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## Advocating at the Intersection of Law, Science, and Culture Change: Options for Changing Minnesota's Statute of Limitations for Criminal Sexual Conduct Felonies

Caroline Palmer

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**ADVOCATING AT THE INTERSECTION OF LAW, SCIENCE,  
AND CULTURE CHANGE: OPTIONS FOR CHANGING  
MINNESOTA’S STATUTE OF LIMITATIONS FOR CRIMINAL  
SEXUAL CONDUCT FELONIES**

Caroline Palmer<sup>†</sup>

I.	INTRODUCTION: NEW ACCOUNTABILITY IN THE #MeToo ERA	945
	A. <i>The #MeToo Movement as a Game-Changer</i> .....	946
	B. <i>Current Minnesota Law</i> .....	948
	C. <i>Making Change in Minnesota</i> .....	949
II.	THE MINNESOTA BILLS.....	950
III.	THE PHYSICAL AND SOCIAL SCIENCE EXPLAINING VICTIM/SURVIVOR RESPONSE TO SEXUAL VIOLENCE.....	952
	A. <i>The Brain’s Response to Trauma</i> .....	953
	B. <i>Trauma and Memory</i> .....	956
	C. <i>Memory and Statutes of Limitations</i> .....	957
IV.	SURVEY OF SELECTED STATE LAWS.....	959
V.	MINNESOTA’S IMPROVED RESPONSE TO SEXUAL ASSAULT EXAMINATION KIT TESTING AND STATUTES OF LIMITATIONS.	962
VI.	CONCLUSION .....	965

‘Til it happens to you, you don’t know how it feels  
How it feels  
‘Til it happens to you, you won’t know  
It won’t be real

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<sup>†</sup> Caroline Palmer graduated from Hamline University School of Law and Barnard College. She is the Safe Harbor Director at the Minnesota Department of Health and, prior to that position, served as the Public and Legal Affairs Manager at the Minnesota Coalition Against Sexual Assault. She is an adjunct professor of Legal Writing and Constitutional Criminal Procedure at Mitchell Hamline School of Law. The opinions expressed in this article are the author’s alone and do not represent the Minnesota Department of Health. Thanks to Lindsay J. Brice, Law & Policy Director at the Minnesota Coalition Against Sexual Assault, for her insights.

No, it won't be real  
Won't know how it feels<sup>1</sup>

I. INTRODUCTION: NEW ACCOUNTABILITY IN THE #METOO ERA

The #MeToo movement has reignited a conversation about eliminating the statute of limitations for criminal sexual conduct, specifically felony sexual assault.<sup>2</sup> Some states have already done so, but Minnesota has not passed laws fully eliminating the statute of limitations with respect to criminal cases that have no DNA collected and preserved—despite advocacy efforts during the 2018 and 2019 legislative sessions as well as the national trend toward statutory reform.<sup>3</sup>

The proposed legislation, promoted by sexual assault survivors and supported by a bipartisan group of lawmakers, would remove the limitations for criminal sexual conduct felonies (sexual penetration or sexual contact) ranging from first to fourth degree, as well as sex trafficking.<sup>4</sup> During both legislative sessions, several bills related to issues raised by the #MeToo movement were heard and supported—with some eventually passing into law.<sup>5</sup> The statute of limitations bill

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1. LADY GAGA, *Til it Happens to You*, on THE HUNTING GROUND SOUNDTRACK (Interscope 2015); see also Spencer Kornhaber, *Lady Gaga's Latest Surprise: A Rape PSA*, THE ATLANTIC (Sept. 18, 2015), <https://www.theatlantic.com/entertainment/archive/2015/09/lady-gaga-til-it-happens-to-you/406066/> [https://perma.cc/67J4-JT73].

2. H.F. 3434, 90th Leg. (Minn. 2018); S.F. 3206, 90th Leg. (Minn. 2018); H.F. 734, 91st Leg. (Minn. 2019); S.F. 731, 91st Leg. (Minn. 2019).

3. See Part B of this section for further explanation of Minnesota's current law.

4. Minn. H.F. 3434; S.F. 3206; Minn. H.F. 734; Minn. S.F.732; see also Brian Bakst, *Minn. Bill Would Repeal Time Limits for Sex Crime Prosecution*, MINN. PUB. RADIO (Mar. 8, 2018), <https://blogs.mprnews.org/capitol-view/2018/03/minn-bill-would-repeal-time-limits-for-sex-crime-prosecution/> [https://perma.cc/HET7-QQ67].

5. See Brendan Stahl et al., *Denied Justice: When Rape is Reported and Nothing Happens: How Minnesota's Criminal Justice System Has Failed Victims of Sexual Assault* (series began July 24, 2018), <http://www.startribune.com/denied-justice-series-when-rape-is-reported-and-nothing-happens-minnesota-police-sexual-assault-investigations/487400761/> [https://perma.cc/V5ZE-93TV]. For example, during the 2018 session, Governor Dayton signed a law improving collection and testing of sexual assault examination kits. 2018 Minn. Laws 160, <https://www.revisor.mn.gov/laws/2018/0/Session+Law/Chapter/160/> [https://perma.cc/427D-S6S2]. While the collaborative effort to change the law began before the 2017 #MeToo movement, the enactment represented increased awareness about the importance of testing and tracking kits that corresponded with increased awareness about sexual violence. See Marion O'Neill, *The Handling of Sexual*

did not receive a hearing in either the Minnesota House or Senate during the 2018 session; however, during the 2019 session, in part due to awareness raised by a Pulitzer Prize-nominated 2018 series by the Star Tribune on failure to investigate sexual assault cases, the bill made significant progress and was heard in the joint House and Senate Public Safety/Judiciary Conference Committee before being cut during final budget negotiations.<sup>6</sup>

A. *The #MeToo Movement as a Game-Changer*

The #MeToo campaign began in 2007, when survivor and civil rights activist Tarana Burke created the concept.<sup>7</sup> It was amplified globally during the fall of 2017 when multiple allegations against Hollywood producer Harvey Weinstein hit the news.<sup>8</sup> The movement inspired survivors, many of whom had never told their stories publicly, to come forward. As a result, legal frameworks governing prosecutions, including statutes of limitations, received fresh scrutiny. Increased attention to abuses of power by individuals in a

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*Assault Cases: New Law on Rape Kits Will Make a Difference*, STAR TRIB. (July 31, 2018), <http://www.startribune.com/the-handling-of-sexual-assault-cases-new-law-on-rape-kits-will-make-a-difference/489681191/> [<https://perma.cc/X2HX-J85L>].

6. Minn. H.F. 3434; Minn. S.F. 3206. In addition, during the 2018 session, several sexual assault reform bills were passed but put on hold due to a budget process (unrelated to the bills) that resulted in a veto of all omnibus bills. The advocacy groundwork laid in 2018 led to the passage of these bills during the 2019 session. These include changes to the several changes to the criminal sexual conduct code included in the public safety omnibus bill as well as direction to form a working group to reform the current statutes in addition to repeal of a marital/cohabitation defense to some kinds of criminal sexual conduct. See 2019 Minn. Laws 5, Special Session, <https://www.revisor.mn.gov/laws/2019/1/Session+Law/Chapter/5/> [<https://perma.cc/9BYR-HUCR>]; 2019 Minn. Laws 16, <https://www.revisor.mn.gov/laws/2019/0/Session+Law/Chapter/16/> [<https://perma.cc/6922-NGLU>].

