

**S.B. 3:  
AN ACT ELIMINATING A STATUTE OF LIMITATIONS  
AND REVIVING TIME-BARRED CLAIMS**

**TESTIMONY OF CARY SILVERMAN, ESQ.  
SHOOK, HARDY & BACON L.L.P.  
1155 F STREET, N.W., SUITE 200  
WASHINGTON, D.C. 20004**

**ON BEHALF OF THE  
AMERICAN TORT REFORM ASSOCIATION**

**BEFORE THE CONNECTICUT  
JOINT COMMITTEE ON THE JUDICIARY**

**APRIL 1, 2019**

On behalf of the American Tort Reform Association (ATRA), thank you for the opportunity to testify today regarding SB 3, which would eliminate the statute of limitations and revive time-barred claims in childhood sexual abuse cases.

I am a partner in the Public Policy Group of Shook, Hardy & Bacon L.L.P.'s Washington, D.C. office. I have written extensively on liability law and civil justice issues. I received my law degree and a Master of Public Administration from George Washington University. I serve as co-counsel to ATRA, a broad-based coalition of more than 300 businesses, corporations, municipalities, associations, and professional firms that have pooled their resources to promote reform of the civil justice system with the goal of ensuring fairness, balance, and predictability in civil litigation.

Sexual abuse against a child is intolerable and should be punished through both criminal prosecution and civil claims. I commend the Committee for considering steps to protect victims of sexual abuse. My testimony today addresses general principles underlying statutes of limitations, as well as the reasons why retroactive changes to such laws, and particularly reviving time-barred claims, are often viewed as unsound policy.

Changes to any statute of limitations should be examined objectively based on core principles. ATRA believes that for statutes of limitations to serve their purpose of encouraging prompt and accurate resolution of lawsuits and to provide the predictability and certainty for which they are intended, they must be, at minimum: (1) finite; and (2) any changes must be prospective only.

## Statutes of Limitations: An Overview

Tort law, by its very nature, often deals with horrible situations that have a dramatic impact on a person's life and the lives of others. No matter how tragic or appalling the conduct, or serious injury, Connecticut law requires a plaintiff to file a lawsuit within a certain time. For example:

- A lawsuit alleging that exposure to a toxic substance caused someone to develop cancer must be within two years of when the illness is discovered or should have been discovered.<sup>1</sup>
- A person is harmed by medical malpractice must file a lawsuit within two years of when the injury is sustained or should have been discovered, but no more than three years after the medical procedure.<sup>2</sup>
- A lawsuit alleging that defective equipment seriously injured a worker or that a prescription drug led to a child's birth defects must be brought within three years of when the injury occurred or should have been discovered, but no more than ten years after the manufacturer sold the product.<sup>3</sup>
- A family member of someone who died because of someone else's careless or reckless conduct has just two years of the death or five years from the conduct at issue.<sup>4</sup>
- Other personal injury (tort) actions, whether based on intentional, reckless, or negligent conduct, must generally be filed within three years of the conduct at issue.<sup>5</sup>

By encouraging claims to be filed promptly, statutes of limitations help judges and juries decide cases based on the best evidence available. Statutes of limitations allow the civil justice system to evaluate liability (in negligence cases, what a person or organization should have done) when witnesses can testify, when records and other evidence is available, and when recollections are fresh. They are a foundational element of a fair and well-ordered civil justice system.

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<sup>1</sup> Conn. Gen. Stat. § 52-577c (statute of limitations for toxic tort claims).

<sup>2</sup> Conn. Gen. Stat. § 52-584 (statute of limitations for medical malpractice)

<sup>3</sup> Conn. Gen. Stat. § 52-577a (statute of limitations for product liability claims).

<sup>4</sup> Conn. Gen. Stat. § 52-555 (statute of limitations for wrongful death claims).

<sup>5</sup> Conn. Gen. Stat. § 52-577 (statute of limitations for tort claims).

As the Connecticut Supreme Court explained, “The purpose of a statute of limitations is to prevent stale claims and unnecessary delays in the presentation of issues. A plaintiff’s timely filed action provides notice to the defendant and ensures that the defendant does not find itself in a situation where, because of the lapse of time, [the defendant] is unable to gather facts, evidence, and witnesses necessary to afford . . . a fair defense.”<sup>6</sup>

The court has also recognized that “[s]tatutes of limitations allow persons, after the lapse of a reasonable time, to plan their affairs with a reasonable degree of certainty, free from the disruptive burden of protracted and unknown potential liability. . . .”<sup>7</sup> For example, statutes of limitations allow businesses and nonprofit organizations to accurately gauge their potential liability and make financial, insurance coverage, and document retention decisions accordingly.

Connecticut’s statutes of limitations reflect a legislative judgment that usually a two or three year period, running from when the injury occurred or its discovery, provides claimants in these actions with an adequate time to pursue a claim while giving defendants a fair opportunity to contest complaints made against them. In addition, Connecticut law recognizes that when the injury is to a child, he or she must have additional time to bring a claim. When a child is harmed, the clock typically does not begin until he or she becomes an adult (age 18).

