

Crime victims in many states now have more time to file civil suits against their attackers.

More days before deadline

Jeffrey R. Dion

When a crime victim consults an attorney about pursuing a civil action, the attorney might first look to the state's general statute of limitations for personal injury actions to determine if the claim is time barred. Traditionally, this would have been determinative. Today, however, many states are extending the length of time crime victims have to pursue civil actions. Before advising a potential client, a litigator must investigate whether his or her state has done so.

These extensions are appropriate for a number of reasons:

- All states have significantly longer criminal statutes of limitations for felonies than civil statutes of limitations for injuries suffered as a result of the same crime. In fact, some states—Alabama, Kentucky, Maryland, Missouri, New Mexico, North Carolina, Rhode Island, South Dakota, Virginia, West Virginia, and Wyoming—have no criminal statute of limitations, even for

the most serious felony cases. As a result, the state has more time than the victim does to hold the perpetrator accountable. Extending the civil statute of limitations for victims rectifies this inequity.

- In a criminal prosecution where a conviction has been obtained after the civil statute of limitations has expired, a court may order restitution to compensate the victim. Yet restitution is not an adequate substitute for a victim's right to bring a civil action. Restitution statutes limit the types of damages that may be claimed—and even when ordered, restitution is rarely collected.

- Technological advances like DNA analysis have made it possible to prosecute criminals who years earlier might have cheated justice for lack of evidence. Some states are extending their criminal statutes of limitations to accommodate the new technology. They are also reviewing their civil statutes to determine whether a similar change is warranted.

- Many prosecutors believe that crime victims should not pursue civil actions until the criminal trial has ended. They

worry that a perpetrator who is defending both criminal charges and a civil action at the same time may obtain information through the civil discovery process that would not otherwise be accessible in the criminal case.

Prosecutors also fear that defense counsel may use a pending civil claim to impeach the victim's credibility or motivation in the criminal case. Victims and their counsel do not want to undermine a criminal prosecution, particularly since a conviction may help establish liability in the civil case. An extended civil statute of limitations may remove the pressure to file an action to toll the statute.

- During a criminal prosecution, many victims are consumed by the case and are unaware of—or unable to focus on—available civil legal remedies. An extended civil statute of limitations may allow victims time to recover from the stress of a criminal trial and to make an informed decision about pursuing a lawsuit.

- Most attorneys who work on a contingent-fee basis will not accept a case if the defendant has no significant assets to sat-

Jeffrey R. Dion is chief counsel for public affairs at the National Crime Victim Bar Association in Arlington, Virginia.



PHOTODISC PICTUREQUEST

isfy a judgment, even if liability could be established through collateral estoppel. But a defendant's financial situation might change, and an extended civil statute may give him or her time to acquire enough assets to satisfy a future judgment.

Extensions applying to particular crimes

Child sex abuse. Generally, every state tolls the statute of limitations for claims of injuries to a minor until the child reaches age 18. At least 39 states offer a tolling provision for victims of childhood sexual abuse.

Extended statutes of limitations in these cases are justified by more than just the age of the victim. Child sex abuse victims often suffer physical injuries, but their severe emotional and psychological damage can be far more devastating and more easily concealed than physical harm. Some victims are so traumatized that they

repress memories of the events. Others remember the abuse but are not strong enough to tell anyone, much less seek to hold the abuser accountable, until they are well into adulthood.

At least 15 states—Alaska, Kentucky, Maine, Minnesota, Missouri, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, Tennessee, Texas, Utah, Vermont, and Wisconsin—have a standard “discovery rule” that requires a civil action to be brought within a specific number of years after the injury was or should have been discovered. There are variations among those states.

In Wisconsin, for example, the discovery rule does not cover child sex abuse that occurs outside the family.¹ This excludes all third parties, such as religious institutions and youth organizations, from liability in delayed-discovery cases. The standard statute of limitations starts running when

the victim reaches age 18.

The discovery rule in Oklahoma states that a case may be brought within two years of discovery of abuse, but that no cause of action for sex abuse may be brought more than 20 years after the plaintiff reaches age 18.²

At least 20 states—including Arizona, Arkansas, California, Colorado, Florida, Hawaii, Illinois, Iowa, Kansas, Massachusetts, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Oregon, Rhode Island, South Dakota, Washington, and Wyoming—have a modified discovery rule. The rule tolls the statute until the abused person discovers or should discover that he or she was sexually abused as a child *and* that the abuse caused his or her current injuries.

