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~~Raised Bill HB-05446
Public Hearing: 3-26-09~~

TO: MEMBERS OF THE JUDICIARY COMMITTEE

FROM: Susan K. Smith of Avon, Richard J. Kenny of Hartford, Timothy O'Keefe of Hartford, Paul Edwards of West Hartford, Thomas McNamara of New Haven, David M. Moore of Simsbury

DATE: March 24, 2009

RE: Support of Raised Bill HB-05446 creating an exception extending the Statute of Limitations contained in CGS 52-577d in the event that newly discovered material evidence is discovered. The Bill provides that victims can file civil actions three (3) years from the date that the evidence is discovered.

The undersigned support Bill HB-05446, and respectfully contend that the bill should be passed.

We respectfully submit that this Bill is necessary in order that victims of child sexual abuse (CSA) be allowed to access the civil courts in the event that evidence is discovered after expiration of the Statute of Limitations (SOL). The Bill provides that the evidence must not only be material to the case, but must not have been discoverable prior to the expiration of the underlying SOL. In this respect, the Bill mirrors legislation and rules that govern the opening of criminal convictions based upon newly discovered evidence. The criteria stated in the bill – materiality and new discovery – have already been demonstrated to be justiciable.

This remedy would be available to any victim of Child Sexual Abuse, and not just one specific class or group of victim.

Sexual abuse is a crime that is inherently self-concealing. Often victims cannot or do not come forward because of the lack of corroborating evidence and the associated fear that they will not be believed. This Bill would allow victims to seek civil justice in instances when supportive evidence is discovered; whether it be photographic slides tumbling out of the walls of a perpetrator's former home, DNA evidence, or incriminating writings. The unimaginable has now become imaginable in the case of a Doctor who lived in West Hartford. But this legislation is not limited to providing a voice for his victims. Predatory pedophiles often keep "trophy evidence", take pictures, trade them with other pedophiles and leave behind other well-hidden memorabilia of their crimes. This scenario could be repeated in the cases of other victims of CSA.

Connecticut pioneered legislation that recognized the special needs of CSA victims and allowing them an extended period of time in which to bring claims. Now other states are expanding on Connecticut's lead.

- There are three states – Delaware, Alaska and Maine – that have abolished their civil SOL's and have provided that there is no limitation period barring victims from bringing cases (See statutes in attached materials).
- There are 23 states which have discovery-based “springing” statutes of limitation which are triggered by a victim's realization that he or she was abused and injured as a result of the abuse. These are categorized as “discovery/realization” statutes of limitation. (See statutory citations in the attached materials).
- The New York legislature is considering a “window bill” which would allow all CSA victims – regardless of when they were abused—to start a civil action during a specified period time, i.e. 18 months or 2 years. This is similar to the legislation that was passed in California. It is widely reported that the New York bill is likely to be passed and Gov. Patterson has announced that he will sign it.

We Respectfully Urge You To Support HB-05446. Thank You.

Susan K. Smith of Avon
Richard J. Kenny of Hartford
Timothy O'Keefe of West Hartford
Paul Edwards of West Hartford
Thomas McNamara of New Haven
David M. Moore of Simsbury

2009 Legislative Session

Reference Materials in Support of
Bill HB-05446 Introduced by Rep. Bye

February 18, 2009

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By Victims of Childhood Sexual Abuse

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States Which Have “Springing” *Civil* Statutes of Limitation Which Are
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She Has Suffered Injuries Arising Out of the Abuse

- See List of 23 States in the Document

Compiled by Susan K. Smith, Atty. And Karen Clark, Atty.

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Delaware's Civil Statute of Limitations for Child Sexual Abuse

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[Legal Resources for Victims of Sexual Abuse](#)

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Delaware

On July 10, 2007, the Delaware legislature passed the Child Victim Act. The bill repeals the statute of limitations in civil suits relating to child sexual abuse cases and provides a two-year "window" in which victims can bring a civil action in cases previously barred by the current statute. Text of the bill follows:

Section 1. Title 10 of the Delaware Code is hereby amended by adding to Chapter 81 a new Section 8145 which shall read as follows

§8145. Civil suits for damages based upon sexual abuse of a minor by an adult.

(a) A cause of action based upon the sexual abuse of a minor by an adult may be filed in the Superior Court of this State at any time following the commission of the act or acts that constituted the sexual abuse. A civil cause of action for sexual abuse of a minor shall be based upon sexual acts that would constitute a criminal offense under the Delaware Code.

