



pennsylvania

OFFICE OF VICTIM ADVOCATE

Giving Crime Victims a Voice

Courage • Strength • Resilience

Statute of Limitations Window | Constituent Talking Points

Background:

We have had multiple grand jury reports on childhood sexual abuse all of which have identified recommendations to, not only abolish the statute of limitations for criminal and civil cases, but also add a two-year window for all previously time-barred victims/survivors to obtain access to justice in a court of law. This recommendation is made not just for the collection of financial remedy, but to allow victims/survivors the ability to depose the accused, subpoena records and evidence, and have their day in court where a judge and jury will make a determination of fact. This process is the only way to allow the thousands of victims/survivors in the Commonwealth who have suffered horrific abuse to finally have legal recourse.

Challenge:

There is current debate around the constitutionality of a retroactive window for victims.

- Kermit Roosevelt*, professor of constitutional law at University of Pennsylvania Law School, has offered this opinion.

The main argument that opponents of this bill make in terms of the constitutionality is based on a stray remark by the Pennsylvania Supreme Court over 100 years ago, in a case that was about something else entirely. They quoted a treatise that said that limitations periods were substantive and, therefore, couldn't be changed retroactively. That was a minority view then. The Supreme Court didn't say we're adopting this as the law of Pennsylvania. More recently and consistently, the Pennsylvania Supreme Court has said limitations periods are procedural and that means they can be changed retroactively. Now there's a constitutional question, sure. There are always constitutional questions on just about any bill. But in this case, it seems pretty clear this actually would be constitutional. The Pennsylvania Supreme Court has said the legislature can make changes in the law going back in time retroactively as long as those changes are procedural, not substantive.

- Senator Rafferty** has offered this opinion.

I disagreed with many of my colleagues in the Senate of Pennsylvania because I do not read Article 1 Section 11 – what we like to refer to as the Remedies Clause – as a way of protecting these institutions and individuals from [charges of] this horrific crime. The Remedies Clause was designed to protect those business practices that were legal, allowable and recognized for many years. The legislature, in subsequent years, has said [they're] not accepting that anymore. This never, ever was intended to bar plaintiffs from a remedy. It is not designed to block plaintiffs from a remedy, and that is what a number of people have tried to do. The Remedies Clause was never, ever designed to protect anyone from being held responsible for child abuse, raping a child, sexually assaulting a child as

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these crimes have always been illegal in Pennsylvania. And we, as legislators, who like to say that we're protecting the health, safety and welfare of all the residents of Pennsylvania with any legislation that we can - it's incumbent upon us to seize upon the 4 initiatives outlined in Attorney General Shapiro's grand jury report.

- Most important, victims have offered various profound statements, here are a few.

"We want our day in court to get answers that haunt us."

"The window would allow us to depose records, expose predators and those who covered-up crimes."

"How many more victims do there need to be? There are predators everywhere who have not been brought to justice because of the statute of limitations. And it is wrong. It needs to be reformed. The window has to happen."

"Stand with us. Let the courts decide the constitutionality."

Talking Points for Speaking with Your Legislator:

As a constituent, I support statute of limitations reform with a window for victims. Please vote YES to the amended Senate Bill 261.

Victims deserve the necessary time and space to heal without the confines of limitations of the law. Full abolishment and a retroactive window is the best way to ensure that all victims receive an opportunity to face their perpetrator in court, if they choose.

Far too many opinions around the constitutionality of a retroactive window exist; therefore, this issue cannot be seen as one legally settled, it is not up to the General Assembly, but the courts to decide, after the laws are passed. We are asking the legislature to stand with victims and pass the window.

For more on statute of limitations reform and crime victims' services, visit www.ova.pa.gov.

**Kermit Roosevelt graduated from St. Albans School (where he was a Presidential Scholar), Harvard University, and Yale Law School. He was a law clerk for Judge Stephen F. Williams of the DC Circuit, and clerk for US Supreme Court Justice David Souter. Roosevelt is a Distinguished Research Fellow of the Annenberg Public Policy Center at the University of Pennsylvania, and a member of the American Law Institute. He prepares students in all 50 states for the Constitutional Law portion of the bar exam.*

***Senator Rafferty offered his thoughts on September 19 while speaking with victims/survivors alongside Attorney General Josh Shapiro and Commonwealth Victim Advocate Jennifer Storm.*