

**Written Submission of Brenda Tracy and Jacqueline Swanson  
In Support of HB 2317  
before the  
Oregon Senate Committee on Judiciary  
Honorable Senator Floyd Prozanski, Chair**

Dear Chairman Prozanski and Members of the Committee,

Thank you for the opportunity to present our views through this written testimony. We write to you today in support of HB 2317, and urge the Senate Committee on Judiciary to vote to send the bill forward to the Senate to extend the criminal statute of limitations for sex crimes here in Oregon.

Currently, Oregon law provides the state a mere six years to commence prosecution of first degree rape, sodomy, unlawful penetration, and/or sexual abuse.<sup>1</sup> HB 2317 would have an immeasurable impact on the lives of sexual assault victims like Ms. Brenda Tracy, who was gang-raped by four men sixteen years ago. Despite admissions by her attackers, the state may no longer charge Ms. Tracy's offenders, as the criminal statute of limitation in her case expired more than a decade ago. Ms. Tracy now seeks to extend the criminal statute of limitations to help prevent other survivors from experiencing a similar denial of justice in the future.

Although a twenty year or longer criminal statute of limitations is preferable to a twelve year statute of limitations, we firmly and unequivocally believe that twelve years extension is preferable to the statute remaining at six years. This is especially true for those victims whose six year statutes of limitations will expire after this session unless reform is enacted. Thus, we submit this testimony in support of HB 2317, which increases the statute of limitation for prosecution of sex crimes across the state of Oregon.

I. The Importance of Extending Criminal Statutes of Limitation in Sexual Abuse Cases

Statute of limitation reform is necessary and vitally important to better ensure justice for victims of sexual assault across the state of Oregon. The sensitive nature and unique circumstances surrounding these crimes require special attention in order to better protect victims of sexual violence and ensure that more offenders are prosecuted.

Proponents of maintaining existing statutes of limitation for sexual abuse cases cite the importance of these time limitations for the provision of efficient justice and fundamental fairness to defendants. However, justice denied to an entire class of victims cannot be said to be efficient, nor fair. Such an approach fails to address the unique problems presented in cases of sexual victimization, where a crime may go unreported for an extended period of time due to the nature and effect of trauma on victims of such crimes.<sup>2</sup>

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<sup>1</sup> ORS 131.125.

<sup>2</sup> E.g., L. Langton and S. Sinozich, *Rape and Sexual Assault Victimization Among College-Age Females, 1995 – 2003*, U.S. Department of Justice, Bureau of Justice Statistics, NCJ 248471 (2014); E. Baumer, *Temporal Variation in the Likelihood of Police Notification by Victims of Rapes, 1973 – 2000*, U.S. Department of Justice, National Institute of Justice, NCJ 207497 (2004); C. Rennison, *Rape and Sexual Assault: Reporting to Police and Medical*

Other arguments in favor of traditional statutes of limitation revolve around the reliability of evidence in older cases and concerns pertaining to the requisite standard of proof in criminal cases. However, extension of the statute of limitations does not require prosecutors to issue charges in each and every case brought forward within the limitation period. Such has never been the case, as prosecutors are endowed with the discretion to decide which cases to bring and what indictments are ultimately issued.

Cases strong enough to enable prosecution more than a decade after the event will necessarily be supported with evidence clear and conclusive enough to spur the state to act on behalf of the public interest. In contrast, cases without such evidence are unlikely to be prosecuted. Thus, concerns regarding the sufficiency and reliability of evidence in these types of cases can be adequately addressed via safeguards currently in operation within the criminal justice system.

Furthermore, although statutes of limitation do grant closure to wrongdoers, society's interest in punishment and retribution may require the state to focus on protecting the rights of victims in special circumstances in order to hold their abuser(s) accountable even after the passage of time. Sexual violence has a devastating impact on the survivor, as well the survivor's family and friends. Society has a strong interest both in affording that individual victim justice, as well as in the punishment and deterrence of crime. Further, justice and deterrence in this context may also protect other victims from enduring abuse at the hands of the same offender.<sup>3</sup>

For these reasons, among others, extending the statute of limitations for sexually violent crimes is both warranted and necessary.

## II. Pertinent History Regarding the Trajectory of HB 2317

At the start of the 2015 legislative session, Sen. Peter Courtney sponsored SB 8, a bill which would have increased the statute of limitations for sex crime prosecutions from six years to twenty years. SB 8 was later abrogated in favor of HB 2317, which proposed three possible amendments to the statute of limitations: twelve years, twenty years, and elimination of the limitation period altogether.<sup>4</sup>

In our April 1, 2015 testimony before the House Committee on Judiciary in support of HB 2317, we requested that the Committee advance either the twenty year amendment or the total elimination of the statute of limitation. The members of the House Committee were divided: some were in favor of twenty years, while others advocated for no extension whatsoever (i.e., six years). Ultimately, the House Committee submitted the amendment containing the twelve year extension to the House floor, where the bill passed unanimously. Thereafter, the bill was sent to the Senate Committee on Judiciary.