7. Cassandra Santiago & Doug Criss, *An Activist, A Little Girl and the Heartbreaking Origin of 'Me Too'*, CNN (Oct. 17, 2017), <https://www.cnn.com/2017/10/17/us/me-too-tarana-burke-origin-trnd/index.html> [<https://perma.cc/H2YN-DWG7>].

8. Ronan Farrow, *From Aggressive Overtures to Sexual Assault: Harvey Weinstein's Accusers Tell Their Stories*, NEW YORKER (Oct. 10 & 23, 2017), <https://www.newyorker.com/news/news-desk/from-aggressive-overtures-to-sexual-assault-harvey-weinsteins-accusers-tell-their-stories> [<https://perma.cc/EMA9-HCNZ>]; Jodi Kantor & Megan Twohey, *Harvey Weinstein Paid Off Sexual Harassment Accusers for Decades*, N.Y. TIMES (Oct. 5, 2017), <https://www.nytimes.com/2017/10/05/us/harvey-weinstein-harassment-allegations.html> [<https://perma.cc/R66C-A3D4>].

wide variety of fields, from the highest levels of government to entertainment, journalism, academia, and beyond, opened the door to a new era of accountability.<sup>9</sup> A notable example is the Time's Up Legal Defense Fund, formed in early 2018 by several well-known entertainers to assist survivors in their workplace sexual harassment cases.<sup>10</sup>

An already expansive national and international conversation became even more urgent in September 2018 during the United States Supreme Court confirmation hearings for United States Court of Appeals District of Columbia Circuit Judge Brett Kavanaugh. Events shifted drastically with reports of his sexual misconduct toward three women: Christine Blasey Ford, Deborah Ramirez, and Julie Swetnick.<sup>11</sup> These events—including dramatic testimony before the Senate Judiciary Committee by Ford and Kavanaugh and a subsequent FBI investigation into the reports—furthered the national conversation regarding the role of the statute of limitations in sexual assault cases, not to mention the credibility of survivors who come forward several years after an alleged incident. Protesters filled the halls outside the hearing room in support of Ford, sharing the experiences they had also held private for so long, empowered by the moment of collective urgency.<sup>12</sup> Nonetheless, the Senate eventually confirmed Kavanaugh's nomination to the Supreme Court on a very close vote.

9. See, e.g., Elaine Godfrey et al., *The 25 Candidates for 2018 Sunk by #MeToo Allegations*, THE ATLANTIC (July 26, 2018), <https://www.theatlantic.com/politics/archive/2018/07/the-25-candidates-for-2018-sunk-by-metoo-allegations/565457/> [<https://perma.cc/9B99-SQTG>].

10. TIME'S UP, <https://www.timesupnow.com/home> [<https://perma.cc/PH3S-EVL6>].

11. Erin Kelly, *Here are the Five Allegations Made Against Supreme Court Nominee Brett Kavanaugh*, USA TODAY (Sept. 26, 2018), <https://www.usatoday.com/story/news/politics/2018/09/26/brett-kavanaugh-accusers/1432173002/> [<https://perma.cc/S9Z4-8HRM>]; Kate Zernike & Emily Steel, *Kavanaugh Battle Shows the Power, and the Limits, of #MeToo Movement*, N.Y. TIMES (Sept. 29, 2018), <https://www.nytimes.com/2018/09/29/us/politics/kavanaugh-blasey-metoo-supreme-court.html> [<https://perma.cc/X7EH-A5MD>].

12. See Caroline Simon & Doug Stanglin, *'Rise Up, Women!': Angry Crowds Flood Capitol Hill to Protest Brett Kavanaugh Nomination*, USA TODAY (Sept. 28, 2018), <https://www.usatoday.com/story/news/2018/09/28/brett-kavanaugh-hearing-protesters-christine-blasey-ford/1453524002/> [<https://perma.cc/QC9V-7SWL>].

*B. Current Minnesota Law*

Research in recent decades has reinforced findings that survivors of sexual assault have many valid and science-based reasons for not coming forward immediately after the harm—or ever.<sup>13</sup> This research is not only based on the shared anecdotal experience of survivors but also the science behind the neurobiology of trauma, which now plays a key role in law enforcement training for trauma-informed sexual assault investigations.<sup>14</sup> In Minnesota, the Supreme Court recognized the validity of the research on the neurobiology of trauma in relation to sexual assault and expanded the opportunity for helpful expert testimony on survivor behavior response in the landmark 2011 decision, *State v. Obeta*.<sup>15</sup>

Under current Minnesota law, the statute of limitations for criminal sexual conduct varies.<sup>16</sup> If a DNA sample is collected and preserved, then there are no limitations for cases involving first, second, or third degree felonies.<sup>17</sup> Without DNA, the current statute of limitations in first, second, or third degree felony cases involving adult survivors is nine years.<sup>18</sup> In other cases, there are varying limitations based on when the sexual assault occurred, the type of crime (felony, gross misdemeanor, or misdemeanor), and the age of the survivor when the crime occurred.<sup>19</sup> When a minor is harmed, for example, the statute of limitations for felonies is nine years after the date of offense or three years after a report to law enforcement (this

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13. See, e.g., Kaarin Long et al., *A Distinction Without a Difference: Why the Minnesota Supreme Court Should Overrule its Precedent Precluding the Admission of Helpful Expert Testimony in Adult Victim Sexual Assault Cases*, 31 HAMLIN J. PUB. L. & POL'Y 569, 584–86 (2010).

14. See CHRISTOPHER WILSON ET AL., END VIOLENCE AGAINST WOMEN INT'L, UNDERSTANDING THE NEUROBIOLOGY OF TRAUMA AND IMPLICATIONS FOR INTERVIEWING VICTIMS 5–6, 17–20 (2016), <https://www.evawintl.org/Library/DocumentLibraryHandler.ashx?id=842> [<https://perma.cc/HH57-GZQL>].

15. 796 N.W.2d 282, 293 (Minn. 2011) (“[E]xpert testimony on the typicality of delayed reporting, lack of physical injuries, and submissive behavior by rape victims may be helpful to the jury because it could assist the jury in evaluating evidence in the case that is relevant to the issue of consent.”).

16. See MINN. STAT. § 628.26 (2018).

17. *Id.* § 628.26(f). This section also includes sex trafficking cases. In addition, the crime must have happened or be eligible for charge as of August 1, 2000. *Id.*

18. *Id.*

19. *Id.* § 628.26(b)–(k).

framework provides a much broader timeframe for charging).<sup>20</sup> Fourth degree felonies and fifth degree gross misdemeanors have a three-year statute of limitations.<sup>21</sup> Changing the state law to eliminate the statute of limitations would impact adult-survivor felony cases primarily, where no DNA evidence was collected, as of the date of the law's enactment (the law cannot be retroactive in effect)—a significant number given that many survivors do not obtain a sexual assault examination for a variety of well-documented reasons.<sup>22</sup>

### C. Making Change in Minnesota

Criminal justice professionals are cautious about removing the statute of limitations entirely for felony criminal sexual conduct cases where DNA has not been collected and preserved.<sup>23</sup> Their hesitancy is not, for the most part, due to disbelief of the survivors' accounts but rather the challenges of conducting an investigation and prosecution several years past the sexual assault (however both belief and timing were key dynamics of the Kavanaugh hearings).<sup>24</sup> In addition, some prosecutors express concern that survivors will expect a full criminal justice response after a long period of time—which may not be

20. *Id.* § 628.26(e).

