
Emerging Issue: State Proposals to Eliminate Statutes of Limitations (and Do So Retroactively) in Child Sexual Abuse Cases

There is an emerging issue facing state legislatures that proposes to abolish civil statutes of limitations for childhood sexual abuse claims provide a window, often one or two years, in which previously time-barred claims may be brought. These efforts are being promoted by victims' advocacy groups and personal injury lawyers. Some of these proposals may be well-intentioned, but many go too far and can have unintended effects for nonprofit organizations, such as scouting groups, churches, and public and private schools. The proposals also set a dangerous precedent for other civil defendants: legislators who start down the path of abolishing statutes of limitations in one area will likely be asked to change time limits that apply to other types of civil claims. Given recent media attention and legislative activity, you may confront these issues in your own state.

Unintended Consequences of Abolishing Statutes of Limitations

- ***Altering a fundamental principle of civil justice.*** All civil claims are subject to statutes of limitations, which are basically a legal "countdown" that begins when someone is injured. When the time period expires, a claim may no longer be brought. These laws promote justice, discourage unnecessary delay, and preclude the prosecution of stale or fraudulent claims. They are essential to a fair and well-ordered civil justice system. Abolishing statutes of limitations in any area of liability would nullify one of the most basic principles of law. Claims could be brought many decades after the alleged events occurred.
- ***Time erases evidence, witnesses and memories.*** As time passes from an alleged harm to the filing of a claim, the task of defending any type of claim becomes more difficult. Witnesses become difficult to locate or pass away, records are lost or discarded, and memories fade. The ordinary "he said-she said" of litigation can turn into a one-sided allegation by a plaintiff that an event happened because the person says it happened, while the defendant lacks the ability to appear or muster facts that might disprove the allegation. The possibility of an unfair trial is heightened when the plaintiff is highly sympathetic, as in a childhood sexual abuse situation.
- ***The unintended effect on nonprofit organizations, schools, and churches.*** Abolishing the statute of limitations would subject organizations, not just the alleged perpetrators, to potentially indefinite liability. If accused of not properly supervising an employee or volunteer, an organization may find itself with an impossible and unfair burden. Often, small organizations do not keep records for more than a few years and may not be able to identify the alleged perpetrator or verify the facts of the complaint. All staff from the period in which the conduct occurred may have left the organization. Often, in old claims, the perpetrator has died or cannot be found, leaving the nonprofit organization on the hook with no practical ability to mount a defense. If found liable, it is the current leadership of the organization and the people it serves who will pay the price, not those who many years ago may have failed to adequately supervise an employee or volunteer.
- ***Loss of predictability and certainty.*** Statutes of limitations provide predictability and certainty to the business community and nonprofit organizations. These laws allow such groups to gauge their potential liability and make financial and insurance coverage decisions accordingly. Many personal injury cases are traumatic and leave scarring effects on the victim for life. In such cases, however, the legislature has balanced an individual's ability to bring a claim with the need for reliable evidence and the ability of defendant to fairly respond to the allegations.

- ***Retroactively changing statutes of limitations is bad public policy.*** Retroactively abolishing statutes of limitations ignores the legal, business, and social knowledge available at the time. For example, nonprofit employers may have purchased insurance or more insurance had they known that they could be subject to lawsuits for an indefinite period of time. Moreover, school districts, churches, other employers, and their insurers, may now face arguments that they should have prevented the harm that occurred from the acts of the perpetrator many decades ago. They are faced with liability even though they may have taken significant steps to protect children from abuse since the allegations came to light. Moreover, establishing a one or two-year window in which plaintiffs can bring claims dating back decades is likely to result in a sudden surge of lawsuits. Such claims have already forced several nonprofit organizations into bankruptcy.
- ***Retroactivity is likely unconstitutional.*** Most state courts that have considered the issue have found that retroactive changes to statutes of limitations are unconstitutional. The principle reason is that both plaintiffs and defendants have “vested rights” in statute of limitations. Defendants’ due process rights are violated when time-barred claims are later “revived.” In addition, at least one court has found that the separation of powers is violated when a legislature revives claims previously dismissed by courts as time-barred.
- ***Establishing a dangerous precedent.*** Tort law, by definition, involves injuries, including tragic, horrible situations, such as a person who has lost a limb, contracted a deadly disease, been rendered a paraplegic or quadriplegic, or suffered severe burns. In each case, if the injured person files a complaint just one day after the applicable limitations period has expired, the claim will be dismissed. The unsettling facts of a particular situation should not distract the legislature from maintaining the important predictability and certainty that statutes of limitations provide. Legislation that abolishes a limitations period could lead to a slippery slope of abolishing limitations in other highly sympathetic cases.

Less Extreme Alternatives

If, in a legislature’s view, a limitations period does not provide a sufficient length of time to bring such claims, there are considerably less extreme options than eliminating the statute of limitations entirely and doing so retroactively – throwing out the rule of law.

- ***Increase the statute of limitations period.*** For example, a legislature can increase the statute of limitations from two years to six years.
- ***Toll the statute of limitations until the victim reaches the age of majority (if state law does not already do so).*** This would significantly expand the length of time for a childhood sexual abuse victim to sue and, in some cases, would provide over a decade to bring a claim.
- ***Make the changes prospective.*** Any legislative modification to the statute of limitations applicable to childhood sexual abuse cases should be made prospectively - not retroactively.
- ***Make changes applicable only to actual perpetrators.*** If legislation includes a window for bringing time-barred claims or abolishes the statute of limitations applicable to childhood sexual abuse cases, then the bill should be limited to claims brought against the actual perpetrators. The legislation should not facilitate vicarious liability claims against institutions or claims alleging negligent supervision of employees or volunteers who are no longer associated with the organization and may have died or cannot be located.
- ***Strengthen criminal penalties.*** The legislature also may consider strengthening criminal sanctions to punish and deter childhood sexual abuse.