

Countdown to Injustice: The Irrational Application of Criminal Statutes of Limitations to Sexual Offenses Against Children

*This year, as in years past, thousands of young girls and boys will be sexually abused in the United States. Every aspect of their emotional, mental, spiritual and physical well-being will be greatly affected by such abuse. When these children reach adulthood they will suffer a myriad of dysfunctions, ranging from troubled relationships, poor self-esteem, substance abuse and self-destructive behavior. Some will become so overwhelmed by their suffering that they will destroy themselves. Others will unknowingly suffer the effect of the childhood sexual abuse for many years, if not for the balance of their lives. If and when these adult survivors are able to understand the devastating connection between their suffering and the childhood sexual abuse, there will be generally no mechanism to hold their abusers accountable: they will be barred from seeking redress in many jurisdictions by the statute of limitations.*¹

I. INTRODUCTION

An alarming number of children are sexually abused throughout the United States every year.² While estimates of this abuse range in the hundreds of thousands each year, the perpetrators of these deplorable acts are rarely held accountable for their actions.³ Child sexual abusers are rarely prosecuted for their crimes because many victims never report the abuse to authorities, and many of those who do report the abuse later become unable to face their abusers in court.⁴ Abusers are able to further hinder prosecution by threatening or intimidating the victims, and by convincing their victims that the abuse is normal.⁵ As time passes, many of these obstacles cease to exist, and adult survivors of childhood sexual abuse often seek redress years later.⁶ Depending

1. Tina Snelling & Wayne Fisher, *Adult Survivors of Childhood Sexual Abuse: Should Texas Courts Apply the Discovery Rule?*, 33 S. TEX. L. REV. 377, 378 (1992) (highlighting long-term and disturbing effects of childhood sexual abuse on children).

2. Timothy J. McCarvill & James M. Steinberg, *Have We Gone Far Enough? Children Who Are Sexually Abused and the Judicial and Legislative Means of Prosecuting the Abuser*, 8 ST. JOHN'S J. LEGAL COMMENT. 339, 339 (1992) (citing statistics detailing prevalence of childhood sexual abuse in United States).

3. *Id.* at 356 (noting infrequency of prosecution of childhood sexual abuse due to widespread unreporting).

4. *Id.* at 340, 356 (listing reasons why childhood sexual abuse often unpunished).

5. *Id.* at 340-41 (citing additional impediments to prosecuting child sexual abuse).

6. See Snelling & Fisher, *supra* note 1, at 383 (indicating barriers to reporting abuse often removed years after occurrence of abuse).

on the jurisdiction, however, many will face one more crippling obstacle: the expiration of the statute of limitations.⁷

Criminal limitations periods have been a part of our criminal justice system since the inception of our nation.⁸ Throughout the years, proponents of these limitations periods have set forth a multitude of rationales to justify their imposition.⁹ Across jurisdictions, there are vast differences in the prescribed limitations periods for identical crimes.¹⁰ Individual states have the power to establish, extend, or eliminate laws that limit the time period to prosecute crimes.¹¹ Many states have recognized the special circumstances of childhood sexual abuse and the legitimate reasons why a complaint often cannot be made until many years after the abuse.¹² Accordingly, various states have either extended or eliminated statutes of limitations in childhood sexual abuse cases.¹³

Part II.A of this Note will begin with a discussion of the operation and historical origin of statutes of limitations.¹⁴ Next, the rationales behind criminal and civil statutes of limitations will be considered, along with the public policy justifications that these statutes supposedly serve.¹⁵ Part II.B will then discuss the prevalence of childhood sexual abuse in this country, as well as the debilitating and often long-term effects that childhood sexual abuse has on its victims.¹⁶ A description of the courts' and legislatures' responses to this

7. See Snelling & Fisher, *supra* note 1, at 383 (acknowledging statutes of limitations often act as final barrier to prosecution or suit).

8. Yair Listokin, *Efficient Time Bars: A New Rationale for the Existence of Statutes of Limitations in Criminal Law*, 31 J. LEGAL STUD. 99, 99 (2002) (noting history of criminal statutes of limitations); see *infra* notes 27-28 and accompanying text (detailing origin of criminal and civil statutes of limitations).

9. See *infra* notes 33-36, 38-41 and accompanying text (discussing proposed rationales behind criminal and civil statutes of limitations).

10. See Alan L. Adlestein, *Conflict of the Criminal Statute of Limitations With Lesser Offenses At Trial*, 37 WM. & MARY L. REV. 199, 250-52 (1995) (noting lack of uniformity in statutes of limitations across jurisdictions).

11. *Id.* at 249-57 (noting "criminal statutes of limitations are . . . flexible instruments of legislative policy"); *infra* note 26 and accompanying text (discussing constitutionality of statutes of limitations).

12. See *infra* note 13 and accompanying text (discussing legislation to extend or abolish statutes of limitations for certain sexual crimes).

13. See Sacha Pfeiffer & Kevin Cullen, *DA Seeks to Limit Time Limit on Rape Cases*, BOSTON GLOBE, June 27, 2004, at A23 (noting growing number of states removed time limit on prosecuting rapists); Jason K. Matthews, *Statute of Limitations for Sexual Assault Crimes in New England, New York, and New Jersey*, OLR RESEARCH REPORT (Mar. 12, 2002), at <http://www.cga.state.ct.us/2002/olrdata/jud/rpt/2002-R-0258.htm> (last visited Jan. 24, 2004) (discussing legislation in various states); The National Center for Victims of Crime, *Extensions of the Criminal & Civil Statutes of Limitations in Child Sexual Abuse Cases* (1998), at <http://www.ncvc.org/ncvc/main.aspx?dbName=DocumentViewer&DocumentID=32466> (last visited Nov. 2, 2004) (outlining state-by-state treatment of child sexual abuse offenses). This state-by-state list is tracked through the National Center for Victims of Crime's Legislative Database, which is updated annually. The National Center for Victims of Crime, *supra*.

14. See *infra* Part II.A (detailing evolution of statutes of limitations and preclusive effect).

15. See *infra* Part II.A (outlining differing public policy justifications of criminal and civil limitations periods).

16. See *infra* notes 49-52 and accompanying text (noting serious effects of child sexual abuse which ultimately hinder prosecution).

widespread problem will follow.¹⁷ This Note will then consider recently proposed legislation in Massachusetts aimed at amending the statute of limitations for sex offenses against children.¹⁸ Part III will illustrate how the traditional public policy justifications for imposing statutes of limitations do not apply to child sexual abuse, because of its unique circumstances and effects.¹⁹ This Note will thus conclude that Massachusetts should follow the lead of the various states that have already eliminated statutes of limitations for the prosecution of serious sexual offenses against children.²⁰

II. HISTORY

A. *Origin, Scope, and Operation of Statutes of Limitations*

1. *Origin*

Statutes of limitations are firmly rooted in the American legal system, deriving from ancient real property laws.²¹ In the criminal justice arena, these limitations periods prescribe time limits within which the government must initiate criminal action against individuals for alleged offenses.²² On the civil side, these periods define the timeframe within which plaintiffs must initiate legal action against alleged tortfeasors upon accrual of a cause of action.²³ Critics of statutes of limitations have often described limitations periods as “mechanical[]” and “arbitrary” because they operate without regard to the merits of the underlying case.²⁴ Statutes of limitations thus insulate persons, whose conduct would otherwise satisfy all of the elements of a claim or offense, from suit or prosecution simply because an arbitrarily prescribed time limit has passed.²⁵

17. See *infra* Part II.B (discussing discovery rule and concept of tolling).

18. See *infra* Part II.B.2 (tracing statutory history and current legislative proposals to extend or abolish statutes of limitations).

19. See *infra* Part III (arguing unique and devastating effects of childhood sexual abuse warrant separate treatment under law).

20. See *infra* Part III (concluding Massachusetts should abolish criminal statutes of limitations in serious abuse cases).

21. Amy Dunn, Note, *Statutes of Limitation on Sexual Assault Crimes: Has the Availability of DNA Evidence Rendered Them Obsolete?*, 23 U. ARK. LITTLE ROCK L. REV. 839, 842-43 (2001) (noting presence of limitations periods in ancient Greece).

22. *Id.* at 843 (discussing criminal statutes of limitations).

23. Susan M. Basham, Note, *Forging the Causal Link: Reasonable Delay in Commencing Action for Childhood Sexual Abuse*, 27 SUFFOLK U. L. REV. 749, 753 (1993) (defining operation of civil statutes of limitations).

24. *RHI Holdings, Inc. v. Comm’r of Revenue*, 748 N.E.2d 964, 971 (Mass. App. Ct. 2001) (citations omitted) (acknowledging blind operation of statutes of limitation).

25. See *id.* (noting mechanical result once period expires).

2. Scope

The federal government and nearly every state in the United States have criminal statutes of limitations, however, no jurisdiction has ever contended that the Constitution requires these statutes.²⁶ Unlike civil statutes of limitations, the origin of criminal statutes of limitations is somewhat mysterious.²⁷ Despite this mysterious origin and early American courts' resistance toward civil limitations periods, both criminal and civil statutes of limitations have reached widespread acceptance in the United States.²⁸

26. See Adlestein, *supra* note 10, at 249-57 (noting criminal statutes of limitations "are solely a matter of legislative choice"). Although "[t]he Supreme Court has . . . praised both criminal and civil statutes of limitations," neither courts nor commentators have ever contended that criminal statutes of limitations "are fundamental to the American system of justice," and, thus "constitutionally required as a matter of due process." *Id.* at 250 n.224. Accordingly, legislatures may alter or even completely remove the limitations periods embodied in these statutes at any time. *Id.* at 251.

