



SCHOOL OF LAW
TEXAS A&M UNIVERSITY

Texas A&M Law Review

Volume 11 | Issue 1

12-8-2023

Time to Heal: Trauma's Impact on Rape & Sexual Assault Statutes of Limitations

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Jillian M. Purdue & Fredrick E. Vars, *Time to Heal: Trauma's Impact on Rape & Sexual Assault Statutes of Limitations*, 11 Tex. A&M L. Rev. 125 (2023).

Available at: <https://doi.org/10.37419/LR.V11.I1.3>

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TIME TO HEAL: TRAUMA’S IMPACT ON RAPE & SEXUAL ASSAULT STATUTES OF LIMITATIONS

by: Jillian Miller Purdue* & Fredrick E. Vars**

ABSTRACT

Short statutes of limitations for sex crimes ask the impossible of many victims: report the crime before they have recovered from the trauma. Perpetrators go free as a direct result of the injury they caused. Nearly a third of victims of rape and sexual assault have PTSD during their lifetimes. PTSD is associated with three symptoms pertinent to reporting a crime: avoidance coping (avoiding distressing thoughts, feelings, or reminders of the attack), dissociative amnesia (forgetting important or all aspects of the attack), and depression. These symptoms all affect a victim’s psychological ability to report a crime before a short statute of limitations runs.

This Article summarizes and critiques the current state of statutes of limitations across the country for rape, forcible rape, and sexual assault. In many states, the statute of limitations is shockingly short. No state tolls limitations periods for trauma-induced reporting delay, but every state should. In fact, given the rates of PTSD among victims and the associated symptoms, this Article advocates for extending statutes of limitations in all cases to ten years for rape and sexual assault and abolishing limitation periods for forcible rape. These changes will give victims more time to heal from the trauma inflicted on them, allowing victims to report when they are ready, and will help ensure that attackers will not escape punishment because of the trauma they inflicted.

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DOI: <https://doi.org/10.37419/LR.V11.I1.3>

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I. INTRODUCTION

Every 68 seconds an American is sexually assaulted, and one out of every six American women has been the victim of attempted or completed rape.¹ Sexual violence in America, and throughout the world, is an epidemic infecting all communities, age groups, and demographics. It is nearly impossible to find a woman who has not experienced sexual assault herself or who does not have a friend or family member who has.² United States Department of Justice data, however, show that only one-third of rape or sexual assault victims report to police, making rape and sexual assault the least reported violent crimes.³ So why do so many sexual assault victims not report?

Although this is specific to each victim, a few common reasons are shame, fear of retaliation, the belief that the assault was not significant enough to report, and the belief that police will do nothing.⁴ Of the approximately one-third of sexual assaults that are reported, only 5% lead to arrest and only 2.5% lead to incarceration.⁵ These outcomes are likely fueling the low reporting rates, with victims correctly believing that reporting would be additional stress with a low likelihood of success or justice.

The phenomenon of victims not reporting their assaults came into the national spotlight in 2018 during Justice Brett Kavanaugh's Supreme Court confirmation hearings.⁶ A year after the #MeToo movement exploded on social media, Dr. Christine Blasey Ford alleged that

1. *Scope of the Problem: Statistics*, RAINN, <https://rainn.org/statistics/scope-problem> [<https://perma.cc/4FCN-D3SK>]; *Fast Facts: Preventing Sexual Violence*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/violenceprevention/sexualviolence/fastfact.html> [<https://perma.cc/24YG-FAPX>].

2. See *Fast Facts: Preventing Sexual Violence*, *supra* note 1 (establishing that sexual violence is common and large amounts of men and women experience sexual violence).

3. 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/DJ42-395M>].

4. *Top 10 Reasons People Do Not Report Abuse*, DORDULIAN L. GRP. (Jan. 3, 2023), <https://www.dlawgroup.com/reasons-people-do-not-report-sexual-abuse/> [<https://perma.cc/VR5C-Y6XK>].

5. *The Criminal Justice System: Statistics*, RAINN, <https://www.rainn.org/statistics/criminal-justice-system> [<https://perma.cc/XLB2-2FTJ>].

6. Jacey Fortin, *#WhyIDidntReport: Survivors of Sexual Assault Share Their Stories After Trump Tweet*, N.Y. TIMES (Sept. 23, 2018), <https://www.nytimes.com/2018/09/23/us/why-i-didnt-report-assault-stories.html> [<https://perma.cc/B4PD-CZGX>].

Justice Kavanaugh sexually assaulted her when they were teenagers.⁷ President Trump quickly called her credibility into question because of her delay in bringing these allegations to light.⁸ President Trump claimed that if the assault was “as bad as she says,” it would have been reported to authorities when it occurred.⁹ Other sexual assault survivors rallied around Dr. Ford, using the hashtag #WhyIDidntReport to display the myriad of reasons victims do not report immediately—or ever.¹⁰ This hashtag was used on Twitter over 720,000 times in the weekend following President Trump’s comments.¹¹

Clearly, victims not reporting their assaults is a widespread problem, but what can we do to fix it? Victim advocates have pushed for many reforms to combat this issue, including victim compensation funds,¹² increased access to resources,¹³ and extended statutes of limitations.¹⁴ There are many improvements that need to be made in the judicial system regarding victims of sexual assault: making victims feel safe when reporting, using specialized interview techniques, and at the most basic level, believing and not blaming the victim. Sexual assault is “really the only crime where people doubt the victim immediately.”¹⁵ Addressing these issues requires administrative and legal changes, as well as societal change in the way we talk about sexual assault. But these improvements matter much less if the victim never reports the crime to police. If the statute of limitations has run, many victims will not report the crime or, if they do, will be told their case cannot proceed. Therefore, keeping the door open for reporting and prosecuting sexual assault whenever the victim is ready is a critical step towards making the judicial system more accessible and just for victims of sexual assault.

Copious amounts of legal scholarship have been dedicated to statutes of limitations for sexual assault crimes. Many papers propose

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. #WhyIDidntReport: Hundreds of Thousands Confide Their Stories of Rape, Abuse, CBS NEWS (Sept. 24, 2018, 7:50 AM), <https://www.cbsnews.com/news/why-ididntreport-hundreds-of-thousands-confide-their-stories-of-rape-abuse/> [<https://perma.cc/6SQ5-DVBR>].

12. *Crime Victim Compensation*, RAINN, <https://www.rainn.org/articles/crime-victim-compensation> [<https://perma.cc/K6Q3-DMDH>].

13. For an example, see *Reporting to Law Enforcement*, RAINN, <https://www.rainn.org/articles/reporting-law-enforcement> [<https://perma.cc/2SJZ-DU97>].

14. Ruth Padawer, *Should Statutes of Limitations for Rape Be Abolished?*, N.Y. TIMES MAG. (June 19, 2018), <https://www.nytimes.com/2018/06/19/magazine/should-statutes-of-limitations-for-rape-be-abolished.html?searchResultPosition=16> [<https://perma.cc/3QF3-RVH5>]; *Five Things That Make an Effective Statute of Limitations*, RAINN, <https://www.rainn.org/articles/five-things-make-effective-statute-limitations> [<https://perma.cc/J8M3-C2QW>].

15. See Fortin, *supra* note 6 (quoting a nurse practitioner who treats sexual assault victims).

abolishing statutes of limitations for child sex abuse, with some motivated by increased awareness about the systemic abuse of children by Catholic priests.¹⁶ Many articles also advocate for tolling provisions or extensions if there is DNA evidence or untested rape kits.¹⁷ On the other hand, some authors have come out “in praise” of statutes of limitations for sexual assault offenses.¹⁸ Within this extensive body of scholarship, however, there is no discussion of the high level of PTSD among sexual assault victims and its effect on reporting. This Article fills that void and develops a new argument in favor of reforming statutes of limitations for sexual assault crimes.

This Article generally uses the blanket term “sexual assault” when discussing trauma and statutes, with sexual assault referring to sexual contact that occurs without the victim’s consent; this includes acts such as attempted rape, rape (nonconsensual sexual intercourse), forcible rape (rape procured using force or forcible compulsion), forcing the victim to perform sex acts (e.g., oral sex), and fondling or other forms of unwanted sexual touching.¹⁹ Within state legislation and some psychological studies discussed below, sexual assault is often distinguished from rape as two separate sex crimes of different degrees.

II. STATUTES OF LIMITATIONS FOR RAPE & SEXUAL ASSAULT

Statutes of limitations exist in both the criminal and civil systems in the United States.²⁰ A statute of limitations is a bar to litigation,²¹ which sets a time limit for when a lawsuit can be filed or a criminal charge brought.²² There were no limitations at common law as to

16. See, e.g., 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, 317–19, 340–41 (2017); Rebecca Schultz, *To the Survivors of Childhood Sexual Abuse—Whenever You’re Ready: Eliminating the Criminal Statute of Limitations on Childhood Sexual Assault Crimes in Light of Pennsylvania’s Catholic Dioceses Grand Jury Investigation*, 22 RICH. PUB. INT. L. REV. 145, 146 (2019); Amy Dunn, *Criminal Law—Statutes of Limitation on Sexual Assault Crimes: Has the Availability of DNA Evidence Rendered Them Obsolete?*, 23 U. ARK. LITTLE ROCK L. REV. 839, 845 n.32 (2001).

17. See, e.g., Hunter Grolman, *Pressing Pause: Tolling Statutes of Limitations for Sex Offenses While Rape Kits Remain Untested*, 26 AM. U. J. GENDER SOC. POL’Y & L. 973, 973–74 (2018); Jonathan W. Diehl, *Drafting a Fair DNA Exception to the Statute of Limitations in Sexual Assault Cases*, 39 JURIMETRICS J. 431, 431–33 (1999); Aaron L. Weisman, Annotation, *Validity, Construction, and Application of State Statutes Eliminating, Extending, or Tolling Statute of Limitations for Sexual Offense when DNA Can Provide Identity of Alleged Perpetrator*, 16 A.L.R.7th Art. 7, § 2 (2016).

18. James Herbie DiFonzo, *In Praise of Statutes of Limitations in Sex Offense Cases*, 41 HOUS. L. REV. 1205, 1208 (2004).

19. *Sexual Assault*, RAINN, <https://www.rainn.org/articles/sexual-assault> [<https://perma.cc/4CU4-AJEA>].

20. *Statute of Limitations*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/statute_of_limitations [<https://perma.cc/T9ND-W7C9>].

21. Vance Eaton & Joseph Berry, *Is Justice Delayed Justice Denied?*, 28 S.C. LAW. 46, 47 (2016).

22. *Statute of Limitations*, *supra* note 20.

when a criminal defendant could be charged, so these limits are statutory creations (as the name indicates) and are jurisdiction-specific.²³ “As such, [statutes of limitations] serve as an ‘optional form of legislative grace.’”²⁴

The United States Supreme Court in 1970 outlined the most common rationale for criminal statutes of limitations:

[Statutes of limitations] limit exposure to criminal prosecution to a certain fixed period of time following the occurrence of those acts . . . 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.²⁵

Other important rationales include promoting public order, encouraging victims to report crimes quickly,²⁶ and “encouraging law enforcement officials promptly to investigate suspected criminal activity.”²⁷ The sooner a victim reports, the sooner the police can catch the offender and thereby prevent more future crimes. These are “laudable goals that make sense in theory. But in practice, they [can] undermine justice for survivors.”²⁸ Deciding on a statute of limitations for a particular crime therefore requires balancing these interests.²⁹ Not surprisingly, different states strike the balance differently.

Statutes of limitations vary widely across the country. In federal court, non-capital offenses carry a five-year limitations period, while capital offenses carry no limitation.³⁰ Certain offenses against children and acts of terrorism also have extended statutes of limitations.³¹ State courts all have different statutory frameworks, but no state has a statute of limitations for murder and most afford longer limits for violent felony charges like arson, robbery, rape, and kidnapping as compared to other felonies.³² Five states—Kentucky, Maryland, North Carolina, South Carolina, and Wyoming—have no statutes of limitations for any felony charges, which includes many sexual assault crimes.³³ In contrast, multiple states have statutes of limitations as low as one year for

23. CHARLES E. TORCIA, 1 WHARTON'S CRIMINAL LAW: STATUTE OF LIMITATIONS § 92 (15th ed. 1993).

24. Eaton & Berry, *supra* note 21, at 47 (quoting *People v. Frazer*, 982 P.2d 180, 193 (Cal. 1999)).

25. *Id.* (quoting *Toussie v. United States*, 397 U.S. 112, 114–15 (1970)).

26. Filipovic, *supra* note 3.

27. *Toussie*, 397 U.S. at 115.

28. Filipovic, *supra* note 3.

29. For a discussion of these policy interests, see *infra* Part IV.

30. 18 U.S.C.A §§ 3281–82 (West).

31. 18 U.S.C.A §§ 3283, 3286 (West).

32. Eaton & Berry, *supra* note 21, at 48.

33. *Id.* at 48, 52 n.10 (citing PAUL H. ROBINSON & MICHAEL T. CAHILL, *LAW WITHOUT JUSTICE: WHY CRIMINAL LAW DOESN'T GIVE PEOPLE WHAT THEY DESERVE* 60–61 (2006)).

rape.³⁴ The countrywide lack of time limits for prosecuting murder in the United States is attributed to its classification as “the most heinous crime.”³⁵ Even though the FBI considers felony sexual assault “the second-most-serious offense,” the nation is not unanimous, or even close to a consensus, on the appropriate statute of limitations for this crime.³⁶ For decades, there was little change in sexual assault statutes of limitations, notwithstanding greater appreciation of the seriousness of the offense by the FBI and others.³⁷

In recent years, there has been a push for extending statutes of limitations, especially for sexual assault.³⁸ This trend can be partially attributed to the rise in dialogue about sexual violence with the #MeToo movement³⁹ and the high-profile cases involving Bill Cosby, Harvey Weinstein, and multiple Catholic priests. These cases involving once-beloved American figures highlight the pervasiveness of these crimes and the length of time it can take survivors to come forward.⁴⁰ Additionally, the increased availability of DNA evidence⁴¹ and greater understanding about survivors of sexual violence and trauma have contributed to this trend as well.⁴²

State laws regarding sexual assault vary widely in terms of the language used, punishment recommended, and the statute of limitations set.⁴³ Table I summarizes the current state of rape and forcible rape statutes of limitations across all 50 states, Washington, D.C., and the federal government. The wide variance in the definitions creates issues when attempting to summarize data for the entire country about these crimes. Most states generally classify the most egregious form of sexual assault as rape and define it as nonconsensual sexual intercourse,⁴⁴ with some states also requiring force for their baseline rape

34. See, e.g., ALA. CODE §§ 13A-6-65, 15-3-2 (2015); IDAHO CODE §§ 18-924, 19-403 (2017).

35. Padawer, *supra* note 14; see also 2019 Crime in the United States: Violent Crime, FBI, <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/topic-pages/violent-crime> [<https://perma.cc/24WW-KYD3>] (describing the FBI’s crime index based on a “serious[ness]” hierarchy, putting rape second behind murder).

36. Padawer, *supra* note 14.

37. *Id.*

38. See *New Law Extends Statute of Limitations for Sex Crimes*, WXXI NEWS (Sept. 18, 2019, 4:31 PM), <https://www.wxxi.com/post/new-law-extends-statute-limitations-sex-crimes> [<https://perma.cc/A3PU-KR5L>] (detailing New York’s 2019 legislation extending the statute of limitations for rape and other sexual assaults). Governor Cuomo commented that “[f]ive years is an insult to these survivors, and today we’re providing them more time to come to terms with the trauma they experienced and to seek justice.” *Id.*

39. See Padawer, *supra* note 14.

40. See Filipovic, *supra* note 3; see also Padawer, *supra* note 14.

41. See Padawer, *supra* note 14.

42. See *New Law Extends Statute of Limitations for Sex Crimes*, *supra* note 38.

43. See *infra* notes 47–75 and accompanying text; see also *infra* Table I.

44. The following statistics do not represent cases when the rape victim is a minor. Many states have longer statutes of limitations for the rape of a minor, but since this Article’s focus is not on sexual assault of children, these statistics will focus on the

offense.⁴⁵ For the purposes of this Article, we will define rape as non-consensual sexual intercourse. Victims' advocates support this definition of rape, instead of a definition requiring force, because "[a]ll acts of non-consensual sexual intercourse are inherently violent in nature, and laws which require proof of additional violence or physical force risk leaving certain types of rape unpunished[.]"⁴⁶ Sadly, many states do not have statutes covering nonconsensual sexual intercourse as a crime or have a much longer statute of limitations for forcible rape. Therefore, we will also report data in Table I for forcible rape, but the statistics listed below are for rape as defined as nonconsensual sexual intercourse.

As of April 2020, ten states had no statute of limitations for rape.⁴⁷ Ten states had statutes of limitations between ten to twenty years for rape.⁴⁸ Eight states and the District of Columbia had statutes of limitations between three to nine years.⁴⁹ Nine states had statutes of limitations under three years.⁵⁰ Strikingly, thirteen states and the federal government did not have any laws in the sex crimes section of their criminal codes that criminalize rape as we define it, with every statute in these jurisdictions requiring some type of force. It is interesting to note that the states that defined rape simply as having sexual intercourse without the other person's consent more commonly had no statute of limitations for the offense (e.g., Alaska & Arizona), while states that always require force or forcible compulsion for rape were likely to have shorter statutes of limitations for rape (e.g., Arkansas &

rape of a nonconsenting adult. Also, many states have lengthened statutes of limitations when there is use of a deadly weapon or serious bodily harm. *See, e.g.*, FLA. STAT. ANN. §§ 794.011, 95.11(9), 775.15 (West 2017). RAINN provides a resource that summarizes the statutes of limitations for various sex crimes in each state. *State by State Guide on Statutes of Limitations*, RAINN, <https://www.rainn.org/state-state-guide-statutes-limitations> [<https://perma.cc/4EBY-29AE>].