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*Attention, 1992—2000*, U.S. Department of Justice, Bureau of Justice Statistics, NCJ 194530 (2002); J. Du Mont, K. Miller, and T. Myhr, *The Role of 'Real Rape' and 'Real Victim' Stereotypes in the Police Reporting Practices of Sexually Assaulted Women*, 9 *Violence Against Women* 466 (2003).

<sup>3</sup> According to research conducted by David Lisak, Ph.D., approximately 60-70% of rapists are recidivist offenders. See D. Lisak and P. Miller, *Repeat Rape and Multiple Offending Among Undetected Rapists*, 17 *Violence and Victims* 73 (2002).

<sup>4</sup> HB 2317 was introduced and printed pursuant to House Rule 12.00 (pre-session filed) at the request of the House Interim Committee on Judiciary.

Recently, an amendment was proposed to reinstate the twenty year extension, as opposed or in addition to the twelve year extension currently before the Senate Committee on Judiciary. If the Senate Committee on Judiciary votes to send the twenty year extension to the Senate floor, and if the Senate passes the twenty year extension, the bill must then be sent back to the House for a full vote. **In light of the late stage at which this amendment was proposed, if the House (or Senate) does not vote to pass the twenty year amendment, the statute of limitation will remain six years.**<sup>5</sup>

In contrast, if the Senate Committee advances the twelve year extension to the Senate floor and the Senate subsequently votes to enact the twelve year extension, the bill will immediately be sent to the Governor for signature and passage into law.

### III. Our Support of HB 2317

**As evidenced by our testimony before the House Committee, it has always been our position that a twenty year statute of limitation (or no statute of limitation) is preferable to a twelve year statute of limitation.** Indeed, the majority of other states have passed legislative reform extending their respective criminal statutes of limitation for prosecution of rape and sexual assault beyond twelve years, and certainly beyond six years.<sup>6</sup>

**That said, however, although we certainly support extension of the statute of limitation to twenty years or more, it is also our strong belief that a twelve year extension is eminently preferable to no extension at all.**

It is true that if the statute of limitation were twenty years or more at the time of Ms. Tracy's gang-rape, the state might yet be able to initiate prosecutions against her attackers today. However, as mentioned above, there is no guarantee that the state would in fact initiate such a prosecution today, as this decision would be a matter of prosecutorial discretion. Furthermore, extension of the statute of limitation to twenty years today would not revive the criminal claims in issue in Ms. Tracy's case, as retroactive application of criminal statutes of limitation has been held to be a violation of state and federal Constitutional prohibitions against ex post facto laws.<sup>7</sup> In light of this, Ms. Tracy does not seek extension of the criminal statute of limitation for herself, but rather, to better ensure justice for other victims moving forward.

Louis Sachar once said, **"it is better to take many small steps in the right direction than to make a great leap forward only to stumble backward."** Absent some concrete, indisputable assurance that a twenty-year extension would pass through both the Senate and the House, it would seem to be both

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<sup>5</sup> Until, at the earliest, next session.

<sup>6</sup> See attached: J. Swanson, "State Criminal Statutes of Limitation for Sexual Offenses Committed Against Non-Minor Victims," last updated March 30, 2015.

<sup>7</sup> See *Stogner v. California*, 539 US 607 (2003); *State v. Cookman*, 127 Or.App. 283 (1994), *aff'd*, 324 Or. 19 (1996). This would be true in any case where the current six-year statute of limitation already barred prosecution at the time of HB 2317's enactment, regardless of whether HB 2317's extension is designated as twelve years, twenty years, or eliminated altogether.

more rational and beneficial to double the statute of limitations now, and then return to advocate for extension of the statute of limitation to twenty years or greater in the next (short or regular) session.