27. See Adlestein, *supra* note 10, at 249-57 (distinguishing origin of criminal versus civil statutes of limitations). The general, criminal statute of limitations currently in force under federal law derives from an act of the First Congress, and at the inception of our nation most states recognized criminal statutes of limitations. *Id.* at 252. Although many of these laws existed in the colonies during the early eighteenth century, criminal statutes of limitations are mysteriously not found under English common law. *Id.* at 252-55. In contrast, as early as the thirteenth century, the English common law contained limitations periods that applied to real property. *Id.* at 256. Over the next several centuries, civil limitations periods evolved drastically into their present form:

At first, such statutes were temporary in nature; their periods barred claims only for a given number of years from a fixed reference point, usually an event in a particular sovereign's life. Not until the end of the fifteenth century were those limitations periods expressed as a given interval between the accrual of the claim and the commencement of the action. Not until the first quarter of the seventeenth century did the first significant English statute of limitations of general application state definite limitations periods, not only for real actions, but also for most personal actions in debt, contract, and torts. This statute, An Act for Limitation of Actions, and for Avoiding of Suits in Law of 1623 (Limitation Act), superseded all others and became the (often verbatim) model for statutes of limitations governing civil suits in many of the colonies. These American versions of the Limitation Act were often found intact long after the formation of the Republic. With the Limitation Act came many English precedents interpreting the statute, which were usually followed by American courts.

Id. at 256-57.

28. Adlestein, *supra* note 10, at 257 (discussing early American court's initial skepticism of statutes of limitations). Initially, American courts narrowly applied civil limitations periods. *Id.* at 257. As time passed, however, these statutes were embraced by American courts, and by the end of 1800's, the Supreme Court expressed high praise for these statutes. *Id.* at 258. The drafters of the Model Penal Code also included a criminal limitations section in the Code. *Id.* at 264. The Commentary to the Code considers several public policy justifications for imposing criminal limitations periods:

First, and foremost, prosecutions should proceed with fresh evidence. Second, as time increases, the likelihood that the offender has reformed also increases, and the necessity for punishment diminishes (or the likelihood increases that the criminally inclined will be prosecuted for a more recent offense). Third, after a long period of time has passed, society's "retributive impulse" is likely to be replaced by sympathy for a defendant prosecuted for a long-forgotten offense. Fourth, reduction of the time of possible prosecution cuts off the ever-present potential for blackmail by one who is aware of the offense. Finally, criminal limitations statutes "promote repose by giving security and stability to human affairs."

Id. at 264-65 (citation omitted) (discussing public policy justifications Code drafters cited in adopting criminal limitations section).

Although statutes of limitations vary dramatically in their scope and breadth across jurisdictions, every jurisdiction in the United States allows the prosecution of murder at any time.²⁹

3. Civil vs. Criminal Law

The state's interest in prosecuting crimes is fundamentally different from an individual's interest in pursuing a civil claim.³⁰ Criminal prosecutions seek to protect the public, whereas the overriding goal of civil actions is to make individual plaintiffs whole through the award of monetary judgments.³¹ Because of this important distinction, it should not be surprising that the rationales behind criminal and civil statutes of limitations are distinct, although not completely unrelated.³²

4. Operation in Civil and Criminal Proceedings

The original rationale for imposing civil statutes of limitations was to protect potential defendants' rights of repose, that is, the expectation that a defendant should not be required to defend against accusations after a plaintiff has slept on his rights for many years.³³ Theoretically, then, statutes of limitations force plaintiffs to act on their rights and initiate legal proceedings while evidence is

29. Adlestein, *supra* note 10, at 250-52, 252 n.229 (noting nearly universal murder exception in statutes of limitations). At Adlestein's publication date, New Mexico was the only state that imposed a time limit, which was fifteen years, on the prosecution of capital murder. *Id.* at 252 n.229. New Mexico, however, has since modified its law to allow the prosecution of murder anytime. N.M. STAT. ANN. § 30-1-8 (Michie 2004).

30. See Adlestein, *supra* note 10, at 257-60 (detailing goals sought by criminal prosecutions). The primary goal sought by criminal prosecutions is to deter both the criminal and members of the general public from committing similar crimes in the future by publicly condemning and punishing the perpetrator. *Id.* at 259-60; Melissa L. Rockhill, Note, *Priests, Pedophiles and Other Child Molesters: California Says Father Time Won't Help Them Now*, 24 WHITTIER L. REV. 1097, 1130, 1130 n.190 (2003) (differentiating between goals of prosecution and goals of civil actions). State governments are solely responsible for the prosecution of criminal offenses because crimes are offenses against society, rather than against a single person. Rockhill, *supra*, at 1130 n.190. "[T]he putative objectives of criminal prosecution and conviction—deterrence, rehabilitation, and retribution—are designed to achieve social goals; they are directly not linked to the cognizable interests of the individual crime victim." *Id.* (quoting Kenneth L. Wainstein, Comment, *Judicially Initiated Prosecution: A Means of Preventing Continuing Victimization in the Event of Prosecutorial Inaction*, 76 CAL. L. REV. 727, 728 (1988)).

31. See W. PAGE KEETON ET AL., PROSSER & KEETON ON THE LAW OF TORTS 2, at 7-8 (5th ed. 1984) (noting purpose of tort law); Adlestein, *supra* note 10, at 257-60 (noting objectives of criminal actions).

32. See *infra* notes 33-36, 38-41 and accompanying text (differentiating between rationales of criminal and civil limitations periods).

33. McCarvill & Steinberg, *supra* note 2, at 365, 365 n.149 (defining right of repose rationale); Dunn, *supra* note 21, at 868 n.47 (listings varying concepts of repose). The concept of repose "embodies four intertwined concepts: (1) permitting 'peace of mind;' (2) maintaining 'settled expectations;' (3) 'reducing uncertainty about the future;' and (4) reduc[ing] the cost of measures designed to guard against the risk of 'untimely claims.'" Dunn, *supra* note 21, at 868 n.47. Although the defendant's right of repose is also one of the rationales behind criminal statutes of limitations, "a policy of repose should be outweighed by the interests of justice." McCarvill & Steinberg, *supra* note 2, at 366.

still “fresh” and thus reliable.³⁴ These statutes recognize that “with the passage of time . . . evidence is lost or destroyed, witnesses become impossible to locate, and memories fade.”³⁵ While these civil rationales also apply to criminal statutes of limitations,³⁶ there are several additional policy justifications for limitations of criminal actions.³⁷

Proponents of criminal statutes of limitations argue that limitations periods force law enforcement authorities to promptly investigate criminal activity and indict suspected criminals, and thus help ensure defendants receive a fair trial.³⁸ These statutes, proponents further argue, prevent law enforcement officials from wasting their limited resources in investigating years-old crimes, when the prevention and prosecution of *current* crimes is of the foremost importance.³⁹ Additional arguments posit that with the passage of time, “society’s instinct for retribution . . . fade[s],” and that in many cases punishment of the wrongdoer is no longer required or even practical because the wrongdoer has “self-rehabilitated” over time.⁴⁰ Finally, proponents contend that the prosecution of

34. Gary M. Ernsdorff & Elizabeth F. Loftus, *Let Sleeping Memories Lie? Words of Caution About Tolling the Statute of Limitations in Cases of Memory Repression*, 84 J. CRIM. L. & CRIMINOLOGY 129, 141 (1993) (discussing additional policies served by civil statutes of limitations). Statutes of limitations also promote judicial efficiency:

The general interest of the public also is served by statutes of limitations. Judicial efficiency is the reward when these statutes produce speedy and fair adjudication of the rights of the parties.

Certainty and finality in the administration of affairs is promoted, and courts are relieved of the burden of trying stale claims when plaintiffs have “slept” on their rights.

Adlestein, *supra* note 10, at 297 n.253 (quoting CALVIN W. CORMAN, 1 LIMITATION OF ACTIONS § 1.1, at 16 (1991) (citations omitted)).

35. Ernsdorff & Loftus, *supra* note 34, at 141 (noting defendant’s increasing difficulty to defend as time passes).

36. Dunn, *supra* note 21, at 844 (stressing importance of “fresh evidence” in guaranteeing defendant’s right to fair trial). Proponents of criminal statutes of limitations argue that these limitations periods are necessary to ensure that defendants are prosecuted with the use of “relatively fresh evidence.” *Id.* The drafters of the Model Penal Code recognized that because these statutes result in the use of fresh evidence, this decreases the likelihood that a defendant will be falsely convicted of a crime, and thereby protects innocent defendants. *Id.*

37. See *infra* notes 38-41 and accompanying text (discussing additional public policy justifications for criminal statutes of limitations).

38. Dunn, *supra* note 21, at 844-45 (noting statutes of limitations protect defendants by requiring government to promptly investigate crimes).

39. Rockhill, *supra* note 30, at 1130 (noting statutes of limitations promote conservation of resources). The government has limited resources available to address, and protect against, criminal activity. *Id.* As time passes from the date of an alleged offense, it becomes more problematic and costly for law enforcement to investigate criminal activity. *Id.* Thus,

[i]t is difficult to justify funneling resources away from the investigation and prosecution of other, more recent crimes committed by individuals who pose an ongoing threat to the safety of society to prosecute decades old crimes committed by offenders who, inferentially, do not pose a continuing threat to the general public.

Id.