45. Force required in a rape statute can usually be met by physical harm or threat of harm. *See* GA. CODE ANN. § 16-6-1 (2019); *Mack v. State*, 792 S.E.2d 120, 122 (Ga. Ct. App. 2016); KY. REV. STAT. ANN. § 510.110 (West 2016); *Murphy v. Commonwealth*, 509 S.W.3d 34, 43 (Ky. 2017).

46. EQUALITY NOW, FAILURE TO PROTECT: HOW DISCRIMINATORY SEXUAL VIOLENCE LAWS AND PRACTICES ARE HURTING WOMEN, GIRLS, AND ADOLESCENTS IN THE AMERICAS 27 (2021), https://equalitynow.storage.googleapis.com/wp-content/uploads/2021/09/20064320/Failure_to_Protect_-_Equality_Now_2021_-_ENG-min-1.pdf [<https://perma.cc/MTP6-HYZK>].

47. These states include Alaska, Arizona, Delaware, Hawaii, Nebraska, New Jersey, Utah, Vermont, Virginia, and Wyoming. *See infra* Table I.

48. These states include Colorado, Connecticut, Iowa, Maine, Montana, Nevada, New York, Pennsylvania, Washington, and Wisconsin. *See infra* Table I.

49. These states include Florida, Kansas, Louisiana, Minnesota, Missouri, Oregon, South Dakota, and Tennessee. The District of Columbia also falls in this range. *See infra* Table I.

50. These states include Alabama, Georgia, Idaho, Kentucky, Maryland, Mississippi, New Mexico, North Dakota, and Ohio. *See infra* Table I.

Indiana).⁵¹ It would appear that states' pro-victim or pro-perpetrator inclination carries through from their statutory definition of rape to their statute of limitations allocation. Alternatively, a state that requires force might rationalize its shorter statute of limitations on the unsupported theory (the same concept argued by former President Trump⁵²) that particularly "bad" sexual assaults will generally be reported sooner.⁵³

States' classifications of other (non-rape) sexual assault crimes vary so widely it would be nearly impossible to succinctly summarize their statutes of limitations across the country while accurately describing all the statutes' technicalities and exceptions. Therefore, we will instead provide a survey of different approaches seen across the country, illustrated by the statutes of five states.

South Carolina and Wyoming represent one side of the spectrum, having no statutes of limitations for *any* crimes.⁵⁴ Therefore, these jurisdictions may prosecute all types of sexual assault at any time. This statutory scheme is obviously quite extreme, but it assures that all crimes can be prosecuted if the evidence permits.⁵⁵ That is an important qualification that many critics of extending statutes of limitations seem to forget; to file criminal charges, ethical prosecutors need probable cause and admissible evidence that will be sufficient to support a conviction beyond a reasonable doubt.⁵⁶ It has been said that a prosecutor could convince a grand jury to "indict a ham sandwich."⁵⁷ Thus, the stronger practical constraint may be a prosecutor's desire to maintain a high win percentage at trial. The important point is that there are meaningful constraints on prosecutors other than the statutes of

51. Compare ALASKA STAT. §§ 11.41.410, 12.10.010 (2023), and ARIZ. REV. STAT. ANN. §§ 13-1406, 13-107(A) (2010 & Supp. 5 2022), with ARK. CODE ANN. §§ 5-14-103, 5-1-109 (2019), and IND. CODE ANN. §§ 35-42-4-1–2 (West 2012).

52. See *supra* text accompanying note 9.

53. See *infra* Part IV.

54. Eaton & Berry, *supra* note 21, at 48.

55. *Id.* (noting that in South Carolina, "justice delayed may be justice denied, but if it is, the most likely culprit will be the quality of the evidence[.]" not a statute of limitations).

56. CRIM. JUST. STANDARDS § 3-4.3 (AM. BAR ASS'N 2017) (discussing the standards for the prosecution function and, specifically, the minimum requirements for filing and maintaining criminal charges).

57. See Marcia Kramer & Frank Lombardi, *New Top State Judge: Abolish Grand Juries & Let Us Decide*, N.Y. DAILY NEWS, Jan. 31, 1985, at 3 (quoting Solomon Wachtler, then Chief Judge of the New York Court of Appeals); accord *Tyson v. Trigg*, 50 F.3d 436, 441 (7th Cir. 1995) ("Instances in which grand juries refuse to return indictments at the behest of the prosecutor are almost as rare as hen's teeth.").

limitations.⁵⁸ So even in states with no statutes of limitations, prosecutors are not free to charge whatever they want, whenever they want.⁵⁹

Close by on the statute of limitations spectrum is Kentucky, which has no statutes of limitations for any felony offenses.⁶⁰ Kentucky's primary sexual assault statute, called "sexual abuse in the first degree," is classified as a felony and therefore has no statute of limitations.⁶¹ This statute covers "sexual contact by forcible compulsion" or sexual contact with someone "who is incapable of consent."⁶² Second degree sexual abuse, however, is a misdemeanor carrying a one-year statute of limitations and covers any Department of Corrections employee or police officer subjecting someone in their custody to sexual contact.⁶³ Third degree sexual abuse is also a misdemeanor carrying a one-year statute of limitations and covers cases when the victim is subject to sexual contact without their consent.⁶⁴ Sexual contact includes "any touching of the sexual or other intimate parts of a person done for the purpose of gratifying the sexual desire of either party."⁶⁵ These sex offense statutes in Kentucky show that the amount of time allotted for

58. For examples, see Janet Portman, *Arrests That Don't Result in Criminal Charges*, NOLO, <https://www.nolo.com/legal-encyclopedia/arrests-that-dont-result-criminal-charges.html> [<https://perma.cc/VD7V-782B>] (establishing some reasons why a prosecutor may not bring charges).

59. Prosecutors are given the authority to decide which people to charge and with what crimes. *What is Prosecutorial Discretion?*, FINDLAW, <https://www.findlaw.com/criminal/criminal-procedure/what-is-prosecutorial-discretion-.html> (last updated Nov. 12, 2019). This is called prosecutorial discretion and could lead to differences in charging decisions between jurisdictions, exaggerating the already harsh "ZIP code lottery" created by the different state laws on sexual assault. See Filipovic, *supra* note 3.

60. KY. REV. STAT. ANN. § 500.050 (West 2016). Other states that do not have statutes of limitations for felony offenses include Maryland, North Carolina, Virginia, and West Virginia. *State v. Renfro*, 223 Md. App. 779, 780 (Md. Ct. Spec. App. 2015); *State v. Hardin*, 201 S.E.2d 74, 75 (N.C. Ct. App. 1973); *Foster v. Commonwealth*, 606 S.E.2d 518, 519 (Va. Ct. App. 2004); *State v. Carrico*, 427 S.E.2d 474, 477 (W. Va. 1993).

61. KY. REV. STAT. ANN. §§ 500.050, 510.110 (West 2016).

62. *Id.* § 510.110. "Forcible compulsion requires the use of physical force or the threat of physical force and [a] fear . . . of 'immediate death, physical injury to self . . . fear of the immediate kidnap of self, . . . or fear of any [sexual offense.]" *Murphy v. Commonwealth*, 509 S.W.3d 34, 44 (Ky. 2017) (quoting § 510.110).

63. §§ 510.120, 500.050. Reporting sexual assault by police or prison staff is already too difficult, even without factoring in such a short limitations period. See Brenda V. Smith, *Watching You, Watching Me*, 15 YALE J.L. & FEMINISM 225, 238 (2003) ("All of the barriers to the prosecution of sexual assault in general, such as issues related to credibility, the shifting nature of consent, and problems of proof, are intensified when the complainant is a prisoner."); *id.* at 238 n.85 (citing Anthea Dinos, Note, *Custodial Sexual Abuse: Enforcing Long-Awaited Policies Designed to Protect Female Prisoners*, 45 N.Y.L. SCH. L. REV. 281, 284–85 (2000–2001)).

64. §§ 510.130, 500.050. This crime being categorized as a misdemeanor is far too light a penalty for rape. Rape should always be a felony offense.

65. § 510.010(7). Examples of sexual contact include digitally penetrating the victim's vagina or anus or making the victim fist the defendant's anus. *Hillard v. Commonwealth*, 158 S.W.3d 758, 761–62 (Ky. 2005). Therefore, the contact can be either unwanted touching of the victim's body or forcing the victim to touch the perpetrator's body. *Id.*

the victim to press charges is often dependent on whether sexual intercourse or other contact occurred and the level of force used on the victim.

Connecticut is somewhere in the middle of the spectrum for statutes of limitations seen in the United States. Connecticut's primary sexual assault statutes are third degree sexual assault and fourth degree sexual assault.⁶⁶ Third degree sexual assault includes cases when the defendant "compels another person to submit to sexual contact" through force or threat of force which causes a reasonable fear of physical injury or subjects someone to sexual contact who cannot consent because of being incapacitated or impaired.⁶⁷ Connecticut classifies this as a felony, and it carries a 20-year statute of limitations.⁶⁸ Fourth degree sexual assault, however, is a misdemeanor carrying a ten-year statute of limitations and covers "sexual contact without such other person's consent" and various positions of power subjecting a subordinate to sexual contact.⁶⁹

Moving towards the shorter end of the spectrum, Arkansas's primary sexual assault statute, called "sexual assault in the second degree," is classified as a felony carrying a three-year statute of limitations and covers "sexual contact . . . by forcible compulsion" or "sexual contact with another person who is incapable of consent."⁷⁰ Third degree sexual assault is classified as a felony carrying a three-year statute of limitations and covers various positions of power, like a police officer or a clergy member, subjecting a subordinate to "sexual intercourse or deviate sexual activity."⁷¹ Notably, Arkansas has no statute covering nonconsensual sexual contact without forcible compulsion, unlike Kentucky and Connecticut.⁷²

As this survey of state laws shows, the conduct criminalized by sexual assault laws varies state-to-state because of the language used in each statute. On top of that, the statute of limitations varies widely state-to-state, even for the exact same conduct. For example, forcible nonconsensual sexual contact, like the defendant groping the victim's breast or forcing the victim to stroke his penis, would carry no statute of limitations in Wyoming, South Carolina, or Kentucky but would

66. CONN. GEN. STAT. ANN. §§ 53a-72a, 53a-73a (West 2023). First- and second-degree sexual assault cover acts of nonconsensual sexual intercourse (rape). *Id.* §§ 53a-70, 53a-71.

67. *Id.* § 53a-72a.

68. *Id.* §§ 53a-72a, 54-193.

69. *Id.*

70. ARK. CODE ANN. §§ 5-14-125, 5-1-109 (2019). Arkansas defines "forcible compulsion" as "physical force or a threat, express or implied, of death or physical injury to or kidnapping of any person." *Id.* § 5-14-101(3). First degree sexual assault only covers victims who are minors or students under 21 years of age engaging in sexual intercourse with a teacher or professor. *Id.* § 5-14-124.

71. *Id.* §§ 5-14-126, 5-1-109.

72. Compare *id.* §§ 5-14-125, 5-14-126, with KY. REV. STAT. ANN. § 510.130 (West 2016), and CONN. GEN. STAT. ANN. § 53a-73a (West 2023).

carry a 20-year limit in Connecticut and a three-year limit in Arkansas.⁷³ The impact is even more disparate for nonconsensual sexual contact without forcible compulsion, which would carry no limit in Wyoming and South Carolina, a one-year limit in Kentucky, a 10-year limit in Connecticut, and is entirely not covered by the sexual assault statutes in Arkansas.⁷⁴ Although there is a more uniform treatment of rape in state criminal statutes,⁷⁵ sexual assault statutes criminalize different conduct and have vastly different applicable time bars across the country.

There are three important takeaways from this examination of statutes of limitations for rape and sexual assault in different jurisdictions. Criminal laws varying state-to-state is not uncommon and derives from each state being a sovereign in its own right.⁷⁶ But the types and degree of variation in this context are concerning. Sexual assault is widely regarded today as the “second-most-serious” crime,⁷⁷ and yet we find state statutes of limitations that range all the way from one year to none.⁷⁸ The human rights organization Equality Now has argued that eliminating the statute of limitations for rape “would help send the signal that rape is a serious issue which should never escape punishment.”⁷⁹ In light of the growing appreciation of the seriousness of sexual assault, the very short limitation periods in some states may well be relics of a bygone era rather than a considered, modern judgment about how seriously to take sexual assault.⁸⁰ The first takeaway from the wide disparities is that the time may be right for reconsideration of the issue and that there are many states with outdated, short statutes of limitations.

The second lesson comes from focusing on the other end of the spectrum. Many jurisdictions have no statute of limitations for sexual assault. Several states eliminated their statutes of limitations years ago: at least five states had done so as of 2004.⁸¹ There is no evidence that this has generated an increase either in unjustified prosecutions or in false convictions because of stale evidence. It is of course true

73. See Eaton & Berry, *supra* note 21, at 47; KY. REV. STAT. ANN. §§ 500.050, 510.110 (West 2016); CONN. GEN. STAT. ANN. §§ 53a-72a, 54-193 (West 2023); ARK. CODE ANN. §§ 5-14-125, 5-1-109 (2019).

74. See *infra* Table I.

75. See *infra* Table I.

76. *Federalism*, LEGAL INFO. INST., <https://www.law.cornell.edu/wex/federalism> [<https://perma.cc/K2CH-F8Z4>].

77. See Padawer, *supra* note 14.

78. See *infra* Table I.

79. EQUALITY NOW, *supra* note 46, at 37.

80. See Veronica Valdivieso, *DNA Warrants: A Panacea for Old, Cold Rape Cases?*, 90 GEO. L.J. 1009, 1048 (2002) (“It seems a vestige of a male-dominated society for the law to treat rapes, which most often involve female victims, as somehow less important to solve than other serious felonies that have no time limit on prosecution, such as murder.”).

81. DiFonzo, *supra* note 18, at 1224 n.96 (listing Alaska, Arizona, Mississippi, New Mexico, and Vermont).

that statistical evidence of false convictions would be difficult to obtain,⁸² but one would expect anecdotal evidence to have accumulated over the course of years. The fact that many states have already dropped statutes of limitations and seem satisfied with the results is reassuring.

The wide disparities reported in this Article generate confusion among victims.⁸³ Both differences between states and within states contribute to this confusion. “The differing statutes of limitations across state lines create a ZIP code lottery” for whether a sexual perpetrator will avoid a criminal sanction.⁸⁴ But the within-jurisdiction variation may be even more troubling. An individual victim’s length of time to initiate a criminal case turns not just on the state of residence but also on the answers to difficult questions like: What is the definition of rape? Is force required? Is other unwanted sexual contact even criminal? What exactly happened to me and where does it fit? Many states have a confusing maze of statutory language for victims to navigate to discover whether their situation falls within the applicable sexual assault statute and whether and when they can initiate prosecution. The website of the nation’s largest anti-sexual violence organization (RAINN) includes a 264-page document devoted to statutes of limitations.⁸⁵

The third takeaway from our review is that statutes of limitations for rape and sexual assault are overly complex and should be radically simplified to provide clarity to victims. The U.S. Supreme Court has observed that “for rape victims, who often wrestle with the painful decision whether to identify their attackers and press charges, a clear deadline allows them to know by when they must make that choice.”⁸⁶ Of course, greater clarity benefits prosecutors and perpetrators as well. Equality Now recommends that statutes of limitations be abolished for rape *and* sexual assault, describing these time bars as “plac[ing] an overwhelming burden on victims and consequently allow[ing] perpetrators to evade punishment.”⁸⁷ Abolishing statutes of

82. See *id.* at 1264 (arguing that longer statutes of limitations for sex offenses in cases with DNA evidence would lead to convictions of “an unknowable number of innocent persons”).

83. See Jessica Klarfeld, *A Striking Disconnect: Marital Rape Law’s Failure to Keep Up with Domestic Violence Law*, 48 AM. CRIM. L. REV. 1819, 1833–34 (2011) (“a victim may not be aware of the . . . statute of limitations . . .”).

84. Filipovic, *supra* note 3.

85. *Statutes of Limitations*, RAINN, <https://apps.rainn.org/policy/compare/statutes-export.cfm> [<https://perma.cc/XZ99-7AW6>] (Mar. 2020).

86. *United States v. Briggs*, 141 S. Ct. 467, 471 (2020).

87. See *Rape Laws Across the Americas Insufficient, Inconsistent, and Poorly Enforced, Leaving Women at Heightened Risk of Sexual Violence*, EQUALITY NOW (Sept. 15, 2021), <https://www.prnewswire.com/news-releases/rape-laws-across-the-americas-insufficient-inconsistent-and-poorly-enforced-leaving-women-at-heightened-risk-of-sexual-violence-301377326.html> [<https://perma.cc/7RSD-VXJS>]; see also EQUALITY NOW, *supra* note 46, at 27.

limitations for *all* unwanted sexual contact will provide clarity and eliminate the burden of parsing difficult statutory text.