The date of accrual is sometimes described as the date the victim discovered the effect of the abuse. For example, a per-

Some states are extending criminal statutes of limitations because of advances in DNA science. They are reviewing their civil statutes to determine whether a similar change is warranted.

son may have known that he or she was abused but only recently discovered that an eating disorder, depression, or addiction was caused by the abuse.

At least five states—Connecticut, Florida, Georgia, Idaho, and New Mexico—extend the statute for a certain number of years beyond the plaintiff's 18th birthday.

Connecticut offers one of the longest extensions, allowing civil cases to be brought up to 17 years after the plaintiff reaches age 18.³

Sexual assault. At least four states—Colorado, Iowa, New Jersey, and Texas—provide an extended civil statute of limitations for claims based on sexual assault.

These states and others that are considering extensions are doing so largely because DNA profiles can now help analyze physical evidence collected from the crime scene and the victim. In cases where the perpetrator of a sexual assault is unknown but DNA evidence is available, it is not unusual for a match to be made several years later, when an offender's genetic profile is entered into a state or federal database and compared with evidence from unsolved cases.

States are also beginning to understand that the nature of sexual assault can prevent victims from seeking redress before the statute expires. Shame may prevent them from coming forward. Or they might initially detect no injury from the attack, and years may pass before they associate their depression, alcoholism, drug abuse, or other mental or emotional harm with the crime.

Texas applies a five-year statute of limitations for causes of action that involve sexual assault.⁴ Colorado has a six-year statute.⁵ New Jersey has no civil statute of limitations on sexual assault claims.

In Iowa, civil cases that allege sexual abuse or sexual exploitation by a counselor or therapist must be brought within five years of the date the victim was last treated by the counselor or therapist.⁶ This statute

recognizes the continuing influence and control that a perpetrator may have over a victim, preventing him or her from reporting the abuse or even realizing that the conduct was inappropriate, exploitive, unethical, and illegal.

Domestic violence. California requires that civil actions for recovery of damages that were suffered as a result of domestic violence must be brought within three years from the date of the most recent act of violence, or within three years of the discovery that the injury resulted from domestic violence.⁷

Like the Iowa statute relating to abuse by therapists, this statute recognizes that the victim often must break free from the abuser's control before he or she can seek help and hold the abuser accountable. Calculating the statute from the date of the most recent violent act acknowledges that domestic violence is a pattern of abuse resulting in cumulative trauma, not a series of individual assaults.

Homicide. In Illinois, time does not heal all wounds. The state legislature has concluded that murder is a crime so heinous that no perpetrator should escape accountability simply because too much time has passed. Illinois has no statute of limitations for civil actions that allege damages from first-degree murder or other serious felonies.⁸

One practical reason for eliminating the statute is to facilitate a law passed in 1998 that requires the Illinois Department of Corrections to report to prosecuting attorneys any settlement or judgment paid to an inmate for injuries suffered while incarcerated.⁹ Under the law, the prosecutor must alert the crime victim and, if asked, discuss his or her right to sue the inmate for damages.

New Jersey has no limit on wrongful death claims if the death resulted from murder or manslaughter. The retroactive statute eliminated the limitations for

causes of action that were filed before the statute was enacted. The provision applies not only to claims against criminal defendants but also may apply to third-party claims.¹⁰

Blanket extensions

Rather than offering extended statutes of limitations for victims of specific types of crimes, New York and Virginia have blanket extensions that apply to all victims whose cases have been prosecuted. In New York, a crime victim may file a civil action against the criminal within seven years of the date of the crime¹¹ or within one year from the end of the criminal trial.¹²

In Virginia, if a criminal prosecution is initiated, a victim may bring a personal action arising out of the same facts within one year of the final disposition of the criminal prosecution but not more than 10 years from the date of the crime. The statute requires only that the criminal and civil cases arise out of the same facts, not that the civil claim be brought against the defendant in the criminal action, as the New York statute does. Consequently, the statute tolls claims against both the perpetrator and any negligent third parties.¹³

Of all the provisions enacted across the nation, those that allow the civil case to be brought within one year of the criminal case most directly address prosecutors' concerns regarding complications that may arise from concurrent criminal and civil cases. Statutes on civil cases that do not run until one year after the criminal trial is complete do not force the plaintiff to file during the criminal trial just to beat a deadline. These statutes recognize the hardship placed on victims who are asked to consider and act on their civil remedies during a criminal prosecution. Once the criminal case is over, victims have the time to carefully consider whether to pursue civil remedies.