21. *Id.* § 628.26(k).

22. U.S. CONST. art. I, § 10 (“No state shall . . . pass any . . . ex post facto law . . .”) and MINN. CONST. art. I, § 11 (“No . . . ex post facto law . . . shall be passed . . .”); *see also* Jennifer Brooks, *Why Don't Sex Assault Victims Report the Crime? Just Read Their Stories*, STAR TRIB. (Sept. 23, 2018), <http://www.startribune.com/there-are-many-reasons-sex-assault-victims-don-t-report-the-crime/494047661/> [<https://perma.cc/67YK-FR9U>] (discussing the personal stories and reasons of women who did not report their sexual assault or obtain a sexual assault examination); Laura Santhanam, *Why Do State Laws Put an Expiration Date on Sex Crimes?*, PBS NEWS HOUR (Nov. 28, 2017), <https://www.pbs.org/newshour/nation/why-do-state-laws-put-an-expiration-date-on-sex-crimes> [<https://perma.cc/ZL58-DCQQ>]; *The Criminal Justice System: Statistics, RAPE, ABUSE & INCEST NAT'L NETWORK*, <https://rainn.org/statistics/criminal-justice-system> [<https://perma.cc/6HE5-TMZG>] (detailing the reasons victims choose to not report sexual assault and the accompanying statistics).

23. Santhanam, *supra* note 23.

24. Dan Morse & Erin Cox, *Why Maryland Police Aren't Investigating the Kavanaugh Allegations*, WASH. POST (Oct. 3, 2018), [https://www.washingtonpost.com/local/public-safety/amid-the-ford-kavanaugh-exchanges-have-the-local-police-been-asked-to-investigate/2018/09/27/7787d8c0-c297-11e8-a1f0-a4051b6ad114\\_story.html?noredirect=on&utm\\_term=.5b9db4e21269](https://www.washingtonpost.com/local/public-safety/amid-the-ford-kavanaugh-exchanges-have-the-local-police-been-asked-to-investigate/2018/09/27/7787d8c0-c297-11e8-a1f0-a4051b6ad114_story.html?noredirect=on&utm_term=.5b9db4e21269) [<https://perma.cc/EF4Z-LEJX>].

possible given the loss of evidence, witnesses, etc.<sup>25</sup> It is not a given that charges will be brought or a conviction will be obtained, but that is already true of most sexual assault cases even when the harm is more recent.<sup>26</sup>

This article explores the intersection of the law, science, and culture change with respect to sexual violence. It addresses options for lengthening or eliminating the statute of limitations in felony criminal sexual conduct cases and sex trafficking cases where no DNA has been collected and preserved.<sup>27</sup> If Minnesota completely removes the statute of limitations for felony sexual assaults, it will join seven other states with similar laws.<sup>28</sup>

The sections in this article cover the following topics: (II) explanation of the bills proposed to the Minnesota State Legislature in 2018 and 2019;<sup>29</sup> (III) examination of recent research into the physical and social science explanations for survivor response to trauma;<sup>30</sup> (IV) review of selected approaches to statute of limitations removal or extension from other states and how they compare to the Minnesota bill proposal;<sup>31</sup> (V) interplay of legislation and policy change regarding sexual assault examination kits in relation to the statute of limitations;<sup>32</sup> and (VI) options for change in Minnesota's statute of limitations scheme.<sup>33</sup>

## II. THE MINNESOTA BILLS

The Minnesota effort to remove the statute of limitations for criminal sexual conduct felonies when no DNA is collected and preserved is led by survivors working on the grassroots level, as is

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25. *Id.*

26. *What to Expect from the Criminal Justice System*, RAPE, ABUSE & INCEST NAT'L NETWORK, <https://www.rainn.org/articles/what-expect-criminal-justice-system> [<https://perma.cc/39PN-HG7T>] (indicating that out of every 1000 instances of rape, only seven cases will lead to a felony conviction).

27. *See infra* Parts II–VI.

28. *State by State Guide on Statutes of Limitations*, RAPE, ABUSE & INCEST NAT'L NETWORK, <https://www.rainn.org/state-state-guide-statutes-limitations> [<https://perma.cc/9URR-AT8v>].

29. *See infra* Part II.

30. *See infra* Part III.

31. *See infra* Part IV.

32. *See infra* Part V.

33. *See infra* Part VI.



common in the #MeToo movement nationally and beyond.<sup>34</sup> Legislative change is often driven by the lived experiences of those directly affected, and sexual assault survivors have found more opportunities to lobby effectively, sharing their stories with lawmakers who are, increasingly, ready to take action.<sup>35</sup>

Minneapolis Representative Ilhan Omar introduced House File 3434 on March 8, 2018, and St. Paul Senator Sandy Pappas introduced Senate File 3206 on March 9, 2018.<sup>36</sup> Legislators from both parties joined as co-authors in the House. Omar stated, “The current statute of limitations for these crimes are simply arbitrary dates that don’t help survivors of sexual violence reach justice. We want to help survivors have as many choices and tools to seek justice as possible, whenever they are ready to do so.”<sup>37</sup> Pappas added:

Our culture now has a heightened awareness of acts of sexual violence, but we need our laws to reflect the support we want to give the survivors of sexual violence and human trafficking. By making this change, we can guarantee that survivors can come forward when they are ready, and begin the process of seeking justice at the time that they choose without arbitrary restrictions in law.<sup>38</sup>

The legislation itself is quite simple, in stark contrast to the complexity of the issues behind it. The bill removes the distinctions between adult and child sexual assault cases, as well as the requirement that DNA must be collected and preserved in order to overcome the statute of limitations.<sup>39</sup> If changed, barring any amendments during the legislative process, the new law would read as follows: “Indictments or complaints for violation of sections

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34. See, e.g., Brooks Johnson & Jana Hollingsworth, *Bill Would Remove Statute of Limitations for Sex Offenses in Minnesota*, DULUTH NEWS TRIB. (Apr. 15, 2018), <http://www.duluthnewstribune.com/news/crime-and-courts/4432154-bill-would-remove-statute-limitations-sex-offenses-minnesota> [https://perma.cc/FG5X-CQYD]; Taylor McAvoy, *No Longer Silent: Sexual Assault Survivors Push Legislative Change*, SEATTLE WEEKLY (Mar. 9, 2018), <https://www.seattleweekly.com/news/no-longer-silent-sexual-assault-survivors-push-legislative-change/> [https://perma.cc/B59P-EBZE].

35. Johnson & Hollingsworth, *supra* note 35.

36. Press Release, Rep. Ilhan Omar, Sen. Sandy Pappas Introduce Bill Eliminating Statute of Limitations for Sexually Violent Crimes (Mar. 8, 2018). Representative Omar was elected to the United States Congress on November 6, 2018.

37. *Id.*

38. *Id.*

39. H.F. 3434, 90th Leg. (Minn. 2018); S.F. 3206, 90th Leg. (Minn. 2018).

609.322 and 609.342 to 609.345 may be found or made at any time after the commission of the offense.”<sup>40</sup> Such a change would create a new statute of limitations scheme for criminal sexual conduct felonies and sex trafficking, similar to other crimes in the Minnesota statutes that do not impose time limits, such as homicide, kidnapping, and labor trafficking of children.<sup>41</sup>

The bill did not pass during the 2018 session and was re-introduced in the 2019 session. The authors of the bill were Representative Aisha Gomez and Representative Marion O’Neill in the House and Senator Dan Hall and Senator Jason Rarick in the Senate.<sup>42</sup> During hearings, one survivor, Laura Stearns Adams, told the committee, “ The system as it exists is slanted in the favor of the people who perpetrate sexual crimes. As our understanding of how victims are affected evolves, we need to evolve the laws as well to give the victims of these crimes the gift of time.”<sup>43</sup> The bill’s language was discussed in the Public Safety Conference Committee, and increasingly gained support amongst legislators after debate reflecting some of the concerns noted above, but was not included in the final Public Safety Omnibus bill.