III. SEXUAL ASSAULT & POSTTRAUMATIC STRESS DISORDER

Survivors of sexual assault are very likely to develop posttraumatic stress disorder (PTSD), and at rates much higher than survivors of other traumas.⁸⁸ Research shows that a breathtaking 94% of women who are raped experience symptoms of PTSD during the two weeks following the rape, and 30% of women report PTSD symptoms nine months after the rape.⁸⁹ The National Women's Study found the lifetime prevalence of PTSD in rape and sexual assault survivors to be 32% and 30.8%, as compared to 9.4% in victims of trauma not related to crime (e.g., victims of natural disasters or car accidents).⁹⁰ The PTSD Alliance estimated the risk of developing PTSD after a traumatic event was 49% for rape, 31% for severe beating or physical assault, 23.7% for other sexual assault, 15.4% for shooting or stabbing, and 7.3% for witnessing a murder or assault.⁹¹

PTSD is a mental health condition triggered by a traumatic event.⁹² "PTSD symptoms are generally grouped into four types: intrusive memories, avoidance, negative changes in thinking and mood, and changes in physical and emotional reactions."⁹³ Symptoms of *intrusive memories* include flashbacks, nightmares about the traumatic event, and severe emotional distress due to something that reminds a victim of the trauma.⁹⁴ Symptoms of *avoidance* include trying to avoid thinking or discussing the event and trying to avoid places or people that remind the survivor of the traumatic event.⁹⁵ Symptoms of *negative changes in thinking and mood* include depression, memory problems (including not remembering aspects of the traumatic event—called dissociative amnesia), lack of interest, emotional numbness, and hope-

88. Emily R. Dworkin et al., *PTSD in the Year Following Sexual Assault: A Meta-Analysis of Prospective Studies*, 24 *TRAUMA, VIOLENCE, & ABUSE* 497, 497 (2023), <https://doi.org/10.1177/15248380211032213>.

89. *Victims of Sexual Violence: Statistics*, RAINN, <https://www.rainn.org/statistics/victims-sexual-violence> [<https://perma.cc/LA7B-JPPV>].

90. Dean G. Kilpatrick et al., *Rape-Related PTSD: Issues and Interventions*, *PSYCHIATRIC TIMES* (Jun. 1, 2007), <https://www.psychiatristimes.com/view/rape-related-ptsd-issues-and-interventions> [<https://perma.cc/X7N4-5RQJ>].

91. *National Crime Victims' Rights Week: Mental Health Issues*, NAT'L CRIM. JUST. REFERENCE SERV. (Apr. 10–16, 2005), https://www.ncjrs.gov/ovc_archives/ncvrw/2005/pg5n.html [<https://perma.cc/L59V-2WNR>] [hereinafter *National Crime Victims' Rights Week*].

92. *Post-Traumatic Stress Disorder (PTSD)*, MAYO CLINIC, <https://www.mayoclinic.org/diseases-conditions/post-traumatic-stress-disorder/symptoms-causes/syc-20355967> [<https://perma.cc/HZA6-ZTM8>].

93. *Id.*

94. *Id.*

95. *Id.*

lessness.⁹⁶ Symptoms of *changes in physical and emotional reactions* include being easily frightened, always being on guard, self-destructive behavior (e.g., over-consumption of drugs or alcohol), and experiencing issues with sleeping or concentrating, irritability, and feeling overwhelming shame.⁹⁷

Nearly all victims of rape experience some PTSD symptoms in the weeks after the event.⁹⁸ But the problem goes beyond this limited duration and lasts much longer. Many survivors of sexual assault (including non-rape offenses) do not just show isolated PTSD symptoms but actually meet the diagnostic criteria for the disorder long after the trauma.⁹⁹ One study found that almost 75% of sexual assault victims meet the criteria for PTSD a month after their assault with over 40% meeting the criteria a year later.¹⁰⁰ On average, there are 463,634 victims of rape and sexual assault a year in the United States, and as of 1998, approximately 17.7 million American women and 2.78 million American men have experienced attempted or completed rape.¹⁰¹ Combining the number of sexual assault victims in the United States and their likelihood of experiencing PTSD symptoms (or the full-blown disorder) produces a staggering number of people dealing with PTSD as they process their trauma.

For statutes of limitations, three common symptoms of PTSD raise particular concern: (1) avoidance coping, (2) dissociative amnesia, and (3) depression.

A. *Avoidance Coping*

Avoidance coping is a subset of PTSD criteria.¹⁰² To be diagnosed with PTSD, a patient needs to be “exposed to actual or threatened death, serious injury, or sexual violence” and present one or more symptoms associated with *each* of the four PTSD symptom types, including avoidance coping.¹⁰³ Therefore, to be diagnosed with PTSD, a patient *must* be either avoiding distressing thoughts or feelings about the traumatic event or avoiding “external reminders” of the event, including conversations about or places related to the traumatic

96. *Id.*; SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., No. (SMA) 14-4816, TRAUMA-INFORMED CARE IN BEHAVIORAL HEALTH SERVICES (TIP 57) 61–64 (2014) [hereinafter SAMHSA, TRAUMA-INFORMED CARE], <https://www.ncbi.nlm.nih.gov/books/n/tip57/pdf/> [<https://perma.cc/TL6K-58RU>].

97. *See Post-Traumatic Stress Disorder (PTSD)*, *supra* note 92.

98. *See supra* note 88 and accompanying text.

99. Barbara Olasov Rothbaum et al., *A Prospective Examination of Post-Traumatic Stress Disorder in Rape Victims*, 5 J. TRAUMATIC STRESS 455, 470–71 (1992), <https://doi.org/10.1002/jts.2490050309> (establishing that some individuals can meet the criteria even a year after the traumatic event).

100. *See id.*

101. *Id.*

102. *See* SAMHSA, TRAUMA-INFORMED CARE, *supra* note 96, at 73.

103. *Id.* at 81–83.

event.¹⁰⁴ This can look like a veteran not watching the news to avoid updates about combat or a car crash survivor walking or biking for transportation rather than using their car.

Since 30–40% of sexual assault victims are still experiencing PTSD around a year after the traumatic event,¹⁰⁵ a large percentage of sexual assault victims avoid thinking or talking about their trauma even a year later. And PTSD does not magically resolve after a year.¹⁰⁶ Most studies are limited to a one-year follow-up period, but at least one study followed individuals who had been victimized at some earlier point in their lives over the course of three years.¹⁰⁷ Declines in PTSD symptoms in these victims were quite gradual.¹⁰⁸ The researchers concluded that “[r]ecovery from sexual assault and related psychosocial consequences can be a long and difficult process.”¹⁰⁹

This avoidance poses a serious problem in terms of statutes of limitations for sex crimes. Reporting a sexual assault involves many things that a victim’s PTSD would push them to avoid, including thinking about the assault, detailing the assault to police and then possibly a jury, seeing the perpetrator in court, and seeing images of the crime scene or other evidence.¹¹⁰ If a victim is avoiding thinking and talking about their assault, how can they be expected to report it to police so soon after the event? One might counter this concern by saying that the victim is *choosing* to deal with their trauma in this way and that if they want to press charges, they need to deal with their assault and face it head-on.¹¹¹

This argument fails to appreciate that PTSD is the outcome of the brain dealing with extreme trauma,¹¹² and symptoms like avoidance coping are not the product of victims choosing to avoid reminders of the trauma, but instead are neurological responses that are not within

104. *Id.*

105. See Dworkin et al., *supra* note 88, at 498; *Victims of Sexual Violence: Statistics*, *supra* note 89.

106. See Rannveig Sigurvinsdottir & Sarah E. Ullman, *Sexual Orientation, Race, and Trauma as Predictors of Sexual Assault Recovery*, 31 J. FAM. VIOL. 913, 918–19 (2016), <https://doi.org/10.1007/s10896-015-9793-8> (establishing that PTSD symptoms decreased over a three-year period, but that recovery is a long process).

107. *Id.* at 913.

108. *Id.* at 918 fig.2.

109. *Id.* at 919.

110. See generally Tim Hrenchir, *Rape Victims Don’t Always Report the Crime Right Away. Here Are Some of the Reasons Why*, CJONLINE — TOPEKA CAP.-J. (Sept. 22, 2021, 5:45 AM), <https://www.cjonline.com/story/news/2021/09/22/rape-victims-report-sexual-assault-right-away-topeka-why/5795584001/> [<https://perma.cc/J5J2-URPG>].

111. President Trump made a similar argument when questioning Dr. Ford’s credibility regarding her allegation of sexual assault during Justice Kavanaugh’s nomination hearing. See Fortin, *supra* note 6.

112. Michelle Rosenthal, *How Trauma Changes the Brain*, BOS. CLINICAL TRIALS (June 10, 2020), <https://www.bostontrials.com/how-trauma-changes-the-brain/> [<https://perma.cc/VH5F-6JPY>] (detailing how physical changes in the brain after trauma lead to PTSD symptoms).

the victim's control.¹¹³ Symptoms of PTSD are thought to be “behavioral manifestation[s] of stress-induced changes in brain structure and function. Stress results in acute and chronic changes in neurochemical systems and specific brain regions, which result in long-term changes in brain ‘circuits,’ involved in the stress response.”¹¹⁴

Given that avoidance coping is a criterion for a PTSD diagnosis, is present in such a high percentage of sexual assault victims, and is a neurological response rather than a choice, statutes of limitations for sexual assault crimes will often unfairly preclude criminal liability.

B. *Dissociative Amnesia*

Another criterion for a PTSD diagnosis is negative changes in thinking and mood.¹¹⁵ To be diagnosed with PTSD, a victim of trauma *must* be displaying symptoms of negative changes in their psyche.¹¹⁶ One common symptom that fits this criterion is memory problems with the victim forgetting important or all aspects of the traumatic event.¹¹⁷ This phenomenon is often called dissociative amnesia.¹¹⁸ The American Psychiatric Association defines dissociative amnesia “as the full or partial memory loss that results from having survived a trauma.”¹¹⁹ Dissociative amnesia is a type of dissociative disorder “that involve[s] experiencing a disconnection and lack of continuity between thoughts, memories, surroundings, actions, and identity.”¹²⁰ People dealing with dissociation escape reality involuntarily as a way to cope with trauma.¹²¹ Psychologists conceptualize it as the “human

113. *What Is Posttraumatic Stress Disorder?*, AM. PSYCHIATRIC ASS'N, <https://www.psychiatry.org/patients-families/ptsd/what-is-ptsd> [https://perma.cc/4U7E-Y86Q]. PTSD symptoms are not under the victim's control in that they are not the victim's fault or their doing. *Id.* That doesn't mean, however, that PTSD symptoms are untreatable. *Id.*

114. J. Douglas Bremner, *Traumatic Stress: Effects on the Brain*, 8 *DIALOGUES CLINICAL NEUROSCIENCE* 445, 446 (2006), <https://doi.org/10.31887/DCNS.2006.8.4%2Fjbremer>.

115. See SAMHSA, *TRAUMA-INFORMED CARE*, *supra* note 96, at 82.

116. See *id.*

117. *Id.*; Molly R. Wolf & Thomas H. Nochajski, *Child Sexual Abuse Survivors with Dissociative Amnesia: What's the Difference?*, 22 *J. CHILD SEXUAL ABUSE* 462, 462 (2013), <https://doi.org/10.1080/10538712.2013.781094>.

118. See SAMHSA, *TRAUMA-INFORMED CARE*, *supra* note 96, at 82. Dissociative symptoms are so common in people with PTSD that “[t]he DSM-5 diagnostic criteria for [PTSD] now include a Dissociative Subtype (PTSD-DS).” Richard J. Loewenstein, *Dissociation Debates: Everything You Know Is Wrong*, 20 *DIALOGUES CLINICAL NEUROSCIENCE* 229, 229 (2018), <https://doi.org/10.31887/DCNS.2018.20.3/rloewenstein>. This classification indicates more dissociative symptoms than dissociative amnesia, which is still a symptom in diagnostic criteria for PTSD. *Id.* “PTSD-DS . . . may comprise 15% to 30% of individuals with PTSD.” *Id.* at 236.

119. See Wolf & Nochajski, *supra* note 117.

120. *Dissociative Disorders*, MAYO CLINIC, <https://www.mayoclinic.org/diseases-conditions/dissociative-disorders/symptoms-causes/syc-20355215> [https://perma.cc/SM72-S4EG].

121. *Id.*

equivalent of the animal ‘freeze’ and ‘feigning death,’ protective response in the face of life-threatening danger.”¹²²

Dissociative amnesia is usually not permanent, with many victims experiencing delayed recall of their memories.¹²³ Most cases of dissociative amnesia, in fact, are not prolonged, with the memories often returning suddenly and completely.¹²⁴ These memories can return on their own, after being triggered by external circumstances, or through therapy.¹²⁵ Psychotherapy (also called talk therapy or counseling) is the main treatment for dissociative disorders.¹²⁶ This treatment involves talking through your mental health concerns, your trauma, and new coping mechanisms to employ.¹²⁷ “The goals of treatment . . . are to relieve symptoms, to make sure the patient and those around [them] are safe, and to ‘reconnect’ the person with [their] lost memories.”¹²⁸ Dissociative amnesia is especially prevalent in child survivors of sexual abuse with studies showing that 19–59% of child victims experience this.¹²⁹ Adults who experience trauma, such as sexual abuse, war, kidnapping, or torture, can also develop dissociative disorders.¹³⁰ Studies estimated that 15–30% of individuals with PTSD fall into the dissociative subtype of PTSD (PTSD-DS), which is categorized by “depersonalization” or “derealization” symptoms after interacting with a traumatic stressor.¹³¹

Although once a very controversial topic in psychology, dissociative amnesia has gained much more acceptance in the scientific community in the past decade, especially among trauma clinicians.¹³² Over 70 psychological studies have documented dissociative amnesia after a traumatic event.¹³³ With this increase in scientific recognition, dissociative amnesia has also infiltrated mainstream media and news coverage. In a 2018 *Cosmopolitan* article, a sexual assault survivor detailed how

122. See Loewenstein, *supra* note 118, at 234.

123. *Id.* at 237.

124. *Dissociative Amnesia*, CLEVELAND CLINIC, <https://my.clevelandclinic.org/health/diseases/9789-dissociative-amnesia> [<https://perma.cc/SAD6-ADMJ>].

125. *Id.*

126. See *Dissociative Disorders*, *supra* note 120.

127. *Id.*

128. See *Dissociative Amnesia*, *supra* note 124.

129. Heather Spence, *Experiencing the Death of a Formerly Abusive Parent* 18 (May 2016) (Psy.D. dissertation, Antioch University), <https://aura.antioch.edu/cgi/viewcontent.cgi?article=1286&context=etds> [<https://perma.cc/S62R-7XRY>].

130. See *Dissociative Disorders*, *supra* note 120.

131. See Loewenstein, *supra* note 118, at 236. For definitions of these terms, see Fiona Mason & Zoe Lodrick, *Psychological Consequences of Sexual Assault*, 1 *BEST PRAC. & RSCH. CLINICAL OBSTETRICS & GYNECOLOGY* 27, 29 (2013), <https://doi.org/10.1016/j.bpobgyn.2012.08.015> (“Dissociative mechanisms, such as de-realisation (a sense that the world around is not real), depersonalization (a sense that it is not happening to ‘me’, rather it is occurring to someone else), and dissociation (a sense of being cut off from the actual situation) can result from extreme fear.”).

132. See Loewenstein, *supra* note 118, at 237.

133. *Id.*

she did not remember her assault until being questioned by police over the same man's assault of another woman.¹³⁴ When the police officer asked if he had ever done anything like this before, "fragments of a scene flashed into her mind," mimicking a "flashback montage in a movie" revealing her assault to her years later.¹³⁵ Dissociative amnesia is even garnering extra news coverage right now with the premiere of *Buried*, a Showtime docuseries based around Eileen Franklin's testimony in her father's murder trial based upon a repressed memory uncovered in therapy.¹³⁶

As the story detailed in *Cosmopolitan* illustrates, dissociative amnesia poses significant problems in terms of short statutes of limitations for sexual assault.¹³⁷ If victims do not even remember their assault, how can they be expected to report it? One might combat this by questioning the purpose of extending statutes of limitations if the victim will never remember. This concern, however, fails to appreciate that dissociative amnesia is typically not permanent.¹³⁸ The issue is not that the victim will never remember, but instead that the victim should be allowed the time to remember and still be able to pursue prosecution. Another concern might be the reliability of testimony detailing a recalled memory once forgotten due to dissociative amnesia. Psychological studies have found no difference in the accuracy between trauma memories with delayed recall or those continuously remembered.¹³⁹

Given that sexual assault victims with PTSD who experience dissociative amnesia cannot even remember the event or substantial parts of it for a period of time, statutes of limitations for sexual assault crimes should raise great concern regarding their actual protection of victims.

C. Depression

Not every individual with a PTSD diagnosis has a memory problem like dissociative amnesia, but if they do not, the individual must experience at least one of the other negative changes in thinking and mood.¹⁴⁰ These qualifying symptoms include depression, lack of inter-

134. Sara Gaynes Levy, *When You Don't Remember Your Sexual Assault*, COSMOPOLITAN (Dec. 28, 2018), <https://www.cosmopolitan.com/sex-love/a25700541/delayed-recall-sexual-assault-recovered-memories/> [https://perma.cc/HQ9Y-KEZY].

