



State of Connecticut

DIVISION OF PUBLIC DEFENDER SERVICES

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Testimony of Deborah Del Prete Sullivan, Legal Counsel, Director Office of Chief Public Defender

JUDICIARY COMMITTEE - March 13, 2024

Raised Bill No. 5466

AN ACT CONCERNING THE PERIOD OF TIME DURING WHICH ELECTIONS-RELATED CRIMES MAY BE PROSECUTED

Consistent with its position of opposing any extension of statutes of limitations in criminal matters, the Office of Chief Public Defender opposes this bill and urges this committee not to support *Raised Bill No. 5466, An Act Concerning the Period of Time During Which Elections-Related Crimes May be Prosecuted*. The bill would expand the existing statute of limitations of a "prosecution of an elections-related crime during the period of time prescribed by the statute of limitations, or the period of time ending six months after the date of referral by the State Elections Enforcement Commission of a complaint, statement or evidence concerning such crime, whichever period of time ends later." The change is retroactive.¹

¹ The change is effective October 1, 2024, and "applicable to any offense committed on or after October 1, 2024, and to any offense committed prior to October 1, 2024, for which the statute of limitations in effect at the time of the commission of the offense had not yet expired as of October 1, 2024, or to any offense for which a complaint, statement or evidence concerning such offense is referred by the State Elections Enforcement Commission to the Chief State's Attorney on or after April 1, 2024".

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Without any finite period of time within which a prosecution can be brought, it may be impossible for an innocent person to fairly defend himself beyond the date of the offense. The Office of Chief Public Defender is concerned that with such a limitation period, evidence may be unable to be located, destroyed, or may deteriorate. In addition, memories of witnesses fade and sometimes no longer exist. It may be difficult or impossible to locate witnesses who may have moved or have passed on.

As we said in United States v. Ewell, supra, at 122, "the applicable statute of limitations . . . is . . . the primary guarantee against bringing overly stale criminal charges." Such statutes represent legislative assessments of relative interests of the State and the defendant in administering and receiving justice; they "are made for the repose of society and the protection of those who may [during the limitation] . . . have lost their means of defen[s]e." Public Schools v. Walker, 9 Wall. 282, 288 (1870). These statutes provide predictability by specifying a limit beyond which there is an irrebuttable presumption that a defendant's right to a fair trial would be prejudiced . . .

United States v. Marion, 404 U.S. 307, 322-323 (1971). In that case, the court continued its discussion in regard to the purpose of a statute of limitations:

The purpose of a statute of limitations is to limit exposure to criminal prosecution to a certain fixed period of time following the occurrence of those acts the legislature has decided to punish by criminal sanctions. Such a limitation is designed to protect individuals from having to defend themselves against charges when the basic facts may have become obscured by the passage of time and to minimize the danger of official punishment because of acts in the far-distant past. Such a time limit may also have the salutary effect of encouraging law enforcement officials promptly to investigate suspected criminal activity.

The Court has indicated that criminal statutes of limitation are to be liberally interpreted in favor of repose. United States v. Habig, 390 U.S. 222, 227 (1968). The policies behind civil statutes of limitation are in many ways similar. They "represent a public policy about the privilege to litigate," Chase Securities Corp. v. Donaldson, 325 U.S. 304, 314 (1945), and their underlying rationale is "to encourage promptness in the bringing of actions, that the parties shall not suffer by loss of evidence from death or disappearance of witnesses, destruction of documents or failure of memory." Missouri, Kansas & Texas R. Co. v. Harriman, 227 U.S. 657, 672 (1913). Such statutes "are founded upon the general experience of mankind that claims, which are valid, are not usually allowed to remain neglected," Riddlebarger v. Hartford, Insurance Co., 7 Wall. 386, 390 (1869), they

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*"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," Order of Railroad Telegraphers v. Railway Express Agency, 321 U.S. 342, 348-349 (1944), and they "are primarily designed to assure fairness to defendants. . . . Courts ought to be relieved of the burden of trying stale claims when a plaintiff has slept on his rights." Burnett v. New York Central R. Co., 380 U.S. 424, 428 (1965). As in the criminal law area, such statutes represent a legislative judgment about the balance of equities in a situation involving the tardy assertion of otherwise valid rights: "The theory is that even if one has a just claim it is unjust not to put the adversary on notice to defend within the period of limitation and that the right to be free of stale claims in time comes to prevail over the right to prosecute them." Order of Railroad Telegraphers v. Railway Express Agency, *supra*, at 349.*

United States v. Marion, 404 U.S. 307, 323, fn 14 (1971).

In order to provide for the rights of the defendant to notice, due process and a fair trial, the statute of limitations should not be extended as proposed in this bill. The Office of Chief Public Defender urges this committee not to support this proposal.