

STATE OF NEW YORK

S. 8441

A. 12012

SENATE - ASSEMBLY

June 20, 2006

IN SENATE -- Introduced by Sens. SKELOS, FLANAGAN, LEIBELL, ALESI, BALBONI, BONACIC, BRUNO, DeFRANCISCO, FARLEY, FUSCHILLO, GOLDEN, HANNON, JOHNSON, LARKIN, LAVALLE, LIBOUS, LITTLE, MALTESE, MARCELLINO, MARCHI, MAZIARZ, MEIER, MORAHAN, NOZZOLIO, PADAVAN, RATH, ROBACH, SALAND, SEWARD, SPANO, TRUNZO, VOLKER, WINNER, WRIGHT, YOUNG -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

IN ASSEMBLY -- Introduced by COMMITTEE ON RULES -- (at request of M. of A. Paulin, Lentol, Silver, Weinstein, Aubry, John, Rosenthal, Grannis, Schimminger, Hoyt, Lafayette, Zebrowski, Alessi, Arroyo, Benjamin, Bing, Carrozza, Christensen, A. Cohen, Colton, Cook, Cusick, Cymbrowitz, DelMonte, Destito, Dinowitz, Eddington, Englebright, Espailat, Fields, Friedman, Galef, Gottfried, Gunther, Heastie, Hevesi, Jacobs, Koon, Lavelle, Lavine, Lifton, Lupardo, Maisel, Markey, Mayersohn, McEneny, Millman, Morelle, Peoples, Pheffer, Pretlow, Reilly, J. Rivera, N. Rivera, P. Rivera, Robinson, Scarborough, Seminerio, Tokasz, Tonko, Weisenberg, Weprin) -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law and the civil practice law and rules, in relation to eliminating and extending the statute of limitations for rape in the first degree, criminal sexual act in the first degree, aggravated sexual abuse in the first degree and course of sexual conduct against a child in the first degree

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraph (a) of subdivision 2 of section 30.10 of the
2 criminal procedure law is amended to read as follows:
3 (a) A prosecution for a class A felony, or rape in the first degree as
4 defined in section 130.35 of the penal law, or criminal sexual act in
5 the first degree as defined in section 130.50 of the penal law, or
6 aggravated sexual abuse in the first degree as defined in section 130.70
7 of the penal law, or course of sexual conduct against a child in the

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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1 first degree as defined in section 130.75 of the penal law may be
2 commenced at any time;

3 § 2. Paragraphs (e) and (f) of subdivision 3 of section 30.10 of the
4 criminal procedure law, as added by chapter 122 of the laws of 1996, are
5 amended to read as follows:

6 (e) A prosecution for [~~course of sexual conduct in the first degree as~~
7 ~~defined in section 130.75 of the penal law and~~] course of sexual conduct
8 against a child in the second degree as defined in section 130.80 of the
9 penal law may be commenced within five years of the commission of the
10 most recent act of sexual conduct.

11 (f) For purposes of a prosecution involving a sexual offense as
12 defined in article one hundred thirty of the penal law, other than a
13 sexual offense delineated in paragraph (a) of subdivision two of this
14 section, committed against a child less than eighteen years of age,
15 incest as defined in section 255.25 of the penal law committed against a
16 child less than eighteen years of age, or use of a child in a sexual
17 performance as defined in section 263.05 of the penal law, the period of
18 limitation shall not begin to run until the child has reached the age of
19 eighteen or the offense is reported to a law enforcement agency or
20 statewide central register of child abuse and maltreatment, whichever
21 occurs earlier.

22 § 3. The civil practice law and rules is amended by adding a new
23 section 213-c to read as follows:

24 § 213-c. Action by victim of conduct constituting certain sexual
25 offenses. Notwithstanding any other limitation set forth in this arti-
26 cle, a civil claim or cause of action to recover from a defendant as
27 hereinafter defined, for physical, psychological or other injury or
28 condition suffered by a person as a result of acts by such defendant of
29 rape in the first degree as defined in section 130.35 of the penal law,
30 or criminal sexual act in the first degree as defined in section 130.50
31 of the penal law, or aggravated sexual abuse in the first degree as
32 defined in section 130.70 of the penal law, or course of sexual conduct
33 against a child in the first degree as defined in section 130.75 of the
34 penal law may be brought within five years. As used in this section,
35 the term "defendant" shall mean only a person who commits the acts
36 described in this section or who, in a criminal proceeding, could be
37 charged with criminal liability for the commission of such acts pursuant
38 to section 20.00 of the penal law and shall not apply to any related
39 civil claim or cause of action arising from such acts. Nothing in this
40 section shall be construed to require that a criminal charge be brought
41 or a criminal conviction be obtained as a condition of bringing a civil
42 cause of action or receiving a civil judgment pursuant to this section
43 or be construed to require that any of the rules governing a criminal
44 proceeding be applicable to any such civil action.