### III. THE PHYSICAL AND SOCIAL SCIENCE EXPLAINING VICTIM/SURVIVOR RESPONSE TO SEXUAL VIOLENCE

Sexual violence is traumatic, and with trauma comes physical and psychological responses. Some responses last throughout a lifetime—others are more immediate, and the survivor must learn to cope, if they can, with a new and unwanted normal.<sup>44</sup> According to leading researchers, sexual assault is “one of the most severe of all traumas, causing multiple, long-term negative outcomes” that can range from depression, anxiety, chemical dependency, dissociation, suicidal

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40. Minn. H.F. 3434; Minn. S.F. 3206; *see also* MINN. STAT. § 609.322 (2018) (sex trafficking); *Id.* §§ 609.342–45 (criminal sexual conduct, first through fourth degree). The crimes detailed in Minnesota Statutes sections 609.322 and 609.342–45 are all felonies.

41. MINN. STAT. § 628.26(a)–(c).

42. H.F. 734, 91st Leg. (Minn. 2019); H.F. 480, 91st Leg. (Minn. 2019); S.F. 731, 91st Leg. (Minn. 2019); S.F. 2521, 91st Leg. (Minn. 2019).

43. Tim Walker, *Statute of Limitations for Criminal Sex Crimes Could Disappear*, SESSION DAILY (Mar. 13, 2019), <https://www.house.leg.state.mn.us/SessionDaily/Story/13756>.

44. *See* Long et al., *supra* note 14, at 592–607.

ideation, suicide attempts, and, in some cases, post-traumatic stress disorder diagnoses.<sup>45</sup>

Each of these challenges are daunting enough on their own, but societal response to sexual violence can make any or all of them even harder to bear. Survivors struggle to gain acceptance and belief, even from their own friends and family and even from the systems that are supposed to respond on their behalf.<sup>46</sup> Significant public events that call a survivor's experience into question, such as the Kavanaugh confirmation hearings, reinforce the societal message that there must always be a fight for credibility and care.<sup>47</sup>

#### A. The Brain's Response to Trauma

Research shows that negative social reactions to sexual violence can reinforce trauma symptoms.<sup>48</sup> Trauma is a "fundamentally subjective event" that manifests based on many factors; in short, what may be traumatic to one person may not be to another, or may affect people in different ways based on their life experiences and relationships, among other reasons.<sup>49</sup> This reality, however, is often forgotten when others are asked to believe the experiences of a sexual assault survivor, especially when an individual is unable to recall the

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45. *Id.* at 595; see also Rebecca Campbell et al., *An Ecological Model of the Impact of Sexual Assault on Women's Mental Health*, 10 TRAUMA, VIOLENCE, & ABUSE 225, 225 (July 2009); Anthony J. Rosellini et al., *Sexual Assault Victimization and Mental Health Treatment, Suicide Attempts, and Career Outcomes Among Women in the US Army*, 107(5) AM. J. PUB. HEALTH 732, 732-39 (May 2017); Kristen Witkemper et al., *Psychological Resilience Following Sexual Assault Predicts Improved Mental Health Outcomes*, 83 BIOLOGICAL PSYCHIATRY S359, S359 (May 2018).

46. See Long et al., *supra* note 14, at 597; see also Brandon Stahl et al., *Denied Justice, Part 1: When Rape is Reported and Nothing Happens*, STAR TRIB. (July 22, 2018), <http://www.startribune.com/when-rape-is-reported-in-minnesota-and-nothing-happens-special-report-part-one/487130861/> [<https://perma.cc/8TDH-QATL>].

47. Julia Jacobs, *When the News Itself is a Form of Trauma*, N.Y. TIMES (Sept. 26, 2018), <https://www.nytimes.com/2018/09/26/us/metoo-survivors-kavanaugh-cosby.html> [<https://perma.cc/3668-L4S7>].

48. See, e.g., Christopher R. DeCou et al., *Coping Self-Efficacy and Trauma-Related Shame Mediate the Association Between Negative Social Reactions to Sexual Assault and PTSD Symptoms*, PSYCHOL. TRAUMA: THEORY, RES., PRAC., AND POL'Y (July 19, 2018), [https://www.researchgate.net/publication/326497453\\_Coping\\_Self-Efficacy\\_and\\_Trauma-Related\\_Shame\\_Mediate\\_the\\_Association\\_Between\\_Negative\\_Social\\_Reactions\\_to\\_Sexual\\_Assault\\_and\\_PSTD\\_Symptoms](https://www.researchgate.net/publication/326497453_Coping_Self-Efficacy_and_Trauma-Related_Shame_Mediate_the_Association_Between_Negative_Social_Reactions_to_Sexual_Assault_and_PSTD_Symptoms) [<https://perma.cc/6N34-R6XT>].

49. WILSON ET AL., *supra* note 15, at 5.

exact details or chronology of an event.<sup>50</sup> Now, even with extensive scientific knowledge about the neurobiology of trauma, especially how trauma impacts memory, survivors still struggle to prove their credibility when they are missing key details, cannot remember information in order of occurrence, or remember new and sometimes conflicting information over the passage of time.<sup>51</sup>

Just like trauma responses, human brains are distinct. A human brain's uniqueness is based on various factors, including the interplay of nature versus nurture, the cumulative effect of lives filled with encounters (positive and negative), the impact of alcohol or drugs, and how individuals are "hard wired" or "conditioned" by their experiences to interact with the world.<sup>52</sup> While an extensive explanation of the neurobiology of trauma is beyond the scope of this article and the author's knowledge, this section briefly describes the relationship between brain circuitry and a traumatic event like sexual assault, with a particular focus on how memory is affected. An important point to remember is that individuals subjected to trauma oftentimes experience a change in their brains that will affect their lives for a long time, possibly the entirety of their lives.<sup>53</sup> Survivors of sexual assault are no different in this respect.

Memory is affected by different parts of the brain. The prefrontal cortex, for example, at the front of the brain, is charged with planning and decision-making, organizing the data, and sensory stimulus received into memory and narratives, while focusing a human's attention on the stimulus around him or her.<sup>54</sup> The limbic system, on the other hand, helps humans defend against and respond to threats—this defense mechanism is so sensitive that when threatened, it may completely surpass the logic center of the prefrontal cortex and go directly into responsive action such as fight, flight, and/or freeze (all are possible), and more specifically, dissociation, tonic immobility, and collapsed immobility.<sup>55</sup> The limbic

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50. See Long et al., *supra* note 14, at 597–98.

51. See, e.g., Jessica Shaw et al., *Beyond Surveys and Scales: How Rape Myths Manifest in Sexual Assault Police Records*, 7 *PSYCHOL. VIOLENCE* 602 (Aug. 2016).

52. WILSON ET AL., *supra* note 15, at 5–6.

53. *Id.* at 7.

54. *Id.* at 7–8.

