

**Written Submission of Margaret Garvin, MA, JD**  
**Executive Director, National Crime Victim Law Institute, Portland, Oregon**  
**before the**  
**Oregon House of Representatives Committee on the Judiciary**  
**Honorable Jeff Barker, Chair**

**Hearing on HB 3284**  
**Submitted for hearing on April 8, 2013**

Mr. Chairman and members of the Committee, thank you for the opportunity to present comment on HB3284 through this written testimony.

By way of background, I am the Executive Director of the National Crime Victim Law Institute (NCVLI), which I joined in 2003, and shortly after I joined I became a Clinical Professor of Law at Lewis & Clark Law School. NCVLI is a nonprofit educational and advocacy organization located at Lewis and Clark Law School, in Portland, Oregon. NCVLI's mission is to actively promote balance and fairness in the justice system through crime victim-centered legal advocacy, education, and resource sharing. As Director of NCVLI I provide programmatic oversight to each of NCVLI's victims' rights programs, including its education, legal technical assistance and *amicus curiae* work. In addition to my prior testimony before the Oregon Legislature, I have testified before the United States Congress on the state of victims' rights nationwide, and I consulted with Congress on the drafting of the 2004 Federal Crime Victims' Rights Act. Prior to joining NCVLI, I clerked for the Honorable Donald P. Lay of the Eighth Circuit Court of Appeals and then practiced in a private law firm in Minneapolis, Minnesota.

I write today to encourage Passage of HB3284 as its passage would be an important step toward promoting access to justice for child-victims.

Statutes of limitations in the criminal justice system are traditionally justified in three ways: 1) on the belief they foster a more forward-looking society; 2) that they help to ensure the quality and availability of evidence is not negatively impacted by passage of time; and 3) that they incentivize timely and diligent prosecution, which also helps to ensure diligent police work. Notably, statutes of limitations are not a constitutional right. Instead, they reflect a legislative judgment that the overall societal benefits of not allowing a case to go forward outweigh the societal benefits of prosecuting guilty individuals. In the case of child-victims of sexual crimes the calculus simply requires a different outcome than is currently in place in Oregon.

First, it is well-documented that in cases of child sexual abuse, lengthy delays in disclosure are common.<sup>1</sup> Thematically, this research reveals that delayed reporting is tied to the nature of the crime as a private and easily concealed crime; the power disparity between a child-victim and offender erects barriers to reporting; explicit and implicit threats often issue from the perpetrator; normalizing efforts are routinely undertaken by the perpetrator; and psychological trauma endured by victims. Nothing in the research reveals that child-victims will be incentivized to report sooner based upon a short statute of limitations. Thus, what the research makes clear is that the real impact of short statutes of limitations is a functional bar to child-victim access to the criminal justice system.

Second, where crimes are less likely to be reported, the deterrent effect of the criminal justice system is diminished. It is well-recognized that child-victim predators tend to perpetrate upon many victims not just one victim. Because their victims often cannot and therefore do not report their victimization for years, perpetrators are left undeterred from seeking new victims. Allowing victims to come forward when they are able and ready is a key way to begin to foreclose future victims of the same offender.

Third, while there are many tools to combat future abuse by child sex offenders once identified, such as sexual offender lists, GPS tracking systems, and pedophile-free zones, these tools are ineffective if the offender never enters the criminal justice system. Allowing child-victims to access the justice system when they become ready will allow these tools to be deployed with perpetrators who might otherwise perpetrate further victimizations.

Concerns regarding potential negative ramifications for defendant's rights from extended or eliminated statutes of limitations are simply overblown. Commonly cited concerns such as evidentiary issues about witness credibility, unavailability of or compromised forensic evidence, and a lack of physical evidence are easily contained by other safeguards in the justice system. The essential features of our criminal justice system mandate that prosecution not go forward

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<sup>1</sup> See, e.g., Mary L. Paine & David J. Hansen, *Factors Influencing Children to Self-Disclose Sexual Abuse*, 22 *Clinical Psychol. Rev.* 271 (2002) (providing a detailed review of research relating to the disclosure of child sexual abuse and the factors relating to disclosure). See also Ellen R. DeVoe & Kathleen Coulborn Faller, *The Characteristics of Disclosure among Children Who May Have Been Sexually Abused*, 4 *Child Maltreatment* 217 (1999); Kamala London et al., *Disclosure of Child Sexual Abuse: What Does the Research Tell Us About the Ways that Children Tell?*, 11 *Psychol. Pub. Pol'y & L.* 194 (2005); Michael Ungar et al., *Patterns of Abuse Disclosure among Youth*, 8 *Qualitative Social Work* 341 (2009).

without adequate evidence and that conviction not occur unless there is evidence of guilt beyond a reasonable doubt. Nothing about the statutes of limitations changes this calculus.

Notably, if Oregon takes the positive step of passing HB3284 it will be in good company nationally. More than thirty states have abolished the statute of limitations for child sexual abuse for at least some subset of victims or offenses.<sup>2</sup>

Taken together the abhorrent nature of child sex crimes, the reasonableness of delayed reporting, and the recognition that criminal defendants will not be unfairly harmed if the statute of limitations is lifted, demand that H.B. 3284 becomes law.

Thank you for the opportunity to submit this written testimony.

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<sup>2</sup> See, e.g., Ala. Code § 15-3-5(a)(4); Alaska Stat. Ann. §§ 12.10.010(a)(3), (4), (5); Ariz. Rev. Stat. Ann. § 13-107(A); Ark. Code Ann. § 5-1-109(b)(1)(B); Cal. Penal Code § 803(f); Colo. Rev. Stat. Ann. § 16-5-401(1)(a); Conn. Gen. Stat. Ann. §§ 54-193, 54-193a; Del. Code Ann. tit. 11, §§ 205(a), (e); Fla. Stat. Ann. §§ 775.15(13)(b), (13)(c), (14); Ga. Code Ann. § 17-3-2.1(b); Idaho Code Ann. § 19-401(4); Ind. Code § 35-41-4-2(c); Iowa Code § 802.10; Kan. Stat. Ann. § 21-5107(c); Ky. Rev. Stat. Ann. § 500.050(1); La. Code Crim. Proc. Ann. art. 571; Me. Rev. Stat. tit. 17-A, § 8; Mass. Gen. Laws Ann. ch. 277, § 63; Mich. Comp. Laws Ann. § 767.24(1); Minn. Stat. Ann. § 628.26(f); Miss. Code Ann. § 99-1-5; Mo. Ann. Stat. § 556.037; Mont. Code Ann. § 45-1-205(9); Neb. Rev. Stat. § 29-110(7); N.J. Stat. Ann. § 2C:1-6; N.M. Stat. Ann. § 30-1-8(I); N.Y. Crim. Proc. Law § 30.10(2); Okla. Stat. Ann. tit. 22 § 152(C)(2); 42 Pa. Cons. Stat. Ann. § 5552(c.1); R.I. Gen. Laws Ann. § 12-12-17(a); S.D. Codified Laws §§ 23A-42-1, 22-22-1; Tex. Code Crim. Proc. Ann. art 12.01; Utah Code Ann. §§ 76-1-301, 302(2)(a), 302(3); Vt. Stat. Ann. tit. 13, § 4501(a); Va. Code Ann. § 19.2-8; W.V. Code § 61-11-9; Wis. Stat. Ann. § 939.74(2)(a); *Story v. State*, 721 P.2d 1020, 1027 (Wyo. 1986) (“Wyoming is one of the two states which has no statute of limitations for any criminal case.”).