It is certainly preferable to litigate a civil

action as early as possible so witnesses can testify while their memories of the crime are fresh and evidence is intact. Courts have justified statutes of limitations by pointing out that they protect defendants against claims so old that the passage of time has made it difficult, if not impossible, to mount a credible defense.

Allowing the civil case to be filed within one year of the criminal prosecution does not put the defendant at a disadvantage because the defense evidence and testimony can be presented again in the civil action. Furthermore, the defendant is protected because the statute is not extended unless prosecution is initiated. That means a prosecutor must believe that the criminal case can be proven beyond a reasonable doubt before the statute is extended. This protects the perpetrator from facing a longer filing period in cases that do not meet that high standard.

Offender-based statutes

At least four states—Idaho, Illinois, Maine, and North Carolina—have crafted civil statutes of limitations for victims based on the financial circumstances of the offender. These provisions address the financial difficulties crime victims may face in retaining counsel, namely that most attorneys will not accept a contingency case against a defendant who has no clearly identifiable means to satisfy a potential judgment. By extending the statute to a time when the defendant's ability to pay might be greater, the states give more victims a realistic opportunity for recovery.

End of prison sentence. In Illinois, actions that claim a loss of means of support or a loss of parental relationship as a result of a crime must be filed no more than 10 years after the guilty party has completed his or her prison sentence.¹⁴

The civil statute of limitations in Idaho extends for one year past the end of a prison sentence.¹⁵

In cases where the perpetrator serves a lengthy prison term, these laws can extend for decades the victim's opportunity to sue. Victims make better-informed decisions about proceeding with a civil action if they know whether the perpetrator is employed after being released from prison and able

to satisfy a judgment. The statutes do not address whether this information must be given to the victim.

Discovery of profits. Maine allows civil actions by or on behalf of crime victims to be brought within three years of the time the victim discovers or reasonably should have discovered that the perpetrator profited from the crime—either by selling his or her story or otherwise profiting from notoriety—whichever occurs later.¹⁶

New York approved a bill in June that allows victims and their families to sue for assets criminals acquire through gifts, inheritances, lottery winnings, investments, and judgments in civil lawsuits.¹⁷

Order of restitution. In North Carolina, when a judge enters an order of criminal restitution against a defendant, the civil statute of limitations for claims by the victim is tolled for up to 10 years from the last criminal act.¹⁸ The extended statute applies only to victims who have suffered financial losses as a result of a crime.

As legislatures better understand the challenges that crime victims face, they are continuing to identify and overcome barriers that have traditionally—though unintentionally—thwarted victims' attempts to secure civil justice. Lawyers who represent crime victims must learn about statutory provisions that increase these clients' opportunities to make a civil recovery. □

Notes

1. WIS. STAT. ANN. §893.587 (West 2001).
2. OKLA. STAT. ANN. tit. 12, §95 (West 2001).
3. CONN. GEN. STAT. §52-577d (2001).
4. TEX. CIV. PRAC. & REM. CODE ANN. §16.0045 (Vernon 1999).
5. COLO. REV. STAT. §13-80-103.7 (2001).
6. IOWA CODE §614.1. 12 (2001).
7. CAL. CIV. PROC. CODE §340.15 (a) (West 2001).
8. 735 ILL. COMP. STAT. 5/13-202.1(a) (2001).
9. 735 ILL. COMP. STAT. 5/13-202.1(d) (2001).
10. N.J. REV. STAT. §24:31-3 (2000).
11. N.Y. C.P.L.R. 213-b (McKinney 2000).
12. N.Y. C.P.L.R. 215-8 (McKinney 2000).
13. VA. CODE ANN. §8.01-229 (2001).
14. 735 ILL. COMP. STAT. 5/13-203.1 (2001).
15. IDAHO CODE §5-248, 5-247 (Michie 2000).
16. ME. REV. STAT. ANN. tit. 14, §752-E (West 2000).
17. Michael Gormley, *Son of Sam Law Expansion OK'd*, TIMES UNION (Albany, New York), June 26, 2001, at B2.
18. N.C. GEN. STAT. §1-15.1 (2000).