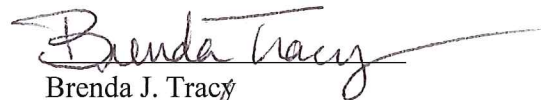
**Extending the statute of limitations to twelve years now would make a great difference to all those victims whose six year statute of limitations are otherwise due to expire by or before the next legislative session.** The twelve year amendment would extend the life of these claims, and also allow us the benefit of time to continue to advocate for greater extensions in the following sessions.<sup>8</sup> This is significant, given the very real possibility that a twenty year amendment seems unlikely to receive sufficient support in one of the two Chambers, thus resulting in the inability to enact any statute of limitation reform this session.<sup>9</sup> Were that to occur, by the time the statute was amended in some future session, those aforementioned claims would be barred, and (as a result the prohibition against ex post facto laws, mentioned above) could not be revived, regardless of the length of that future extension.<sup>10</sup>

#### IV. Conclusion

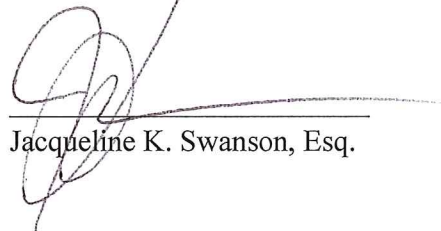
No matter the outcome of HB 2317, we will continue to advocate for victims of sexual violence. But we believe that a small change today can bring about radical change tomorrow. Because of this, and because incremental change can create remarkable and monumental results, we support HB 2317, and urge its passage in order to promote prompt, attainable and real progress for victims across our state.

Thank you for the opportunity to submit this written testimony.

Sincerely,



Brenda J. Tracy



Jacqueline K. Swanson, Esq.

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<sup>8</sup> Presumably, those who are hesitant to extend the statute of limitations (either beyond six years or beyond twelve years) have rational reasons underlying their concerns. If the legislature were to pass the twelve year extension now, then in the interim we can work together to identify and meaningfully address the concerns surrounding greater extension to the statute of limitation, and thereby ensure that all perspectives are heard and the best solution achieved. Such is, after all, the very nature of democracy.

<sup>9</sup> In other words, due to time constraints and session deadlines, if the twenty year amendment does not pass in both Chambers, we will not have time to reinstate the twelve year option, and the statute of limitations would remain at six years until amended in some future legislative session.

<sup>10</sup> I.e., it would not matter if the amendment in the future session completely eliminated the criminal statute of limitations: the claims would still be barred due to the unconstitutionality of (criminal) ex post facto laws.

**State Criminal Statutes of Limitation for Sexual Offenses Committed Against Non-Minor Victims**  
*Last Updated: March 30, 2015*

STATE	SOL FOR SEXUAL OFFENSES (NON-MINOR VICTIM)	CITATION <sup>1</sup>	DNA EXCEPTION
Alabama	NONE	Ala. Code § 15-3-5	No
Alaska	NONE	Ak. Stat. § 12.10.010	No
Arizona	NONE	Az. Rev. Stat. § 13-107	Yes
Arkansas	Six (6) years for Rape Three (3) years for Sexual Assault	Ar. Code § 5-1-109	Yes
California	Ten (10) years	Ca. Pen. Code §§ 799 – 803	Yes
Colorado	Ten (10) years	Co. Rev. Stat. § 16-5-401	Yes
Connecticut	Five (5) years	Ct. Gen. Stat. § 54-193	Yes
Delaware	NONE	De. Code Ann. § 11-205	Yes
District of Columbia	Fifteen (15) years for 1 <sup>st</sup> and 2 <sup>nd</sup> Degree sexual offenses Ten (10) years for 3 <sup>rd</sup> and 4 <sup>th</sup> Degree sexual offenses	D.C. Code § 23-113	No
Florida <sup>2</sup>	NONE if reported within 72 hours Four (4) years if not reported within 72 hours	Fl. Stat. § 775.15	Yes
Georgia	Fifteen (15) years	Ga. Code § 17-3-1	Yes
Hawaii	Six (6) years for Class A offenses Three (3) years for other sexual offenses	Haw. Rev. Stat. § 701-108	Yes
Idaho	NONE	Id. Code § 19-401	No
Illinois	Ten (10) years if reported within three years Three (3) years if not reported within three years	720 Il. Comp. Stat. 5/3-5 – 5/3-6	Yes
Indiana <sup>3</sup>	NONE if class A Felony Five (5) years if Felony other than Class A	In. Code § 35-41-4-2	Yes
Iowa	Ten (10) years	Ia. Code § 802.2	Yes
Kansas	NONE for Rape Ten (10) years for other sexual offenses	Ks. Stat. Ann. § 21-5107	Yes
Kentucky	NONE	Ky. Rev. Stat. § 500.050	No
Louisiana	NONE for Forcible Rape Thirty (30) years for other sexual offenses	La. Code Crim. P. Art. 571 – 572	Yes
Maine	Eight (8) years for Gross Sexual Assault Three (3) years for other sexual offenses	Me. Rev. Stat. § 17-A-8	No

<sup>1</sup> Citations provide references statutes or laws relating to limitation period; the citation does not necessarily include reference to DNA or other codified exceptions tolling state statute of limitations.

<sup>2</sup> Legislation pending to extend “other sexual offenses” from four (4) years to ten (10) years.

