



Refining Tennessee's Criminal Statutes of Limitation

Draft Report for Commission's
Review and Comment

September 2018

Directed by Public Chapter 849, Acts of 2018

- The law directing this report was prompted by the testimony of a child sexual abuse survivor whose abuser escaped prosecution because of an expired statute of limitation.
- **Statute of Limitation - Defined:**
 - They can be thought of as a deadline for bringing a legal action and exist in both the criminal and civil law.
 - In the criminal law context, statutes of limitation establish periods within which prosecution can be commenced.
 - After the relevant statutes of limitations period expires, the state can no longer bring charges, even if more than enough evidence of the perpetrator's guilt is later obtained.



Why do Criminal Statutes of Limitation Exist?

Purpose: In the criminal justice system, according to Tennessee case law, they exist to protect the defendant against unfair prosecutions after evidence has deteriorated and memories have faded and to provide an incentive for efficient prosecutorial action in criminal cases.



Tennessee's Current Law – Limitations on Prosecutions (TCA 40-2-101)

- Exceptions exist, but in general, for most crimes, Tennessee's criminal statutes of limitations periods are based on the felony level of the crime:
 - **15 years for a Class A felony;**
 - **8 years for a Class B felony;**
 - **4 years for a Class C or Class D felony;**
 - **2 years for a Class E felony; and**
 - **1 year for misdemeanors.**



Exceptions to Tennessee's General Statutes of Limitation

- First degree murder has no limitation period.
- Regardless of the level of felony, most felony child sex crimes statutes of limitation have been extended to be either 15 (victim age 33) or 25 years (victim age 43) after the victim becomes 18 years of age.
- TN's Statute of Limitation for Rape Offenses: if the crime is reported within the first three years after it occurs, the statute of limitation is eliminated; if not, the limitation period otherwise in place applies. (more on this later)



Why do child sexual abuse crimes have longer statutes of limitation?

- Research shows that victims of child sexual abuse often do not disclose the sexual abuse until much later in life, if they disclose at all.
- According to some research, only one-third of victims disclose in childhood and another one-third never discloses the abuse; the remaining one-third disclose in adulthood, with age 48 as the median age of disclosure of child sexual abuse.



Recent Example - Pennsylvania 2018 Grand Jury Report on Child Sexual Abuse in the Catholic Church

- “We ask the Pennsylvania legislature to stop shielding child sexual predators behind the criminal statute of limitations. Thanks to a recent amendment, the current law permits victims to come forward until age 50. That’s better than it was before, but still not good enough; we should just get rid of it. **We heard from plenty of victims who are now in their 50’s, 60’s, 70’s, and even one who was 83 years old....No piece of legislation can predict the point at which a victim of child sex abuse will find the strength to come forward.**”
- Only 2 out of the 301 priests named in Pennsylvania's 2018 report on child sex abuse have been charged with crimes as the rest are protected by the state's statute of limitations.