(b) For a period of two years following the effective date of this bill, victims of child sexual abuse that occurred in this State who have been barred from filing suit against their abusers by virtue of the expiration of the former civil statute of limitations, shall be permitted to file those claims in the Superior Court of this State. If the person committing the act of sexual abuse against a minor was employed by an institution, agency, firm, business, corporation, or other public or private legal entity that owned a duty of care to the victim, or the accused and the minor were engaged in some activity over which the legal entity had some degree of responsibility or control, damages against the legal entity shall be awarded under this subsection only if there is a finding of gross negligence on the part of the legal entity

(c) A person against whom a suit is filed may recover attorney's fees where the Court determines that a false accusation was made with no basis in fact and with malicious intent. A verdict in favor of the accused shall not be the sole basis for a determination that an accusation was false. The Court must make an independent finding of an improper motive to award attorneys' fees under this section."

Previously, Delaware did not have a special statute of limitations for childhood sexual abuse cases. Under Delaware's general personal injury SOL, any claims had to be brought within 2 years from the date of the injury. 10 Delaware Code § 8119. If the abuse took place when the victim was a minor, suit had to be filed within 2 years of reaching

individual situations. You should consult an attorney about your particular situation.

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the age of 18 (i.e., before the victim's 20th birthday).

Delaware has a general discovery rule for "inherently unknowable" injuries, but the courts have previously applied the definition of "unknowable" very strictly and have not relaxed the rule for sexual abuse cases. More recently, in a case of first impression, the Delaware Superior Court recognized traumatic amnesia / repressed memory as a means of tolling the statute of limitations. *Eden v. Oblates*, C.A. No. 04C-01-069-CLS (Del. Super. Dec. 6, 2006) (slip op.). Compare *Warner v. University of Delaware*, 1995 WL 656797 (Del. Super., Oct 02, 1995) (NO. 94C-07-104); *Garcia v. Nekarda*, 1993 WL 54491 (Del. Super., Feb 19, 1993) (NO. C.A. 92C-06-008).

Resources:

[Delaware Code & Law Materials](#)

[Coordinating Council Against Sexual Assault in Delaware](#)

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Civil Statute of Limitations for Child Sexual Abuse

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Alaska

Alaska has no time limitation for bringing suits for injuries arising out of felony sexual abuse of a minor, felony sexual assault or unlawful exploitation of a minor:

Sec. 09.10.065. Commencement of actions for acts constituting sexual offenses.

(a) A person may bring an action at any time for conduct that would have, at the time the conduct occurred, violated provisions of any of the following offenses:

- (1) felony sexual abuse of a minor;
- (2) felony sexual assault; or
- (3) unlawful exploitation of a minor.

(b) Unless the action is commenced within three years of the accrual of the claim for relief, a person may not bring an action for conduct that would have, at the time the conduct occurred, violated the provisions of any of the following offenses:

- (1) misdemeanor sexual abuse of a minor;
- (2) misdemeanor sexual assault;
- (3) incest; or
- (4) felony indecent exposure.

Under Chapter 41, first, second and third degree sexual assault or child abuse are classified as felonies.

In addition, Alaska has a delayed discovery/realization statute. For acts of non-felonious sexual abuse, a victim may bring suit within 3 years of majority or 3 years of discovery (specific statutory requirements for discovery) pursuant to Alaska's minority and disability tolling (suspension) statute, AS § 09.10.140. Discovery is defined as when "the plaintiff discovered or through use of reasonable diligence should have discovered that the act caused the injury or condition."

Resources:

- [Alaska Statutes](#)
- [R.I.D. Alaska Child Abuse - Legal and support](#)

- information, text of criminal statutes
- [Links and resources from Women's Law.](#)

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Maine

Actions (civil or criminal) may be brought at any time in
Maine. The Statute of Limitations as to both has been
abolished. Me. Rev. Stat. Ann. 14 § 752-C.

Resources:

[Maine Revised Statutes](#)

Maine Coalition Against Sexual Assault
Phone: (207) 626-0034

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PROCEDURE -- CIVIL

Part 2: PROCEEDINGS BEFORE TRIAL

Chapter 205: LIMITATION OF ACTIONS

Subchapter 1: GENERAL PROVISIONS

§752-C. Sexual acts towards minors

1. No limitation. Actions based upon sexual acts toward minors may be commenced at any time.

[1999, c. 639, §1 (NEW); 1999, c. 639, §2 (AFF) .]