<sup>3</sup> Legislation pending to extend five (5) year SOL an additional five (5) years.

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*Last Updated: March 30, 2015*

Maryland	NONE	Md. Code Ct. Jud. P. § 5-106	No
Massachusetts	Fifteen (15) years for Rape Six (6) years for other sexual offenses	Ma. Gen. Laws § 277-63	No
Michigan	NONE for 1 <sup>st</sup> degree sexual offenses Ten (10) years for other sexual offenses	Mi. Comp. Laws § 767.24	Yes
Minnesota	Three (3) years	Mn. Stat. § 628.26	Yes
Mississippi	NONE	Ms. Code Ann. § 99-1-5	No
Missouri	NONE	Mo. Rev. Stat. § 556.036	No
Montana	Ten (10) years for Rape and Sexual Assault Five (5) years for other sexual offenses	Mt. Code § 45-1-205	Yes
Nebraska	NONE for 1 <sup>st</sup> and 2 <sup>nd</sup> Degree offenses Three (3) years for other sexual offenses	Ne. Rev. Stat. § 29-110	No
Nevada	NONE if written report made before SOL expires Four (4) years	Nv. Rev. Stat. §§ 171.083 –.085	No
New Hampshire	Six (6) years	Nh. Rev. Stat. § 625.8	No
New Jersey	NONE for Sexual Assault Five (5) years for other sexual offenses	Nj. Stat. Ann. § 2C:1-6	Yes
New Mexico	NONE for 1 <sup>st</sup> Degree Felonies	Nm. Stat. Ann. § 30-1-8	Yes
New York	NONE for Rape Five (5) years for other sexual offenses	Ny. Crim. Pro. Laws § 30.10	Yes
North Carolina	NONE	N/A <sup>4</sup>	No
North Dakota	Seven (7) years for Gross Sexual Imposition	Nd. Cent. Code § 29-04-02.1	No
Ohio	Twenty (20) years	Oh. Rev. Code Ann. § 2901.13	Yes <sup>5</sup>
Oklahoma	Twelve (12) years	Ok. Stat. § 22-152	Yes
Oregon <sup>6</sup>	Six (6) years	Or. Rev. Stat. § 131.125	Yes
Pennsylvania	Twelve (12) years	Pa. Cons. Stat. § 42-5552	Yes
Rhode Island	NONE for 1 <sup>st</sup> Degree Sexual Assault Three (3) years for other sexual offenses	Ri. Gen. Laws § 12-12-17	No

<sup>4</sup> North Carolina has no statute addressing the limitations period for prosecution of felony crimes. *See State v. Hardin*, 201 S.E.2d 74 (N.C. Ct. App. 1973) (“In this State no statute of limitations bars the prosecution of a felony.”); *cf.* Nc. Gen. Stat. § 15-1 (setting forth statute of limitations for misdemeanors).

<sup>5</sup> Passed legislation in 2015 providing for DNA exception.

<sup>6</sup> Pending legislation: HB 2317.

**State Criminal Statutes of Limitation for Sexual Offenses Committed Against Non-Minor Victims**  
*Last Updated: March 30, 2015*

South Carolina	NONE	N/A <sup>7</sup>	No
South Dakota	NONE for 1 <sup>st</sup> and 2 <sup>nd</sup> Degree sexual offenses Seven (7) years for 3 <sup>rd</sup> and 4 <sup>th</sup> Degree sexual offenses	Sd. Cod. Laws §§ 23A-42-1 & 22-22-1	No
Tennessee	NONE	Tn. Code Ann. § 42-2-101	No
Texas	Ten (10) years for Sexual Assault Three (3) years for other sexual offenses	Tex. Code Crim. P. § 12.01	Yes
Utah	NONE	Ut. Code Ann. §§ 76-1-301 – 302	Yes
Vermont	NONE for aggravated sexual assault Six (6) years for other sexual offenses	Vt. Stat. Ann. § 13-4501	No
Virginia	NONE	Va. Code Ann. § 19.2-8	No
Washington	Ten (10) years for Rape if reported within one year Three (3) years for Rape if not reported within one year Three (3) to Six (6) years for other sexual offenses	Wa. Rev. Code § 9A.04.080	Yes
West Virginia	NONE	Wv. Code § 61-11-9	No
Wisconsin	NONE for 1 <sup>st</sup> Degree sexual offenses Six (6) years for other sexual offenses	Wi. Stat. § 939.74	Yes
Wyoming	NONE	N/A <sup>8</sup>	No

<sup>7</sup> South Carolina has no statute addressing the limitations period for prosecution of felony crimes.

<sup>8</sup> Wyoming has no statute addressing the limitations period for prosecution of felony crimes. *Boggs v. State*, 484 P.2d 711 (Wy. 1971).