or have passed on. Without any finite period of time within which a prosecution can be brought, it may be impossible for an innocent person to fairly defend himself, 30, 40, 50 or more years beyond the date of the offense.

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As we said in United States v. Ewell, *supra*, at 122, "the applicable statute of limitations . . . is . . . the primary guarantee against bringing overly stale criminal charges." Such statutes represent legislative assessments of relative interests of the State and the defendant in administering and receiving justice; they "are made for the repose of society and the protection of those who may [during the limitation] . . . have lost their means of defence." Public Schools v. Walker, 9 Wall. 282, 288 (1870). These statutes provide predictability by specifying a limit beyond which there is an irrebuttable presumption that a defendant's right to a fair trial would be prejudiced . . .

United States v. Marion, 404 U.S. 307, 322-323 (1971). In that case, the court continued its discussion in regard to the purpose of a statute of limitations:

The purpose of a statute of limitations is to limit exposure to criminal prosecution to a certain fixed period of time following the occurrence of those acts the legislature has decided to punish by criminal sanctions. Such a limitation is designed to protect individuals from having to defend themselves against charges when the basic facts may have become obscured by the passage of time and to minimize the danger of official punishment because of acts in the far-distant past. Such a time limit may also have the salutary effect of encouraging law enforcement officials promptly to investigate suspected criminal activity.

The Court has indicated that criminal statutes of limitation are to be liberally interpreted in favor of repose. United States v. Habig, 390 U.S. 222, 227 (1968). The policies behind civil statutes of limitation are in many ways similar. They "represent a public policy about the privilege to litigate," Chase Securities Corp. v. Donaldson, 325 U.S. 304, 314 (1945), and their underlying rationale is "to encourage promptness in the bringing of actions, that the parties shall not suffer by loss of evidence from death or disappearance of witnesses, destruction of documents or failure of memory." Missouri, Kansas & Texas R. Co. v. Harriman, 227 U.S. 657, 672 (1913). Such statutes "are founded upon the general experience of mankind that claims, which are valid, are not usually allowed to remain neglected," Riddlebarger v. Hartford, Insurance Co., 7 Wall. 386, 390 (1869), they "promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared," Order of Railroad Telegraphers v. Railway Express Agency, 321 U.S. 342, 348-349 (1944), and they "are primarily designed to assure fairness to defendants. . . . Courts ought to be relieved of the

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*burden of trying stale claims when a plaintiff has slept on his rights." Burnett v. New York Central R. Co., 380 U.S. 424, 428 (1965). As in the criminal law area, such statutes represent a legislative judgment about the balance of equities in a situation involving the tardy assertion of otherwise valid rights: "The theory is that even if one has a just claim it is unjust not to put the adversary on notice to defend within the period of limitation and that the right to be free of stale claims in time comes to prevail over the right to prosecute them." Order of Railroad Telegraphers v. Railway Express Agency, *supra*, at 349.*

United States v. Marion, 404 U.S. 307, 323, fn 14 (1971).

Current Connecticut General Statute §54-193b, *Limitation of prosecution for sexual assault offenses when DNA evidence available*, already provides for a twenty year statute of limitations as follows from:

the date of the commission of the offense provided (1) the victim notified any police officer or state's attorney acting in such police officer's or state's attorneys official capacity of the commission of the offense not later than five years after the commission of the offense, and (2) the identity of the person who allegedly committed the offense has been established through a DNA (deoxyribonucleic acid) profile comparison using evidence collected at the time of the commission of the offense.

Even C.G.S. §54-193a, *Limitation of prosecution for offenses involving the sexual abuse of minor*, provides for a statute of limitations of thirty years from the date the victim attains the age of majority or within five years of the victim notifying a police officer or state's attorney of the offense. The only criminal offenses which have no statute of limitations are capital felonies, class A felonies or violations of C.G.S. §53a-54d (Arson Murder) or C.G.S. §53a-169 (Escape in the first degree).

In addition, even if this proposal were to be approved by the legislature, this office would urge the Committee to limit it prospectively and not make it retroactive. In 2003 the United States Supreme Court concluded that "a law enacted after expiration of a previously applicable limitations period violates the *Ex Post Facto* Clause when it is applied to revive a previously time-barred prosecution. Stogner v. California, 539 U.S. 607, 633 (2003) . There is a "predominating constitutional interest in forbidding the State to revive a long-forbidden prosecution. And to hold that such a law is *ex post facto* does not prevent the State from extending time limits for the prosecution of future offenses,

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or for prosecutions not yet time barred." Stogner v. California, supra at 632; see also, State v. Skakel, 276 Conn. 633 (2006).

In order to provide for the rights of the defendant to notice, due process and a fair trial, the statute of limitations should not be extended beyond the already lengthy time period. The Office of Chief Public Defender urges this committee not to support this proposal.