2. Sexual acts toward minors defined. As used in this section,

"sexual acts toward minors" means the following acts that are committed against or engaged in with a person under the age of majority:

A. Sexual act, as defined in Title 17-A, section 251, subsection 1, paragraph C; or [1999, c. 639, §1 (NEW); 1999, c. 639, §2 (AFF) .]

B. Sexual contact, as defined in Title 17-A, section 251, subsection 1, paragraph D. [1999, c. 639, §1 (NEW); 1999, c. 639, §2 (AFF) .]

[1999, c. 639, §1 (NEW); 1999, c. 639, §2 (AFF) .]

SECTION HISTORY

1985, c. 343, §1 (NEW). 1989, c. 292, (AMD). 1991, c. 551, §1 (AMD). 1991, c. 551, §2 (AFF). 1993, c. 176, §1 (AMD). 1999, c. 639, §2 (AFF). 1999, c. 639, §1 (RPR).

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23 States Which Have "Springing" Statutes of Limitation Which Are Triggered by the Victim's Discovery of Abuse and Realization That Injuries Arose Out of The Abuse

1. Alaska Stat. §09.10.140(b) (for purposes of sexual abuse victim has 3 years from age of majority or discovery that the act caused the injury or condition);
2. Ca. Civ. Code §340.1 (victim has 3 years from when victim discovers or reasonably should have discovered that the psychological injury occurring after the age of majority was caused by sexual abuse as a minor);
3. Colo. Rev. Stat. Ann. §13-80-103.7 (6 years from the realization that not only was victim abused but injured as result of the abuse);
4. Fla. Stat. §415.102, §984.03 and §95.051 (provisions work together to recognize delayed discovery doctrine in determining when to commence limitations period in sex abuse claim);
5. Id. Code §6-1704 (suit may be brought 5 years from date of reasonable discovery of abuse and causal relationship between injuries and abuse);
6. Ill. Stat. §5/13-202.2(b)(5 years after victim discovers act occurred and that injury sustained was caused by the sexual abuse);
7. Iowa Code Ann. §614.8A(4 years after discovery of injury and causal relationship between the injury and the abuse);
8. KS Stat. §60-523(3 years from date victim realizes suffered injury or illness was caused by sex abuse);
9. Mass. G. L. c.260 §4C(3 years from date victim discovers or reasonably should have discovered that the emotional injury was caused by the sexual abuse);
10. Mo. Rev. Stat. §537.046 (3 years from time victim discovers or should have discovered that physical or psychological injury was caused by the abuse); M.C.A. 27-2-216 (3 years after victim's discovery that they have sustained an injury caused by the abuse);
11. Nev. Rev. Stat. Ann. §11.215 (10 years from discovery that injury was caused by the sexual abuse);
12. N.H. Rev. Stat. Ann. §508.4-g (3 years from discovery or with exercise of reasonable diligence should have discovered the injury and its causal relationship to the sexual abuse);
13. N.J. Stat. An. §2A:61B-1 (2 years from the date of reasonable discovery of the injury and its causal relationship to the act of sexual abuse);
14. N.M. Stat. Ann. §37-1-30 (3 years from the date of time the victim knew or had reason to know of childhood sexual abuse and that the abuse resulted in an injury as established by competent medical or psychological testimony);
15. Okla. Stat. Ann. Tit. 12 §95 subd. 6 (2 years from discovery or when reasonably should have discovered that the injury or condition was caused by the sexual abuse);
16. Or. Rev. Stat. §12.117 (3 years from the date of discovery of the causal connection between the injury and the abuse);
17. R.I. Gen. Laws §9-1-51 (claim against perpetrator must be brought within 7 years from the time victim discovers or reasonably should have discovered the injuries were caused by sexual abuse);
18. S. C. Code Ann. §15-3-555(b)(3 years from time victim realizes injuries caused by childhood sexual abuse or 6 years after they reach age of 21);
19. S.D. Code Laws Ann. §26-10-25 (3 years from the time the victim discovers that the injury was caused by the sexual act);
20. Utah Code Ann. §78-12-25.1 (4 years from the time that the victim discovers that the injury was caused by the sexual abuse);
21. Va Code Ann. §8.01-249 (limitations begins to run when fact of injury and causal connection to sexual abuse is first communicated to the person by a licensed physician, psychologist or clinical psychologist);
22. Wash. Rev. Code Ann. §4.16.340 (3 years from time victim discovers or reasonably should discover that injury was caused by sexual abuse);
23. Wyo. Stat. §1-3-105 (3 years after victim discovers that the injury was caused by the sexual act).