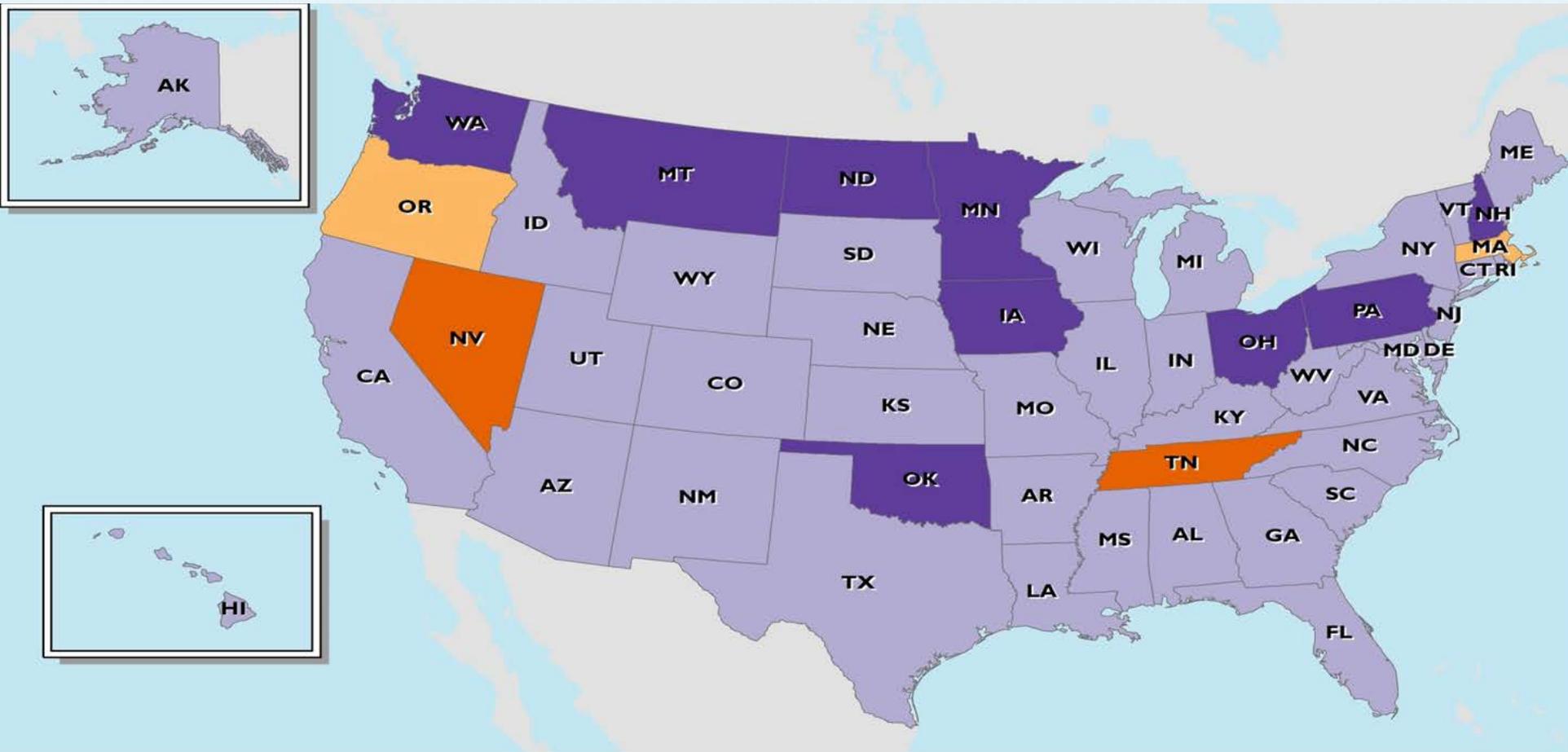


Compared to Other States

- The national trend is to eliminate the criminal statutes of limitations on most child sexual abuse crimes.
- **10** states have eliminated the statute of limitation for all felony child sexual abuse crimes;
- **31** states have eliminated the statute of limitation for some but not all felony child sexual abuse crimes;
- **9** states still have a statute of limitation on all felony child sexual abuse crimes.



Statute of Limitation for the Crime of Child Rape



Child Rape – Statutes of Limitation (SOL)

- | | |
|--|---|
|  Child Rape SOL Eliminated |  SOL Eliminated but with Evidence Requirements |
|  Child Rape SOL Not Eliminated |  SOL Eliminated but with Reporting Requirement |



Two Common Concerns with Elimination of Child Sex Crime Statutes of Limitation

1. Cost

- Fiscal Notes generally show that the cost is either insignificant or relatively low

2. Unfair Prosecutions of Old Crimes

- Defendants retain all substantive and procedural rights
- Must still ultimately be proven beyond a reasonable doubt
- Studies show that child sexual abuse false accusations are rare