40. See Dunn, *supra* note 21, at 845 (noting “need for punishment wanes as time passes”). The logic behind these arguments is that persons who have escaped prosecution for past criminal acts often rehabilitate themselves over time and, therefore, no need for punishment remains. *Id.* The punishment of wrongdoers who have since rehabilitated years after their criminal acts removes “productive members of society.” *Id.* at 846.

individuals for years-old crimes unfairly assesses the defendant's past conduct with current, and often harsher, standards.⁴¹

Despite the numerous public policy justifications supporting criminal statutes of limitations, there are various arguments against these statutes.⁴² Critics contend that these statutes are unnecessary because the court system contains various mechanisms that sufficiently protect defendants from being convicted through the use of unreliable or stale evidence.⁴³ With respect to the "self-rehabilitation" argument, critics argue this rationale completely ignores the "deterrence" and "retributive" theories of punishment.⁴⁴ An additional criticism is that statutes of limitations strip prosecutors of their discretion and detract from their effectiveness because of limitations periods' broad and inflexible nature.⁴⁵ These criticisms have forced courts to take measures that temper the harsh operation of the statutes in certain cases where the resulting injustice would outweigh the public policy considerations.⁴⁶

B. Bringing Childhood Sexual Abuse Cases and Tolling the Statute of Limitations

1. Effects of Childhood Sexual Abuse

In the recent decades, our nation's scholars and parents have recognized childhood sexual abuse as a serious national problem.⁴⁷ Studies suggest that as

Persons who have not rehabilitated over time, but have instead continued to perpetrate crimes, face a greater likelihood of being discovered, and thus prosecuted for their later crimes. *Id.* at 845; *see also* Rockhill, *supra* note 30, at 1130-31 (questioning whether "public need[s] to be protected from someone who has likely been reformed or rehabilitated").

41. Rockhill, *supra* note 30, at 1133 (citing additional support for criminal limitations periods).

42. *See infra* notes 43-45 and accompanying text (citing criticisms of statutes of limitations and rebuttal arguments to public policy justifications).

43. *See* Adlestein, *supra* note 10, at 265-66 (articulating protections criminal trial process provides to defendants). The rules of evidence, the allowance of zealous cross-examination, and the high burden of proof, requiring proof beyond a reasonable doubt, adequately protect defendants by "exclud[ing] or discred[it]ing unreliable evidence." *Id.* at 266.

44. Adlestein, *supra* note 10, at 265-66 (criticizing self-rehabilitation rationale). "Although in some cases a community's impulse for the moral balance of retribution may weaken with the running of the limitations period, in . . . those [cases] involving homicide or lasting physical or psychological damage, no such weakening occurs." *Id.* at 266.

45. Adlestein, *supra* note 10, at 267 (noting criminal statutes of limitations undermine critical function of prosecutors). Normally, in contemplating the initiation or continuation of a criminal prosecution, prosecutors consider: "the seriousness of the offense, the personal circumstances of the defendant, the strength of the available evidence, and the significance of the prosecution in all its aspects measured against the limited resources of every prosecutor's office." *Id.*

46. *See infra* Part II.B.2 (discussing evolution of tolling provisions and discovery rule to alleviate statutes of limitations' ill effects). Despite the various criticisms of criminal statutes of limitations, the United States Supreme Court has repeatedly opined that criminal statutes of limitations "are 'to be liberally interpreted in favor of repose.'" *Toussie v. United States*, 397 U.S. 112, 115 (1970) (quoting *United States v. Scharton*, 285 U.S. 518, 522 (1932)).

47. *See infra* notes 48-50 and accompanying text (noting prevalence of childhood sexual abuse and recent

many as one-third of Americans may have been victimized by sexual abusers during childhood.⁴⁸ This abuse leads to severe and devastating psychological and emotional effects that the victims often experience for the remainder of their lives.⁴⁹ Experts have recognized, however, that a segment of those victimized subconsciously repress the painful memories of their abuse as a defense mechanism.⁵⁰ Despite the staggering statistics of this abuse and its

recognition of its seriousness). “[S]ince the late 1970s, the problem of child sexual abuse has been ‘discovered’ as a malignant cultural secret . . . and elevated to the level of a ‘national emergency.’” Amy Adler, *The Perverse Law of Child Pornography*, 101 COLUM. L. REV. 209, 211 (2001). Before the mid-1970’s, however, scholars paid very little attention to this issue, and those that addressed the problem tended to cast it in a skeptical light. Rebecca J. Whitcombe, Essay, *Child Sexual Abuse: Adult Survivors, Repressed Memories, and Stories Finally Told*, 11 UCLA WOMEN’S L.J. 255, 267 (2001) (discussing “historical skepticism” surrounding child sexual abuse). These writers “downplayed the frequency and seriousness of child sexual abuse, blamed the victims for their own abuse, [and] accused adult survivors of fabricating stories of sexual abuse out of spite or a need for attention.” *Id.* As early as the mid-1800s, however, some scholars recognized this problem and its seriousness. Norrie Clevenger, Note, *Statute of Limitations: Childhood Victims of Sexual Abuse Bringing Civil Actions Against Their Perpetrators After Attaining the Age of Majority*, 30 J. FAM. L. 447, 447 (1991). French physician Amboise Tardieu noted that adults frequently sexually abused children, and that when such abuse occurred, the children would often go to great lengths to cover up the abuse. *Id.* In the late 1800s, Sigmund Freud hypothesized about the effects of childhood sexual abuse. *Id.* Freud posited that the operation of defense mechanisms in sexually abused children very often caused the victims to block out their memory of the abuse. *Id.* Freud substantiated this by pointing to his own patients who had blocked out memory of their abuse until it was revived during therapy. *Id.* Contemporaries of Tardieu and Freud, at their respective times, questioned and dismissed their writings. *Id.* “[W]ith the rise of the feminist and child protection movements,” of the 1970s, this cynicism widely began to dissipate, and considerable writings began to appear that finally acknowledged the serious abuse problem. Whitcombe, *supra*, at 267.

48. Ernsdorff & Loftus, *supra* note 34, at 129 (citing prevalence of childhood sexual abuse in United States); Thomas G. Burroughs, Note, *Retroactive Application of Legislatively Enlarged Statutes of Limitations For Child Abuse: Time’s No Bar To Revival*, 22 IND. L. REV. 989, 989 (1989) (citing childhood sexual abuse statistics and effects). Studies estimate that each year between 200,000 and 400,000 children are sexually assaulted in the United States. Burroughs, *supra*, at 989.

49. Ernsdorff & Loftus, *supra* note 34, at 129-30 (indicating long-term psychological effects of childhood sexual abuse on victims). “Child sexual abuse inflicts staggering economic, psychological and social costs on society and its victims. These costs are ‘taken out of [the victims’] current and future health, happiness, and . . . productivity. . . . In effect, a large mortgage on their future life is taken out when children’s legal interests are not satisfied” Burroughs, *supra* note 48, at 991 (quoting Miller & Miller, *Protecting the Rights of Abused and Neglected Children*, 19 TRIAL 68, 72 (1983)). Victims often become abusers themselves during adulthood. *Id.* “Other long-term effects may include a propensity for promiscuity and prostitution as well as a predisposition to engage in sexually abusive relationships. Various studies indicate other long-term effects including anxiety, pseudo-seductive behavior, substance abuse, sexual dysfunction, homosexuality and various forms of psychosis such as depression and suicidal obsession.” *Id.* Additional “[l]ong-term effects of child sexual abuse can include . . . self-destructiveness, anxiety, sleeping problems, eating disorders, disassociation, poor self-esteem, trouble with interpersonal relationships, difficulty trusting others, vulnerability to revictimization later in life . . . and other problems with functioning socially.” Whitcombe, *supra* note 47, at 259-60.

50. Ernsdorff & Loftus, *supra* note 34, at 130 (discussing memory repression phenomenon). The clinical term for this phenomenon is Repressed Memory Syndrome (RMS). Laura Johnson, *Litigating Nightmares: Repressed Memories of Childhood Sexual Abuse*, 51 S.C. L. REV. 939, 942 (2000). The four stages of human memory are: “encoding, consolidation, storage and retrieval.” *Id.* “Repression is ‘the forcing of ideas, perceptions or memories associated with psychic trauma from conscious awareness into the unconscious.’” *Id.* (quoting Stan Abrams, *False Memory Syndrome v. Total Repression*, 23 J. PSYCHIATRY & L. 283, 283 (1995)). While there is a consensus among psychiatric experts that RMS is a legitimate medical condition, there is no

serious and long-term effects, an alarming percentage of this abuse is never reported, and thus never prosecuted.⁵¹

The ability to prosecute child sexual abusers is further hampered because of the reluctance of many victims to face their abusers in court, out of either fear or shame, or because the abuser has convinced their victims that the abuse is normal.⁵² More troubling, however, is that the expiration of statutes of limitations further hinders prosecution of childhood sexual abuse.⁵³ These barriers also prevent the victims from filing civil suits against their abusers.⁵⁴

such consensus as to the incidence of RMS in patients. Johnson, *supra*, at 942. Repression of memories of abuse may provide the victims with short-term coping benefits, however, the abuse may still result in emotional and psychological effects in the long-term. Ernsdorff & Loftus, *supra* note 34, at 130. Some victims of child sexual abuse who have repressed memory of the abuse will live out the remainder of their lives and never recall the abuse. *Id.* at 137. For many abuse victims, however, the memory of their abuse will randomly resurface in their consciousness many years later as a result of some “triggering mechanism.” *Id.* at 137-38. The resurfacing of the victim’s repressed memory may be prompted by “a television show on child sexual abuse, contact with an unrelated case of abuse, or experiencing a scene similar to one associated with the repressed images.” *Id.* at 138. “In 1994, the American Psychiatric Association . . . officially recognized RMS [as a psychiatric disorder], referring to it by its medical term, dissociative amnesia.” Johnson, *supra*, at 943. According to the American Psychiatric Association:

The essential feature of Dissociate Amnesia is an inability to recall important personal information, usually of a traumatic or stressful nature, that is too extensive to be explained by normal forgetfulness This disorder involves a reversible memory impairment in which memories of personal experience cannot be retrieved in a verbal form (or if temporarily retrieved, cannot be wholly retained in consciousness)

