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## *COVID-19 Response*

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### **Compliance with Victims' Rights Requires Suspension of Civil and Criminal Statutes of Limitations During the COVID-19 Pandemic**

Crime victims should not have to choose between risking exposure to COVID-19 and accessing justice. Requiring compliance with statutes of limitations during this pandemic is inconsistent with federal and state laws and policies, as it jeopardizes the physical, emotional and mental health of victims, their advocates and the public; it is not possible for many to comply, given shelter-in-place laws, social distancing requirements, and other efforts to reduce in-person communication; and it conflicts with victims' federal and state rights to be treated with fairness and respect for their dignity.<sup>1</sup> While the pandemic is unprecedented, recognizing that statutes of limitations should not run during extraordinary times is not.<sup>2</sup> Fortunately, many courts and state governors have recognized the need to suspend criminal and civil statutes of limitation during the COVID-19 pandemic<sup>3</sup>, other courts and state leaders must now follow suit. Such suspension is necessary to:

- **Protect victims' physical, emotional and mental health.** Even in ordinary times the physical, emotional and mental health needs of crime victims impact how and when victims initiate a civil lawsuit or report a crime.<sup>4</sup> The stress and anxiety caused by the COVID-19 pandemic can exacerbate victims' existing physical and mental trauma. Given the severity of COVID-19, forcing victims to choose between their health or pursuing justice<sup>5</sup> causes the victim unnecessary secondary harm.
- **Protect victims' safety.** Federal and state governments have recognized that participation in the justice system implicates unique safety concerns for victims and have crafted rights in response.<sup>6</sup> Compliance with statutes of limitations at a time when federal and local governments are asking for—and often requiring—people to stay at home jeopardizes the safety of crime victims, particularly those who live with, or in close proximity to, their offenders.<sup>7</sup>
- **Protect the public's health.** Many state jurisdictions have already recognized, suspending statutes of limitations is necessary during the COVID-19 outbreak to protect public health.<sup>8</sup> Because COVID-19 has been recognized as highly contagious and dangerous, it is critical that all in-person communications are reduced, if not eliminated.<sup>9</sup> Maintaining statutes of limitations undermines this goal.

- **Protect the public’s safety.** Suspension of statute of limitations during the COVID-19 pandemic will ensure that more offenders are held accountable once the pandemic is over, thereby ultimately increasing public safety.<sup>10</sup>
- **Protect the public’s interest in facilitating crime victim participation in the criminal justice system.** Suspending the statute of limitations will encourage victims to trust that the justice system supports them and their interests; such trust is necessary to encourage the reporting of crime when this national emergency is over.<sup>11</sup>
- **Protect the victim’s and the public’s interest in justice.** Victims’ rights and interests are subject to statutes of limitations due to the unlawful acts of another person; continuing to enforce these statutes in the midst of a pandemic effectively penalizes those who choose to pursue civil remedies or participate in a criminal investigation or prosecution an outcome clearly contrary to the purpose of the civil and criminal justice systems.<sup>12</sup> Further, because COVID-19 has limited the resources law enforcement’s investigation of these crimes, prosecution’s ability of focus on these crimes, and courts ability to hear these cases are diminished; thus, continuing to impose statutes of limitations during the pandemic will likely result in some offenders not being able to be brought to justice.<sup>13</sup>
- **COVID-19 shelter-in-place laws, social distancing requirements, and other efforts to reduce in-person communication, as well as diminished access to courts and law enforcement are supported by suspension.** Suspension of statutes of limitations is consistent with national and local efforts to reduce contact between people.<sup>14</sup> Many victims are effectively unable to participate in civil and criminal litigation because of shelter-in-place laws, social distancing requirements, and other efforts to reduce in-person communications.<sup>15</sup>