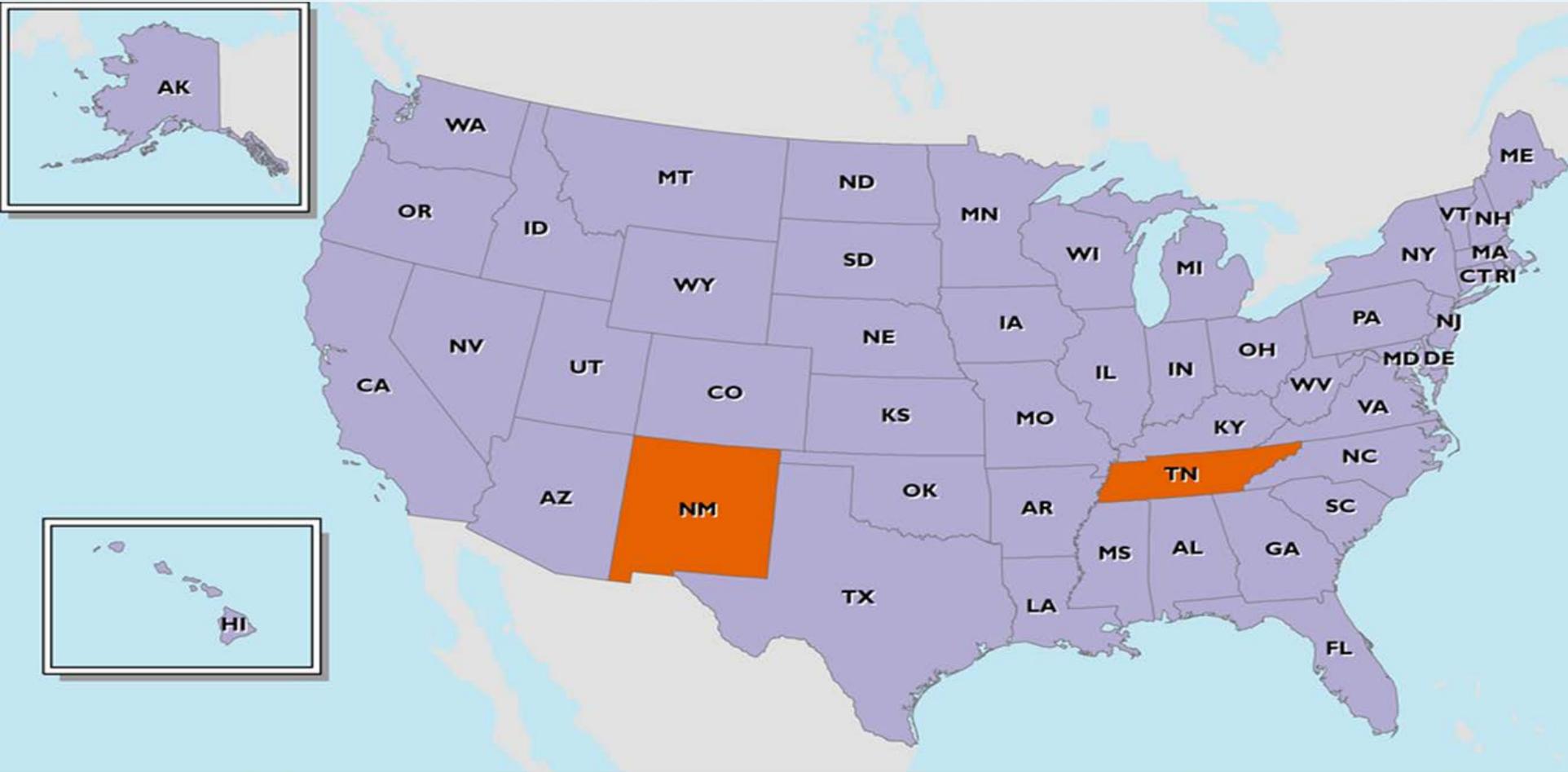


Recommendations in Draft Report

- The first recommendation listed in the Summary and Recommendations Section involves the second degree murder statutes of limitation, which was not the primary focus of this report but was discovered as an issue in interviews with District Attorneys.
- **The draft report recommends that the state may want to consider either extending or eliminating the statute of limitation for second degree murder.**



Second Degree Murder Statutes of Limitation



Statutes of Limitation for Second Degree Murder

 No Statute of Limitation  Statute of Limitation is 15 Years or Less



Recommendations in Draft Report

The second recommendation is setup as a choice between two alternative policy options:

- A. Tennessee should consider fully eliminating the statute of limitation for most felony child sex abuse crimes, as has already been done in a majority of other states.
- B. Alternatively, Tennessee should consider eliminating the statute of limitation for felony child sexual abuse crimes in circumstances where corroborating evidence is obtained by the prosecutor. If corroborating evidence is not obtained, then the statute of limitations otherwise in place would apply.



Correction of Drafting Error in Current Law

The final recommendation in the report addresses the **correction of a drafting error in Tennessee's current law**, found at Tennessee Code Annotated, Section 40-2-101(h)(2) and (i)(2), which has the unintentional effect of shortening the statute of limitation for rape offenses committed against minors.



Example of the Need for Correction of the Drafting Error

- The following example illustrates the issue: if a 5 year old child is raped in 2015, and does not notify authorities within the first 3 years, then she would have until **age 20** to report the crime and for the prosecution to be commenced; whereas under the statute of limitation in place prior to the drafting error, the child rape victim would have until **age 43** (i.e., 25 years after turning 18) to report the crime and for prosecution to be commenced.
- A review of the committee hearings on the bill and interviews of stakeholders indicate that this was not the intent of the law.