Id. (quoting AMERICAN PSYCHIATRIC ASSOCIATION, THE DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 478 (4th ed. 1994)). Despite the relatively widespread acceptance that memories of childhood sexual abuse are often repressed, in the early 1990s a group formed with the primary function of discrediting this acceptance. See Whitcombe, *supra* note 47, at 272. A group of parents that had been accused of child sexual abuse established the False Memory Syndrome Foundation in Philadelphia in 1992, with the sole objective of discrediting RMS as a medical condition. *Id.* The Foundation provides legal aid to those accused of sexual abuse in cases where the accuser claims to have repressed the memory, lobbies against the recognition of RMS, and sponsors research aimed at discrediting the validity of RMS as a medical syndrome. *Id.* The group challenges RMS and instead “has posited the existence of what it calls ‘false memory syndrome,’ which states that false ‘memories’ of child sexual abuse that never occurred are implanted in the minds of people . . . during therapy with . . . therapists [who] ‘manipulat[e] adult patients into believing they were sexually abused during childhood.’” *Id.* (quoting INGER J. SAGATUN & LEONARD P. EDWARDS, CHILD ABUSE AND THE LEGAL SYSTEM 252 (1995)). Proponents of RMS have countered by arguing that “false memory syndrome” is a meaningless “scientific term,” and that the theory is devoid of any clinical support. INGER J. SAGATUN & LEONARD P. EDWARDS, CHILD ABUSE AND THE LEGAL SYSTEM, 258 (1995). Aside from RMS, victims employ various other “defense mechanisms to deal with the trauma of the abuse, such as denial . . . and blocking out [of] a period of childhood, a person, a place, or the more painful aspects of [the] abuse.” Whitcombe, *supra* note 47, at 259-60.

51. See McCarvill & Steinberg, *supra* note 2, at 340-41 (detailing widespread unreporting and causes). “Three recurrent themes exist in all cases of childhood sexual abuse: (1) the victim’s extreme vulnerability due to the personal relationship with the victimizer . . . (2) the devastating, everlasting and traumatic effects on the victims; and (3) the failure to report the incident(s) because of incapacity, fear and embarrassment.” Jorge L. Carro & Joseph V. Hatala, *Recovered Memories, Extended Statutes of Limitations and Discovery Exceptions in Childhood Sexual Abuse Cases: Have We Gone Too Far?*, 23 PEPP. L. REV. 1239, 1239 (1996).

52. McCarvill & Steinberg, *supra* note 2, at 340-41 (citing barriers to prosecution).

53. McCarvill & Steinberg, *supra* note 2, at 340-41 (citing statutes of limitations as additional barrier to prosecution).

54. See Snelling & Fisher, *supra* note 1, at 383 (noting victims frequently unable to file timely suit).

In certain cases, however, the application of tolling provisions by both civil and criminal courts, and of the “delayed discovery rule” by civil courts, has somewhat diminished the strangling effect that these barriers have had on victims’ pursuit of recourse.⁵⁵ Because the discovery rule only applies in civil cases, however, abusers are often still able to escape criminal liability in cases where the corresponding civil statute is tolled.⁵⁶

2. Legislative Responses: Tolling and the Discovery Rule

Civil statutes of limitations begin to run as soon as a cause of action accrues.⁵⁷ In the majority of cases, the accrual of a cause of action for tort will occur simultaneously with the tortious act, because the harm to the victim usually is immediately apparent.⁵⁸ In some cases, however, the operation of this “time-of-the-act accrual rule” leads to unfair results, thus, courts and legislatures have fashioned special rules to temper the unfairness in certain situations.⁵⁹ One such special rule calls for the tolling, or freezing, of the statute of limitations when the victim is under the age of majority, or suffers some mental deficiency, at the time of the tortious conduct.⁶⁰ In such a case, the court will freeze the running of the limitations period until after the plaintiff’s “disability” is removed, in order to safeguard the plaintiff’s rights, when he is sufficiently capable of recognizing and exercising his rights.⁶¹

A further exception to the sometimes harsh operation of civil statutes of limitations has evolved in cases where the plaintiff is not immediately aware of the harm caused by the defendant’s tortious conduct.⁶² In these cases, the “discovery rule” shifts accrual of the cause of action [from the time of the tortious act] to the point in time when the plaintiff knew or reasonably should have known of the injury.”⁶³ The discovery rule originated in negligence cases. Courts have widely recognized and applied this rule in cases involving

because psychologically or emotionally incapable).

55. See *infra* Part II.B.3 (discussing application of tolling provisions and discovery rule to child sexual abuse cases).

56. See Ernsdorff & Loftus, *supra* note 34, at 147-53 (noting discovery rule inapplicable in criminal cases whereas civil limitations period freezes); *infra* notes 60-61 and accompanying text (discussing definition of tolling and examples).

57. McCarvill & Steinberg, *supra* note 2, at 357 (explaining accrual of causes of action). “In the majority of cases, a cause of action accrues when the injured party knows or has reason to know of his or her injury.” *Id.*

58. Basham, *supra* note 23, at 753 (noting typical accrual of causes of action for torts).

59. Basham, *supra* note 23, at 753-54 (describing evolution of tolling provisions to combat “harsh” operation of statutes of limitations).

60. Basham, *supra* note 23, at 754 (discussing tolling of limitations periods where “disability” existed for plaintiff when cause of action accrued).

61. Basham, *supra* note 23, at 754 (indicating rationale behind tolling provisions).

62. Basham, *supra* note 23, at 754 (discussing evolution of discovery rule to temper harshness of statutes of limitations).

63. Basham, *supra* note 23, at 754 (describing functioning of discovery rule).

“professional malpractice, concealed medical injuries, and defective product design or installation,” where the plaintiff’s injuries do not occur, or are not discovered, until long after the act that caused them.⁶⁴ The discovery rule also operates in cases in which the plaintiff is aware of his injury, but unaware of the causal relationship between the injury and the defendant’s tortious conduct.⁶⁵ This category of cases poses greater difficulties to courts applying the discovery rule than cases where the injury, rather than cause, remained latent.⁶⁶ The difficulty arises because courts are forced to determine the plaintiff’s subjective knowledge, or the reasonableness of his lack of knowledge, as to the relationship of his injury and the defendant’s conduct.⁶⁷ In these cases, the court charges the plaintiff with constructive knowledge of the cause of his injury at the point in time when he “has reason to believe that a product or a particular act of another person *may* have caused [him] harm,” and initiates the operation of the statute of limitations at that same time.⁶⁸

3. Application to Childhood Sexual Abuse

More recently, courts have similarly applied the discovery rule in cases involving adults who were abused during childhood and suddenly manifested injuries that had previously remained repressed in their memories.⁶⁹ Although courts were initially hesitant to extend the discovery rule to cases involving resurfaced memories, courts eventually became more receptive to this idea and legislatures across the country eventually extended the discovery rule to civil cases where the plaintiff repressed memory of the abuse.⁷⁰ Unlike the

64. Basham, *supra* note 23, at 754 (tracing origin of discovery rule to negligence cases).

65. Basham, *supra* note 23, at 756 (discussing application of “discovery rule in cases where injury apparent but cause unknown”).

66. Basham, *supra* note 23, at 756-57 (distinguishing between unknown injury and unknown cause of injury).

67. See Basham, *supra* note 23, at 756-57 (noting courts must determine “when the plaintiff knew or reasonably should have known of” injury’s cause).

68. Basham, *supra* note 23, at 756-57 (discussing reasonableness standard of discovery rule).

69. Ernsdorff & Loftus, *supra* note 34, at 143 (indicating discovery rule often applied in repressed memory cases).

70. Ernsdorff & Loftus, *supra* note 34, at 143-57 (discussing courts’ and legislatures’ eventual extension of discovery rule to civil sex abuse cases). The first attempt by a plaintiff to extend the discovery rule in a case involving repressed memories of abuse was *Tyson v. Tyson*, 727 P.2d 226 (Wash. 1986); Ernsdorff & Loftus, *supra* note 34, at 143. In *Tyson*, the plaintiff claimed that her father had sexually abused her until she was eleven years old and that she had repressed the memory of the abuse for fifteen years. *Tyson*, 727 P.2d at 227. The plaintiff sought to have the “discovery rule” applied to toll the running of the statute of limitations. *Id.* The court rejected the plaintiff’s request out of “concern about the length of time which had elapsed since the alleged abusive events, and about the lack of ‘objective, verifiable evidence.’” Ernsdorff & Loftus, *supra* note 34, at 143; see *Tyson*, 727 P.2d at 230. The *Tyson* Court found that the application of the “discovery rule” would:

(1) undermine, and perhaps eliminate, the statute of limitations defense, (2) compel courts to rely on less than scientific evidence, a junk science of sorts, that could not afford the certainty and precision a factfinder demands for fair and accurate disposition of a case, and (3) prevent courts from being able to weed out stale or fraudulent claims as there is no judicial, psychological, or psychiatric

negligence cases discussed above, however, courts have been much more reluctant to apply the discovery rule in cases where the plaintiff was fully aware of the abuse, but did not realize that it caused his “present-day physical or psychological problems.”⁷¹

The application of tolling provisions, and more importantly, the discovery rule, in civil childhood sexual abuse cases has allowed many plaintiffs, who would have once been left without recourse, to pursue civil suits against their abusers long after the abuse occurred.⁷² Although many states also toll their criminal statutes of limitations for sex crimes against children until the child reaches the age of majority, the “judicially created” discovery rule does not apply to criminal proceedings.⁷³ Thus, in cases where previously repressed memories of abuse have resurfaced after the running of the criminal limitations period, victims are unable to pursue criminal charges against their abusers.⁷⁴

Although victim memory repression adds to the widespread unreporting and thus dearth of prosecution of childhood sexual abuse, the more common causes of unreporting tend to be fear, shame, embarrassment, confusion, denial, or some other psychological phenomenon which prevents the victim from addressing their abuse.⁷⁵ Often, many years pass before a victim finally addresses and acknowledges his or her abuse.⁷⁶ By this time, however, the criminal statute of limitations has likely expired, insulating the abuser from prosecution and preventing justice from being served.⁷⁷

mechanism that can be relied on in distinguishing false claims of sexual abuse from true ones.