55. *Id.* at 9, 16–19. "Dissociation" is "a coping mechanism that involves the brain 'disconnecting' from the circuitry that keeps us aware of what's happening inside our bodies." *Id.* at 18.

"Tonic immobility" involves being:

system is also a source for emotion and is responsible for encoding the memories received by the prefrontal cortex.<sup>56</sup>

The brain is always vigilant, even when one is not conscious of its protective propensity. The amygdala serves as the “early warning” system for “potential threats in the environment.”<sup>57</sup> It responds to a threat by triggering a chemical release into the body to aid in the response.<sup>58</sup> The hippocampus, located near the amygdala in the brain, assesses the threat environment for safety and danger and aids in the most efficient response based on the immediacy of need.<sup>59</sup>

After a threat is over, the prefrontal cortex gradually returns to its usual role, which includes determining how to avoid the potential for harm in the future.<sup>60</sup> It is always planning while the limbic system, led by the amygdala and hippocampus, reacts without thinking, as that would be an inefficient response in the face of danger.<sup>61</sup> Generally, the brain remembers traumatic events and remains alert for the circumstances related to them.<sup>62</sup> Thus, in the midst of a new or recurring trauma, the prefrontal cortex shuts down to allow the more efficient limbic system to jump into survival mode—the brain relies on its learned response for self-protection.<sup>63</sup>

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[U]nable to move or talk. The person might still be alert and aware, or they might be experiencing dissociation at the same time, which disconnects them from being aware of what is happening with their bodies. In the context of a sexual assault, this means that some victims will describe being unable to move, talk or cry out during the assault, even though they were aware of what was happening to their body.

*Id.* at 18–19. With “collapsed immobility:”

[T]he same four conditions that can trigger tonic immobility may also trigger collapsed immobility: (1) Extreme fear, (2) Physical contact with the perpetrator, (3) Physical restraint, and (4) The perception of inescapability. Also, like tonic immobility, it has a sudden *onset*, but the *offset* is usually more gradual. In general, the individual experiencing collapsed immobility cannot speak or move and will exhibit a general loss of muscle tone. Heart rate and blood pressure will also decrease, which results in less oxygen getting to the brain. This can produce faintness or even passing out.

*Id.* at 19–20 (emphasis in original).

56. *Id.* at 9.

57. *Id.* at 10.

58. *Id.* at 11.

59. *Id.*

60. *Id.* at 12–13.

61. *Id.* at 13.

62. *See id.*

63. *Id.*

### B. Trauma and Memory

The prefrontal cortex dictates how one pays attention, and in the absence of a threat, one is able to focus on his or her surroundings without extreme distraction.<sup>64</sup> In the midst of a threat, however, the prefrontal cortex does not wield the same control over attention, and humans can become fixated on specific, sometimes minute, details to the exclusion of others that may seem more compelling or relevant.<sup>65</sup> A common example is “weapon focus,” which occurs when a person who was faced with a weapon can describe it extensively, but cannot recall other details, such as the facial features or clothing of the perpetrator.<sup>66</sup>

For survivors of sexual violence, the focus may be on a weapon if one was used, but since weapons are not all that common as compared to coercive tactics, often other sensory details come into play, such as the feel of the bedding fabric, the scent of the room, or specific sounds (for example, during her testimony in the Kavanaugh confirmation hearing, Ford recounted the “uproarious laughter” by Kavanaugh and his friend, Mark Judge, at her expense after the sexual assault).<sup>67</sup> The lack of certain details that some would deem as most important can cause doubt towards the survivor, when in fact the extreme focus on other details may indicate the sort of hyper-focus associated with trauma—a greater indicator of credibility.

The hippocampus encodes memories in different ways during trauma, commonly described as “flashbulb” and “fragmented.”<sup>68</sup> A flashbulb memory is especially detailed, yet brief, as if the survivor sought to capture a moment in a photograph for further study.<sup>69</sup> Fragmented memories capture parts of the experience, sometimes

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64. *Id.* at 24.

65. *Id.*

66. *Id.*

67. Alanna Vagianos, *Christine Blasey Ford Recalls ‘Uproarious Laughter’ During Alleged Sexual Assault*, HUFFINGTON POST (Sept. 27, 2018), [https://www.huffingtonpost.com/entry/christine-blasey-ford-brett-kavanaugh-sexual-assault-laughter\\_us\\_5bacf617e4b09d41eb9f00d8](https://www.huffingtonpost.com/entry/christine-blasey-ford-brett-kavanaugh-sexual-assault-laughter_us_5bacf617e4b09d41eb9f00d8) [<https://perma.cc/H7KU-9T3R>].

68. WILSON ET AL., *supra* note 15, at 28.

69. *Id.* (“[The concept of] *flashbulb memory* . . . explains why victims will often have a high level of detail in their account of the initial moments of a sexual assault or other traumatic event.” (emphasis in original)).

without contextual details.<sup>70</sup> The senses are particularly acute with regard to these memories, which is why trauma-informed investigative techniques that rely on sight, touch, smell, and sound can be very effective in helping a survivor to assemble the fragments into some semblance of a sequence of events.<sup>71</sup> There is no guarantee, however, that the survivor will be able to accurately track the length of time of the sexual assault as a whole or in its parts, and some details may not emerge until a later time.<sup>72</sup> Think of puzzle pieces tossed into the air, or a desktop covered with sticky notes—all of the elements of the whole are present, but they are not neatly organized and could conceivably have gaps if certain pieces or notes are lost or covered up when they are scattered apart.<sup>73</sup>

### C. Memory and Statutes of Limitations

Some criminal justice professionals worry that removing the statute of limitations increases the odds that an innocent person will

70. *Id.* (“These fragments are often encoded without contextual details such as the timing of events, which explains why many victims can remember sounds, smells and other aspects of an assault, but cannot put them in sequential order or tell you when they occurred.”).

71. *Id.* See, e.g., STRAND<sup>2</sup> HOLISTIC INNOVATIVE FORENSIC TECHNIQUES, LLC, A PARADIGM SHIFT SOLUTION [hereinafter *SHIFT*], <https://russellstrand.com/> [<https://perma.cc/NZ9N-8U3P>] (advocating for use of trauma-informed care and protocols in all courtrooms).

72. WILSON ET AL., *supra* note 15, at 29–31.

73. Examples used during trainings by forensic experiential trauma interview developer Russell Strand and researcher Dr. Rebecca Campbell, respectively. See Rebecca Campbell, The Neurobiology of Sexual Assault, Speech at the National Institute of Justice Seminar (Dec. 3, 2012), <https://nij.gov/multimedia/presenter/presenter-campbell/pages/presenter-campbell-transcript.aspx> [<https://perma.cc/9DVG-WKWZ>] (“I want you to imagine the messiest desk ever . . . I want you to take that pile of precious post-it notes, and I want you to scatter them all over that desk . . . and I want you to find all of those post-it notes. And I want you to put them in the correct order, and then I want you to tell me right back what you learned in my presentation. The storage of [memory] is disorganized and fragmented.”); Sarah Jarvis, *Minneapolis, University Police Receive Specialized Training for Sexual Assault Victims*, STAR TRIB. (June 27, 2017), <http://www.startribune.com/minneapolis-university-cops-receive-specialized-training-for-sexual-assault-victims/431182513/> [<https://perma.cc/5EK7-64CG>] (“Russell Strand held up a 100-piece puzzle box as a metaphor for a typical criminal case, each piece inside representing a specific memory a victim has of the crime that investigators try to put together. . . . ‘What happens in trauma is this,’ [Strand] said, throwing a dozen pieces into the air.”).

