



House
Legislative
Analysis
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CHILD SEX ABUSE; REMOVE STATUTE OF LIMITATIONS

House Bill 4330 as introduced
Sponsor: Rep. Gary L. Randall

First Analysis (3-14-95)
Committee: Judiciary and
Civil Rights

THE APPARENT PROBLEM:

Few crimes incense the public as much as that of childhood sexual abuse. Unfortunately, the victim of this crime is often the prey of a family member or other person with authority, such as a teacher or priest, and experiences great difficulty in summoning up the courage to confront the abuser. In emotional testimony before the House Judiciary and Civil Rights Committee, some of those who have been harmed by sexual abuse have related their experiences -- the acts of sexual abuse that were inflicted upon them, the embarrassment and fear that drove them to suppress the memories, and the feelings of guilt and shame that continued to cause emotional distress into adulthood. In later years, a loss of self-esteem, employment problems, and an inability to maintain healthy relationships is common among these persons. Many experience serious depression or alcoholism.

Individuals who -- having spent their lives both struggling to remember and resisting memories of sexual abuse -- confront their abusers often seek to gain a measure of vindication in court. Case law has been evolving regarding the statute of limitations in civil suits alleging "repressed memories" of childhood sexual abuse. However, the statute of limitations on a criminal prosecution in such cases is clear: six years after the event or before the alleged victim's twenty-first birthday, whichever is later. Many believe that the trauma suffered by victims of childhood sexual abuse justifies elimination of the statute of limitations on criminal prosecutions for those offenders, regardless of the validity of claims of repressed memories.

THE CONTENT OF THE BILL:

The bill would amend the Code of Criminal Procedure to eliminate the statute of limitations for commencing a prosecution for certain sex offenses if the alleged victim was a minor at the time the

offense was committed. The current statute of limitations in such instances is six years after the offense was committed or the alleged victim's twenty-first birthday, whichever is later.

The bill would apply to the following offenses: producing or distributing child pornography, assault with intent to commit criminal sexual conduct, and criminal sexual assault (in the first, second, third, and fourth degree). The bill also would state a legislative intent that the proposed extension of the statute of limitations is to apply retroactively to offenses for which prosecution was not already barred at the time the bill took effect.

MCL 767.24

FISCAL IMPLICATIONS:

The House Fiscal Agency reports that the bill could result in indeterminate increases in state prison and local jail costs. Average incarceration costs, including allocated capital costs, are \$24,500 per prisoner per year, but it is not known how many additional persons would be charged and convicted under the provisions of the bill. (3-3-95)

ARGUMENTS:

For:

Many people who experience sexual abuse as youngsters or adolescents suffer trauma so great that they are unable to communicate the situation to other adults, or they may even repress the memories of the events. The memories may surface years later, either through psychological therapy or upon the occurrence of some triggering event. However, the statute of limitations on prosecution is so restrictive that bringing timely action is extremely difficult, if not impossible.

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The bill would eliminate the statute of limitations, thus enabling many cases that would otherwise be barred to go forward, and in turn enabling wrongdoers to be punished. Being able to fully confront their abusers also will help many victims to complete the healing process, breaking the chain of abuse that can run from one generation to the next. Molesters will be held accountable for their actions, thus not only forcing them to realize the gravity of their offenses, but also providing the opportunity for court-ordered counseling that may prevent others from being harmed. Without the bill, many of those who sexually abuse children will continue to be able to escape the consequences of the law.

Against:

The statute of limitations should not be eliminated without requiring reliable corroborating evidence, such as an admission by the defendant, or scientific or medical evidence. In its 1988 decision on Meiers-Post v. Schafer (170 Mich App 174), the court of appeals held that there would have to be corroboration for the plaintiff's testimony that a sexual assault had occurred. Thus, the court reasoned, there would be a fair balance between the risk of stale claims and the unfairness of precluding justifiable causes of action. In cases alleging childhood sexual abuse, the defendant pays a heavy price even if exonerated. In addition, accused people may be hard-pressed to defend themselves so long after the event was alleged to have happened. On the other hand, skepticism remains regarding the reliability of repressed memories, especially those that surface through hypnosis or psychotherapy. In recent news articles, both the American Medical Association (AMA) and the American Psychiatric Association warn against the use of repressed memory therapy. According to the AMA, "The use of recovered memories is fraught with problems of potential misapplication."

Response:

To require corroboration of evidence would directly contradict both the basic principle that a rape victim is not the person on trial, and the provision of law that says that the testimony of a victim in a criminal sexual conduct prosecution need not be corroborated. In addition, it would impose an unnecessary burden on already-suffering plaintiffs and would allow more sex offenders to escape the law.

Against:

As written, the bill does not go far enough. While the bill would address issues with regard to perpetrators of abuse, it would excuse other culpable adults from prosecution. For example, a parent who did nothing to stop a pattern of sexual abuse against a child should be held accountable. In addition, given the deep psychological trauma that can be caused by a sexual assault, it would be justifiable to extend the statute of limitations for all victims of sexual assault, not just juvenile victims.

POSITIONS:

The Department of State Police supports the bill. (3-8-95)

The Prosecuting Attorneys Association of Michigan supports the bill. (3-8-95)

The National Organization for Women, Michigan Conference, supports the bill. (3-9-95)