45 § 4. Subdivision 8 of section 215 of the civil practice law and rules,
46 as added by chapter 95 of the laws of 1983, is amended to read as
47 follows:

48 8. (a) Whenever it is shown that a criminal action against the same
49 defendant has been commenced with respect to the event or occurrence
50 from which a claim governed by this section arises, the plaintiff shall
51 have at least one year from the termination of the criminal action as
52 defined in section 1.20 of the criminal procedure law in which to
53 commence the civil action, notwithstanding that the time in which to
54 commence such action has already expired or has less than a year remain-
55 ing.

1 (b) Whenever it is shown that a criminal action against the same
 2 defendant has been commenced with respect to the event or occurrence
 3 from which a claim governed by this section arises, and such criminal
 4 action is for rape in the first degree as defined in section 130.35 of
 5 the penal law, or criminal sexual act in the first degree as defined in
 6 section 130.50 of the penal law, or aggravated sexual abuse in the first
 7 degree as defined in section 130.70 of the penal law, or course of sexu-
 8 al conduct against a child in the first degree as defined in section
 9 130.75 of the penal law, the plaintiff shall have at least five years
 10 from the termination of the criminal action as defined in section 1.20
 11 of the criminal procedure law in which to commence the civil action,
 12 notwithstanding that the time in which to commence such action has
 13 already expired or has less than a year remaining.

14 § 5. This act shall take effect immediately and:

15 (a) sections one and two of this act shall apply to offenses committed
 16 on and after such date as well as to offenses committed prior thereto,
 17 provided that such sections one and two of this act shall not apply to
 18 offenses committed prior to such date on which the prosecution thereof
 19 was barred under the provisions of section 30.10 of the criminal proce-
 20 dure law in effect immediately prior to such date; and

21 (b) sections three and four of this act shall apply to acts committed
 22 on and after such date as well as to acts committed prior thereto,
 23 provided that such section three of this act shall not apply to acts
 24 committed prior to such date where the commencement of an action thereon
 25 was barred under the provisions of article 2 of the civil practice law
 26 and rules in effect immediately prior to such date.

**NEW YORK STATE SENATE
 INTRODUCER'S MEMORANDUM IN SUPPORT
 submitted in accordance with Senate Rule VI. Sec 1**

BILL NUMBER: S8441

REVISED 6/21/06

SPONSOR: SKELOS

TITLE OF BILL: An act to amend the criminal procedure law and the civil practice law and rules, in relation to eliminating and extending the statute of limitations for rape in the first degree, criminal sexual act in the first degree, aggravated sexual abuse in the first degree and course of sexual conduct against a child in the first degree

PURPOSE:
 Extends indefinitely the time to commence a criminal prosecution for the crimes of rape in the first degree, criminal sexual act in the first degree, aggravated sexual abuse in the first degree and course of sexual conduct against a child in the first degree, and extends from one year to five years the time to commence a civil action for acts constituting these crimes.

SUMMARY OF PROVISIONS:
 Sections 1 and 2 amend subdivisions 2 and 3 of section 30.10 of the Criminal Procedure Law to eliminate the statute of limitations with

reference to rape in the first degree as defined in section 130.35 of the penal law, or criminal sexual act in the first degree as defined in section 130.50 of the penal law, or aggravated sexual abuse in the first degree as defined in section 130.70 of the penal law, or course of sexual conduct against a child in the first degree as defined in section 130.75 of the penal law.

Section 3 of the bill adds to the civil practice law and rules a new section 213-c establishing a five year statute of limitations for civil law suits based upon an act constituting crimes of rape first degree, criminal sexual act first degree, aggravated sexual abuse first degree or course of sexual conduct against a child first degree. Civil actions under these provisions would be limited to actions against a person who commits the crime or any other person who, in a criminal proceeding, could be charged with criminal liability for the commission of the crime.