135. *Id.*

136. Gina Tron, 'Memory Wars,' *What Is Repressed Memory and Is Testimony Like Eileen Franklin's Reliable in Court?*, OXYGEN (Oct. 7, 2021, 5:14 PM), <https://www.oxygen.com/true-crime-buzz/what-is-repressed-memory-and-can-it-be-used-in-court-like-in-the-eileen-franklin> [https://perma.cc/ZP2Z-E9A2].

137. See Levy, *supra* note 134.

138. See *Dissociative Disorders*, *supra* note 120.

139. See Loewenstein, *supra* note 118, at 237.

140. SAMHSA, TRAUMA-INFORMED CARE, *supra* note 96, at 82.

est, feeling emotionally numb, and hopelessness.¹⁴¹ Sexual assault commonly produces these symptoms, which are associated with non-reporting and delays in reporting to law enforcement.¹⁴²

Sexual assault survivors frequently suffer from depression.¹⁴³ A recent review of research concluded that “studies consistently find higher rates of diagnoses of depression and depressive symptoms among victims than non-victims.”¹⁴⁴ Rates of depression among survivors of sexual assault are often double or triple the rate observed in the general population. For example, one study reported that 33% of the participants who had experienced forced sexual contact within the last six months met the cutoff for depression versus just 11% of the comparison group.¹⁴⁵ Depression and PTSD are both tragically common and highly correlated: “Co-occurring and comparably severe PTSD and depression symptoms are pervasive among female sexual assault survivors.”¹⁴⁶ Survivors suffer from PTSD and depressive symptoms at similar rates.¹⁴⁷ Both PTSD and depression are even more likely for Black women victims.¹⁴⁸

Victims of sexual assault have much higher rates of depression than non-victims well after the assault.¹⁴⁹ In one review, 19 out of 20 studies found significantly more long-term depression among survivors.¹⁵⁰ The findings were consistent across samples and assessment methodologies.¹⁵¹ In one study of women in an urban psychiatric emergency room combining interviews with chart reviews, rape victims were more likely (41%) to have had a diagnosis of depressive disorder than

141. *Id.*

142. *Victims of Sexual Violence: Statistics*, *supra* note 89.

143. *Id.*

144. DAVID L. FAIGMAN ET AL., *Review of the Scientific Research on Rape Trauma—Depression—Studies Using Comparison Groups*, in 2 MODERN SCIENTIFIC EVIDENCE: THE LAW AND SCIENCE OF EXPERT TESTIMONY § 14:17 (2020 ed.).

145. *Id.*

146. Teresa M. Au et al., *Co-Occurring Posttraumatic Stress and Depression Symptoms After Sexual Assault: A Latent Profile Analysis*, 149 J. AFFECTIVE DISORDERS 209, 209 (2013), <https://doi.org/10.1016/j.jad.2013.01.026>; accord Sarah E. Ullman & Leanne R. Brecklin, *Sexual Assault History and Suicidal Behavior in a National Sample of Women*, 32 SUICIDE & LIFE-THREATENING BEHAV. 117, 127 (2002), <https://doi.org/10.1521/suli.32.2.117.24398> (“PTSD and depression are both common diagnoses in sexual assault victims . . .”).

147. Au et al., *supra* note 146, at 209 (“Although PTSD is the most commonly researched trauma disorder, major depression occurs at a similar rate after trauma and frequently co-occurs with PTSD.”).

148. Sigurvinsdottir & Ullman, *supra* note 106, at 914 (“A crosssectional study of sexual assault survivors found that Black women reported greater depression, PTSD, problem drinking, and drug use than White women . . .”).

149. FAIGMAN ET AL., *supra* note 144.

150. *Id.*

151. *Id.*

women who had not been raped (29%).¹⁵² Studies relying on self-reporting reach the same conclusion.¹⁵³ In one such study, 19% of rape victims were classified as severely depressed as compared to none of the non-victims.¹⁵⁴ It should be noted that many of these studies are limited to rape and do not include other types of sexual assault.¹⁵⁵ The ones that do include other types of sexual assault also show greatly elevated levels of depression.¹⁵⁶ For example, 60% of veterans who reported sexual assault in the military evidenced current symptoms of depression versus 33% among those who did not experience sexual assault.¹⁵⁷

Many studies identified only the subset of survivors who meet the clinical threshold for a diagnosis of Major Depressive Disorder (“MDD”).¹⁵⁸ Of course, some survivors experience depressive symptoms without meeting the criteria for a formal diagnosis of MDD. That is particularly true of victims who meet the threshold for a PTSD diagnosis given that depressive symptoms are one way to meet the PTSD diagnostic criteria.¹⁵⁹ The other negative mood symptoms that can meet the thought/mood prong of the PTSD test—lack of interest, emotional numbness, and hopelessness—are closely related to depression.¹⁶⁰ The precise connections are not important for present purposes. What matters is that all of these symptoms are frequently

152. *See id.* (citing John Briere et al., *Lifetime Victimization History, Demographics, and Clinical Status in Female Psychiatric Emergency Room Patients*, 185 J. NERVOUS & MENTAL DISEASE 95 (1997), <http://doi.org/10.1097/00005053-199702000-00005>).

153. *See* Ekta Choudhary et al., *Depression, Anxiety, and Symptom Profiles Among Female and Male Victims of Sexual Violence*, 6 AM. J. MEN'S HEALTH 28, 34 (2012), <http://doi.org/10.1177/1557988311414045>.

154. *See id.* (citing Judith V. Becker et al., *Depressive Symptoms Associated with Sexual Assault*, 10 J. SEX & MARITAL THERAPY 185 (1984), <https://doi.org/10.1080/00926238408405944>).

155. *See, e.g., id.*

156. *See generally* Choudhary et al., *supra* note 153 (discussing statistics among victims of all types of sexual violence).

157. Cheryl S. Hankin et al., *Prevalence of Depressive and Alcohol Abuse Symptoms Among Women VA Outpatients Who Report Experiencing Sexual Assault While in the Military*, 12 J. TRAUMATIC STRESS 601, 607 (1999), <http://doi.org/10.1023/A:1024760900213>.

158. Laura P. Chen et al., *Sexual Abuse and Lifetime Diagnosis of Psychiatric Disorders: Systematic Review and Meta-analysis*, 85 MAYO CLINIC PROC. 618, 624 fig.5 (2010) (reporting results of sixteen studies assessing a formal diagnosis of depression among sexual assault survivors).

159. *See* SAMHSA, TRAUMA-INFORMED CARE, *supra* note 96, at 82.

160. *E.g.,* SUBSTANCE ABUSE & MENTAL HEALTH SERVICES ADMIN., DSM-5 CHANGES IMPLICATIONS FOR CHILD SERIOUS EMOTIONAL DISTURBANCE 25 tbl.9 (2016) [hereinafter SAMHSA, DSM-5 CHANGES], https://www.ncbi.nlm.nih.gov/books/NBK519708/pdf/Bookshelf_NBK519708.pdf [<https://perma.cc/GEX3-74HT>] (listing “loss of interest” as one of two key indicia of depression); Shervin Assari & Maryam Moghani Lankarani, *Depressive Symptoms Are Associated with More Hopelessness Among White Than Black Older Adults*, 4 FRONTIERS PUB. HEALTH 1, 1 (2016), <https://doi.org/10.3389/fpubh.2016.00082> (“Hopelessness is a core component of depression.”).

present for prolonged periods among sexual assault survivors.¹⁶¹ One empirical study that examined survivors on a longer timeframe concluded that “[r]ecovery from sexual assault and related psychosocial consequences [PTSD in particular] can be a long and difficult process.”¹⁶²

Depression makes it difficult to do anything, especially something as difficult as reporting a sexual assault. Testifying experts and scholars alike cite depression and related symptoms as one of the most significant reasons that victims of sexual assault do not report the crime.¹⁶³ And while depression may lead some victims to never report, other victims will eventually overcome their depression enough to report the crime, though later than they would have had they not been depressed. One psychotherapist who works with victims of sexual assault testified in a case that “it is not uncommon for victims of sexual assault to delay reporting assaults” as a result of “anxiety, depression, and shock.”¹⁶⁴ Short statutes of limitations ignore the common and often debilitating psychological consequences of sexual assault,¹⁶⁵ effectively eliminating criminal responsibility for perpetrators.

IV. CURRENT LAW IGNORES THE LASTING EFFECTS OF TRAUMA

Existing laws extending criminal statutes of limitations and providing civil remedies fail to account for PTSD symptoms. Tolling the limitations period for child victims and in cases where there is DNA evidence will help some victims with PTSD but will miss many others. So-called “John Doe” indictments that identify defendants by their DNA when the defendant’s name is unknown share the limitations of DNA tolling provisions and add serious constitutional concerns. An expansive discovery rule has the potential to help many victims of sex-

161. See SAMHSA, DSM-5 CHANGES, *supra* note 160, at 25 tbl.9.

162. Sigurvinsdottir & Ullman, *supra* note 106, at 919.

163. *E.g.*, Fischer v. Commonwealth, 543 A.2d 177, 180 (Pa. Commw. Ct. 1988) (summarizing expert testimony that “post-traumatic depression and anxiety” is one of the “[t]wo major factors” responsible for the under-reporting of rape); Deborah A. Brandon, *Going to Extremes: The Doctrine of Prompt Complaint and Louisiana Code of Evidence Article 801(d)(1)(d)*, 39 LOY. L. REV. 151, 165 (1993) (“[T]ypical psychological reactions to rape trauma (e.g., depression, apathy, sadness, fatigue, indecisiveness, and low self-esteem) may also affect the incidence of non-reporting.”).

164. State v. Hipler, 763 N.W.2d 248, 248 (Wis. Ct. App. 2008) (unpublished table decision).

165. This Article is primarily focused on injuries and disabilities resulting from the sexual assault, but our arguments apply with even greater force to victims who were already disabled before the assault and were further harmed by it. Individuals with disabilities are often targeted and report even less often than individuals without disabilities. See Erika Harrell, *Crime Against Persons with Disabilities, 2009–2019 – Statistical Tables*, BUREAU OF JUST. STAT. (Nov. 2021), <https://bjs.ojp.gov/library/publications/crime-against-persons-disabilities-2009-2019-statistical-tables> [<https://perma.cc/5GGT-ZLN5>]. “Nineteen percent of rapes or sexual assaults against persons with disabilities were reported to police, compared to 36% of those against persons without disabilities.” *Id.*

ual assault, but few jurisdictions have adopted one. Civil remedies fail to protect society at large from sexual predators. Current law is not enough to combat the epidemic of sexual assault in the United States.

A. Tolling Provisions

A tolling provision delays a statute of limitations from running until a specified event occurs.¹⁶⁶ These provisions are common in civil law, with statutes tolling until a person learns of their harm or can obtain enough information to determine whether the injury is due to wrongfulness by the defendant.¹⁶⁷ Although tolling provisions are typically associated with civil law, some criminal law statutes incorporate them as well.

Many criminal codes' sex crimes sections delay statutes of limitations from running until the minor victim reaches a certain age.¹⁶⁸ The problem with an age-based approach is that PTSD symptoms do not magically disappear when victims hit the age of majority. Another more promising type of tolling provision is the "discovery" rule, which delays the start of the limitations period until the offense is discovered.¹⁶⁹ *State v. Day* defined "discovered" for the Oklahoma statute as "when any person (including the victim) other than the wrongdoer or someone in par delicto with the wrongdoer has knowledge of both (i) the act and (ii) its criminal nature."¹⁷⁰ If they are conscious during the assault, most adult victims will be found to have knowledge of the act and its criminality during or just after the assault, so the discovery rule will not extend the time for filing a criminal charge. However, Oklahoma has since amended the definition of "discovery" to mean the date that the crime "is reported to a law enforcement agency."¹⁷¹ The state can then charge the offense up to twelve years after report-

166. *Cada v. Baxter Healthcare Corp.*, 920 F.2d 446, 450 (7th Cir. 1990). Though not a Supreme Court decision, this opinion by Judge Posner was heralded as Justice Breyer's "bible" on the issue of tolling provisions. Mark E. Rooney, *The Many Ways to Extend a Limitations Period*, AM. BAR ASS'N (Nov. 27, 2019), <https://www.americanbar.org/groups/litigation/committees/consumer/practice/2019/many-ways-to-extend-a-limitations-period/> [<https://perma.cc/JHB8-YZNM>].

167. See Rooney, *supra* note 166.

168. See, e.g., FLA. STAT. ANN. §§ 775.15(13)(a), 826.04 (West 2017) (stating that if the victim was a minor at the time of the incest, the statute of limitations does not run until the victim reaches the age of 18 or when the offense is reported to police, whichever occurs first).

169. OKLA. STAT. ANN. tit. 22, § 152(C)(1) (West 2021).

170. *State v. Day*, 882 P.2d 1096, 1098 (Okla. Crim. App. 1994). A peculiarity of this statute is that the crime can be "discovered" by "any person," not just the victim. *Id.* This wording takes away the victim's power and could lead to absurd results. Say a random bystander saw an unconscious person being raped in an alley, giving them knowledge of "the act and . . . its criminal nature," but does not tell anyone or do anything. Has the crime really been discovered? The victim's discovery of the action and its criminality should be the only trigger for a discovery statute.

171. § 152(M).

ing.¹⁷² The discovery rule and twelve-year limitations period apply to both rape and “sexual battery” (Oklahoma’s version of sexual assault).¹⁷³

Discovery means different things in different states. For example, an Ohio statute provides that “[t]he period of limitations shall not run during any time when the corpus delicti remains undiscovered.”¹⁷⁴ In one child sexual assault case, the state argued that this provision meant that the statute of limitations did not begin to run at the moment the victim turned eighteen, but rather only when the victim disclosed the crime to a third party.¹⁷⁵ The court rejected that argument on the grounds that the legislature could not have intended the “absurd result” that “as long as the victim kept it to herself, she could wait until she was well into middle age to disclose the abuse and then the State would still have six years to indict.”¹⁷⁶ And while the case involved a child victim, the court strongly suggested that the discovery rule would not apply to adult sex crime victims either.¹⁷⁷ The court recognized but made no allowance for “trauma that may cause [an adult] victim to hesitate to report the abuse to proper authorities.”¹⁷⁸ On the discovery rule, one state’s plain language (Oklahoma) is another state’s absurd result (Ohio). Sometimes, victims of sexual assault will benefit; other times they will not.

Most of these tolling provisions target one specific circumstance where lawmakers saw cases falling through the cracks. Tolling provisions for minor victims were created because many victims were losing their opportunity for justice before they even reached the age of eighteen, which was often before they could leave the house of their abuser.¹⁷⁹ DNA tolling provisions originated because victims’ rape kits would sit in police databases for decades until the rapists were arrested on other charges and their DNA was matched; the assailants, however, would not be prosecuted because the limitations period had run.¹⁸⁰

Although these tolling provisions are helpful, they solve only one symptom of a much larger disease. Without new solutions, lawmakers will have to continue drafting exception after exception to allow for each different scenario that captures their attention. Massachusetts is a prime example of this situation happening in the context of child sex abuse.

172. *Id.* § 152(C)(1).

173. *Id.*

174. *State v. Webber*, 654 N.E.2d 1351, 1352 (Ohio App. 1995) (quoting OHIO REV. CODE ANN. § 2901.13(F) (now Subsection (G))).

175. *Id.*

176. *Id.* at 1353–54.

177. *See id.* at 1354

178. *Id.*

179. *See Shinton*, *supra* note 16, at 320–22.

180. *See Padawer*, *supra* note 14.

In Massachusetts, sex crimes against children were originally treated like all crimes other than murder with a firm statute of limitations of six years.¹⁸¹ Then, this limitation was increased to ten years in 1985.¹⁸² Two years later, the Massachusetts legislature added a tolling provision (much like Ohio's), which tolled the limitations period from running until the victim turned sixteen.¹⁸³ In 1996, the statute of limitations was extended from ten to fifteen years.¹⁸⁴

From here, victims' stories pushed the limitations period even further. "Kathy Picard accused her abuser when she turned thirty-two years old—that accusation came too late. In 2006, Massachusetts extended the statute of limitations again, giving adult survivors until they are forty-three to report."¹⁸⁵ After Kathy came Rosanne, who was abused for nine years of her childhood by a family member and came forward—with a signed letter admitting the abuse from her abuser—at forty-eight.¹⁸⁶ The abuser could not be prosecuted, even with a signed confession, because the limitations period had run five years earlier.¹⁸⁷ Ultimately, Massachusetts abolished statutes of limitations for sex crimes against minors in 2012¹⁸⁸ with the qualification that victims reporting "more than 27 years after the date of commission of such offense shall be supported by independent evidence that corroborates the victim's allegation."¹⁸⁹

As the evolution of Massachusetts's statutes of limitations for child sex crimes shows, there will always be another heart-wrenching case that falls outside of the new limitations set by an extension or a tolling provision. Current tolling provisions and extensions are simply not enough. If a state only has a DNA tolling provision, what if a victim comes forward with an abuser willing to confess like Rosanne's?¹⁹⁰ If a state only has a tolling provision for minors, what about a victim whose rape kit finally comes back with a positive match? There will always be someone who falls through the cracks, and any victim not receiving justice is an injustice to us all.

Another major defect with the prevailing tolling and extension approaches is complexity. Survivors of sexual assault dealing with trauma may have difficulty figuring out how long they have to file a

181. David Viens, *Countdown to Injustice: The Irrational Application of Criminal Statutes of Limitations to Sexual Offenses Against Children*, 38 SUFFOLK U. L. REV. 169, 181 (2004).