### **Connecticut’s Current Statute of Limitations for Lawsuits Alleging Injuries Resulting from Childhood Sexual Abuse**

In the case of childhood sexual abuse, the legislature has struck a balance in favor of protecting victims by allowing them to file a lawsuit three or more decades after the events occurred. The General Assembly has significantly extended the period to file a claim, twice.

Prior to 1986, victims of childhood sexual abuse were subject to the general statute of limitations for personal injury claims—they had just two years from becoming an adult to file a claim. That year, the General Assembly established a specific statute of limitations for childhood sexual abuse, but required a claim to be filed within two years of turning 18 and not later than seven years after the abuse occurred.

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<sup>6</sup> *Electrical Contractors Inc. v. Ins. Co. of the State of Pa.*, 104 A.3d 713, 724 (Conn. 2014) (internal citations omitted).

<sup>7</sup> *Id.* (quoting *St. Paul Travelers Cos. v. Kuehl*, 12 A.3d 852 (Conn. 2011)).

The General Assembly made its first significant expansion of the statute of limitations to bring child sexual abuse lawsuits in 1991, when it changed the law to provide 17 years from becoming an adult (age 35) to do so. In 2002, it extended the period again—to 30 years of becoming an adult (age 48). This 30-year period remains in effect today and applies retroactively, allowing individuals to take advantage of this period even if the time for bringing a claim had expired under the law in effect when the abuse occurred. This law not only applies to claims against perpetrators but also to claims that a nonprofit group, school, business, or other organization did not take adequate steps to prevent the abuse. Connecticut's statute of limitations is significantly longer than the statute of limitations applicable to child sexual abuse claims in most other states.

### **The Proposed Legislation**

S.B. 3 would change Connecticut law in ways that are extraordinary and unprecedented. The bill entirely eliminates a civil statute of limitations. It discards what already the longest civil statute of limitation period in Connecticut law, which allows at least three decades to file a lawsuit. Instead, Section 19 of the bill provides that lawsuits seeking damages for injuries from childhood sexual abuse may be filed "at any time." To my knowledge, no other tort claim can be filed indefinitely in Connecticut.

In addition, the bill provides a two-year window, running from October 1, 2019 to October 1, 2021, during which individuals whose claims would be otherwise untimely and barred by the previous statute of limitations can file lawsuits no matter how long ago the conduct at issue occurred. This will result in a surge of old claims.

The bill does not specifically target perpetrators of abuse. Those named as defendants in these revived actions will primarily be organizations that hired or supervised an employee or volunteer who allegedly committed the abuse. Organizations will be subject to liability based purely on negligence, meaning that a lawsuit only needs to assert that an organization should have taken additional steps to detect, avoid, or stop abuse many years ago, not that the organization knew of abuse and allowed, enabled, or concealed it. These lawsuits will be evaluated in hindsight based on what we now know and the steps to protect children that we take for granted today.

### **Eliminating a Statute of Limitations and Reviving Time-Barred Claims Sets a Troubling Precedent**

The approach taken by S.B. 3 concerns ATRA because eliminating a statute of limitations and reviving-time barred claims no matter how long ago the action arose sets a troubling precedent for other types of civil actions.

As discussed earlier, tort claims often address horrible, tragic situations. Whether the claim involves an illness from exposure to a toxic substance, a birth defect associated with a drug, or a death resulting from wrongful conduct, Connecticut law sets a finite period to bring a claim to protect the ability of the judicial system to reach accurate decisions based on reliable evidence.

Reviving time-barred claims is particularly concerning. The Connecticut Supreme Court has found that the General Assembly can constitutionally revive-time barred claims, while recognizing that this is impermissible in most other states.<sup>8</sup> While the reviver window may be constitutionally permissible in Connecticut, it is not sound policy.

Courts have recognized that “retroactively applying a new statute of limitations robs both plaintiffs and defendants of the reliability and predictability of the law.”<sup>9</sup> For example, nonprofit employers may have purchased insurance or more insurance had they known that they could be subject to lawsuits for an indefinite period. Records retention policies may have provided for discarding old personnel files after a certain number of years.

In most instances, retroactively eliminating the statute of limitations will have little effect on those who perpetrated the abuse, the child abusers, who are unlikely to have any substantial means to be able to answer judgments. Many may be dead. The more likely groups affected are private and nonprofit organizations that provide services to children, who are faced, decades later, with allegations that those in charge at the time should have taken some action that may have prevented the harm that occurred.

Just as retroactively changing a statute of limitations is unfair to defendants, it is unfair to plaintiffs. Consider, for example. if the General Assembly decided today that it had gone too far in 2002 when it increased the statute of limitations for child sexual abuse from 17 to 30 years of reaching majority and instead reduced the period of time to no more than 25 years of becoming an adult. Imposing such a change retroactively would be extraordinarily unfair to a person who reasonably believed he or she had an additional five years to bring a claim, but then could not do so.

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<sup>8</sup> *Doe v. Hartford Roman Catholic Diocesan Corp.*, 119 A.3d 462 (Conn. 2015) (finding that of 44 states that have considered the issue, in 24 states “legislation that retroactively amends a statute of limitations in a way that revives time barred claims is per se invalid”).

<sup>9</sup> *Wiley v. Roof*, 641 So. 2d 66, 68 (Fla. 1994).

Remainder of this testimony is  
available for public review in

Judiciary Committee  
Room 2500