

Why Sex Trafficking Should Not Have a Statute of Limitation

Statutes of limitation designate a particular time frame within which a prosecution must be commenced. The inherent policy behind a statute of limitation is to adequately provide a defendant the needed resources, many of which are time sensitive, in order to mount a competent defense. A secondary purpose may be to encourage law enforcement to promptly investigate and prosecute crimes. The average statute of limitation for a federal crime is 5 years. However, more serious crimes—often capital crimes—do not have a statute of limitation.

Federal trafficking law 18 U.S.C. § 1591, which criminalizes sex trafficking by force, fraud, coercion, or of a child, does not have a statute of limitation. The Adam Walsh Child Protection and Safety Act also eliminates a statute of limitation for certain federal sex offenses committed against children. There are numerous other non-capital federal crimes that have no statute of limitation, such as various terrorist related crimes, child sexual crimes, and destruction of federal property.

State laws vary in statute of limitation requirements for prosecuting adult and child trafficking. For example, Alabama has no statute of limitation requirement for first or second degree human trafficking; however, Illinois requires prosecution for child trafficking to initiate before the victims turns 19, although no sooner than 3 years after commission of the offense, conceivably pushing the limit to age 20¹. A statute of limitation requirement such as Illinois' seemingly fails to take into account the emotional bondage victims suffer, which often results in delaying coming forward. Minnesota has a 6-year statute of limitation for trafficking of an adult, which begins when the offense has ended, although there is no statute of limitation if the victim was under 18.² Minnesota's varying statute of limitation requirements clearly indicates an acknowledgment of the severity of crimes against children.

The problem with having a statute of limitation for the prosecution of sex trafficking laws is the fact that, due to past physical and emotional abuse by traffickers, victims are emotionally scarred and often delay coming forward to law enforcement. Considering the trauma suffered, it is easy to understand the hindrance of wanting to relive past injustices, not to mention the fear of retaliation.

The suspension of a statute of limitation for a period of time, otherwise known as "tolling", is available in most states and is a way to address a pre-mature statute of limitation for a sex trafficking prosecution. Most "tolling" that is related to issues of child trafficking refers to starting a statute of limitation when the victim turns 18, instead of when the criminal act actually ended. For example, a 3-year statute of limitation would begin the day a victim turns 18, even though the victim may have stopped the sexual exploitative act at age 14. "Tolling" is beneficial in that it provides child victims, and those that prosecute for the crime, more time to bring a case;

¹ Alabama HB 432(8); Illinois HB 5278

² Minnesota § 628.26

however, it still fails to adequately address the longing issues of hesitancy to come forward. An example of “tolling” for adult victims of sex trafficking is evidenced in Maine’s statute of limitation code which allows tolling of a sex trafficking prosecution due to threats made by the defendant that cause duress to the plaintiff. This “tolling” caveat may be sufficient to cover many trafficked adults, however, it is likely difficult to prove defendant specific duress. The statute of limitations begins to run when this duress is considered having ended.

The only apparent justification for state differences in statutes of limitation is legislative judgment on severity of crimes. Particularly heinous acts do not deserve a statute of limitation. It is in society’s interest to classify certain crimes as more egregious than others—as both a deterrent and retributive tool—and eliminating a statute of limitation helps fulfill that goal. The commercial sexual exploitation of children is of such an atrocious magnitude as to not deserve a statute of limitation. Similarly, trafficking of adults, which by definition requires force, fraud, or coercion also deserves no statute of limitation. Repeated assaults, rapes, threats, and loss of dignity, no matter the age, should be classified as a crime in which the severity equates no statute of limitation.

Every state should follow the lead of the federal government and eliminate any statute of limitation for the prosecution of sex trafficking. In fact, Kentucky, South Carolina, West Virginia, and Wyoming have no statute of limitations for any criminal act. Although there is no common law precedent for requiring a statute of limitations, it does serve a purpose in the judicial system; however, particularly odious crimes warrant no statute of limitation. Victims of sex trafficking, and potential future victims, deserve to see those responsible prosecuted for these abhorrent crimes that strip away youth, innocence, and dignity, and a statute of limitation should not prohibit the pursuit of justice in these tragic cases.