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<sup>1</sup> See 18 U.S.C. § 3771(a)(8) (affording crime victims “[t]he right to be treated with fairness and with respect for the victim’s dignity and privacy”); *Fundamentals of Victims’ Rights: A Summary of 12 Common Victims’ Rights: A Summary of 12 Common Victims’ Rights* at 1 n.1, NCVLI Victim Law Bulletin (Nat’l Crime Victim Law Inst., Portland Or.), November 2011, <https://law.lclark.edu/live/files/11823-fundamentals-of-victims-rights-a-summary-of-12> (compiling a list of state statutes guaranteeing victims rights to fairness, dignity, and respect). These rights generally apply at the outset of government efforts to detect and investigate crime. See, e.g., 18 U.S.C. § 3771(c)(1); D.C. Code Ann. § 23-1901(a); see also *Does v. United States*, 817 F. Supp. 2d 1337, 1343 (S.D. Fla. 2011) (holding that victims’ rights under the Crime Victims’ Rights Act (CVRA), 18 U.S.C. § 3771, apply before formal charges are filed).

<sup>2</sup> See *Gallewski v. H. Hentz Co.*, 301 N.Y. 164, 175 (N.Y. 1950) (observing that allowing the statute of limitations to run against a plaintiff’s claims, where that plaintiff was “under a practical and total inability to commence an action in the courts of this State” due to being a resident of a German occupied territory in World War II, “would not accord with elementary notions of justice and fairness”).

<sup>3</sup> As of late March, many states and federal jurisdictions have already addressed the effect of COVID-19 on statutes of limitations. For instance, some states—including Connecticut, Massachusetts and New York—have suspended

their civil and criminal statutes of limitations in response to the pandemic. *See, e.g.*, Conn. Exec. Order No. 7G (Mar. 19, 2020), <https://jud.ct.gov/HomePDFs/Executive-Order-No-7G.pdf>; Mass. Super. Ct. Standing Order 3-20, *Protocol Governing Superior Court Proceedings During the Coronavirus (COVID-19) Pandemic* (Mar. 17, 2020), <https://www.mass.gov/superior-court-rules/superior-court-standing-order-3-20-protocol-governing-superior-court>; N.Y. Exec. Order 202.8 (Mar. 20, 2020), <https://www.governor.ny.gov/news/no-2028-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>. At least one state, Texas, has authorized courts to extend only civil statutes of limitations. *See* Tex. Supreme Ct., *First Emergency Order Regarding the COVID-19 State of Disaster* (Mar. 13, 2020), <https://www.txcourts.gov/media/1446056/209042.pdf>. At least one other state, Rhode Island, has given courts the authority to extend a statute of limitation upon a showing that such an extension is necessary because of COVID-19. *See* R.I. Supreme Ct. Exec. Order No. 2020-04 (Mar. 17, 2020), <https://www.courts.ri.gov/Courts/SupremeCourt/SupremeExecOrders/20-04.pdf>. Some federal courts have suspended statute of limitations in all cases. *See, e.g.*, M.D. La. Admin. Order No. 2020-2 (Mar. 18, 2020), <http://www.lamd.uscourts.gov/sites/default/files/pdf/AO%202020-2%20first%20amended%20order.pdf>. Certain federal district courts have ordered that grand jury sessions will be suspended and that “related” statute of limitations will be tolled. *See, e.g.*, M.D. Tenn. Admin. Order No. 209 (Mar. 16, 2020), <https://www.tnmd.uscourts.gov/sites/tnmd/files/AO%20209%20-%20Court%20Operations%20Related%20to%20COVID-19.pdf>; E.D. Tex. Gen. Order 20-03 (Mar. 16, 2020), *Court Operations Under Exigent Circumstances Created by the COVID-19 Pandemic*, [http://www.txed.uscourts.gov/sites/default/files/goFiles/GO%2020-03%20%20COVID-19\\_signed.pdf](http://www.txed.uscourts.gov/sites/default/files/goFiles/GO%2020-03%20%20COVID-19_signed.pdf). Additionally, some federal district courts have stated that adjustments to court operations during the COVID-19 outbreak do not toll applicable statute of limitations. *See, e.g.*, D.D.C. Standing Order No. 20-9 (Mar. 16, 2020), <https://www.dcd.uscourts.gov/sites/dcd/files/Court%20Operations%20Standing%20Order%2020-9.pdf>; E.D.V.A. Gen. Order 2020-3 (Mar. 16, 2020), [http://www.vaed.uscourts.gov/pdf/General%20Order%202020-03\(1\).pdf](http://www.vaed.uscourts.gov/pdf/General%20Order%202020-03(1).pdf).