Carro & Hatala, *supra* note 51, at 1257 (explaining rationale of *Tyson* decision). The Washington Legislature, however, soon thereafter legislatively reversed the *Tyson* decision. See WASH. REV. CODE § 4.16.340 (1988) (applying discovery rule to cases of child sexual abuse). The same concerns expressed in *Tyson*, however, would be considered by other jurisdictions in considering the application of the discovery rule to cases involving repressed memories of sexual abuse. Carro & Hatala, *supra* note 51, at 1257.

71. See Rebecca L. Thomas, Note, *Adult Survivors of Childhood Sexual Abuse and Statutes of Limitations: A Call For Legislative Action*, 26 WAKE FOREST L. REV. 1245, 1260 (1991) (noting courts' reluctance to apply discovery rule unless plaintiff actually repressed memory of abuse).

72. See Ernsdorff & Loftus, *supra* note 34, at 142-47 (discussing widespread application of discovery rule to civil cases of childhood sexual abuse).

73. See Ernsdorff & Loftus, *supra* note 34, at 147-53 (indicating courts have not extended discovery rule to criminal cases).

74. See Ernsdorff & Loftus, *supra* note 34, at 147-53 (indicating resurfaced memories may lead to civil, but not criminal, liability).

75. See *supra* notes 49-51 and accompanying text (detailing psychological effects leading to lack of reporting). “Childhood sexual abuse is the darkest of secrets, relegated to silence through the most vile forms of trickery, threats and abuse of trust.” Thomas, *supra* note 71, at 1250.

76. See *supra* notes 49-51 and accompanying text (discussing psychological effects contributing to failure to report).

77. See *supra* notes 21-22 and accompanying text (explaining function of criminal statute of limitations).

C. *Change in Criminal and Civil Statutes of Limitation in Massachusetts*

1. *Impetus for Change*

Recently, a significant number of people across the country have come forward with allegations of sexual abuse against members of the clergy, many of these dating back as far as thirty or forty years.⁷⁸ These allegations have created a domino effect, with an incredible number of people gaining the courage to finally report their abuse.⁷⁹ Although many of these victims have reached civil settlements with archdioceses across the country, very few of these cases have led to criminal prosecutions because of the expiration of the applicable statutes of limitations.⁸⁰ As a result, many legislatures across the country have extended, or even abolished, statutes of limitations for crimes involving the sexual abuse of children.⁸¹

2. *Massachusetts' Approach*

In Massachusetts, virtually every crime is subject to a limitations period requiring the state to bring charges against a defendant within a prescribed time period.⁸² The exception, as in most jurisdictions, is that there is no statute of limitations for the crime of murder.⁸³ Originally, sexual offenses against children were treated no differently than any other crime with respect to the time limit for prosecution.⁸⁴ Over the years, however, the legislature has increased the statute of limitations for sexual crimes against children, thus allowing prosecutors more time to commence criminal actions.⁸⁵ Currently, the

78. See Eric Convey, *Church Data Shows Sex Abuse More Widespread*, BOSTON HERALD, Feb. 28, 2004, at 4 (acknowledging recent widespread allegations against clergy members of sexual misconduct against children).

79. *Id.* (discussing extensive number of allegations).

80. Gregg M. Miliote, *Church Scandal Prompts Push to Change Laws*, THE HERALD NEWS (Apr. 9, 2003), available at http://www.zwire.com/site/news.cfm?newsid=7651452&BRD=1710&PAG=461&dept_id=99784&rfti=8 (noting untimeliness of claims resulted in low number of prosecutions despite numerous allegations).

81. Pfeiffer & Cullen, *supra* note 13, at A23 (noting "growing number of states . . . have removed . . . time limit [on] prosecut[ing] rapists"); see The National Center for Victims of Crime, *supra* note 13 (maintaining legislative database).

82. See MASS. GEN. LAWS ch. 277, § 63 (2003) (prescribing general statute of limitations).

83. See *id.* (excluding murder from crimes subject to criminal limitation periods in Massachusetts).

84. See Matthews, *supra* note 13 (discussing evolution of statute of limitations for sexual offenses against children in Massachusetts).

85. See Matthews, *supra* note 13 (outlining amendments to statute limiting criminal prosecutions). Originally, the statute of limitations for sexual crimes against children was six years, similar to that of all other crimes. *Id.* "In 1985, the [Massachusetts] Legislature increased the statute of limitations from 6 to 10 years" for the following crimes: "rape of a child under 16, rape of a child, assault with intent to commit rape, and assault on a child under age 16 with intent to commit rape." *Id.* (numbering omitted). "In 1987, the legislature added [the crime of] rape to the [list of] crimes for which there is a 10 year statute of limitation," and the legislature also added a provision allowing tolling the statute until the victim reached the age of sixteen. *Id.* "In 1996, the legislature extended the statute of limitations for [all of these crimes from] 10 to 15 years." *Id.*

Massachusetts statute of limitations for the prosecution of sexual offenses against children is fifteen years.⁸⁶ If the alleged victim is under the age of sixteen at the time of the abuse, the period does not begin until the victim reaches that age.⁸⁷ Additionally, the state excludes any time period in which the alleged perpetrator resides outside Massachusetts in determining the time remaining to prosecute.⁸⁸

The statute of limitations governing civil actions for child sexual assault in Massachusetts prescribes a much different limitations period than its criminal counterpart.⁸⁹ Actions for assault and battery alleging sexual abuse of a minor must be brought within three years of the alleged abuse, or within three years of the victim's discovery of their injury.⁹⁰ This time period does not begin to run until the child reaches eighteen.⁹¹ Although the criminal statute of limitations for sexual offenses against children is similarly tolled until the child reaches a particular age, the discovery rule which is applicable to civil actions, is not applicable to criminal actions.⁹² Despite the relatively liberal application of the discovery rule in civil cases and the fifteen year extension for filing criminal charges, the recent clergy abuse scandal has sparked attacks on these periods as being too short and unjust, leading to several legislative proposals.⁹³

During the Massachusetts Legislature's 2003 Regular Session, Massachusetts House and Senate members filed several bills seeking to either extend or abolish the statute of limitations governing acts of childhood sexual abuse.⁹⁴ All were referred to committee and were the subject of public hearings

86. MASS. GEN. LAWS ch. 277, § 63 (setting fifteen year time limit for prosecuting certain sexual offenses).

87. *Id.* (stating fifteen year limitation period tolled until alleged victim reaches age of sixteen). If the abuse is reported to a law enforcement agency, however, the statute begins to run immediately, regardless of the age of the victim. *Id.* The fifteen year limitation period applies to rape, rape of a child under the age of sixteen, assault with intent to commit rape, and assault of a child under the age of sixteen with intent to commit rape. *Id.* The statute of limitations for the above crimes also applies to allegations of conspiracy and accessory. *Id.*

88. *Id.* (tolling running of statute during time period when abuser resides outside of state).

89. *See infra* notes 90-92 and accompanying text (discussing operation of Massachusetts civil statute of limitations for claims of child sexual abuse).

90. MASS. GEN. LAWS ch. 260, § 4C (2003) (setting limitations on civil actions for assault and battery by sexual abuse of minor). The statute provides in relevant part:

Actions for assault and battery alleging the defendant sexually abused a minor shall be commenced within three years of the acts alleged to have caused an injury or condition or within three years of the time the victim discovered or reasonably should have discovered that an emotional or psychological injury or condition was caused by said act, whichever period expires later

Id.

91. *Id.* (tolling statute from running until alleged victim reaches eighteen years of age).

92. *Compare* MASS. GEN. LAWS ch. 277, § 63 (setting absolute criminal limitation period requiring prosecution within fifteen years of victim's sixteenth birthday), *with* MASS. GEN. LAWS ch. 260, § 4C (applying discovery rule to postpone running of statute for damages from child sexual assault).

93. *See infra* notes 96-99, 101-10, 112-16 and accompanying text (outlining proposed legislation relating to criminal and civil statutes of limitations).

94. *See infra* notes 96-99, 101-10, 112-16 and accompanying text (discussing Massachusetts' legislative

during 2003, but other than this preliminary action, these bills did not advance any further during the 2003 Session.⁹⁵

In the first week of the 2004 Regular Session, the Massachusetts House resumed action relating to these bills.⁹⁶ In early January of 2004, the Joint Committee on Criminal Justice met in executive session and reported favorably on House Bill 1247.⁹⁷ The bill would eliminate the statute of limitations for rape and attempted rape of children under the age of sixteen.⁹⁸ The bill was

proposals seeking to amend criminal and/or civil statutes of limitations).

