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A Key Legal Reform To Fight The Child Sex Abuse Epidemic

By **Michael Dolce** | December 9, 2018


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As his mother Patty tearfully explained, one Christmas Eve, Jeff Smith "put a bullet where it hurt most, in his heart." Jeff had been sexually abused as a young teen by a martial arts instructor. Two of his friends were as well. The three of them, once grown, found the courage to tell police their long-kept secret. But the law had long left them behind. Each of their cases was barred by a statute of limitation. All the police could do, the detective explained, was wait for another victim, hopefully one who would disclose early enough. Despite their feelings of grief and abandonment, and fear for the next victim, Jeff's friends found the strength to carry on. Jeff did not. Patty wanted to know what could be done to get rid of the statutes of limitation, for today's children. "I don't want my son to have died in vain," she said to me.

I felt an affinity for Jeff, though I never met him. I, too, was sexually abused as a young child, by a neighbor. I was 7. It took me 20 years to overcome the fear of the gun he held to my head and reveal my truth. So, in Jeff's memory, I started what became a grassroots campaign to repeal Florida's statutes of limitation for civil and criminal prosecution of child sexual battery. In the face of substantial, organized and politically influential opposition — primarily the hierarchy of the Roman Catholic Church and liability insurance companies for institutions like that church — we had to fight for six years before winning in 2010.

Fights like ours continue today in states across the country, with the same cast of characters and the same arguments for and against a repeal. The arguments against are, put simply, spurious. Their prophesies of doom and calamity that would come with a repeal have been disproven in Florida over the past eight years. It is disingenuous to continue arguing them.

Opponents argued in Florida, and continue to argue in other states today, that opening indefinite civil liability for institutions that contribute to abuse of children, through negligence or otherwise, would lead to skyrocketing insurance premiums, forcing churches, private schools, day care centers, recreation leagues and others to close their programs out of economic necessity. With the Florida Catholic church's hierarchy having led that argument, it only seems fair to look at how they have weathered the last eight years. According to the Florida Conference of Catholic Bishops, today they operate 468 churches, in addition to schools for almost 25,000 high school students and 60,000 pre-kindergarten to eighth grade students. They employ over 7,300 teachers and administrators and some 1,900 clerics. There is no dearth of daycare providers either. According to data maintained by the Florida Department of Children and Families, among the state's eight most populous urbanized counties, there are almost 4,000 licensed privately operated

child care facilities today. Likewise, recreation leagues are alive and well; as just one example, the Florida Youth Soccer Association reports today operating 23 leagues throughout the state, with 250 clubs of 105,000 youth players.

As these institutions have continued to thrive following the repeal, many have implemented greater and more comprehensive safety measures than ever before. Insurers have the incentive to audit the institutions they insure to confirm that the highest standard of care to protect children is being followed. The threat of indefinite liability has underscored the nature and extent of the crippling impact child sex abuse can have on a victim and the importance of acting decisively to operate institutions in ways that deprive predators of the opportunity to access their prey.

Opponents to the repeal campaign in Florida also argued that overly sympathetic plaintiffs in civil litigation, or the state in criminal prosecutions, would have an unfair advantage in litigation of delayed-reporting cases, resulting in verdicts and convictions based simply on one person's word against another. The fact is, as it was before 2010 and always has been, that the burden of proof in these cases remains on a plaintiff or the state. Before or since 2010, child sex predators in these cases are held accountable based on substantial evidence well beyond a "he-said, she-said" case, the lack of which will always discourage a civil sector lawyer or a prosecutor from filing the case. Asking a jury to hold a defendant accountable for such a crime requires much more evidence, lawyers understand, regardless of how long the victim delayed disclosure.

For example, my legal team successfully represented a child sex abuse survivor this year in a civil suit against her father in Gainesville, Florida. But for Florida's 2010 repeal, the suit would have been barred by statutes of limitation due to a delayed disclosure into the survivor's mid-20s. The evidence offered at trial included incriminating statements the defendant made in the presence of two pastors that he "got too close" and "molested" his child, a similar verbal statement he made by telephone to a family friend, written statements he made to a third party that he was "responsible" for "all the harm" to his child, his own admission to incriminating statements he made while his daughter was 8 years old that he perceived her to be "warming up to him" and "becoming a woman," as well as expert testimony about child sex crime victim behaviors and predatory behaviors.

In contrast to the arguments against a repeal, the reasons to repeal such statutes remain as compelling as ever, and Florida's experience in the last eight years confirms the benefits we predicted. In the Gainesville case, for example, the silence of the survivor for so long would have prevented any legal accountability for the perpetrator and exposure to the community of what the jury found he did to his own child. Before the trial, every immediate family member and numerous family friends simply rejected what the survivor said her father did to her. The delayed disclosure of this Gainesville survivor is no anomaly, as experts widely agree. Based on studies reported by the advocacy organization Darkness to Light, the majority of survivors delay over five years before reporting child sex abuse, if they report at all.

Our campaign to repeal the statutes of limitation estimated that Florida law was locking the courthouse doors to some 70 percent of child sex abuse survivors at the time of disclosure. With child sex predators victimizing, on average, over 100 children in their lifetimes, the implicit danger of the statutes of limitations could not be more obvious. As the detective in Jeff Smith's case made clear, the problem was not one of proof, it was time. The clock ticks in favor of those who would prey on our children if we enshrine that clock in our statutes. Time protects child rapists. Time rewards and even encourages their threats, like the gun once pressed to my head. As long as the law of the several states continues to behave this way, predators will simply continue to hunt for young victims, and get them, before threatening them into silence.

The justification to continue debating whether to repeal these statutes of limitation has long since passed.

As long ago as 1984, the U.S. attorney general, through the Task Force on Family Violence, sensibly recommended running the statutes of limitations not from the date of the offense, but from the date of the victim's disclosure, for the very reasons discussed here. Repealing them altogether makes even more sense.

The demand to repeal these statutes of limitation is not revolutionary. It is not without precedent that serious crimes carry no statute of limitations, whether for civil or criminal prosecution, or both; murder being the prime example. In my view, there is good reason to treat child sex abuse just as our laws treat murder. Jeff is dead; his abuser is alive, walking free, able to hunt for his next victim. Another survivor I knew, Kay, found the courage to reveal her abuse to police after she moved out of her home town, where her abuser continued to live. The police could do nothing, they said, because the statute of limitations had expired. Kay did not survive much longer after receiving this news. The internal organ damage from years battling anorexia, an illness that can result from having suffered child rape, was too severe. She got a death sentence. The man who imposed that sentence on her got no sentence at all. He was still working at an elementary school when she died. As several courts have observed, statutes of limitation are "matters of legislative grace." Jeff, Kay and I have seen Satan. He does not deserve our grace.

I was in the gallery of the Florida Senate when Jeff's bill received unanimous approval, needing then only Gov. Charlie Crist's signature to become law. He had stated publicly that he would sign it, calling it "common sense." So with the fight over, I stepped out of the Senate chamber and immediately placed the call I had worked for six years to make. When she answered, I said, "Patty, we did it. Jeff did not die in vain. His story has been told. Thousands of children will be saved as a result." And we are saving children in Florida. All other states should do the same.

Michael Dolce is of counsel at Cohen Milstein Sellers & Toll PLLC, where he leads the firm's sexual abuse, sex trafficking and domestic violence team. He fought for legislation in Florida to repeal all statutes of limitation for civil and criminal prosecution of child sexual battery, which the Florida legislature passed in 2010.

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