Section 4 of the bill amends the civil practice law and rules to provide that the victim of these crimes shall have an additional 5 years to commence an action against the perpetrator of the crime, even if the original 5 year statute of limitations has expired if a criminal proceeding against the defendant is commenced. This additional 5 year period would begin running at the time that the criminal proceeding against the defendant was terminated.

Section 5 of the bill provides that the provisions of this new law are effective immediately. However, with respect to criminal actions, the new provisions establishing an unlimited statute of limitations to prosecute these enumerated offenses shall apply to offenses committed on and after the effective date and to offenses committed prior to the effective date provided that the current statute of limitations for such offenses has not yet expired. In the case of civil actions, the new statute of limitations shall apply to acts committed on and after the effective date as well as to acts committed prior thereto, but shall not apply to any acts committed prior to the effective date where the commencement of the action was time barred on the effective date.

EXISTING LAW:

Current law provides a five year statute of limitations for commencement of a criminal prosecution of a felony sex offense, and a one year statute of limitations for commencement of a civil action based upon commission of a sex offense.

JUSTIFICATION:

In enacting a statute of limitations in criminal cases, the New York State Legislature balanced the need to protect individuals from having to defend themselves against stale charges with the need to bring suspected criminals to justice. By setting a maximum time within which a prosecution must be commenced, statutes of limitation make sure that defendants are not unfairly jeopardized by having to defend themselves against testimony from witnesses whose memories may have been obscured by the passage of time. Statutes of limitations are particular to individual states and not all states mandate them in every criminal case. For example, Kentucky, Maryland and North Carolina only limit the time period for prosecuting misdemeanors. At least a dozen other states, including Rhode Island, New Jersey, and Delaware have no statute of limitations restricting the prosecution of serious felonies. In balancing between the conflicting policies of preserving an individ-

ual's right to defend himself or herself and legitimate justice concerns, the New York State Legislature determined that certain crimes are so serious and damaging to the fabric of ordered society that no statute of limitations should apply. Therefore, the Legislature exempted from the statute of limitations all class A felony offenses: (1) murder in the first and second degrees; (2) kidnapping in the first degree; (3) arson in the first degree; (4) criminal sale of a controlled substance in the first and second degrees; and (5) criminal possession of a controlled substance in the first and second degrees. However, our criminal laws also recognize the extremely serious nature of offenses other than class A felonies. Indeed, so as to codify this recognition, the New York Legislature created a class of "violent" felonies and set forth enhanced mandatory state prison sentences for such offenses.

This bill recognizes the comparative seriousness of certain violent felonies and modifies this rigid structure by eliminating the five-year period of limitation for class B violent felonies. This change is predicated upon the justifiable notion that offenders who commit violent and serious acts should not be shielded from prosecution by the mere passage of time, especially at the expense of those whom they have victimized, and whose physical and emotional scars will endure without limitation. In exempting class A felonies from the statute of limitations, New York law recognized that offenders who commit these felonies often cause lasting harm, not only to victims and their families, but also to society and our system of justice. However, our laws must be strengthened to provide clear recognition of the gravity of other violent crimes and the compelling importance of prosecuting serious offenders, regardless of when law enforcement is able to proceed. The bill accomplishes that end by removing the statute of limitations in these felonies.

Sex crimes are one of the most heinous and deeply disturbing in our society. Under existing law victims of sex crimes have one year to bring an action against a perpetrator measured from the date of the incident and in most cases where a statute of limitations has expired but a criminal proceeding has been commenced, the victims have an additional one year period measured from the time that the criminal action terminates. This proposal would extend the statute of limitations for these enumerated sex offenses of rape first degree, criminal sexual acts first degree, aggravated sexual abuse first degree or course of sexual conduct against a child first degree to five years from the date of the incident. In those cases where a criminal action is commenced against the perpetrator of the crime, the victim shall have five years from the termination of the criminal proceeding even if the original statute of limitations has already expired.

LEGISLATIVE HISTORY:

None.

FISCAL IMPLICATIONS:

None

EFFECTIVE DATE:

Immediately, provided however, provisions establishing an unlimited criminal statute of limitations shall apply to offenses committed on and after the effective date and to offenses committed prior to the effective date provided that the current statute of limitations for such offenses has not yet expired. In the case of civil actions, the new statute of limitations shall apply to acts committed on and after the effective date as well as to acts committed prior thereto, but shall not apply to any acts committed prior to the effective date where the

commencement of the action was time barred on the effective date.