182. JASON K. MATTHEWS, STATUTE OF LIMITATIONS FOR SEXUAL ASSAULT CRIMES IN NEW ENGLAND, NEW YORK, AND NEW JERSEY (2002), <https://www.cga.ct.gov/2002/rpt/2002-R-0258.htm> [<https://perma.cc/R6BL-ZJEV>].

183. *Id.*

184. *Id.*

185. See Shinton, *supra* note 16, at 328.

186. *Id.*

187. *Id.*

188. *Id.* at 329.

189. MASS. GEN. LAWS ANN. ch. 277, § 63 (West 2017).

190. See Shinton, *supra* note 16, at 328.

criminal report. As discussed in Part II, limitations periods vary radically across and within states, depending on the specifics of the crime.¹⁹¹ Add to this the changing rules about tolling, and even a lawyer would have trouble figuring out exactly the applicable time limit. The evolution of law in Massachusetts is an extreme but not uncommon example. These laws are frequently changing and the scope of the exceptions along with them. A victim may correctly believe at time one that they are too late to report the crime. Unless they closely follow subsequent legal developments, they will be unaware of a retroactive extension of time that allows reporting at time two.

The modern Oklahoma discovery rule stands on stronger footing, but it is still an imperfect solution. Recall that in Oklahoma the twelve-year statute of limitations does not begin to run until the crime is “reported to law enforcement.”¹⁹² Thus, the statute of limitations is largely irrelevant for victims; it only kicks in to limit how long prosecutors can delay before filing charges *after* a victim reports. Assuming this rule doesn’t change, it’s relatively easy for victims to understand and provides essentially limitless time to overcome trauma before reporting. There is, however, a wrinkle. One study found that third parties were present at 29% of rapes or sexual assaults.¹⁹³ These witnesses may report the crime, even if the victim does not, thus taking control of the case out of the victim’s hands and starting the clock on the statute of limitations.¹⁹⁴ Starting the limitations period only after reporting to police will help most victims, but not all.

B. DNA Tolling Provisions

DNA tolling provisions are particularly widespread and raise some unique issues. DNA is present in nearly every cell of the human body, and no two people, other than identical twins, have the same DNA.¹⁹⁵ Therefore, DNA analysis is a useful technology to identify suspects based upon evidence collected at crime scenes or off of victims.¹⁹⁶ DNA tolling provisions originated because victims’ rape kits would sit in police databases for decades until the rapists were arrested on other charges and their DNA was matched; the assailants, however, would

191. *See supra* Part I.

192. OKLA. STAT. ANN. tit. 22, § 152(M) (West 2021).

193. U.S. DEP’T OF JUST.: OFF. OF JUST. PROGRAMS, BUREAU OF JUSTICE STATISTICS: SPECIAL REPORT: THIRD-PARTY INVOLVEMENT IN VIOLENT CRIME, 1993-99, AT 1 (2002), <https://bjs.ojp.gov/content/pub/pdf/tpivc99.pdf> [<https://perma.cc/ZZ2D-ZKK3>].

194. *Id.* at 5 (“Police notification occurred 41% of the time when the victimization involved only the victim versus 44% when the victimization occurred in the presence of a third party.”).

195. U.S. DEP’T OF JUST.: OFF. OF JUST. PROGRAMS, UNDERSTANDING DNA EVIDENCE: A GUIDE FOR VICTIM SERVICE PROVIDERS <https://www.ojp.gov/pdffiles1/nij/bc000657.pdf> [<https://perma.cc/T2ZE-PJV6>].

196. *Id.*

not be prosecuted because the limitations period had run.¹⁹⁷ Some states extend DNA tolling provisions not just to sex offenses, but to other types of offenses as well.¹⁹⁸

The arguments outlined above apply equally to DNA tolling provisions, but DNA tolling provisions present additional problems. The fundamental problem with DNA tolling is that it depends on having a DNA sample. As explained above, nearly all victims of rape in the immediate aftermath have symptoms of PTSD, including avoidance, amnesia, and depression.¹⁹⁹ The window of opportunity to collect genetic material is short: between 24 hours and 12 days, depending on the nature of the assault.²⁰⁰ Many victims forgo medical treatment altogether, and many who do receive treatment decline rape kit testing or refuse to release the results to the police.²⁰¹ The upshot is that the survivors who are struggling the most and need extra time to report the crime are the survivors least likely to have preserved a DNA sample.²⁰²

Even for the minority of victims who have preserved genetic evidence, DNA tolling is not a silver bullet. As shown in Table I, 22 of the states that had a statute of limitations for rape had a DNA tolling provision.²⁰³ Even though DNA tolling provisions are common and DNA is widely used as evidence in American courts, the reliability of DNA evidence is questionable.²⁰⁴ Although DNA was once considered the “gold standard” of evidence, recent research has called this into question.²⁰⁵ The forensic science standards used to analyze DNA are not regulated or consistent across the country, and the analysis is

197. See Padawer, *supra* note 14.

198. Scott Akehurst-Moore, *An Appropriate Balance? – A Survey and Critique of State and Federal DNA Indictment and Tolling Statutes*, 6 J. HIGH TECH. L. 213, 218 n.29 (2006).

199. See *supra* Sections III.A–III.C.

200. Linda Carroll, *Police Get Rape Kits in Small Percentage of Cases*, REUTERS (Aug. 7, 2018, 5:43 PM), <https://www.reuters.com/article/us-health-sexual-assault/police-get-rape-kits-in-small-percentage-of-cases-idUSKBN1KS2JQ> [<https://perma.cc/366W-3HEQ>].

201. *Id.*

202. David M. Greenwald, *Boudin Alleges SF Police Are Improperly Using DNA from Rape Kits to Match to Crimes*, DAVIS VANGUARD (Feb. 15, 2022), <https://www.davisvanguard.org/2022/02/boudin-alleges-that-the-sf-police-are-improperly-using-dna-from-rape-kits-to-match-to-crimes/> [<https://perma.cc/88WW-BQ5A>] (“Sexual assault is one of the most traumatic experiences anyone can undergo,” said California State Senator Scott Wiener. ‘Coming forward after a sexual assault to provide a rape kit can be re-traumatizing. Too many people decide not to take that step, given the trauma.’”).

203. See *infra* Table I.

204. See Matthew Shaer, *The False Promise of DNA Testing*, ATLANTIC (June 2016), <https://www.theatlantic.com/magazine/archive/2016/06/a-reasonable-doubt/480747/> [<https://perma.cc/75PZ-UR95>].

205. Kristen Bolden, *DNA Fabrication, A Wake Up Call: The Need to Reevaluate the Admissibility and Reliability of DNA Evidence*, 27 GA. ST. U. L. REV. 409, 410 (2011) (internal citation omitted).

typically done by a lab connected with a police department.²⁰⁶ Training, education, and technique vary so much among technicians that it is said that “[i]f you show 10 colleagues a mixture, you will probably end up with 10 different answers’ as to the identity of the contributor.”²⁰⁷

Our argument is not that DNA evidence should be excluded. Instead, we object to the implication that DNA evidence is the only evidence with sufficient permanence to sustain delayed prosecution of sex crimes. By singling out DNA evidence for this special treatment, legislators implicitly devalue all other forms of evidence, including the firsthand experiences of victims and the sworn confessions of perpetrators. DNA should not be required for society to believe a victim, especially given DNA’s questionable accuracy.²⁰⁸

C. *John Doe* Indictments

John Doe indictments are a way prosecutors extend the time in which defendants can be charged.²⁰⁹ Instead of indicting the defendant using their legal name, John Doe indictments identify the suspect by their DNA profile alone.²¹⁰ Because DNA is unique, prosecutors have begun charging defendants by their DNA profile as a way to avoid statutes of limitations.²¹¹ If they cannot find a DNA match in time, prosecutors indict the sample number.²¹² As of 2019, ten states and the District of Columbia had used John Doe indictments to essentially side-step the limitations period.²¹³

Defense attorneys have challenged the constitutionality of John Doe indictments based “on the Fourth Amendment’s particularity requirement and the Sixth Amendment’s speedy trial requirement.”²¹⁴ *People v. Robinson* expresses the rationale many courts employ to up-

206. See Shaer, *supra* note 204.

207. *Id.*

208. Veronica Valdivieso, Note, *DNA Warrants: A Panacea for Old, Cold Rape Cases?*, 90 GEO. L.J. 1009, 1048 (2002) (“Elimination of the statute of limitations on rapes seems preferable to dependence on DNA warrants because it will acknowledge the seriousness of the crimes while at the same time allowing for investigation and prosecution of cases.”).

209. Catherine M. Guthrie, *Killing Time: The Application of John Doe Indictments to Keep Cases Warm*, U.S. DEP’T OF JUST.: OFF. OF JUST. PROGRAMS (Apr. 2007), <https://www.ojp.gov/ncjrs/virtual-library/abstracts/killing-time-application-john-doe-indictments-keep-cases-warm> [<https://perma.cc/7G9V-XV2U>].

210. *Id.*

211. Emily Clarke, Note, *Tolling Time: How John Doe DNA Indictments Are Skirting Statutes of Limitations and Crippling the Criminal Justice System*, 56 AM. CRIM. L. REV. ONLINE, Winter, at 1 (2019), <https://www.law.georgetown.edu/american-criminal-law-review/wp-content/uploads/sites/15/2019/02/56-O-Tolling-Time-How-John-Doe-DNA-Indictments-are-Skirting-Statutes-of-Limitations-and-Crippling-the-Criminal-Justice-System.pdf> [<https://perma.cc/D9EX-3ZEQ>].

212. *See id.*

213. *Id.* at 2.

214. *Id.*

hold the use of John Doe indictments and confirm their constitutionality.²¹⁵ In *Robinson*, a defendant was charged with rape based on DNA found on the victim.²¹⁶ The indictment was filed four days before the statute of limitations expired and identified the defendant by his DNA and called him “John Doe, unknown male.”²¹⁷ The Supreme Court of California found that the indictment was “reasonably specific” and therefore met the Fourth’s Amendment’s particularity requirement.²¹⁸ The court explained that when the suspect’s name is unknown, the next-best identifier may be used.²¹⁹ Because DNA is “arguably the most discrete, exclusive means of personal identification possible,” John Doe indictments identifying suspects by their DNA profile are constitutional.²²⁰

Notwithstanding the uniform judicial rejection of Fourth Amendment challenges to John Doe indictments, this reasoning is questionable. Sure, a DNA profile is “particular” to a given person, but the Constitution requires “particularity” in an indictment not for particularity’s sake, but in order to provide defendants with timely notice that a criminal case has been filed against them.²²¹ To uphold the John Doe indictment in *Robinson*, the court had to disregard the clear view of the state commission that drafted the relevant statute of limitations.²²² That commission concluded: “[i]ssuance of a ‘Doe’ warrant does not reasonably inform a person that he or she is being prosecuted and therefore does not satisfy the statute of limitations.”²²³ As one commentator put it, “DNA profiles are more certain than any other ‘John Doe’ descriptive options, but at the same time, they are worse than all other modes of description in terms of notice.”²²⁴ People simply do not know their own DNA profile.

As with the Fourth Amendment, no court has invalidated a John Doe indictment on the ground that it violates the Sixth Amendment’s Speedy Trial Clause.²²⁵ A common rationale for the speedy trial requirement (like statutes of limitation) is to prevent the defendant from having to defend against or with old evidence.²²⁶ No court, how-

215. *Id.*; see *People v. Robinson*, 224 P.3d 55, 60 (Cal. 2010).

216. *Robinson*, 224 P.3d at 60.

217. *Id.*

218. *Id.* at 73–74 (quoting *United States v. Hayes*, 794 F.2d 1348, 1354 (9th Cir. 1986)).

219. *Id.* at 74.

220. *Id.* (quoting *State v. Dabney*, 663 N.W.2d 366, 372 (Wis. Ct. App. 2003)).

221. Akehurst-Moore, *supra* note 198, 230 n.102 (“The main purpose for the reasonable certainty requirement is to put the accused on sufficient notice of the charges, to allow a defense, to plead and to prevent double jeopardy.”).

222. See *People v. Robinson*, 224 P.3d 55, 77–78 (Cal. 2010).

223. *Id.* (internal citation and quotation marks omitted).

224. Frank B. Ulmer, *Using DNA Profiles to Obtain “John Doe” Arrest Warrants and Indictments*, 58 WASH. & LEE L. REV. 1585, 1610 (2001).

225. Daniel Gaudet, *Waiting for John Doe: The Practical and Constitutional Implications of DNA Indictments*, 18 SUFFOLK J. TRIAL & APP. ADVOC. 106, 123 (2013).

226. *Id.*

ever, has ever found this rationale compelling enough to rule John Doe indictments unconstitutional.²²⁷ So while it remains theoretically possible for a defendant to successfully challenge the delay associated with a John Doe indictment under the Supreme Court's complex multi-factor approach,²²⁸ no defendant to date has actually done so. Thus, John Doe indictments generally do not violate either the Speedy Trial Clause or the particularity requirement of the Fourth Amendment.

John Doe indictments, although found to be constitutional by many courts, present practical problems. Although these indictments were originally limited to DNA profiles, fingerprint evidence is as specific, if not more, and is collected more uniformly across the country than DNA evidence.²²⁹ As with DNA, however, finding fingerprints at the crime scene does not necessarily mean that the person they belong to committed the crime.²³⁰ To be sure, the DNA used in most John Doe indictments is semen collected after a sex crime—which police can be more confident came from the assailant than with other DNA or fingerprints found at the crime scene—but available DNA evidence is not always semen, and it is not always a sex crime being investigated.²³¹ Courts have extended John Doe indictments beyond DNA,²³² heightening the risk of wrongful convictions. If used broadly, John Doe indictments have the potential to effectively eliminate all statutes of limitation.

The first use of John Doe indictments was to prosecute rapists, but their continued and extended use could lead to an unrecognizable criminal justice system.²³³ Suspects getting indicted and being identified solely by their DNA or fingerprints found at the crime scene, whether for a robbery or a rape, would create an alternative reality where defendants have no way of knowing if they are indicted and can

227. *Id.* (“[N]o decision has held that the delay between indicting a defendant’s DNA sample and later attaching his name to the indictment constitutes an unreasonable delay that subjects him to prolonged detention, public humiliation, or a trial involving decayed evidence.”).

228. *See* *United States v. Green*, 223 F. App’x 408, 409–10 (5th Cir. 2007) (discussing the multi-factor approach and demonstrating how the Fifth Circuit applied it in this case).

229. *Clarke*, *supra* note 211, at 5.

230. *Id.*

231. *Id.* at 6. (“The increased use of John Doe DNA indictments begs the question: how long can prosecutors only use DNA for these anonymous indictments when much more criminal activity involves fingerprints and many scientists acknowledge fingerprints may be more reliable . . . ?”).

232. *Id.* at 1.

233. *See id.* at 1 n.1 (citing Peter Hermann & Michael Brice-Saddler, *The Hotel Rapist’s Name Is Still a Mystery, but ‘John Doe’ has Been Indicted, Based on His DNA Profile*, WASH. POST (June 19, 2018, 4:48 PM), https://www.washingtonpost.com/local/public-safety/the-hotel-rapists-name-is-still-a-mystery-but-john-doe-has-been-indicted-based-on-his-dna-profile/2018/06/19/83f5c73c-73bb-11e8-805c-4b67019f4e4_story.html?noredirect=ON [<https://perma.cc/5ZDD-AT9C>]).

be so based upon evidence perhaps not even related to the crime. Why risk the possibility of doing so “when a simpler solution exists[?]”²³⁴ John Doe indictments, at their core, are intended to circumvent the statutes of limitations for sex crimes.²³⁵ Adjusting or eliminating statutes of limitations for sex crimes only is a more direct and focused solution.

D. *Civil Remedies*

Criminal charges are not the only avenue victims of sexual assault can pursue against their assailant. Civil lawsuits are another possible way victims can seek out justice and closure.²³⁶ Civil lawsuits, however, differ substantially from criminal cases.²³⁷ They are filed by the victim, instead of by the state or federal government, and have a greater financial cost to the victim because victims must pay for their own attorneys.²³⁸ Another major difference between criminal and civil cases is the outcome if the defendant is found to have committed the offense.²³⁹ In a criminal case, the defendant may face imprisonment or compulsory therapy.²⁴⁰ In contrast, a defendant found civilly liable will only be responsible for monetary damages.²⁴¹ Monetary damages might be appealing to some victims, but they are essentially meaning-

234. *Id.* at 6.

235. *Id.*

236. For example, a New York jury recently found in favor of E. Jean Carroll, a writer who accused former president Donald Trump of sexually assaulting her in the mid-1990s. She was awarded a combined \$5 million in damages for sexual abuse and defamation. Shayna Jacobs et al., *Jury in Civil Trial Finds Trump Sexually Abused, Defamed E. Jean Carroll*, WASH. POST (May 9, 2023, 7:11 PM), <https://www.washingtonpost.com/national-security/2023/05/09/e-jean-carroll-trump-jury/> [<https://perma.cc/RJU6-S4SZ>].

237. WASH. COAL. OF SEXUAL ASSAULT PROGRAMS, A SURVIVOR’S GUIDE TO FILING A LAWSUIT 3 (2004), https://www.wcsap.org/sites/default/files/uploads/working_with_survivors/advocacy/survivors_guide_to_filing_civil_lawsuit_2004.pdf [<https://perma.cc/5ZEP-BVHM>].