95. See *infra* notes 96, 101, 107, 113, 116 and accompanying text (noting legislature's inaction on proposed bills during 2003 Regular Session). Bills introduced in the General Court require the approval of both the Senate and the House before proceeding to the Governor's desk for signing, and thus enactment. MASSACHUSETTS POLITICAL ALMANAC 570-71 (Holly Burch ed., 2004). This approval process involves study by a committee and three separate readings in each chamber before submission to the Governor. *Id.* In the typical filing of a bill, a "legislator [first] files [a] petition with the House or Senate clerk" and the [b]ill is referred to [a] topic-appropriate joint committee." *Id.* at 570. The bill is subjected to a "public hearing in the appropriate committee," in which the public is free to comment on the proposed bill. *Id.* "After the hearing, the committee meets in executive session" where "[t]estimony, and staff reports are studied prior to [the committee's issuance of an] official recommendation." *Id.* "Standard recommendations are 'Ought to Pass,' 'Ought to pass with amendment,' 'Ought not to pass,' 'Changed,' 'Discharge to another committee' or 'Refer to study order.'" *Id.* "The [bill's] first reading is when a favorable committee report appears in the Journal of the branch considering the bill." *Id.* The bill is then sent to the branch's committee on Steering, Policy and Scheduling. *Id.* "The Notice of the Second Reading appears in the [branch's] Calendar to prepare legislators to debate [the bill] or offer amendments." *Id.* "Some bills can be referred to [a] third reading without debate." *Id.* Debate is "shut[] off" when "[m]embers vote to refer the [bill] to a third reading." *Id.* "The Committee on Bills in the Third Reading [is responsible for] mak[ing] corrective or technical changes [to the bill's] language." *Id.* Next, "the bill is open again to debate or amendments by the full chamber." *Id.* "Members [then] vote [to have the] bill . . . engrossed [typed in simulated script on special paper] and sent to the other chamber." *Id.* "Three readings are then duplicated in the other [branch]," and if no amendments are made, "the bill is engrossed in final official text." *Id.* Any "differences between [the two] chambers are resolved in [joint] conference committees . . . [and] [t]he . . . committee[s] [final] reports must be accepted or rejected in whole." *Id.* at 570-71. "A final vote is taken in the House and then the Senate" and if the bill passes, it "is signed by leaders of both chambers and sent by the Senate for the Governor's signature." *Id.* at 571.

96. See 2003 Bill Tracking MA, H.R. 1247, available at LEXIS, Massachusetts Bill Tracking StateNet (seeking to eliminate statute of limitations for certain sexual crimes against children).

97. See *id.* (noting joint committee action on bill). The committee's recommendation for the Bill was "Ought to Pass." *Id.*

98. See *id.* (describing would-be effect of proposed bill). The bill, filed by Representative Walsh on behalf of Suffolk County District Attorney Daniel Conley, would eliminate the statute of limitations for five crimes if the victim is under the age of sixteen at the time of the commission of the crime. *Id.* The affected crimes would be: rape, rape of a child under sixteen, rape of a child, assault with intent to commit rape, and assault on a child under sixteen with intent to commit rape. *Id.* In urging lawmakers to support the bill during the public hearing addressing the bill, District Attorney Conley proclaimed:

Victims of sexual assault, for emotional and psychological reasons, often are not immediately ready to participate in a prosecution of their offender . . . [b]ut they may be prepared to do so years after the assault, and should not be denied that right because of an arbitrary limit on the time in which the case can be prosecuted. "These are the kind of crimes that by their very nature place an unfair burden of secrecy and shame on victims Those who sexually abuse children and teenagers actually seem to count on these feelings of shame to coerce children and teenagers into silence. Even among adult victims of rape and assault with intent to rape, the feelings of guilt and shame make it extremely difficult to come forward. These feelings are often compounded by the knowledge that in our criminal justice system the victim may be subjected to rigorous personal scrutiny." . . . "One of the things we've learned over time is people who are sexually abused—

referred to the House Committee on Steering, Policy, and Scheduling, and then discharged to the committee on House Rules, which has yet to schedule the bill for debate on the House floor.⁹⁹

Several of the other proposed bills attempting to modify the statute of limitations have a much broader scope than House Bill 1247, which may explain why the Judiciary Committee has not yet acted on these bills.¹⁰⁰ The Judiciary Committee, however, has also not addressed House Bill 2830, which has a more limited and conservative scope in proposing a further extension, rather than elimination, of the criminal statute of limitations for child sexual abuse crimes.¹⁰¹ This bill would extend the statute of limitations from fifteen to thirty years for the crimes of rape and attempted rape of a child under the age of sixteen.¹⁰²

The most expansive of the proposed bills, House Bill 1895, would eliminate the statute of limitations for twenty-nine crimes dealing with sexual assault, prostitution, child pornography, and various other related areas.¹⁰³ Similar to House Bill 1247, House Bill 1895 would eliminate the statute of limitations for

particularly children and teenagers—are terribly damaged by the experience It takes different victims vastly different amounts of time to deal with the abuse they have suffered, and still more time to summon the courage to report their abuse to authorities. But no matter how much time they need to do that, they should not be prohibited from seeking justice in a court of law just because an arbitrary clock ran out.’

Press Release, Suffolk County District Attorney Daniel F. Conley, Conley Urges Lawmakers to Support His Bill to Eliminate Statute of Limitations on Rape Crimes (Apr. 23, 2003) (on file with author).

99. See 2003 Bill Tracking MA, H.R. 1247, available at LEXIS, Massachusetts Bill Tracking StateNet (noting Bill awaiting placement on House Calendar).

100. See *infra* notes 101-07, 109-11, 112-16 and accompanying text (discussing various other proposed Bills). One explanation for the Judiciary Committee’s inaction with respect to these bills is the committee’s traditional composition of “defense attorneys who are philosophically opposed to amending, let alone eliminating, statutes of limitations for any crimes except murder.” Pfeiffer & Cullen, *supra* note 13, at A23.

101. See H.R. 2830, 183rd Gen. Ct., Reg. Sess. (Mass. 2003) (seeking to increase statute of limitations for sexual crimes against children); 2003 Bill Tracking MA, H.R. 2830, available at LEXIS, Massachusetts Bill Tracking StateNet (noting bill’s status).

102. H.R. 2830 (seeking fifteen year extension). The bill would not affect the current fifteen year statute of limitations for rape or assault with intent to rape. *Id.* The bill would, however, extend the statute of limitations to thirty years for the crimes of rape of a child under sixteen, rape of a child, and assault on a child under sixteen with intent to commit rape. *Id.*

103. H.R. 1895, 183rd Gen. Ct., Reg. Sess. (Mass. 2003) (seeking to eliminate statute of limitations for expansive list of crimes). The bill would eliminate the statute of limitations for a variety of crimes including: indecent assault and battery on a child under fourteen, assault and battery or indecent assault and battery on mentally retarded persons, indecent assault and battery on persons over fourteen, rape, rape of a child under sixteen, rape of a child, assault with intent to commit rape, assault on a child under sixteen with intent to commit rape, custodial interference by relatives, abduction of an unmarried person under age sixteen for the purpose of marriage, abduction of persons for the purpose of prostitution or unlawful sexual intercourse, administering drug, enticing to unlawful intercourse, promoting child prostitution, deriving support from child prostitution, maintaining a house of prostitution, deriving support from an inmate of a house of ill fame, soliciting, sending a person to a house of ill fame, detaining a person in a house of ill fame, incest, resorting to café for immoral purposes, dissemination of or possession with intent to disseminate harmful matter to minors, child pornography, exhibition of deformities, sodomy and buggery, unnatural and lascivious acts, and unnatural acts with a child under sixteen. *Id.*

rape or attempted rape of a child.¹⁰⁴ House Bill 1895, however, is much more expansive than House Bill 1247, and seeks to eliminate the statute of limitations for dozens of crimes, some having no relation to sexual abuse or children.¹⁰⁵ House Bill 1895 was referred to the Judiciary Committee and was the subject of a public hearing in early 2003.¹⁰⁶ The bill, however, has remained dormant since that time.¹⁰⁷

The two remaining proposals seeking to modify the statute of limitations in cases of child sexual abuse were filed in the Massachusetts Senate.¹⁰⁸ Senate Bill 1063 would establish a “Bill of Rights for Victims of Rape and Sexual Assault.”¹⁰⁹ Among other provisions, this bill would eliminate the civil statute of limitations for claims alleging sexual abuse of a person under the age of eighteen.¹¹⁰ This bill also proposes to eliminate the criminal statute of limitations for certain sexual crimes against children, in the same manner as proposed by House Bill 1247.¹¹¹ Thus, this bill would also eliminate the statute of limitations for rape and attempted rape of persons under the age of sixteen.¹¹² Senate Bill 1063 has been referred to the Judiciary Committee and awaits further action.¹¹³

Senate Bill 931 seeks to abolish the statute of limitations in cases of child

104. See H.R. 1247, 183rd Gen. Ct., Reg. Sess. (Mass. 2003); H.R. 1895 (discussing limited extent of bills’ similarities).

105. See H.R. 1247 (indicating bill’s limited application to sexual offenses against children); H.R. 1895 (indicating bill not limited to sexual offenses); *supra* note 103 and accompanying text (listing crimes covered by House Bill 1895).

106. See 2003 Bill Tracking MA, H.R. 1895, available at LEXIS, Massachusetts Bill Tracking StateNet (indicating bill’s history). House Bill 1895 gained the support of several groups known for their advocacy of clergy sexual assault victims, and that have been extremely vocal in their criticism of the Catholic Church for its handling of the scandal. Kathleen A. Shaw, *Hearing Set on Abuse Limits Bill; Advocates for Victims Back Change*, WORCESTER TELEGRAM & GAZETTE, Apr. 5, 2003, at A3. Voice of the Faithful, a Catholic lay group; the Survivors Network of Those Abused by Priests; Survivors First; Coalition of Catholics and Survivors; and Worcester Voice have all voiced their support for the bill during its public hearing before the Judiciary Committee. *Id.*

107. See 2003 Bill Tracking MA, H.R. 1895, available at LEXIS, Massachusetts Bill Tracking StateNet (indicating bill has not advanced beyond preliminary stages).

108. See *infra* notes 109-10, 112-16 and accompanying text (discussing Senate bills proposal to modify statute of limitations for child sexual abuse).