go to prison.<sup>74</sup> They argue that statutes of limitations ensure that persons are protected from prosecution when, for example, physical evidence may have deteriorated or become less reliable over the passage of time.<sup>75</sup> And yet, while memory will always be a concern, especially as more time passes between the sexual assault and a report to law enforcement, the science, as described in the sections above, demonstrates that survivors can remember important details, particularly with the support of trauma-informed investigations that draw upon the brain's ability to connect certain memories with sensory sensations. For example, the proximity of the olfactory bulb (connected with the sense of smell) and the amygdala within the brain can create a very strong connection between a traumatic event and smells associated with the event.<sup>76</sup>

The expressed concerns, while legitimate, should not block the opportunity for prosecution if the evidence is attainable and can be presented in a responsible manner to overcome the burden of beyond a reasonable doubt required in a criminal case. Expansion or removal of the statute of limitations will not negate the role of prosecutorial discretion or the ethical obligations that must be taken into consideration when making charging decisions.<sup>77</sup> When coupled with

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74. Santhanam, *supra* note 23.

75. *Id.*

76. "The anatomy and behavioral features of olfactory processing suggest that hedonically valenced olfactory stimuli may act as useful probes for studying limbic regions. The perception of smell is dominated by a hedonic (pleasantness-unpleasantness) dimension, and exposure to odorants produces robust approach and withdrawal responses." David H. Zald & José V. Pardo, *Emotion, Olfaction, and the Human Amygdala: Amygdala Activation During Aversive Olfactory Stimulation*, 94(8) *PROC. NAT'L ACAD. SCI. U.S.* 4119 (Apr. 15, 1997) (citations omitted).

77. See, e.g., MINN. R. PROF. COND. 3.8 (2015) ("The prosecutor in a criminal case shall: (a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause."). According to Comment [1] to Rule 3.8,

A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence. Precisely how far the prosecutor is required to go in this direction is a matter of debate and varies in different jurisdictions. Many jurisdictions have adopted the ABA Standards of Criminal Justice Relating to the Prosecution Function, which in turn are the product of prolonged and careful deliberation by lawyers experienced in both criminal prosecution and defense. Applicable law may require other measures by the prosecutor and knowing disregard of those obligations or a systematic abuse of prosecutorial discretion could constitute a violation of Rule 8.4 [Misconduct].



law enforcement investigations that fully utilize all aspects of trauma-informed forensic techniques and recognize the complexities of survivor responses to sexual assault, it is likely that cases will be stronger in terms of evidence, witnesses, and other aspects that help with credibility determinations in the courtroom.<sup>78</sup>

#### IV. SURVEY OF SELECTED STATE LAWS

In recent years, the national trend has moved slowly toward extending or removing the statute of limitations for sexual assault crimes, especially as reports about sexual abuse in the Catholic Church and other institutions have come to light.<sup>79</sup> Recent high-profile cases have also underscored the problem of time-bars. For example, prosecutors in the Bill Cosby case were just two-and-a-half weeks away from losing the opportunity to criminally charge the entertainer known as “America’s Dad” with three counts of aggravated indecent assault in Pennsylvania, where the statute of limitations for such crimes is ten years.<sup>80</sup> After a hung jury trial, Cosby was eventually sentenced to three to ten years in prison for sexually assaulting Andrea Constand in 2004—one of many women who made reports against him.<sup>81</sup> Constand, however, was the only one who

*Id.*

78.

It is important to remember that direct questions may ask about information that was peripheral to the victim’s experience and therefore not encoded in memory. As a result, the victim may begin to feel stressed about not being able to answer. Even if they are reassured that it is okay to not remember certain aspects of the assault, many victims believe they *should* be able to remember simple details like the location of a water bottle. This stress can then affect their prefrontal cortex and further hinder their ability to recall other memories. A trauma-informed approach includes asking questions that allow central details to emerge, without pushing the victim for peripheral details that aren’t available.

WILSON ET. AL, *supra* note 15, at 33.

79. Sasha Aslanian et al., *Betrayed by Silence*, MINN. PUB. RADIO (various dates), <http://minnesota.publicradio.org/collections/catholic-church/> [<https://perma.cc/UM53-D5UX>].

80. Jill Filipovic, *No More Statutes of Limitations for Rape*, N.Y. TIMES (Dec. 31, 2015), <https://www.nytimes.com/2016/01/01/opinion/no-more-statutes-of-limitations-for-rape.html> [<https://perma.cc/4F3H-B9YZ>].

81. See generally Eric Levenson & Aaron Cooper, *Bill Cosby Sentenced to 3 to 10 Years in Prison for Sexual Assault*, CNN (Sept. 26, 2018), <https://www.cnn.com/2018/09/25/us/bill-cosby-sentence-assault/index.html> [<https://perma.cc/GXF2-T5UC>] (discussing the events and circumstances leading up

could see her case through to justice, because the others were time-barred.<sup>82</sup>

Actor Corey Feldman, who appeared in several popular films during his youth, stated that he could name several powerful individuals in the entertainment industry who sexually assaulted him and other child actors. Nonetheless, because the California statute of limitations had run on Feldman's claims (a similar problem for many of Cosby's victims who reported drug-facilitated sexual assaults by him from decades ago), he did not share the names for fear of being sued.<sup>83</sup>

In September 2016, California changed its law to remove statute of limitations on rape and sex crimes (effective January 1, 2017), but the law cannot be applied retroactively,<sup>84</sup> so cases like Feldman's still cannot be pursued—unless new DNA evidence is found later.<sup>85</sup> In another high-profile case, Joseph James DeAngelo, the “Golden State Killer,” who was arrested in 2018 for crimes dating back decades, cannot be charged for rape, even though many of his murders involving rape are not time-barred.<sup>86</sup> Despite the barrier of

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to the criminal trial of Bill Cosby and the reactions of his victims/survivors to the guilty verdict).

82. *Id.* (quoting attorney Gloria Allred who said, “[T]here has been no justice for many of the accusers who were barred from a court by the arbitrary time limits imposed by the statute of limitations.”).

83. Jill Filipovic, *Corey Feldman's Claims Show Why Sex Crimes Should Have No Statute of Limitations*, TIME (May 26, 2016), <http://time.com/4349546/statute-limitations-rape-feldman/> [<https://perma.cc/E6LP-9W53>].

84. *See Stogner v. California*, 539 U.S. 607, 610 (2003).

The Constitution's two *Ex Post Facto* Clauses prohibit the Federal Government and the States from enacting laws with certain retroactive effects. The law at issue here created a new criminal limitations period that extends the time in which prosecution is allowed. It authorized criminal prosecutions that the passage of time had previously barred. Moreover, it was enacted after prior limitations periods for Stogner's alleged offenses had expired. Do these features of the law, taken together, produce the kind of retroactivity that the Constitution forbids? We conclude that they do.

*Id.* (citation omitted).

85. *See* CAL. PENAL CODE § 799 (2018) (stating that the prosecution of a felony offense involving substantial sexual conduct may be commenced at any time); *see also* CAL. PENAL CODE § 803 (2018) (providing an exception to the tolling of limitation of time by which a suit relating to sexual conduct must be filed if new DNA evidence is found).