238. *Id.*

239. *Id.*

240. *Id.* Some states also allow restitution:

In cases involving rape or other criminal sexual conduct, some courts have held that victims were entitled to restitution damages for medical expenses, lost wages, attorney’s fees, gasoline, mileage, or towing expenses, and future medical expenses, though other courts, considering the propriety of awarding the same elements of damages, have held contra. The courts have also upheld orders requiring defendants convicted of rape and the like to make victim restitution for pain and suffering, moving expenses, child support, and private schooling costs, though other tribunals have found restitution to be inappropriate for the victim’s payment of loans or other bills

George Blum, *Measure and Elements of Restitution to Which Victim Is Entitled Under State Criminal Statute*, 15 A.L.R. 5th 391, Art. I, § 2(a) (1993) (internal citations omitted).

241. WASH. COAL. OF SEXUAL ASSAULT PROGRAMS, *supra* note 237, at 3.

less when the defendant is insolvent.²⁴² Moreover, civil lawsuits might not be appealing to society at large for crimes like sexual assault.

Civil remedies are an important mechanism in our legal system for victims to seek redress. They are not, however, a substitute for the criminal legal system.²⁴³ A primary feature of the criminal legal system and our punishment regime in the United States is imprisonment, which removes criminals from society so they cannot continue to do harm.²⁴⁴ The recidivism rate²⁴⁵ among convicted rapists ranges from 5% after 3 years to 24% after 15 years.²⁴⁶ The actual rate of recidivism is much higher, as “there is universal agreement” in the scientific community “that the observed recidivism rates of sex offenders are underestimates of actual reoffending.”²⁴⁷ This rate of recidivism among sex offenders shows the danger in relying solely on civil suits: offenders who are not incarcerated may reoffend and hurt more victims. Society is left unprotected.²⁴⁸ And while a civil suit does put some people on notice as to the wrongdoings of the defendant, it may not send as strong a signal as a criminal conviction would. A defendant who loses a civil case would not be forced to register as a sex offender, unlike individuals who have been criminally convicted.²⁴⁹

Another problem with relying on civil remedies is that civil lawsuits, like criminal cases, are often subject to short statutes of limitations. For example, a victim must bring suit within two years of the date of the sexual assault in Alabama and within four years in Nebraska.²⁵⁰ An individual suffering from PTSD may not be able to file a civil suit within these narrow timeframes.

As with criminal statutes of limitations, however, there are exceptions. The discovery rule is the prime example. Civil claims in most states do not accrue (and thus the limitations period does not begin to

242. *Id.* at 4.

243. *See* Shinton, *supra* note 16, at 329.

244. Alfred Blumstein, *Selective Incapacitation as a Means of Crime Control*, 27 AM. BEHAV. SCIENTIST 87, 93 (1983), <https://doi.org/10.1177/000276483027001006>.

245. “Recidivism has been conceptually defined as the reversion to criminal behavior by an individual who was previously convicted of a criminal offense.” Roger Przybylski, *Chapter 5: Adult Sex Offender Recidivism*, DEP’T OF JUST.: OFF. OF JUST. PROGRAMS (2015), <https://smart.ojp.gov/somapi/chapter-5-adult-sex-offender-recidivism> [<https://perma.cc/DC38-ZDLA>].

246. *Id.*

247. *Id.*

248. *See* Shinton, *supra* note 16, at 329.

249. *See* Amanda Y. Agan, *Sex Offender Registries: Fear Without Function?*, 54 J.L. & ECON. 207, 210 (2011), <https://doi.org/10.1086/658483>. We do not mean to overstate the impact of sex offender registries on recidivism. Perhaps surprisingly, empirical studies find little impact. *See* Joshua E. Montgomery, *Fixing a Non-Existent Problem with an Ineffective Solution: Doe v. Snyder and Michigan’s Punitive Sex Offender Registration and Notification Laws*, 51 AKRON L. REV. 537, 570–73 (2017) (summarizing empirical research). Some studies suggest that registries may actually *increase* recidivism by erecting a barrier to employment. *Id.*

250. ALA. CODE § 6-2-38 (2014); NEB. REV. STAT. § 25-207 (2016).

run) until the plaintiff knows, or reasonably should have known, of the claim.²⁵¹ This principle is of little or no help to a victim of sexual assault. Because PTSD interferes with a victim's ability to take legal action, the fact that the assault was traumatic decreases rather than increases the time allowed to sue. For example, the Seventh Circuit, applying Illinois law, has held that the limitations period for an alleged rape and torture immediately began to run "because . . . [the] force or violence . . . permit[ed] the law to presume that the event immediately placed the plaintiff on notice of her injury and a right of action."²⁵²

Other civil tolling principles are only somewhat more promising. Many states toll civil statutes of limitations during periods of time that the injured party is disabled.²⁵³ The PTSD symptoms outlined above will not qualify as a disability for this purpose unless they are so severe that the victim "is not capable of understanding [their] rights."²⁵⁴ The symptom most likely to qualify is dissociative amnesia. The Iowa Supreme Court declined to toll the statute of limitations for a domestic violence victim with PTSD including amnesia because the court did not believe the allegation of amnesia on the facts presented.²⁵⁵ However, the court made clear that "psychologically repressed memories may sometimes serve to toll the statute of limitations."²⁵⁶ Unfortunately, not all states agree.²⁵⁷

Civil suits can be very valuable to individual sexual assault victims, but they cannot fully compensate for inadequate enforcement of criminal laws. A criminal conviction, unlike a civil judgment, will generally result in a period of imprisonment, which protects society against further criminal activity. After a prisoner is released, their criminal record—and perhaps the sex offender registration that accompanies the conviction—may provide notice to other potential victims who can take private action to protect themselves. These societal impacts are huge, but the essential point for purposes of this Article is that civil lawsuits, like criminal cases, are often barred by short statutes of limi-

251. David Crump, *Statutes of Limitations: The Underlying Policies*, 54 U. LOUISVILLE L. REV. 437, 445 (2016).

252. *Hollander v. Brown*, 457 F.3d 688, 692 (7th Cir. 2006).

253. *See, e.g.*, 735 ILL. COMP. STAT. 5/13-211 (West 2015).

254. *See Kestel v. Kurzak*, 803 N.W.2d 870, 879 (Iowa Ct. App. 2011) (holding plaintiff's depression and anxiety did not constitute a disability for the purposes of the discovery rule).

255. *Borchard v. Anderson*, 542 N.W.2d 247, 250 (Iowa 1996).

256. *Id.*; *accord* *Carlson v. Rice*, 832 F. Supp. 17, 19 (D. Me. 1993) ("The Court concludes that the Plaintiff could potentially prove facts consistent with her allegations of severe emotional distress, repression of memory, and impairment of ability to engage in normal activities which indicate that she was not competent to comprehend and exercise [her] legal rights.") (applying Maine law) (internal quotation marks omitted).

257. Gregory G. Sarno, *Emotional or Psychological "Blocking" or Repression as Tolling Running of Statute of Limitations*, 11 A.L.R. 5th 588 (2022).

tation. The same PTSD symptoms that lead to delays in reporting to police will also delay filing a civil suit, effectively denying access to either criminal or civil court.

V. PROPOSALS TO ALLOW TIME TO HEAL FROM TRAUMA

The length of a criminal statute of limitations is meant to balance the interests of accusers, defendants, and society. It is therefore not surprising that different states strike the balance differently, resulting in disparate limitations periods for both rape and sexual assault. The differences are instructive in several ways. First, some states have eliminated statutes of limitations altogether.²⁵⁸ This precedent supports outright abolition. Second, many states have very short limitations periods, even for forcible rape.²⁵⁹ Lengthening these unduly short limitations periods would be a less extreme solution than abolition. A final, even narrower, alternative would be to toll limitations periods for victims experiencing PTSD symptoms that delay reporting to law enforcement.

Before evaluating potential changes to criminal statutes of limitation, though, it is important to recognize their purposes. The United States Supreme Court has explained the importance of criminal statute of limitations:

[The criminal statute of limitations] 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.²⁶⁰

Relatedly, speedier prosecution may prevent additional crimes by a repeat perpetrator. And of particular relevance here, the Court has observed that “for rape victims, who often wrestle with the painful decision whether to identify their attackers and press charges, a clear deadline allows them to know by when they must make that choice.”²⁶¹

These purposes have been widely recognized for many years, so legislators had plenty of opportunity to take them into account in setting existing statutes of limitation. In contrast, the relevance of PTSD to

258. See *supra* note 47 and accompanying text; see also *infra* Table I.

259. See *supra* notes 70–72 and accompanying text; see also *infra* Table I.

260. *Toussie v. United States*, 397 U.S. 112, 114–15 (1970); accord Kevin Foley, Comment, *Availability of Tolling in a Presidential Prosecution*, 168 U. PA. L. REV. 1789, 1804 (2020); Gary M. Ernsdorff & Elizabeth F. Loftus, *Let Sleeping Memories Lie? Words of Caution About Tolling the Statute of Limitations in Cases of Memory Repression*, 84 J. CRIM. L. & CRIMINOLOGY 129, 141 (1993), <https://doi.org/10.2307/1143888>.

261. *United States v. Briggs*, 141 S. Ct. 467, 471 (2020).

limitations periods for sexual assault is a new observation. Our primary focus below is therefore on the marginal impact this new factor should have on limitations periods. We assess this separately for different types of sex offenses.

Two traditional arguments for short limitations periods deserve consideration: (1) law enforcement will move more quickly, and (2) perpetrators jailed sooner will have less chance to reoffend. In theory, these are good arguments, but they matter only if legislators underestimated their weight in the context of sex offenses. All signs point to the opposite conclusion. It is much more likely that legislators gave these arguments too much weight, not too little, and that limitations periods are too short. Most sexual assaults go unreported, and only a miniscule fraction (less than 1%) results in incarceration.²⁶² If shorter limitations periods lead to quicker law enforcement action and incapacitation, the effect is tiny at best.²⁶³

A. *Trauma-Sensitive Tolling*

Trauma-sensitive tolling is the most narrowly tailored solution. The criminal limitations period could start to run only at the moment a sexual assault victim has overcome their PTSD symptoms to such a degree that it is reasonable to expect them to report the crime. This would grant extensions of time only to those who need them for this reason. The closest analogy discussed above is the principle that a civil statute of limitations is tolled during periods in which the plaintiff is “disabled.”²⁶⁴ While PTSD can clearly qualify as a “disability” for other purposes,²⁶⁵ “disabled” in the tolling context traditionally has a much narrower definition. Ohio courts, for example, require “mental retardation,” “derangement,” or “insanity.”²⁶⁶ To be useful, the defi-

262. *The Criminal Justice System: Statistics*, *supra* note 5.

263. It is important to note that our proposals, if adopted, will not affect cases in which the statute of limitations has already run. The Ex Post Facto Clause “forbids resurrection of a time-barred prosecution.” *Stogner v. California*, 539 U.S. 607, 616 (2003). On the other hand, legislatures are permitted to extend unexpired statutes of limitations for crimes that have already been committed. Legislatures should give the victims of such crimes additional time for all of the reasons set forth in this Article. The distinction between expired and unexpired limitations periods is important. Recall that the primary justification for criminal statutes of limitations is the loss and deterioration of evidence over time. Robert C. Post & Lani Guinier, *The Supreme Court 2002 Term*, 117 HARV. L. REV. 1, 273 (2003), <https://doi.org/10.2307/3651943>. Through this lens, revival and extension look much different: “The hypothetical defendant subject to an extended statute of limitations is on notice that he must preserve exculpatory evidence; the hypothetical defendant subject to a revived prosecution, however, is not.” *Id.* at 272–73.

264. *Kestel v. Kurzak*, 803 N.W.2d 870, 879 (Iowa Ct. App. 2011).

265. *Garibay v. Hamilton Cnty.*, 496 F. Supp. 3d 1140, 1147 (E.D. Tenn. 2020) (collecting cases holding that PTSD qualifies as a disability under the Americans with Disabilities Act).

266. *Fisher v. Ohio Univ.*, 589 N.E.2d 13, 16 (Ohio 1992).

nition of “disability” for trauma-sensitive tolling would have to include, at least, the PTSD symptoms described above.

There are several practical problems with this approach. The burden to prove the facts that justify tolling in a particular case generally falls on the party asking for tolling.²⁶⁷ Once a defendant raises the statute of limitations, the state has the burden to prove disabling trauma by a preponderance of the evidence.²⁶⁸ Even with this relatively low standard of proof, courts may demand expert psychiatric or psychological testimony.²⁶⁹ Most victims of sexual assault do not receive mental health care (only 17.8% in one older study).²⁷⁰ Without contemporaneous expert evaluation, it may be difficult to establish “disabling” symptoms retrospectively. The situation is only marginally better for a criminal complainant than for a civil plaintiff because the state, in pursuing a criminal prosecution, may locate and cover the cost of an expert. But by definition, such evidence will not be contemporaneous because the issue is presented only where there is a substantial delay in reporting the crime. In other words, the state’s evidence of disability will in most cases be collected well after the event.

In light of these difficulties and the astronomical rates of PTSD among sexual assault victims, some have suggested that the burden of proof could be shifted to the criminal defendant—either at the outset or after some *prima facie* showing of a symptom.²⁷¹ Thus, a criminal defendant who raises the statute of limitations as a defense in a sexual assault case would have to prove that the victim did not suffer from PTSD to such a degree as to excuse delayed reporting. The justification for shifting the burden to the defendant is that they are the one insisting on timeliness and the one whose violent act is alleged to have caused the PTSD and resulting reporting delay.²⁷² No one can reasonably claim to be surprised that it takes time to recover from trauma.

267. 54 C.J.S. Limitations of Actions § 428 (2023) (“A party claiming the benefit of a disability has the burden of proving it.”).

268. Some courts have required proof beyond a reasonable doubt for tolling. *State v. MacArthur*, No. 2006AP1379-CR, 2007 WL 4125444, at *3 (Wis. Ct. App. Nov. 21, 2007). But that standard is too high. *State v. MacArthur*, 750 N.W.2d 910, 922–24 (Wis. 2008).

269. *Mary D. v. John D.*, 264 Cal. Rptr. 633, 640 (Ct. App. 1989); *see also Fisher*, 589 N.E.2d at 16 (“A nebulous assertion of emotional distress does not create an issue of fact concerning unsound mind.”).

270. Jacqueline M. Golding et al., *Sexual Assault History and Use of Health and Mental Health Services*, 16 AM. J. CMTY. PSYCH. 625, 633 tbl.1 (1988), <https://doi.org/10.1007/BF00930018>.

271. Cf. Ian Ayres & Robert Gertner, *Filling Gaps in Incomplete Contracts: An Economic Theory of Default Rules*, 99 YALE L.J. 87 (1989), <https://doi.org/10.2307/796722>.

272. *See State v. Danielski*, 348 N.W.2d 352, 356 (Minn. Ct. App. 1984) (“Th[e] stale-claims] argument in favor of strict application of the statute of limitations does not apply when defendants’ actions are the direct cause of the delay.”).

Despite the surface appeal of these arguments, the burden of proof on PTSD symptoms should not be shifted to the defendant. Doing so on the theory that the defendant caused the symptoms assumes the defendant's guilt. The presumption of innocence is the foundation of the criminal law.²⁷³ In addition, shifting the burden to the defendant creates a perverse incentive for the victim. If a victim knows that evidence of psychiatric care (showing none of these PTSD symptoms, or showing a complete recovery, for example) could be used by the defendant to cut short her reporting period, she may avoid or delay treatment. It is better, of course, for everyone that victims promptly receive needed care, recover, and report the crime when they feel up to it.

Adopting trauma-sensitive tolling and leaving the burden of proof in its traditional place—on the state (and the victim)—creates the opposite incentive. Because proof of PTSD symptoms is essential to extend the period to charge the defendant, this new tolling rule will create an extra incentive for victims to seek treatment and thereby create the evidentiary basis for waiting to report the crime until they are healthy enough to do so.

All states should (at a minimum) adopt a trauma-sensitive tolling rule for sexual assault crimes. The reasons are several. The rates of PTSD after sexual assault are very high, higher than other crimes.²⁷⁴ Several PTSD symptoms prevent reporting, often for years. Trauma-sensitive tolling rests on the same foundation as the existing “disability” tolling doctrine: it is not fair to penalize someone for failing to report their crime when they were psychologically incapable of doing so. Requiring the state and victim to prove the facts that justify tolling incentivizes treatment and is necessary to respect the presumption of innocence. However, the proof problems for many may be insurmountable, so broader solutions should also be considered.

B. *Longer Limitations Periods*

Many states in recent years have substantially increased limitations periods for sex offenses.²⁷⁵ This reflects a growing appreciation of the seriousness of these crimes, including the psychological impacts such crimes have on victims. New York is a good example. New York has no limitations period for first-degree rape.²⁷⁶ A new law in 2019

273. *Coffin v. United States*, 156 U.S. 432, 453 (1895).

274. *See supra* notes 88–91 and accompanying text.

275. *See Sexual Assault Limitations for Each State in 2022*, SHUBIN L., <https://www.shubinlaw.com/sexual-assault-statute-of-limitations-for-each-state-in-2022/> [<https://perma.cc/4AMX-3AF9>] (“Many states have updated their statutes of limitations for sexual abuse claims in recent years, as victims and advocates have voiced the need for change.”).

