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Testimony by the Connecticut Catholic Public Affairs Conference

Concerning: Senate Bill 3 An Act Combatting Sexual Assault and Sexual Harassment

Committee on Judiciary
April 1, 2019
Legislative Office Building
Hartford, CT

The Connecticut Catholic Public Affairs Conference welcomes any proposal that brings justice to those who have suffered any form of sexual harassment or assault. Anyone aggrieved should have a reasonable expectation that they are deserving of justice. Certain provisions of Senate Bill 3, however, will not accomplish these worthy goals.

This proposal's provisions that allow for an extremely long or non-existent limitation period can lead to serious sociological and economic harm. These limitations are in place to protect the rights of everyone and they establish effective guidelines to allow for claims while protecting the rights of the accused.

Sociological Impact

One point of consideration is that it is very difficult to judge long-ago actions without the distorting effects of hindsight. Witnesses may die, memories fade, trauma may distort information over time, and documents are lost. If victims, with no incentive to come forward promptly, hesitate to make a timely claim, others may be abused in the interim. Unfortunately, the possibility of fraudulent yet nearly indefensible claims cannot be dismissed.

Economic Impact

With respect to unintended economic effects, insurance companies must know how long claims can be asserted when they set premiums. Insurance coverage limits that were adequate when purchased may be inadequate for claims brought decades later. While we defer to the expertise of insurance experts, this legislation would dramatically impact the cost of obtaining insurance for individuals, companies, non-profits and the like.

Institutional Abuse Prevention Initiatives

In 2002, the Catholic Bishops of the United States adopted the *Charter for the Protection of Children and Young People* which set the standard for aggressive institutional abuse prevention initiatives. The

effect of that Charter was to bring about improved policies and practices for dealing with childhood sexual abuse in every Catholic diocese and archdiocese in the United States, emphasizing, among other things, a zero-tolerance policy with respect to abusers and the importance and need to report suspected sexual abuse to law enforcement or other governmental agencies.

The Charter also established Safe Environment Programs in every diocese and archdiocese. These programs educate children and adults on an ongoing basis about how to recognize the signs of and respond appropriately to acts of grooming, sexual exploitation, and abuse of every kind. VIRTUS training, a best practices training program to prevent child sexual abuse, is mandated for any adult who comes into contact with children, including pastors, teachers, volunteers, coaches, and staff.

All of these changes and improvements have curtailed abuse incidents and protected youths from the heinous acts of sexual abuse. The Charter also abolished the use of confidentiality agreements. It established a Victim's Assistance Coordinator in each diocese and archdiocese whose job it is to reach out to victims and offer help and assistance of various types. Such assistance can take the form of counseling or therapy. It can also include, among other things, setting up arrangements for a victim to speak directly to the bishop or archbishop or his designee, if desired, to discuss the sexual abuse experience and the deleterious impact it has had on the victim's life.

History and Purpose of Statute of Limitations in Connecticut

Section 52-577d, when enacted in 1986, provided just two years from age of majority to bring suit for sexual abuse as a child. In 1991 the period was increased to seventeen years from age of majority and in 2002 to thirty years from age of majority. "[O]ne object of § 52–577d is to afford a plaintiff sufficient time to recall and come to terms with traumatic childhood events before he or she must take action." *Roberts v. Caton*, 224 Conn. 483, 493 (1993) (commenting on the 1991 revision).

The current 30-years from age of majority statute of limitations is sufficiently lengthy in the interest of being fair to victims. It serves society's needs by giving plaintiffs an extended period of time to process what happened while giving at least a modicum of protection to defendants. If the General Assembly deems it necessary to open the window for claims, out of concern for victims of childhood sexual abuse who have somehow missed their opportunity to file a claim, it must in fairness protect all such victims, including those abused in a public sector setting. The General Assembly should not make two classes of victims: public versus private. All victims should have equal access to justice.

"Statutes of limitation are not simply technicalities, or mere technical defenses, but are fundamental to a well-ordered judicial system. Limitation periods are favored in connection with lawsuits by public policy in order to grant some degree of certainty to litigants." (foot-notes omitted) 51 Am. Jur. 2d Limitation of Actions § 18. "Statutes of limitation are enacted upon the presumption that one having a well-founded claim will not delay in enforcing it and are designed to promote justice by forcing parties to pursue a case in a timely manner. They are meant to, among other things, compel plaintiffs to exercise their rights of action within a reasonable time, while the evidence is still fresh." (foot-notes omitted) 51 Am. Jur. 2d Limitation of Actions § 6.

The United States Supreme Court has offered the following in this area:

- “[T]he basic policies of all limitations provisions [include] repose, elimination of stale claims, and certainty about a plaintiff’s opportunity for recovery and a defendant’s potential liabilities.” *Rotella v. Wood*, 528 U.S. 549, 555 (2000). Statutes of limitations are intended to “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.” *Railroad Telegraphers v. Railway Express Agency, Inc.*, 321 U.S. 342, 348–349 (1944). They provide “security and stability to human affairs.” *Wood v. Carpenter*, 101 U.S. 135, 139 (1879). We have deemed them “vital to the welfare of society,” *ibid.*.

Gabelli v. S.E.C., 568 U.S. 442, 448–49 (2013).

- Statutes of limitations encourage plaintiffs “to pursue diligent prosecution of known claims.”

CTS Corp. v. Waldburger, 573 U.S.1, 8(2014).

The Connecticut Supreme Court has expressed similar considerations:

- The purpose of “[a] statute of limitation or of repose is . . . to (1) prevent the unexpected enforcement of stale and fraudulent claims by allowing 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, and (2) to aid in the search for truth that may be impaired by the loss of evidence, whether by death or disappearance of witnesses, fading memories, disappearance of documents or otherwise.” (Internal quotation marks omitted.) *Tarnowsky v. Socci*, 271 Conn. 284, 296 (2004).

Neuhaus v. DeCholnoky, 280 Conn. 190, 206–07 (2006).

During testimony before the Judiciary Committee in 2002, when the statute of limitations extension to 30 years after the age of 18 was being considered, Lisa Winjum, Director of Public Policy and Communications for Connecticut Sexual Assault Crisis Services was asked by State Rep. Gail Hamm if the statute proposal was sufficient for victims.

“Thirty years past majority?” Winjum replied. “I feel thirty years post-majority is long enough. That would give the victim to the age of 48 which should be ample time for the victim to – who has not yet addressed the abuse by time they’re 20 to address the issues and feel strong enough to come forward.”

For the forgoing reasons, we urge the Judiciary Committee to reject this measure.