86. *See generally* Eric Levenson, *California Ended its Statute of Limitations on Rape After Bill Cosby. It May Not Apply to the Golden State Killer*, CNN (April 26, 2018),

retroactivity, California's Justice for Victims Act is a progressive measure and places it among a growing list of states that do not have a statute of limitations for sexual assault, including Kentucky, Maryland, North Carolina, South Carolina, Virginia, West Virginia, and Utah.<sup>87</sup>

Some states have extended the statute of limitations, opting not to remove them entirely but still recognizing that current timeframes may be too short. Nevada, responding like California to the Bill Cosby case, extended its law from four years to twenty years in 2015 after survivor Lisa-Lotte Lublin was time-barred from pursuing a Las Vegas sexual assault by the entertainer in 1989.<sup>88</sup> In the same year, Indiana changed its law to allow for prosecution after five years where there is new DNA evidence or a confession.<sup>89</sup> The act was called "Jenny's Law," named after survivor Jenny Wendt whose rapist went free, despite confessing, because of the old statute of limitations.<sup>90</sup>

Statute of limitation extension is a positive step and sends a message to survivors that states recognize a longer time may be needed for reporting. Even so, new limitations may still be too short, and in the case of Indiana's law, depend on new, difficult-to-obtain evidence or the equally challenging access to a confession.<sup>91</sup> Pennsylvania and Montana, for example, allow only one year for charges to be filed after a DNA match.<sup>92</sup> Oregon, on the other hand,

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<https://www.cnn.com/2018/04/26/us/golden-state-killer-statute-limitations-trnd/index.html> [<https://perma.cc/72JU-EMP8>].

87. See KY. REV. STAT. ANN. § 500.050 (West 2018); S.C. CODE ANN. § 16-3-652 (2018); UTAH CODE ANN. § 76-1-302 (West 2018); VA. CODE ANN. § 19.2-8 (2018); Renfro v. State, 122 A.3d 976 (Md. 2015); Massey v. State, 579 A.2d 265 (Md. 1990); State v. Hardin, 201 S.E.2d. 74 (N.C. Ct. App. 1973); Foster v. Virginia, 606 S.E.2d. 518 (Va. Ct. App. 2004); State v. Carrico, 427 S.E.2d. 474 (W. Va. 1993). Note that these states do not reduce the statute of limitations if a survivor chooses not to report.

88. See NEV. REV. STAT. § 171.085 (2018); NEV. REV. STAT. § 171.090 (2018); see also Casey Tolan, *Nevada Extends Statute of Limitations Because of Bill Cosby Rape Allegations*, SPLINTER (May 26, 2015), <https://splinternews.com/nevada-extends-statute-of-limitations-because-of-bill-c-1793847950> [<https://perma.cc/6K89-YTMN>].

89. IND. CODE § 35-41-4-2 (2018).

90. *Id.*; see Tim Evans, 'Jenny's Law' Closes Loophole that let Confessed Rapist Escape Prosecution, INDY STAR (Apr. 30, 2015), <https://www.indystar.com/story/news/politics/2015/04/30/jennys-law-closes-loophole-let-confessed-rapist-escape-prosecution/26630979/> [<https://perma.cc/3CXM-SHN5>].

91. See IND. CODE § 35-41-4-2 (2018).

92. See MONT. CODE ANN. § 45-1-205 (2018); 42 PA. CONS. STAT. § 5552 (2018).

allows for filing in a first-degree case any time after a DNA match and twenty-five years after a match in a second-degree case.<sup>93</sup>

A change in the Illinois law, just as in California and Nevada, came as the result of a case involving a well-known public figure, specifically Dennis Hastert, the former United States Speaker of the House. He confessed in court to several crimes involving sexual abuse of high school boys when he had been their wrestling coach four decades prior, but because the statute of limitations had run out, no charges could be brought.<sup>94</sup> The Illinois amendment, however, was limited in reach to felony child sexual abuse and felony child sexual assault cases.<sup>95</sup> While this is important progress,<sup>96</sup> adult victims are also likely to delay reporting due to shame, fear of retribution, or the other trauma-related reasons already discussed and would benefit from the same opportunity to seek justice through expanded or eliminated statutes of limitations for sexual assault.<sup>97</sup>

#### V. MINNESOTA'S IMPROVED RESPONSE TO SEXUAL ASSAULT EXAMINATION KIT TESTING AND STATUTES OF LIMITATIONS

Minnesota recently changed its law regarding the handling of sexual assault examination kits. New procedures, enacted on August 1, 2018, define kits in terms of whether or not the survivor has chosen to report the case, set forth timeframes for collection from the hospital by law enforcement when a survivor releases the case for investigation (ten days), and set forth timeframes for submission to the forensic lab by law enforcement (sixty days, however, if a decision is made by law enforcement not to submit, the reasons for doing should be documented in consultation with the county attorney).<sup>98</sup>

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93. See OR. REV. STAT. § 131.125 (2018).

94. See Santhanam, *supra* note 23.

95. See 720 ILL. COMP. STAT. § 5/3-5 (2018); 720 ILL. COMP. STAT. §§ 5/3-6(e), (i), (j) (2018).

96. See generally Symone Shinton, *Pedophiles Don't Retire: Why the Statute of Limitations on Sex Crimes Against Children Must Be Abolished*, 92 CHI.-KENT L. REV. 317 (July 2017) (discussing how the statute of limitations for sex crimes against children must be abolished because the effects of childhood sexual abuse span a lifetime and adult survivors need the opportunity to participate in the criminal justice system on their own time).

97. See Santhanam, *supra* note 23.

98. MINN. STAT. § 299C.106 (2018).

Minnesota also changed its laws to include guidance for sharing information about kit testing with survivors upon their request.<sup>99</sup>

While Minnesota does not have as many untested kits on law enforcement shelves as other jurisdictions, it still has a very significant number—at one point nearly 3,500, according to a 2015 audit by the Bureau of Criminal Apprehension in response to a state law requiring the count.<sup>100</sup> The state recently received a federal Sexual Assault Kit Initiative (SAKI) grant<sup>101</sup> to address the untested kits if a survivor intended them to be submitted for testing (federal and state law requires survivors to have a choice as to whether or not to request testing).<sup>102</sup> Any DNA evidence found in the untested kits will be available for use in a prosecution because of Minnesota’s existing law allowing for unlimited statute of limitations in first to third degree cases.<sup>103</sup>

Thus, Minnesota is already ahead of other states. In some states where significant numbers of kits were found untested, changes in the law have been pursued to remove or extend the statute of limitations to give an opportunity for some cases to be brought to justice.<sup>104</sup> In Ohio, for example, where nearly 14,000 kits went untested in Cuyahoga County (including Cleveland),<sup>105</sup> a new law in 2015

99. *Id.* § 611A.27.

100. Jennifer Bjorhus, *State Officials Detail Backlog of Rape Kits*, STAR TRIB. (Nov. 12, 2015), <http://www.startribune.com/police-agencies-in-minnesota-disclose-tally-of-untested-rape-kits/346861582/> [https://perma.cc/575W-8QVQ].

101. See generally *The National Sexual Assault Kit Initiative*, SAKI (Oct. 21, 2018), <https://sakitta.org/about/> [https://perma.cc/PME7-Q7KQ]. The National Sexual Assault Kit Initiative provides funding to support the jurisdictional reform of approaches to sexual assault cases resulting from evidence found in sexual assault kits that have never been tested. *Id.* This funding can help link survivors to advocates and needed services, help jurisdictions implement best practices and comprehensive reform to bring perpetrators to justice, and increase safety in communities by preventing future sexual assaults. *Id.*

102. See 18 U.S.C. § 3772 (2016); MINN. STAT. § 609.35.

103. MINN. STAT. § 628.26(f) (detailing that there is no statute of limitations for cases where DNA evidence is collected and preserved and the crime is a first-, second-, or third-degree criminal sexual conduct).