276. *Criminal Statutes of Limitations New York*, RAINN, <https://apps.rainn.org/policy/policy-crime-definitions.cfm?state=New%20York&group=7> [<https://perma.cc/D24R-JTGE>] (last updated Mar. 2020).

lengthened the statute of limitations for second-degree rape from 5 to 20 years and lengthened the statute of limitations for third-degree rape from five to ten years.²⁷⁷ The governor explained: “Five years is an insult to these survivors and today we’re providing them more time to come to terms with the trauma they experienced and to seek justice.”²⁷⁸

Giving every victim more time to report the crime will reduce the number of victims who run out of time before they have overcome the symptoms of PTSD. This clearly advances the societal interests in punishing crime: retribution, rehabilitation, deterrence, and incapacitation.²⁷⁹ On the other side of the scale, longer limitations periods will force some alleged perpetrators to, in the words of the Supreme Court, “defend themselves against charges when the basic facts may have become obscured by the passage of time.”²⁸⁰ The question becomes how to properly strike this balance.

It is important first to carefully delineate the relevant considerations. For the defendant, time will make it more difficult to prove innocence in every case of sexual assault. But the state has the burden of proof, not the defendant, and the state’s evidence will also weaken over time.²⁸¹ DNA evidence is arguably an exception: many jurisdictions toll the statute of limitations in cases with DNA evidence because of its perceived “accuracy and longevity.”²⁸² DNA is more likely to be present in more serious sex offenses that involve penetration. On the other hand, victims of more serious crimes who experience greater trauma may be less likely to seek medical care at all or to consent to a rape kit if they do. Thus, the relative longevity of DNA evidence may be a sound justification for DNA tolling (subject to the caveats above), but it is only a weak argument for longer limitations periods for more serious offenses.

That means the real work is being done on the other side of the equation: society’s interests in prosecuting sex crimes. More serious sex crimes should have longer limitations periods for precisely the same reasons that we punish crime to begin with: retribution, rehabili-

277. Rob Frehse & Lauren de Valle, *New State Law Extends the Statute of Limitations for Rape in New York*, CNN (Sept. 18, 2019, 9:50 PM), <https://www.cnn.com/2019/09/18/us/new-york-law-rape-statute-of-limitations-extended/index.html> [<https://perma.cc/7WSL-K5R5>].

278. *Id.*

279. *United States v. Brown*, 381 U.S. 437, 458 (1965).

280. *Toussie v. United States*, 397 U.S. 112, 114 (1970).

281. See Mihailis E. Diamantis, *Limiting Identity in Criminal Law*, 60 B.C. L. REV. 2011, 2059 (2019) (citing the burden of proof and other applicable rules in support of the conclusion that “the general effect of time on evidence is to increase the risk of letting the guilty go free”). DNA tolling is based in large part on the perceived “accuracy and longevity” of DNA evidence. Dunn, *supra* note 16, at 841.

282. See Dunn, *supra* note 16, at 841.

tation, deterrence, and incapacitation.²⁸³ A longer limitations period leads to greater enforcement of the criminal law. If a limitations period is too short, crimes will go unpunished, negating all four goals of punishment. It is more important to punish more serious crimes because such crimes impose greater costs on society.²⁸⁴

Sexual assault is one of the most serious offenses. That is not a new observation. A key insight of this Article is the recognition that “seriousness” for purposes of statutes of limitations includes not one idea, but two. The first idea is familiar. The magnitude of the negative impact on the victim and society determines how “serious” an offense is. By this standard, there can be no question that rape is one of the most serious crimes. The stories of survivors demonstrate that “the personal costs associated with rape are enormous.”²⁸⁵ Many of the most tragic and lasting consequences are emotional and psychological,²⁸⁶ but estimates of the purely economic harms are also staggering. One study found that medical expenses for rape survivors were double the expenses for other patients.²⁸⁷ Another study “estimated [that the] lifetime cost of rape was \$122,461 per victim, or a population economic burden of nearly \$3.1 trillion (2014 U.S. dollars) over victims’ lifetimes.”²⁸⁸

The second, distinct concept embedded in “seriousness” flows from the first definition but was largely invisible before this Article. A crime is “serious” if one of its impacts is to delay reporting by the victim. Equity provides a compelling rationale for this principle: “the wrongdoer should not profit ‘by his own wrong.’”²⁸⁹ In other words, a perpetrator should not benefit from a missed limitations period when the delay is the product of his own wrongdoing.²⁹⁰ Economics provides a second rationale: “the expected sanction [associated with com-

283. *Brown*, 381 U.S. at 458. At least one commentator apparently disagrees: “The mere passage of time is unrelated to the traditional interests of criminal justice, such as retribution, deterrence, and rehabilitation.” Diamantis, *supra* note 281, at 2055.

284. E.G. Morris, *Statutes of Limitations Are an Essential Safeguard to Preserve the Accused’s Ability to Defend*, CHAMPION, Apr. 2016, at 5 (“Society has skewed the balance against a presumption of prejudice resulting from delay and for preserving the right to prosecute alleged perpetrators based on the judgement that murder is the ultimate transgression against an individual and society.”).

285. Francis X. Shen, *How We Still Fail Rape Victims: Reflecting on Responsibility and Legal Reform*, 22 COLUM. J. GENDER & L. 1, 31 (2011).

286. *See supra* Part II.

287. Susan D. Solomon & Jonathan R.T. Davidson, *Trauma: Prevalence, Impairment, Service Use, and Cost*, 58 J. CLIN. PSYCHIATRY 5, 10 (1997).

288. Cora Peterson et al., *Lifetime Economic Burden of Rape Among U.S. Adults*, 52 AM. J. PREVENTIVE MED. 691, 691 (2017), <https://doi.org/10.1016/j.amepre.2016.11.014>.

289. *Liu v. SEC*, 140 S. Ct. 1936, 1943 (2020).

290. *Cf. Olson v. Mobil Oil Corp.*, 904 F.2d 198, 201 (4th Cir. 1990) (“Equitable tolling is a narrow limitations exception” and “applies only when an employer’s reliance on the applicable statute of limitations would be inequitable, because the employer wrongfully deceived or misled the plaintiff in order to conceal the existence of a cause of action.”) (internal quotations omitted).

mitting a crime] is just the magnitude of the sanction multiplied by the probability that the criminal will be caught and convicted.”²⁹¹ Statutes of limitations that do not account for PTSD set the expected sanction too low for optimal deterrence. The probability of conviction is lower than legislators realize if legislators ignore the fact that many victims will miss the statute of limitations due to their PTSD symptoms.

Rape and sexual assault are clearly both “serious” in the sense that delayed reporting is a common by-product of the offense. Nearly every rape victim experiences symptoms of PTSD, and these symptoms persist for many.²⁹² Avoidance, amnesia, and depression are common symptoms that make reporting difficult or impossible.²⁹³

One study used a large telephone survey to estimate the lifetime prevalence of PTSD among rape survivors to be 32% and 31% among survivors of other types of sexual assault.²⁹⁴ This supports a long statute of limitations for both rape and sexual assault. However, the same study found even higher levels of PTSD among survivors of other physical assault—39%.²⁹⁵ This suggests that the problem of PTSD preventing or delaying reporting may be under-appreciated in the context of non-sexual violent crimes as well. Importantly, subsequent research confirms a very high prevalence of PTSD among female rape survivors (50%) but finds a much lower rate of PTSD for female survivors of physical attacks (21%),²⁹⁶ thus contradicting the earlier study. The later study is probably more reliable because it is “the only nationally representative study of the general population.”²⁹⁷ In sum, while the evidence about the rate of PTSD following non-sexual assault is mixed, there is strong support for the view that rape and other sexual assault very often cause PTSD. When this new factor is added to the equation, it should tip the scales in the remaining states. Forcible rape is at or near the extreme of “seriousness” in both senses of the word: first, because of its massive costs to victims and society, and second, because of its high likelihood of causing PTSD symptoms that prevent reporting. All states should abolish the statute of limitations for forcible rape.²⁹⁸

291. Diamantis, *supra* note 281, at 2062–63.

292. See Kilpatrick et al., *supra* note 90.

293. See *supra* Part III.

294. Heidi S. Resnick et al., *Prevalence of Civilian Trauma and Posttraumatic Stress Disorder in a Representative National Sample of Women*, 61 J. CONSULTING & CLINICAL PSYCH. 984, 988 tbl.2 (1993), <http://doi.org/10.1037//0022-006x.61.6.984>.

295. *Id.*

296. Solomon & Davidson, *supra* note 287, at 8 tbl.1.

297. *Id.* at 5.

298. Some have argued that abolition would lead to a “slippery slope.” Lauren Kearns, *Incorporating Tolling Provisions into Sex Crimes Statutes of Limitations*, 13 TEMP. POL. & C.R.L. REV. 325, 358 (2003). But rape is different than other crimes in two critical respects. “[P]eople who experience rape are more likely to develop post-traumatic stress disorder than victims of any other crime.” Jan Welch & Fiona Mason,

Rape without force, which we define as nonconsensual sexual intercourse, currently stands on a different footing than forcible rape in many states. The statutes of limitations across the country for rape could hardly be more variable. Some states do not classify this as a species of rape, but instead include it under the lesser offense of sexual assault, as their rape statute requires force.²⁹⁹ Other states altogether do not criminalize rape, as we define it, with all of their sex crime statutes requiring force or forcible compulsion.³⁰⁰ In jurisdictions where nonconsensual intercourse is criminalized as a sex offense, the limitation periods range from 1 year to 20 years, with an additional ten states having no statute of limitations.³⁰¹

The case for completely abolishing the statute of limitations for rape without force is not as strong as it is for forcible rape. Our argument again is that rape causes PTSD, and PTSD prevents timely reporting. Rape without force is less likely to cause PTSD than forcible rape.³⁰² Most research showing a high prevalence of PTSD among rape survivors does not distinguish between forcible rape and other types of rape. One older study that comes close examined a subgroup of respondents consisting of female victims of “direct assault” (lumping together rape, sexual assault, and physical assault).³⁰³ The victims whose assault included a “life threat or injury” had a much higher prevalence of PTSD (45%) than victims of assaults that did not (19%).³⁰⁴ A review of more recent research directly on point concludes that “[p]hysical injury and force during rape are associated with heightened risk for PTSD.”³⁰⁵

Traditional considerations also strengthen the case for eliminating the statute of limitations for forcible rape. Forcible rape has been recognized as more “serious” than nonconsensual intercourse in the usual sense of the term—in other words, as imposing greater harms to the victim and society.³⁰⁶ The higher rate of PTSD is one of these harms. Forty states have implicitly determined that the prejudice to defendants from the passage of time at some point (the moment the

Rape and Sexual Assault, 334 BRIT. MED. J. 1154, 1157 (2007), <http://doi.org/10.1136/bmj.39211.403970.BE>. And rape is an underreported serious crime. *See id.*

299. *See supra* notes 44–46 and accompanying text; *see also infra* Table I.

300. *See supra* notes 44–46 and accompanying text; *see also infra* Table I.

301. *See supra* notes 47–51 and accompanying text; *see also infra* Table I.

302. *See* Anna E. Jaffe et al., *Acute Stress Symptoms After Forcible and Substance-Involved Rapes*, 43 PSYCH. WOMEN Q. 485, 486 (2019), <http://doi.org/10.1177/0361684319845099>.

303. Heidi S. Resnick et al., *supra* note 294, at 988–89.

304. *Id.* at 989 fig.2.

305. Jaffe et al., *supra* note 302, at 486.

306. *See* Joshua Dressler, *Where We Have Been, and Where We Might Be Going: Some Cautionary Reflections on Rape Law Reform*, 46 CLEV. ST. L. REV. 409, 423 (1998) (“Can there be any doubt that forcible nonconsensual sexual intercourse is a worse harm than nonforcible, nonconsensual intercourse and, therefore, should be punished more severely?”).

limitations period expires) outweighs the interests served by enforcing the criminal law of non-forcible rape.³⁰⁷

Notwithstanding these distinctions, ten states have in fact abolished the statute of limitations for rape without force.³⁰⁸ These states view nonconsensual intercourse as sufficiently “serious” to justify putting no time limit on prosecution. The high prevalence of PTSD and the way its symptoms suppress reporting provide additional support for this conclusion. Whether on balance the case for abolition is strong enough is fairly debatable. Hopefully, states going forward will make these difficult judgments with their eyes open to the effects of trauma on reporting.

What is not difficult to see is that the statutes of limitations for non-consensual intercourse are too short in many states. Twelve states and D.C. have limitations periods for rape shorter than five years.³⁰⁹ As a result, rape will go unpunished in many cases because the victim had PTSD caused by the rapist. When these jurisdictions set their short limitations periods, they almost certainly overestimated the probability of conviction because they simply did not consider the negative impact of PTSD on reporting. Too many perpetrators will go free, which undermines all the purposes of punishment.³¹⁰

Statutes of limitations for other types of sexual assault present similar issues. Non-rape sexual assault also produces high rates of PTSD, which impedes reporting. At least one foreign court understands. The Constitutional Court of South Africa struck down as “irrational and arbitrary” a 20-year statute of limitations for sexual assault other than rape where there was no limitations period for rape.³¹¹ The court observed that “psychological hindrances are a potential feature of all sex crimes.”³¹²

Existing statutes of limitations for sexual assault vary widely both across jurisdictions and across offense definitions within jurisdictions.³¹³ The time allowed to prosecute ranges from one year to none.³¹⁴ As with rape, limitations periods shorter than ten years will allow too many perpetrators to avoid punishment because their sexual assault caused PTSD-induced reporting delays.

307. See *supra* note 47 (explaining that only ten states have no statute of limitations for rape).

308. See *supra* note 47.

309. See *infra* Table I.

310. An alternative way to achieve optimal deterrence might be to increase the penalty. See Peterson et al., *supra* note 288, at 691.

311. *Levenstein v. Estate of Frankel—South Africa Removes Statute of Limitations Distinction Between Rape and Other Sexual Offenses*, 132 HARV. L. REV. 2394, 2394 (2019).

312. *Id.* at 2396.

313. See *supra* Part I.

314. See *infra* Table 1.

Recognizing the high prevalence and lingering effects of PTSD weighs in favor of longer limitations periods. We have argued that this factor tilts the scales all the way toward abolition of statutes of limitations for forcible rape. For rape and other sexual assaults, ten or fewer years is too short, but beyond that, mathematical precision is unattainable. Similar to forcible rape, rape and sexual assault victims experience high rates of PTSD, but, as explained above, often to a lesser extent.³¹⁵ But because elevated levels of PTSD exist for these victims as well, avoidance coping, dissociative amnesia, and depression still threaten these victims' abilities to report, especially within short limitations periods. Currently, 9 states have statutes of limitations under three years, and 13 states and the federal government do not have any laws in the sex crimes section of their criminal codes that criminalize rape as we define it, with every statute in these jurisdictions requiring some type of force.³¹⁶ This lack of criminalization and these short limitation bars are insulting to victims.

We urge jurisdictions to reduce variation in statutes of limitations for non-forcible rape and sexual assault. Navigating a complex patchwork of statutory definitions in order to figure out the relevant time limit is an undue burden on victims of sexual assault, especially on victims suffering from PTSD.³¹⁷ This is not to say that all types of sexual assault are equally serious, but legislatures should generally take differences into account by setting greater penalties for more serious offenses, not by setting different limitation periods. Having just one limitations period could be called arbitrary,³¹⁸ but it would set a clear deadline for victims to decide "whether to identify their attackers and press charges."³¹⁹

VI. CONCLUSION

Rape and sexual assault cause many victims to suffer from PTSD symptoms. Symptoms like avoidance, amnesia, and depression make it difficult or impossible for a victim to report the crime. Recovery can take years. For some, it will be too late. Perpetrators in these cases will escape criminal punishment because of a reporting delay caused by their own wrongdoing.

315. See *National Crime Victims' Rights Week*, *supra* note 91; see Jaffe et al., *supra* note 302, at 486.

316. See *infra* Table I.

317. For example, the New York criminal law chapter on sex offenses has 28 sections. N.Y. PENAL LAW § 130.00 (McKinney 2023).

318. Joseph P. Bauer, Schiavone: *An Un-Fortune-Ate Illustration of the Supreme Court's Role as Interpreter of the Federal Rules of Civil Procedure*, 63 NOTRE DAME L. REV. 720, 731 (1988). But recall that a South African court held that having different limitations periods for rape than for other sexual assault was "arbitrary." See *supra* note 311 and accompanying text.

319. *United States v. Briggs*, 141 S. Ct. 467, 471 (2020); *Toussie v. United States*, 397 U.S. 112, 114–15 (1970); *accord* *Foley*, *supra* note 260, at 1804).

The Kavanaugh confirmation hearing, discussed in Part I, is an excellent illustration. Thirty-six years after the alleged sexual assault by Justice Kavanaugh, Dr. Ford, who is a clinical psychologist, testified that she still suffers from “anxiety, phobia, and PTSD-like symptoms.”³²⁰ Senator Kamala Harris identified trauma as a barrier to reporting: “I know, having personally prosecuted sexual assault cases and child sexual assault cases, that study after study shows trauma, shame, and the fear of consequences almost always cause survivors to, at the very least, delay reporting, if they ever report at all.”³²¹ Sexual assault survivors need more time.

