



TACIR

The Tennessee Advisory Commission
on Intergovernmental Relations



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MEMORANDUM

TO: Commission Members

FROM: Cliff Lippard *Cliff*
Executive Director

DATE: 7 September 2018

SUBJECT: Public Chapter 849, Acts of 2018 (Criminal Statute of Limitations)—Draft
Report for Review and Comment

The attached Commission report is submitted for your review and comment. It was prepared in response to Public Chapter 849, Acts of 2018, which directs the Commission to perform a study on the effectiveness of statutes of limitation on the prosecution of criminal offenses. The Act directed that the study include, but shall not be limited to, information on the effectiveness of statutes of limitation on prosecution of sexual offenses. The Act requires the Commission to report its findings and recommendations, including any proposed legislation, by January 15, 2019. The motivation for this study stems, in part, from the testimony of a child sexual abuse survivor whose abuser escaped prosecution because of the state's statute of limitation expiring before he reported the crime to law enforcement.

Starting in the early 2000s, many states began eliminating or extending the statutes of limitations for child sexual abuse crimes. Ten states have now fully eliminated statutes of limitation for all felony child sexual abuse crimes, and an additional 31 states have eliminated the statutes of limitation for some but not all felony child sexual abuse crimes. Over the last decade, while Tennessee has not fully eliminated its statutes of limitation for child sexual abuse crimes, it has extended them to either 25 or 15 years after the victim turns 18. And for the most serious sex crimes—rape offenses committed against minors—the state eliminated the statute of limitation in 2014, but placed a condition on its elimination: the victim must notify law enforcement or the district attorney of the crime within three years after it occurs, if not, the limitation period otherwise in place would apply. Although the legislative intent was for the age-of-

majority-plus-25 limitation period to remain in effect for rape offenses committed against minors not reported within three years, an apparent drafting error in the bill resulted in the statute of limitation for those crimes not reported within three years reverting to the shorter periods of 15 years for a Class A felony and 8 years for a Class B felony. **The draft report recommends that at a minimum, Tennessee law should be amended to clarify a drafting error 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 if the victim does not report the crime within three years of the offense.**

Further, recognizing the special circumstances of child sexual abuse and the legitimate reasons why a complaint often is not made until many years after the abuse, the draft recommends that Tennessee should consider the following alternatives:

- **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.**
- **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, similar to Oregon and Massachusetts, which would still provide additional protection from unfair prosecutions. If corroborating evidence is not obtained, then the statute of limitations otherwise in place would apply.**

The draft report also notes that prosecutors argue that Tennessee's current 15 year statute of limitation for second degree murder has prevented them from prosecuting "cold case" murders for which evidence of the premeditation element necessary for first degree murder is unavailable. First degree murder has no statute of limitation in Tennessee. Unlike Tennessee, 48 states have no statute of limitations for second degree murder. **The draft report recommends that the state may want to consider either extending or eliminating the statute of limitation for second degree murder.**