

April 4, 2024

**TESTIMONY OF THE OFFICE OF THE PUBLIC DEFENDER (OPD) REGARDING:**

**House Bill No. 7629**

**ENTITLED, AN ACT RELATING TO CRIMINAL PROCEDURE -- INDICTMENTS, INFORMATIONS AND COMPLAINTS.**

Chairman Craven and Members of the Judiciary Committee:

The Office of the Public Defender opposes H7629, which would extend the statute of limitations for certain offenses. As our Supreme Court has said, “statutes of limitation are intended to foreclose the potential for inaccuracy and unfairness that stale evidence and dull memories may occasion in an unduly delayed trial.”<sup>1</sup>

Statutes of limitations (SOL) exist in the criminal context for three reasons: (1) a valid criminal case should be pursued with reasonable diligence; (2) by the time a stale allegation is litigated, a defendant might have lost evidence necessary to defend against the allegation; and (3) memories fade and evidence grows stale over a period of time.

The statute being amended by this legislation has, for the most part, a sliding scale where more serious the crime, the longer the SOL is. For the most serious offenses under RI law, such as murder, robbery, and first-degree sexual assault, there is no SOL at all. One can assume that another reason for this is that in more serious cases, physical and other corroborating evidence is available and preserved. In less serious cases, where physical and other corroborating evidence is not usually available, SOLs serve the useful purposes described here. If enacted into law, this legislation would cause untold amounts of evidentiary, proof, and other problems especially for those accused, where none currently exist.

This is because, in the second-degree sexual assault context, the crime is a ‘specific intent’ crime, requiring proof beyond a reasonable doubt that the defendant's contact with the victim was for the purpose of the defendant's sexual arousal, gratification, or assault. Presumably this requirement is meant to discern between otherwise innocent or accidental touching and that engaged in for more nefarious purposes. In contrast, first-degree sexual assault, a far more serious crime containing a potential sentence of life imprisonment, is not considered a specific intent crime, because it only requires proof of ‘penetration’ regardless of sexual arousal or gratification. Again, first-degree sexual assault has no statute of limitations.

Legislators, courts, and juries have struggled with discerning between conduct that meets the definition of second-degree sexual assault and that which is merely an innocent or accidental touching. Presumably, it is for that reason that the legislature did not include second degree sexual assault as a crime without a statute of limitations, recognizing that with the passage of time, it becomes even more difficult for a criminal defendant to provide a judge or jury with information that could assist them in making such a discernment.

Third-degree sexual assault is a status offense in that it does not require any element of criminal intent. Extending the statute of limitations for this offense is particularly troubling where the defendant is already precluded from arguing mistake or ignorance of the other

person's age. In many cases, individuals may reasonably assume that their sexual partner is of legal age based on appearance, behavior, statements, or other factors. Punishing individuals for their inability to accurately determine the age of their partner, especially when both parties willingly participated, undermines the principles of fairness and justice.

Additionally, Rhode Island lacks the "Romeo-Juliet" defenses that many states have adopted in similar legislation. These types of laws recognize that consensual sex between two teenagers should not be a crime. For instance, New Jersey and Florida have an exception to their statutory rape laws when the age difference is not more than four years. While the protection of minors is of utmost importance, it is crucial to strike a balance that respects the rights of individuals and ensures a fair and just legal system. The current 3-year statute of limitations does that.

The OPD opposes the elimination of the SOL for second-degree sexual assault and the extension of the SOL to 10 years for third-degree sexual assault.

Sincerely,

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