



Connecticut Criminal Defense Lawyers Association
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CCDLA.org

March 31, 2019

Senator Gary Winfield, Co-Chair
Representative Steven Stafstrom, Co-Chair
Judiciary Committee
Capitol Building,
Hartford, CT 06106

TESTIMONY IN OPPOSITION TO COMMITTEE BILL 3 -
An Act Combatting Sexual Assault and Sexual Harassment

AND IN SUPPORT OF RAISED BILL 913
An Act Concerning the Extension of the Statute of Limitations for the Prosecution of Sexual Assault

Dear Senator Winfield, Representative Stafstrom and Committee Members:

The CCDLA is a not-for-profit organization of approximately three hundred lawyers who are dedicated to defending persons accused of criminal offenses. Founded in 1988, the CCDLA is the only statewide criminal defense lawyers' organization in Connecticut. An affiliate of the National Association of Criminal Defense Lawyers, the CCDLA works to improve the criminal justice system by insuring that the individual rights guaranteed by the Connecticut and United States constitutions are applied fairly and equally and that those rights are not diminished.

CCDLA opposes Committee Bill No. 3, Sec. 23 and Sec. 24, because they would virtually eliminate the Statute of Limitations on sex assault offenses. The current statutes already contain elongated statutes of limitations for sexual offenses against minors to take into account psychological and sociological reasons for delayed reporting of offenses by minor victims and permit the initiation of criminal prosecution up to the time a victim reaches the age of 48. If there is DNA evidence, there is often no period of limitation.

Anyone who has practiced criminal defense regularly for any period of time has represented someone falsely accused of sexual assault and who is innocent. They are among the most difficult cases to defend and often go to trial because they are not amenable to resolution through plea agreement and the clients reasonably refuse to admit to something that they did not do. These cases are decided by objective evidence: documents, independent third party witness, texts and emails, photographs -- all the things that would disappear with the passage of time and would be unavailable to utilize in defense of these claims.

“The purpose of a statute of limitations is 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.” Toussie v. United States, 397 U.S. 112, 114–15 (1970). “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 defense. 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 (1971) (citations omitted). “[T]heir 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. . . . 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.” Marion, 404 U.S. at 323, n. 14.

The Sixth Amendment to the United States Constitution guarantees an accused person the right to a trial without unnecessary delay as well as the right to compulsory service for obtaining witnesses in his favor and the right to present his own defense. The Fifth and Fourteenth Amendments provide the right to due process and a fair trial. All of these rights would be severely compromised, if not completely eliminated, if the state has the right to bring charges against an individual for the entire term of his life, based on a mere

allegation. Most, if not all, individuals would not be able to recall where they were or what they were doing many decades earlier, recall who might have been with them decades earlier who could present favorable evidence on their behalf or where those individuals are currently, if they are even still alive. They will not be able to access calendars or access stored communications that would be exculpatory. Data that could exonerate them would be long deleted. A false claim would be easily made and impossible to defend. In short, Committee Bill 3 effectively denies individuals the constitutionally guaranteed due process of law and the opportunity to present a defense in their own behalf.

On the other hand, Raised Bill 913 would extend the general felony statute of limitations for sexual assault that does not involve minors from 5 to 10 years. While this extension would also present difficulties in the defense of such matters, it reflects a compromise that will not irrevocably undermine the ability of innocent citizens to defend against false allegations.

For these reasons, the CCDLA urges this committee to take no action on Committee Bill 3 but if so inclined, act favorably on Raised Bill 913.

Respectfully submitted,
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Executive Board Member, CCDLA