

TESTIMONY OF MEAGAN SWAY, ESQ

*in opposition to*

**LD 1790 – An Act Removing the Statute of Limitations on Criminal and Civil Actions Involving Sexual Abuse of Minors**

Joint Standing Committee on Judiciary

May 10, 2023

Senator Carney, Representative Moonen and members of the Joint Standing Committee on Criminal Justice and Public Safety, greetings My name is Meagan Sway, and I am policy counsel for the American Civil Liberties Union of Maine, a statewide organization committed to advancing and preserving civil liberties guaranteed by the Maine and U S Constitutions through advocacy, education, and litigation On behalf of our members, we oppose Section 2 of LD 1790

We recognize the very difficult issues raised by LD 1790, including the great time and pain that it sometimes takes for a victim to grasp what has happened to them after they have been victimized Sexual abuse against anyone, particularly children, is despicable and victims are often, for a variety of reasons, unable to come forward immediately after such abuse has taken place Our opposition to this bill is not intended to diminish the courage of sexual assault victims to come forward However, we oppose it because of the important safeguards that a statute of limitations provides to the accused

Statutes of limitations play an essential role in the criminal justice system and are carefully designed to preserve the right to prosecute while also protecting defendants' rights Statute of limitations are "designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared"<sup>1</sup> In any prosecution that takes place after a significant passage of time, an innocent person accused of a crime may be unable to remember where they were on a particular day Additionally, alibi witness' memories fade, or such witnesses move away or otherwise become inaccessible By eliminating statutes of limitation entirely, a person could find themselves practically without the ability to defend themselves because all exculpatory evidence is gone

There is no denying that our criminal legal system often fails to deliver justice for victims of sexual assault However, in order to truly address this lack of justice, we

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<sup>1</sup> *Wood v Carpenter*, 101 U S 135, 139 (1879)

should start with bigger barriers that prevent survivors from finding solace in our legal system. *First*, we should start with the biggest barrier to entry fear of ever reporting to law enforcement. A 2015 report that draws on interviews with 900 people involved in supporting survivors of sexual assault found that 88 percent of respondents answered that police “sometimes” or “often” do not believe survivors or blamed survivors for the violence.<sup>2</sup> It is no wonder, then, that only 14 percent of sexual violence victims report the offense to police.<sup>3</sup> *Second*, many victims find that even with support from police, they have difficult experiences progressing through the criminal legal system. Of the 14 percent of sexual assault victims who report their assault to police, only 30 percent proceed to trial, and only 6.5 percent of defendants are convicted of the original offense.<sup>4</sup> These are issues that have nothing to do with the statute of limitations, but affect 76 percent of sexual assault victims.

Sex crimes, and allegations of sex crimes, provoke strong emotions. For this very reason, it is incumbent upon lawmakers to recognize that the criminal legal system is susceptible to error, and that as a consequence, people who are innocent may become the targets of criminal prosecutions. For those who are wrongly convicted of sexual offenses, the consequences of the wrongful conviction are harsh: sex offender registries, invasive probation, and residency restrictions can serve to limit a person’s ability to reintegrate into society.

We understand that sexual assault is particularly ridden with shame and fear, and that as a result the legislature has in the past already singled out sex crimes against young people as exempt from the ordinary statute of limitations: there is no statute of limitations for crimes listed in Chapter 11 of the criminal code if committed against a child under the age of 16, *see* 17-A M R S A §8(1)(B), and felony sex crimes against people of any age have a 20 year statute of limitations, as opposed to the usual six year statute of limitations to bring other felony charges. The latter change was made only 4 years ago, in 2019. We urge the legislature to exercise caution in eliminating a statute of limitations altogether.

Because eliminating the statute of limitations removes important due process protections and imposes serious risks to due process and the ability of the innocent to defend themselves, we ask you to vote ought not to pass on LD 1790.

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<sup>2</sup> Goldscheid, Julie, Coker, Donna, Park, Sandra, Neal, Tara, and Halstead, Valerie, “Responses from the Field: Sexual Assault, Domestic Violence, and Policing” (2015) CUNY Academic Works. [http://academicworks.cuny.edu/cl\\_pubs/76](http://academicworks.cuny.edu/cl_pubs/76)

<sup>3</sup> Kathleen Daly and Bridgette Bouhours, *Rape and Attrition in the Legal Process: A Comparative Analysis of Five Countries*, University of Chicago 2010, available at [https://www.jstor.org/stable/10.1086/653101?seq=1#page\\_scan\\_tab\\_contents](https://www.jstor.org/stable/10.1086/653101?seq=1#page_scan_tab_contents)

<sup>4</sup> *Id.*