104. *Criminal Justice Update: Sexual Assault Cases Granted More Time*, OHIO ATT’Y GEN. (Oct. 2, 2015), <https://www.ohioattorneygeneral.gov/Media/Newsletters/Criminal-Justice-Update/October-2015/Sexual-assault-cases-granted-more-time> [https://perma.cc/7JZP-45FL]; Santhanam, *supra* note 23.

105. See, e.g., Rachel Dissell, *The Impact of One of Almost 14,000 Tested Rape Kits, a “Weight lifted” for One Survivor Who Got Her Day in Court*, CLEVELAND PLAIN-DEALER (Feb. 23, 2018),

extended the statute of limitations in cases with DNA evidence—prosecutors have five years to do so after the evidence is identified, even if the twenty year statute of limitations has run.<sup>106</sup>

The key consideration for Minnesota now is the opportunities available for statute of limitations reform when a case does not have any collected and preserved DNA. This is not an unusual situation—many survivors do not obtain a sexual assault examination kit because they choose not to go to a hospital, do not know their options about evidence collection, or obtain medical care too long after the typical window of time for evidence collection (generally up to 120 hours after a sexual assault).<sup>107</sup>

Biological evidence is not the only kind of evidence available in a sexual assault case—witness testimony, technology (phone, text, social media), physical evidence described by the survivor (i.e., clothing or specific items in the location where the sexual assault occurred), and other options may exist that can help to support a prosecution if carefully organized. Even though the “CSI effect” remains strong—meaning some jurors come to expect DNA evidence in cases due to the popularity (and real life improbability) of the CBS procedural—a successful prosecution is possible without it if the evidence is framed in a compelling manner and other approaches, such as expert testimony about the various survivor responses to sexual assault, are employed.<sup>108</sup> Expert testimony by professionals including advocates, sexual assault nurse examiners, therapists and law enforcement, among others, can help the prosecution explain to the jury why, due to the length of time in reporting related to the

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[https://www.cleveland.com/metro/index.ssf/2018/02/the\\_impact\\_of\\_one\\_of\\_almost\\_14000\\_tested\\_rape\\_kits\\_a\\_weight\\_lifted\\_for\\_one\\_survivor\\_who\\_got\\_her\\_day\\_in\\_court.html](https://www.cleveland.com/metro/index.ssf/2018/02/the_impact_of_one_of_almost_14000_tested_rape_kits_a_weight_lifted_for_one_survivor_who_got_her_day_in_court.html) [https://perma.cc/QF3V-M2Q4].

106. OHIO REV. CODE ANN. § 2901.13 (West, 2018); *Criminal Justice Update*, *supra* note 105.

107. See *National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach*, U.S. DEP'T OF JUST. 1, 17 (2017), <https://www.ncjrs.gov/pdffiles1/nij/250384.pdf> [https://perma.cc/ZCB4-5GZB].

108. See Donald E. Shelton, *The CSI Effect: Does it Really Exist?*, NAT'L INST. JUS. J. No. 259 (Mar. 2008), <https://www.ncjrs.gov/pdffiles1/nij/221501.pdf> [https://perma.cc/8BNR-VWTD]; Amanda Vicary & Yuliana Zaikman, *The CSI Effect: An Investigation into the Relationship Between Watching Crime Shows and Forensic Knowledge*, 19 N. AM. J. PSYCH. 51, 51 (2017).

trauma described earlier in this article, DNA testimony may be missing.<sup>109</sup>

## VI. CONCLUSION

Minnesota can build upon its existing statute of limitations laws to provide more opportunities for prosecution when a sexual assault case presents enough evidence to do so. Whether the state decides to extend the timeframe or eliminate the statute of limitations altogether in felony criminal sexual conduct cases depends on how bold the legislature is willing to be when adopting a change and how willing stakeholders, such as law enforcement and prosecutors, are to support reform. The creation of a criminal sexual conduct statutory reform task force during the 2019 legislative session to address criminal sexual conduct code changes could pave the way for adoption of changes in the statute of limitations, including elimination.<sup>110</sup>

Already the legislature has taken significant steps to improve the prospects for sexual assault prosecution by addressing the handling of sexual assault evidentiary kits and ensuring that they will not go untested when a survivor chooses to report. The state has also successfully obtained federal funding to clear up the untested kits.<sup>111</sup>

The national trend shows more states making significant changes, especially when cases that could have been prosecuted were lost due to the statute of limitations. Minnesota is no stranger to these types of scenarios—the ongoing sexual abuse investigation of the Archdiocese of St. Paul and Minneapolis, for example, has revealed hundreds of cases that might have been eligible for prosecution had the statute of limitations not expired.<sup>112</sup> A change in the statute of limitations for civil remedies involving child sexual abuse cases helped some survivors hold the Catholic Church accountable; the new

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109. See Long et al., *supra* note 14, *passim*. See also *State v. Obeta*, 796 N.W.2d 282, 293 (Minn. 2011).

110. See 2019 Minn. Laws 5, Special Session, <https://www.revisor.mn.gov/laws/2019/1/Session+Law/Chapter/5/>; Stephen Montemayor, *New Minnesota Sex Crimes Task Force Survives in Late Budget Deal*, STAR TRIB. (May 22, 2019), <http://www.startribune.com/new-minnesota-sex-crimes-task-force-survives-in-late-budget-deal/510281592/> [<https://perma.cc/37M8-6YS2>].

111. Jennifer Mayerle, *The Push to Examine All of Minnesota's Untested Rape Kits*, CBS MINN. (May 29, 2018), <https://minnesota.cbslocal.com/2018/05/29/rape-kit-test-backlog/> [<https://perma.cc/TC9S-3PBV>].

112. Aslanian et al., *supra* note 80.

law was also enforceable against other institutions and individuals.<sup>113</sup> Known as the “Minnesota Child Victim Act,” it included a three-year “window” to file a civil lawsuit no matter when the childhood sexual abuse occurred. The window closed in 2016.<sup>114</sup> Under current law, victims of sexual abuse over the age of eighteen have six years to file suit, and victims of sexual abuse that occurred when they were under eighteen have until they are twenty-four to file suit.<sup>115</sup>

Minnesota, like other states, finds itself at the intersection of law, science, and culture change in the midst of the #MeToo movement. Whether the state decides to eliminate the statute of limitations for felony criminal sexual conduct cases that do not have collected and preserved DNA, extend the time frame for possible prosecution, or do nothing at all, remains to be seen. The survivor advocates who supported the legislation during the 2018 session returned in 2019—and will continued to do so in subsequent years if necessary. The desire for reform spurred on by the #MeToo movement and pivotal events such as the Kavanaugh confirmation process will only grow stronger.

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113. Rose French, *New Minnesota Law Gives Child Sex Abuse Victims More Time to Sue*, STAR TRIB. (June 28, 2013), <http://www.startribune.com/new-minnesota-law-gives-child-sex-abuse-victims-more-time-to-sue/213424111/> [<https://perma.cc/2YYR-U6EK>].

114. *Id.* (noting that the three-year window opened in 2013).

115. MINN. STAT. § 541.073, subdiv. 2 (2018).



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