This Article proposes several specific adjustments to criminal statutes of limitations for rape and sexual assault. First, states should adopt trauma-sensitive tolling which would extend the deadline for victims who can show that PTSD delayed their reporting. Because many deserving victims may not be able to make that evidentiary showing, however, trauma-sensitive tolling is not enough. Second, survivors of forcible rape should get all the time they need, with no limitations period. Most states have already taken this step, and victims of forcible rape suffer from PTSD at astronomical rates. Third, statutes of limitations for other sex crimes should be at least ten years and should be as uniform as possible across offense types. Victims should not have to hire a lawyer just to figure how much time they have to report.

This Article became even more important when the landscape of abortion law dramatically changed last year. With the Supreme Court of the United States overruling *Roe v. Wade* and *Casey v. Planned Parenthood*,³²² regulation of abortion has been returned to the states, and abortion laws, much like the rape and sexual assault laws outlined above, have become a confusing maze, riddled with complex wordage and exceptions. Reasonable anti-abortion lawmakers acknowledge the need for rape and incest exceptions.³²³ Such exceptions must be carefully drafted to be meaningful.³²⁴ Doctors who accept at face value their patients’ self-reported rape or incest may risk criminal prosecu-

320. *Christine Blasey Ford Says She’s Coping with “Anxiety, Phobia and PTSD-like Symptoms,”* CBS NEWS (Sept. 27, 2018), <https://www.cbsnews.com/video/christine-blasey-ford-says-shes-coping-with-anxiety-phobia-and-ptsd-like-symptoms/> [https://perma.cc/S7JV-D856].

321. *Sen. Kamala Harris to Christine Blasey Ford: ‘You Are Not on Trial,’* YOUTUBE (Sept. 27, 2018), <https://www.youtube.com/watch?v=6jrweFqnn1c> [https://perma.cc/6VAC-6UWJ].

322. *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228 (2022).

323. Michelle Goodwin & Mary Ziegler, *Whatever Happened to Exceptions for Rape and Incest?*, ATLANTIC (Nov. 29, 2021), <https://www.theatlantic.com/ideas/archive/2021/11/abortion-law-exceptions-rape-and-incest/620812/> [https://perma.cc/9KUR-FK8Q].

324. See generally J. Allison Strickland, *Rape Exceptions in Post-Webster Antiabortion Legislation: A Practical Analysis*, 26 COLUM. J.L. & SOC. PROBS. 163 (1992).

tion.³²⁵ Some states require that the crime be reported to police before an abortion can lawfully be performed,³²⁶ but, as we have seen, most cases of rape and incest go unreported for a variety of reasons, including PTSD. One way states can ensure meaningful access to abortion in cases of rape or incest is to waive the reporting requirement “if the treating physician certifies that in his or her professional opinion, the patient was unable, for physical or psychological reasons, to comply with the requirement.”³²⁷

After a rape or sexual assault is committed, the victim deserves time to heal and process the trauma inflicted on them by their attacker. They should not have to immediately report the crime to receive justice or to access a safe abortion. They should also not have to research the complex web of statutes in their state to know how expediently they must report. Statutes of limitations must be extended to allow for just prosecution of these crimes and to provide victims with the time they need to heal before coming forward.

325. Megan Messerly, *In States That Allow Abortion for Rape and Incest, Finding a Doctor May Prove Impossible*, POLITICO (June 27, 2022, 11:15 AM), <https://www.politico.com/news/2022/06/27/abortion-exceptions-doctor-shortage-00042373> [<https://perma.cc/62EK-YLHS>].

326. *E.g.*, ARK. CODE ANN. § 20-16-1305(b)(2)(A) (2018).

327. *Elizabeth Blackwell Health Ctr. for Women v. Knoll*, 61 F.3d 170, 175 (3d Cir. 1995) (internal citation omitted).

TABLE I. STATUTES OF LIMITATIONS FOR RAPE & FORCIBLE RAPE³²⁸

STATE	SOL FOR RAPE	SOL FOR FORCIBLE RAPE	DNA TOLLING PROVISION? ³²⁹	NEW SOLS FOR DNA TOLLING
Alabama ³³⁰	1 year	No limit	None	
Alaska ³³¹	No limit	No limit	N/A	
Arizona ³³²	No limit	No limit	N/A	
Arkansas ³³³	*	6 years	Yes	No limit
California ³³⁴	*	No limit	Yes	1 year after ID established
Colorado ³³⁵	20 years	20 years	Yes	No limit if reported in 10 years
Connecticut ³³⁶	10 years	20 years	Yes	No limit if reported in 5 years
Delaware ³³⁷	No limit	No limit	N/A	

328. As noted in the text accompanying *supra* notes 45–46, rape (second column) accounts for statutes criminalizing nonconsensual sexual intercourse. Forcible rape (third column) accounts for statutes criminalizing nonconsensual sexual intercourse procured using force or forcible compulsion. We felt this table was extremely important to compile because there were not any accurate and up-to-date tables for this information available. The ones that were available did not differentiate statutes that required force from those that did not, rendering the tables inaccurate and misleading.

329. “N/A” denotes jurisdictions that have no statute of limitations for rape or forcible rape, rendering a DNA tolling provision unnecessary. “None” denotes jurisdictions that have no DNA tolling provision but have an statute of limitations for rape or forcible rape.

330. ALA. CODE §§ 13A-6-61, 13A-6-65(a)(1) (2015); *id.* §§ 15-3-2, 15-3-5 (2018).

331. ALASKA STAT. §§ 11.41.410, 12.10.010(a)(4) (2023).

332. ARIZ. REV. STAT. ANN. §§ 13-107(A), 13-1406 (2010).

333. ARK. CODE ANN. §§ 5-1-109(b)(1)(A) to (B), 5-14-103 (2013).

334. CAL. PENAL CODE § 261 (West 2014); *id.* §§ 799(b)(1), 803 (West 2020).

335. COLO. REV. STAT. §§ 16-5-401(8a.7)(I), (8)(a.5), 18-3-402 (1986).

336. CONN. GEN. STAT. ANN. §§ 53a-70, 53a-73a, 54-193(b), 54-193b (West 2023).

337. DEL. CODE ANN. tit. 11, §§ 205(a), (e), (i), 772, 773, 205I (2015) (providing a five-year statute of limitations if the prosecution is “based upon the memory of the victim that has been recovered through psychotherapy” without “some evidence of the corpus delicti independent of such repressed memory.”).

STATE	SOL FOR RAPE	SOL FOR FORCIBLE RAPE	DNA TOLLING PROVISION?	NEW SOLS FOR DNA TOLLING
Florida ³³⁸	8 years	No limit	Yes	1 year after ID established
Georgia ³³⁹	2 years	15 years	Yes	No limit-only applies to forcible rape
Hawaii ³⁴⁰	No limit	No limit	N/A	
Idaho ³⁴¹	1 year	No limit	None	
Illinois ³⁴²	*	No limit	None	
Indiana ³⁴³	*	5 years	Yes	5 years after ID established
Iowa ³⁴⁴	10 years	10 years	Yes	3 years after ID established
Kansas ³⁴⁵	5 years	No limit	None ³⁴⁶	
Kentucky ³⁴⁷	1 year	No limit	None	
Louisiana ³⁴⁸	6 years	No limit	Yes	3 years after ID established
Maine ³⁴⁹	20 years	20 years	None	
Maryland ³⁵⁰	1 year	No limit	None	
Massachusetts ³⁵¹	*	15 years	None	

338. FLA. STAT. ANN. §§ 775.15(1), (14)(b), (15)(a), 794.011(3), (5)(b) (West 2017).

339. GA. CODE ANN. §§ 16-6-1, 16-6-22.1 (2019); *id.* § 17-3-1(b), (d) to (e) (2020).

340. HAW. REV. STAT. §§ 701-108, 707-730, 707-731 (2014).

341. IDAHO CODE § 18-924 (Supp. 2022); *id.* § 18-6101 (2016); IDAHO CODE §§ 19-401(3), 19-403 (2017).

342. 720 ILL. COMP. STAT. §§ 5/3-5, 5/11-1.20 (2016).

343. IND. CODE ANN. §§ 35-41-4-2(a) to (c), 35-42-4-1, (West 2012).

344. IOWA CODE ANN. § 709.4 (West 2016); *id.* § 802.2(2) (West 2015).

345. KAN. STAT. ANN. §§ 21-5107(a), (d), 21-5503, 21-5505 (Supp. 2022).

346. Kansas does have a DNA tolling provision, but it does not apply to the rape statute, statutes of limitations listed above in column 2, because sexual battery (the name of the statute) is not considered a sexually violent crime. § 21-5107(c).

347. KY. REV. STAT. ANN. §§ 500.050(1) to (2), 510.040, 510.130 (West 2016).

348. LA. STAT. ANN. §§ 14:42.1, 14:43 (2016); LA. CODE CRIM. PROC. ANN. art. 571, 572, 572(B) (2017).

349. ME. REV. STAT. ANN. tit. 17-A, §§ 8(2-A), 253(1), 255-A(1) (2006).

350. MD. CODE ANN., CRIM. LAW §§ 3-304, 308 (LexisNexis 2021); MD. CODE ANN., CTS. & JUD. PROC. § 5-106(a) (LexisNexis 2020); *State v. Renfro*, 223 Md. App. 779 (Md. Ct. Spec. App. 2015).

351. MASS. GEN. LAWS ANN. ch. 265, § 22, ch. 277, § 63 (West 2017).

STATE	SOL FOR RAPE	SOL FOR FORCIBLE RAPE	DNA TOLLING PROVISION?	NEW SOLS FOR DNA TOLLING
Michigan ³⁵²	*	10 years ³⁵³	Yes	10 years after ID established
Minnesota ³⁵⁴	3 years	No limit	Yes	No limit
Mississippi ³⁵⁵	2 years	No limit	None	
Missouri ³⁵⁶	3 years	No limit	Yes	SOLs did not begin to run until ID established
Montana ³⁵⁷	10 years	5 years	Yes	1 year after ID established
Nebraska ³⁵⁸	No limit	No limit	None	
Nevada ³⁵⁹	20 years	20 years	Yes	No limit
New Hampshire ³⁶⁰	*	6 years	None	
New Jersey ³⁶¹	No limit	No limit	Yes	SOL only starts running when State has evidence to establish ID
New Mexico ³⁶²	2 years	5 years	Yes	SOL only starts running when State has evidence to establish ID ³⁶³

352. MICH. COMP. LAWS ANN. §§ 750.520d(1), 767.24(3) (West 2023).

353. From the date of offense or the victim's 21st birthday, whichever is later. § 767.24(3)(b).

354. MINN. STAT. ANN. §§ 609.342, 609.3451, 628.26(e), (j), (m) (West 2022).

355. MISS. CODE ANN. §§ 97-3-65(4)(a), 97-3-95, 99-1-5 (2020).

356. MO. REV. STAT. §§ 566.030, 566.031, 556.036(1)-(2)(1) (2016); § 556.036(6)(5) (Supp. 2022).

357. MONT. CODE ANN. §§ 45-1-205(1)(b), (2)(a), (9), 45-5-503, 45-5-508 (West 2023).

358. NEB. REV. STAT. § 28-319 (2016); § 29-110(11) (Supp. 2022).

359. NEV. REV. STAT. §§ 171.082, 171.085(2), 200.366 (2021).

360. N.H. REV. STAT. ANN. §§ 625:8, 632-A:2 (2016).

361. N.J. STAT. ANN. §§ 2C:1-6(a)(1), 2C:1-6(c), 2C:14-2(a), (c) (West 2023) (§ 2C:1-6(c) also includes fingerprint evidence in addition to DNA evidence).

362. N.M. STAT. ANN. §§ 30-1-8(B) to (C), 30-1-9.2, 30-9-11(F), 30-9-12 (2022).

363. Only applies to forcible rape; does not apply to rape without force listed in the first column.

STATE	SOL FOR RAPE	SOL FOR FORCIBLE RAPE	DNA TOLLING PROVISION?	NEW SOLS FOR DNA TOLLING
New York ³⁶⁴	10 years	No limit	Yes	SOL can only be extended by 5 years through tolling
North Carolina ³⁶⁵	*	No limit	None	
North Dakota ³⁶⁶	2 years	7 years	None	
Ohio ³⁶⁷	2 years	25 years	Yes	Depends on time it takes for ID to be established after offense
Oklahoma ³⁶⁸	*	12 years after discovery	Yes	3 years after ID is established
Oregon ³⁶⁹	4 years	12 years	Yes	No limit (only applies to rape with force)
Pennsylvania ³⁷⁰	12 years	12 years	Yes	1 year after ID established
Rhode Island ³⁷¹	*	No limit	None	

364. N.Y. PENAL LAW §§ 130.25, 130.35 (McKinney 2023); N.Y. CRIM. PROC. LAW §§ 30.10(2)(a), 30.10(2)(a-2), 30.10(4)(a) (McKinney 2014 & Supp. 2023). New York allows tolling when the “whereabouts of the defendant [are] continuously unknown and continuously unascertainable by the exercise of reasonable diligence.” § 30.10(4)(a). An example of a defendant being continuously unascertainable is when the DNA from a rape kit remains without a match, despite the best efforts of detectives. *See People v. Ramos*, 921 N.E.2d 598 (N.Y. 2009).

365. N.C. GEN. STAT. ANN. § 14-27.22 (2021); *State v. Hardin*, 201 S.E.2d 74, 75 (N.C. Ct. App. 1973).

366. N.D. CENT. CODE §§ 12.1-20-04, 12.1-20-07, 29-04-02.1, 29-04-03 (2021).

367. OHIO REV. CODE ANN. §§ 2901.13(A)(1)(b), (A)(4), (D)(1), 2907.02(A)(2)-(B), 2907.06(A)(1), (C) (West 2023).

368. OKLA. STAT. ANN. tit. 21, §§ 152, 1114(A)(5) (West 2018); tit. 22, § 152(C)(1)-(2) (West 2021).

369. OR. REV. STAT. §§ 131.125(2)(a), (4)(b), (10), 163.375, 163.415(1)(a) (2021).

370. 18 PA. CONS. STAT. §§ 3121(a), 3124.1 (2021); 42 PA. CONS. STAT. §§ 5552(b.1), 5552(c.1) (2015).

371. 11 R.I. GEN. LAWS § 11-37-2 (Supp. 2022); 12 R.I. GEN. LAWS § 12-12-17 (Supp. 2022).

STATE	SOL FOR RAPE	SOL FOR FORCIBLE RAPE	DNA TOLLING PROVISION?	NEW SOLS FOR DNA TOLLING
South Carolina ³⁷²	*	No limit	None	
South Dakota ³⁷³	7 years	No limit	None	
Tennessee ³⁷⁴	8 years	8 years	None	
Texas ³⁷⁵	*	10 years	Yes	No limit
Utah ³⁷⁶	No limit	No limit	Yes	No limit
Vermont ³⁷⁷	No limit	No limit	None	
Virginia ³⁷⁸	No limit	No limit	None	
Washington ³⁷⁹	10 years	20 years	Yes	4 years after ID established
West Virginia ³⁸⁰	*	No limit	None	
Wisconsin ³⁸¹	10 years	10 years	Yes	1 year after ID established
Wyoming ³⁸²	No limit	No limit	None	
D.C. ³⁸³	3 years	No limit	None	
Fed. Gov't ³⁸⁴	*	5 years	None	

* Indicates jurisdictions that lack a statute expressly covering non-consensual sexual intercourse, without any type of force or coercion being required. Some of these jurisdictions do not criminalize rape without force or forcible compulsion. Others criminalize this conduct under different sections.

372. S.C. CODE ANN. § 16-3-652 (2015); *See Eaton & Berry, supra* note 21, at 48, 52 n.10 (explaining South Carolina does not have statutes of limitations for any felonies).

373. S.D. CODIFIED LAWS §§ 22-22-1, 22-22-7.4, 23A-42-2 (2017).

374. TENN. CODE ANN. §§ 39-13-503, 40-2-101(b)(2) (2018).

375. TEX. PENAL CODE ANN. § 22.011 (West Supp. 2022); TEX. CODE CRIM. PROC. ANN. art. 12.01(1)(C), (2)(E) (West Supp. 2022).

376. UTAH CODE ANN. §§ 76-1-301, 76-1-302, 76-5-402 (West 2023).

377. VT. STAT. ANN. tit. 13, §§ 3252(a), 4501(a) (2018).

378. VA. CODE ANN. § 18.2-61 (2021); *Foster v. Commonwealth*, 606 S.E.2d 518, 519 (Va. Ct. App. 2004) (holding that Virginia does not have statutes of limitations for any felonies).

379. WASH. REV. CODE ANN. §§ 9A.04.080(1)(b)(i)–(ii), (1)(c)(iii), (3), 9A.44.050, 9A.44.060 (West 2015).

380. W. VA. CODE ANN. § 61-8B-4(a) (LexisNexis 2020); *State v. Carrico*, 427 S.E.2d 474, 477 (W. Va. 1993) (explaining West Virginia does not have statutes of limitations for any felonies).

381. WIS. STAT. ANN. §§ 939.74(2)(ar), (2d)(c), 940.225 (West 2023).

382. WYO. STAT. ANN. §§ 6-2-302, 6-2-313 (2023); *Remmick v. State*, 275 P.3d 467, 470 (Wyo. 2012) (holding that Wyoming has no statutes of limitations for any criminal offenses).

383. D.C. CODE §§ 22-3004, 22-3006, 23-113(a)(1)(I), 23-113(a)(5) (2001).

384. 18 U.S.C.A. §§ 2242, 3282.