109. S. 1063, 183rd Gen. Ct., Reg. Sess. (Mass. 2003) (proposing various changes to laws pertaining to sexual abuse).

110. *Id.* (noting provision of bill related to civil statute of limitation). Under this bill, “sexual abuse” includes indecent assault and battery, rape, attempted rape, etc. *Id.* This bill also seeks to create a campus rape and sexual assault prevention advisory council at state colleges, seeks to amend rape shield and mandatory reporting laws, and also seeks to eliminate the criminal statute of limitation on certain sexual offenses against children. *Id.*

111. See *infra* note 112 and accompanying text (noting similarity between Senate Bill 1063 and House Bill 1247).

112. See H.R. 1247, 183rd Gen. Ct., Reg. Sess. (Mass. 2003) (seeking to eliminate statute of limitations only for rape and attempted rape of persons under sixteen); S. 1063 (seeking, among other things, to eliminate statute of limitations in same cases).

113. See 2003 Bill Tracking MA, S. 1063, available at LEXIS, Massachusetts Bill Tracking StateNet (noting bill’s current status).

sexual abuse.¹¹⁴ This bill, however, appears to be more symbolic than a legitimate attempt to amend the law, as it neither makes clear the definition of “sexual abuse,” nor references any specific laws to amend.¹¹⁵ This bill is also awaiting further action from the Judiciary Committee.¹¹⁶

III. ANALYSIS

A. Traditional Rationales Inapplicable to Child Sexual Abuse Crimes

The justifications for imposing limitation periods on the filing of criminal complaints typically carry great weight, however, in the unique case of child sexual abuse the traditional justifications lack persuasive force.¹¹⁷ Although in many instances a crime victim’s desire for retribution against the perpetrator fades with time, in child sexual assault cases, there is no such waning of the victim’s, or society’s, retributive impulse.¹¹⁸ Despite the passage of many years from the abuse, the victim’s “retributive impulse” remains strong because of the long-term and extensive mental damage the abuse inflicted upon them.¹¹⁹ This impulse remains equally as strong in members of society because of the moral reprehensibility of such crimes against children.¹²⁰

The related rationale that a criminal’s self-rehabilitation over time removes the need for punishment is similarly inapplicable when dealing with child sexual abusers.¹²¹ While many criminals may in fact rehabilitate themselves over time and become law-abiding citizens, “the reality of child sex abuse indicates that the abuser does not reform, but continues to abuse children.”¹²² Regardless of the abuser’s rehabilitation, or lack thereof, this rationale also

114. S. 931, 183rd Gen Ct., Reg. Sess. (Mass. 2003) (proposing to eliminate statute of limitations for sexual abuse).

115. *See id.* (failing to specify bill’s expanse).

116. *See* Bill Tracking MA, S. 931, available at LEXIS, Massachusetts Bill Tracking StateNet (noting bill’s current status).

117. Barton Aronson, *Why Statutes of Limitations for Child Abuse Should Be Extended, as Pennsylvania Legislators Have Proposed*, FINDLAW’S WRIT (Mar. 21, 2002), at <http://writ.news.findlaw.com/aronson/20020321.html> (last visited Nov. 2, 2004) (attacking statutes of limitations in cases of child sexual abuse).

118. *See* Adlestein, *supra* note 10, at 265-66 (discussing theory of retribution).

119. *See* Adlestein, *supra* note 10, at 266 (noting community’s retributive impulse remains in cases “involving homicide or lasting physical or psychological damage”); *supra* note 49 and accompanying text (outlining long-term physical and psychological effects of child sexual abuse).

120. *See* Adlestein, *supra* note 10, at 266 (discussing “community’s impulse for moral balance of retribution” in certain cases).

121. McCarvill & Steinberg, *supra* note 2, at 366 (indicating typical child sexual abuser repeatedly offends); Dunn, *supra* note 21, at 863 (claiming “sexual offenders . . . more likely than any other class of criminals to repeat their crimes”).

122. McCarvill & Steinberg, *supra* note 2, at 366, 366 n.156 (offering support for proposition). “Even after treatment, pedophiles are more likely to repeat their offenses because they suffer from a life-long sexual attraction to children which cannot be cured with drugs and therapy.” *Id.* (quoting NORA UNDERWOOD, *THE ABUSE OF CHILDREN* 56 (1989)).

completely ignores “both the general deterrence and retributive purposes of criminal punishment,” which are particularly important when dealing with a serious crime such as child sexual assault.¹²³

Similarly, the rationale that the investigation and prosecution of old crimes does not serve the public because it wastes resources that could be used to prosecute and prevent future crimes also does not apply with equal force to child sexual abuse crimes.¹²⁴ As acknowledged above, child sexual abusers tend to repeat their offenses against children.¹²⁵ Thus, abusers who have escaped criminal liability for earlier offenses pose a continuing threat to society, and may very well be presently committing additional crimes against children.¹²⁶ Accordingly, the prosecution of these abusers for earlier crimes would presently serve and protect the public by preventing further abuse from taking place.¹²⁷

An additional justification for criminal limitations periods that lacks merit when considered in the context of child sexual abuse is that prosecution for years-old crimes “prejudice[s]” defendants by evaluating their past conduct with modern values.¹²⁸ Although scholars did not widely recognize the seriousness and prevalence of child sexual abuse until relatively recently, this does not signify that past generations viewed child sexual abuse as any less repugnant than contemporary society.¹²⁹ Whether child sexual abuse occurred thirty years ago, or one year ago, the “gravity” of these crimes has not changed, and these perpetrators were “well aware [that their conduct would] plague the victim for a lifetime.”¹³⁰

One of the more often cited justifications in support of criminal statutes of

123. See Adlestein, *supra* note 10, at 265 (criticizing self-rehabilitation theory).

124. See *supra* note 39 and accompanying text (explaining rationale); *supra* notes 121-22 (noting abusers’ tendencies as repeat-offenders); *infra* text accompanying notes 126-27 (indicating rationale not applicable to child sexual abuse crimes).

125. *Supra* notes 121-22 and accompanying text (noting tendency of child sexual abusers to reoffend).

126. See *supra* notes 121-22 and accompanying text (suggesting persons accused of earlier abuse potentially committing current abuse).

127. See *supra* notes 121-22 and accompanying text (inferring correlation between imprisoning offenders and lowering crimes). The logical inference is that if child sexual abusers have a high likelihood of re-offending throughout their lives, then the prosecution and imprisonment of the abusers for crimes committed years before still serves the public; this is because the abusers are removed from society and thus prevented from committing current offenses against the public. See *id.*

128. *Contra* Rockhill, *supra* note 30, at 1133-34 (suggesting contemporary society’s view of child sexual abuse differs from past generations’).

129. *But see* Rockhill, *supra* note 30, at 1133-34 (suggesting contemporary society’s view of child sexual abuse differs from past generations’). Rockhill asserts that contemporary society views child sexual abuse much more harshly than society did just a few decades ago. *Id.* at 1134. She argues that because the contemporary “awareness” concerning child sexual abuse did not exist thirty years ago, perpetrators of decades-old crimes are today judged by “a higher standard of culpability.” *Id.* The fact that society was not “aware” of the serious effects and prevalence of child sexual abuse thirty years ago, however, does not logically lead to the conclusion that today’s society views this past behavior as more culpable. See *id.*

130. See *Stogner v. California*, 539 U.S. 607, 652 (2003) (5-4 decision) (Kennedy, J., dissenting) (indicating child molesters aware of harm caused to victims).

limitations is that they ensure defendants receive a fair trial by requiring indictments while evidence is still “fresh.”¹³¹ While it may generally be true that as time passes evidence becomes less reliable and the difficulty of defending against a charge increases, sufficient protections for potential defendants exist in our legal system that militate against barring prosecution for child sexual abuse.¹³² Before filing charges against a defendant, the prosecutor must first be satisfied that there is probable cause, and once indicted, the rules of evidence, the allowance of zealous cross-examination, and the strict burden of proof in a criminal trial ensure that defendants receive a fair trial.¹³³

A related policy justification normally cited in favor of criminal limitations periods is that they force law enforcement officials to promptly “investigate and prosecute crimes.”¹³⁴ In the unique case of child sexual abuse, however, this justification has little application because the victim often has not reported the crime to police until long after its occurrence.¹³⁵ Thus, the existence of a criminal limitations period on sexual crimes against children cannot encourage prompt investigation because law enforcement officials have no immediate knowledge of the abuse.¹³⁶

Perhaps the most often cited justification in support of criminal statutes of limitations is the potential defendant’s right of repose, that is, the expectation that a defendant should not be required to defend against accusations after a plaintiff has consciously failed to come forward for many years.¹³⁷ The concept of repose “relies heavily on principles of self-reformation and rehabilitation,” but as previously indicated, the typical child sexual abuser neither self-reforms nor rehabilitates.¹³⁸ Further, it is widely accepted that “a policy of repose should be outweighed by the interests of justice.”¹³⁹ Thus, where a child sexual abuser takes “advantage of the tender years and perilous position of a fearful victim, it is the victim’s lasting hurt, not the perpetrator’s fictional reliance, that the law should count the higher.”¹⁴⁰

131. *Supra* notes 34-35 and accompanying text (discussing rationale).

132. *See* Adlestein, *supra* note 10, at 265-66 (articulating protections “criminal trial process” provides to defendants).

133. *See* Adlestein, *supra* note 10, at 265-66 (indicating criminal trial process includes sufficient mechanisms to discredit unreliable evidence).

134. Dunn, *supra* note 21, at 844 (identifying additional justification often cited).

135. *See supra* notes 49-51, 75 and accompanying text (discussing extensive unreporting of child sexual abuse).

136. *See supra* notes 49-51, 75 and accompanying text (indicating rationale’s inapplicability due to delayed reporting of abuse).

137. *See* McCarvill & Steinberg, *supra* note 2, at 365-66 (discussing concept of repose).

138. *See* McCarvill & Steinberg, *supra* note 2, at 366 (noting components of repose concept); *supra* notes 121-22 (arguing child sexual abusers more likely than other criminals to offend again).

139. McCarvill & Steinberg, *supra* note 2, at 366 (noting importance of repose policy dependent upon interests of justice).

140. *See* *Stogner v. California*, 539 U.S. 607, 652 (2003) (5-4 decision) (Kennedy, J., dissenting) (arguing victim’s right to have justice served outweighs abuser’s right to repose).

The victims whose cause is now before the Court have at last overcome shame and the desire to

Because the traditional public policy rationales behind statutes of limitations do not apply to child sexual abuse crimes, the statute of limitations on serious sex crimes against children should be eliminated.¹⁴¹ The widespread unreporting of this type of abuse further warrants the elimination of the governing statute of limitations.¹⁴² It is extremely difficult for victims of child sexual abuse to come forward and report their abuse.¹⁴³ In most cases, despite the victim's lifelong struggle to forget their abuse and attempts to lead normal lives, the fact is they cannot do so until they have come forward and sought justice.¹⁴⁴ More often than not, it takes victims decades to fully address their abuse and to garner the courage to report the crimes to law enforcement.¹⁴⁵ When victims finally gain the strength to report their abuse, the perpetrators, who specifically targeted a vulnerable and helpless class of victims, should not escape prosecution simply because an arbitrary time period has expired.¹⁴⁶ If sufficient and reliable evidence exists to indict and prosecute a defendant for child sexual abuse, then charges should be brought, regardless of how much time has passed.¹⁴⁷

B. Pending Legislation

Of the several bills currently before the Massachusetts Legislature that specifically target child sexual abusers and the statute of limitations, the most promising and appropriate proposal is House Bill 1247.¹⁴⁸ The bill seeks to eliminate the statute of limitations for rape and attempted rape of a child under

repress these painful memories. They have reported the crimes so that the violators are brought to justice and harm to others is prevented. The Court now tells the victims their decision to come forward is in vain.

Id.

141. See *supra* Part III.A (attacking traditional rationales behind statutes of limitations when applied to child sexual abuse).

142. See Aronson, *supra* note 117 (noting likelihood of reporting child sexual abuse seriously diminished as compared to other crimes).

143. See Aronson, *supra* note 117 (arguing abusers take advantage of limitations periods and use as "sword" rather than as "shield").

144. See Whitcombe, *supra* note 47, at 275-78 (discussing importance of "telling story" in order for victim's to heal).

145. See Aronson, *supra* note 117, (acknowledging extremely long delay in reporting in many cases and causes). Apart from voluntary unreporting, it is widely recognized that many victims of child sexual abuse suffer from RMS, where they have no conscious memory of the abuse, and may suddenly remember the abuse years later after some triggering event. See *supra* note 50 and accompanying text (discussing RMS). Because the discovery rule does not apply in criminal cases, these victims are left without criminal recourse after the statute has expired, even when they have not willingly waited to report the abuse. *Id.*

146. See Aronson, *supra* note 117 (arguing courts should be receptive to these victims for their well-being and future victims well-being); *supra* note 140 (citing Justice Kennedy's dissent in *Stogner*).

147. See *supra* Part III.A (concluding statutes of limitations have no place in context of child sexual abuse).

148. See *infra* notes 149, 152-56, 158-62, 164, 166 and accompanying text (arguing House Bill 1247 most appropriate solution for Legislature).

the age of sixteen.¹⁴⁹ The various other proposed bills are either too expansive, or fall short of what is necessary to address the serious problem of child sexual abuse.¹⁵⁰

House Bill 2830, which seeks to extend the statute of limitations from fifteen to thirty years for rape and attempted rape of a child, falls short of what is called for in the most serious cases of child sexual abuse.¹⁵¹ This extended time period may not be enough to allow some victims of the most serious forms of child sexual abuse to address their abuse and come forward.¹⁵² Victims of child sexual abuse should be able to come forward on their own terms, regardless of how much time has passed, and it should then be left to law enforcement officials to assess the available evidence and exercise their discretion in deciding whether to move forward.¹⁵³

On the other side of the spectrum is House Bill 1895, which is far more expansive than what is necessary to address the current problem.¹⁵⁴ The bill seeks to eliminate the statute of limitations on twenty-nine separate crimes dealing with sexual assault, prostitution, child pornography, and other related areas.¹⁵⁵ Many of these crimes have little, or no, relation to sexual abuse or children, and many of the considered crimes are relatively minor when compared to serious child sexual abuse cases.¹⁵⁶

Senate Bill 1063 is similarly over-expansive and also not the appropriate legislative remedy.¹⁵⁷ This bill seeks to eliminate both the criminal and civil statutes of limitations for certain types of child sexual abuse.¹⁵⁸ Additionally, the bill seeks to create a campus sex assault prevention council at state colleges, and seeks to amend the rape shield statute, as well as the state's mandatory reporting laws.¹⁵⁹ Although all of these proposals warrant consideration from the Legislature, they all pertain to distinct (although related) problems, thus the Legislature should consider all of these proposals separately, and under separately proposed legislation.¹⁶⁰

Senate Bill 931 is also not the appropriate solution for the Legislature, as the

149. H.R. 1247, 183rd Gen. Ct., Reg. Sess. (Mass. 2003) (indicating substance of bill).

150. See *infra* notes 151-62 and accompanying text (illustrating problems with various other proposals).

151. See H.R. 2830, 183rd Gen. Ct., Reg. Sess. (Mass. 2003) (noting bill's aim); *infra* notes 152-53 and accompanying text (arguing bill's fifteen year extension inadequate).

152. See H.R. 2830 (proposing fifteen year extension, rather than elimination, of statute of limitations).

153. See *supra* Part III.A (concluding statutes of limitations have no place in context of child sexual abuse).

154. See H.R. 1895, 183rd Gen. Ct., Reg. Sess. (Mass. 2003) (proposing expansive changes to various current laws).

155. *Id.* (indicating bill's would-be effect).

156. *Id.* (proposing changes unrelated to childhood sexual abuse).

157. See *infra* notes 158-60 and accompanying text (discussing proposal's shortcomings).

158. S. 1063, 183rd Gen. Ct., Reg. Sess. (Mass. 2003) (proposing, among other things, changes to childhood sexual abuse law).

159. *Id.* (indicating bill's further proposals).

160. See *id.* (noting need to break up bill into several distinct proposals).

text of the bill reads more like a personal condemnation against members of the clergy who have sexually abused children than a legitimate attempt to amend the law.¹⁶¹ The bill seeks to abolish the “statute of limitations for sexual abuse,” but neither defines “sexual abuse,” nor references any specific laws to be amended.¹⁶²

The most balanced and appropriate remedy before the Legislature at this time is House Bill 1247.¹⁶³ The bill would eliminate the statute of limitations in the most serious child sexual abuse cases, that is, in cases of rape or attempted rape of a child.¹⁶⁴ These crimes inflict the most devastating effects on the child victims, and impose the kind of injury that often takes decades to address.¹⁶⁵ House Bill 1247 seeks to give these victims the crucial time needed to deal with their abuse and allow victims to pursue justice whenever they gain the strength to come forward.¹⁶⁶

IV. CONCLUSION

Statutes of limitations have historically served an important role in our criminal justice system and certainly continue to do so today. These statutes have enjoyed universal acceptance throughout United States’ jurisdictions because of our legal system’s strong desire to protect individual defendants, and because of the belief that these statutes promote the overall well-being of society. These important objectives, however, have been sought at the expense of those individuals who have been victimized, but simply failed to promptly pursue recourse against their perpetrators due to the significant emotional harm caused by the abuse. Over the years, various rationales have been advanced in order to justify this seemingly unjust result, and in the vast majority of cases these rationales carry great weight. In cases of serious sexual abuse against children, however, the traditional rationales simply do not logically apply.

Child sexual abuse is a serious problem with devastating and long-term effects. The typical child sexual abuser continues to abuse children, and their victims suffer the effects of the abuse for their lifetimes. The law should not favor those who target society’s most vulnerable and helpless class over the innocent children whose lives they have deliberately destroyed. Just as these victims are forced to deal with the effects of their abuse throughout the remainder of their lives, the inflictors of this abuse should have to fear the consequences of their actions for the remainder of their lives. Thus, the legislatures should eliminate the statute of limitations for serious child sexual

161. See S. 931, 183rd Gen. Ct., Reg. Sess. (Mass 2003) (discussing bill’s aim).

162. See *id.* (noting bill’s ambiguity).

163. See *infra* notes 164-66 and accompanying text (arguing superiority of proposal).

164. See H.R. 1247, 183rd Gen. Ct., Reg. Sess. (Mass 2003) (noting bill’s would-be effect).

165. See *supra* note 49 and accompanying text (listing long-term effects of childhood sexual abuse).

166. See H.R. 1247, 183rd Gen. Ct., Reg. Sess. (Mass 2003) (discussing bill’s effect on abuse victim’s pursuit of justice).

abuse crimes because of the calculated selection of defenseless victims, the devastating and long-term effects of this abuse, and because the traditional rationales behind these statutes do not apply to this type of crime.

The Massachusetts Legislature currently has the opportunity to accomplish this by passing House Bill 1247, which will eliminate the statute of limitations for the crimes of rape and attempted rape of a child. This proposal deals with the most extreme cases of a serious problem that plagues not only our state, but also our entire nation. Massachusetts ought to follow the lead of the various other states that have recognized and addressed this alarming problem by removing this irrationally placed barrier to justice.

David Viens