<sup>4</sup> *See* RAINN, *Recommendations for Effective Sex Crime Statutes of Limitations* 4 (Mar. 2017), <https://www.rainn.org/sites/default/files/import/Recommendations-Effective-Sex-Crime-Statutes-of-Limitations.pdf> (noting, in the context of recommending that states should insure that a victim’s decision to report a sex offense never affects a statute of limitations, that “[s]ociety has come to understand how the physical, emotional, and psychological effects of sexual violence can influence how and when a victim reports a crime”).

<sup>5</sup> *See* Letter from Senator Brad Hoylman, et. al. to Governor Andrew Cuomo 1 (Mar. 19, 2020) <https://www.scribd.com/document/452414447/Senators-letter-to-toll-statutes-of-limitations> (state senators asking the governor to temporarily toll all statute of limitations during the COVID-19 emergency because, *inter alia*, “[p]rosecutors, litigants, and attorneys should not have to choose between placing themselves at risk of exposure to COVID-19 and pursuing civil and criminal justice”).

<sup>6</sup> *See* 18 U.S.C. § 3771(a)(1) (guaranteeing crime victims the right to be reasonably protected from the accused); *see Fundamentals of Victims’ Rights*, *supra* note 1, at 1 n.50–51 (compiling a list of state constitutional amendments and statutes guaranteeing victims a right to reasonable protection).

<sup>7</sup> *See* Melissa Godin, *As Cities Around the World Go on Lockdown, Victims of Domestic Violence Look for a Way Out*, *Time* (Mar. 18, 2020), <https://time.com/5803887/coronavirus-domestic-violence-victims/> (detailing how COVID-19 lockdowns have endangered victims of domestic violence).

<sup>8</sup> *See, supra* note 3.

<sup>9</sup> *Cf. In re RFC and Rescap Liquidating Trust Action*, No. 0:13-cv-3451 (SRN/HB), No. 16-cv-4070 (SRN/HB), 2020 WL 1280931, at \*3-4 (D. Minn. Mar. 13, 2020) (granting defendants’ motion to allow final two witnesses in bench trial to appear via videoconference due to, *inter alia*, the danger of spreading COVID-19 through in-person communication).

<sup>10</sup> *Cf. Suzanne M. Knight, Rights for the Rape Victim: Lifting Statute of Limitations for Prosecution of Violent Crimes*, 8 *Buff. Women’s L.J.* 11, 12 (2000) (concluding that the “[t]he lifting of the statute of limitations for violent felonies will ensure that violent rapists and sex offenders are punished and the public is safer”).

<sup>11</sup> *See* RAINN, *supra* note 4, at 1 (concluding, in the context of developing effective sex crime statutes of limitations, that “[w]e have a responsibility in which more victims choose to report because they believe it is in their best interest” and noting that such an outcome “will serve states’ overall public safety interests, and support efforts to hold perpetrators of sexual assault—who are often serial criminals—accountable”).

<sup>12</sup> *See Polyvictims: Victims’ Rights Enforcement as a Tool to Mitigate “Secondary Victimization” in the Criminal Justice System*, *NCVLI Victim Law Bulletin* (Nat’l Crime Victim Law Inst, Portland, Or.), March 2013, <http://law.lclark.edu/live/files/13798-polyvictims-victims-rights-enforcement-as-a-tool> (describing how the manner in which victims are treated throughout the criminal justice process effects their trust in the justice system and

observing that victims who feel they have been treated unfairly experience more trauma symptoms and system-based victimization); *see also* RAINN, *supra* note 4, at 4 (noting that when California abolished the statute of limitations for nearly every type of sex crime, Senator Connie Leyva remarked “that the bill signaled to every victim, ‘that they matter and that, regardless of when they are ready to come forward, they will always have an opportunity to seek justice in a court of law. Rapists should never be able to evade legal consequences simply because an arbitrary time limit has expired.’”) (citation omitted).

<sup>13</sup> *See* Knight, *supra* note 10, at 12 (arguing that extending statutes of limitations for violent felonies will help ensure that violent offenders are punished and that victims get justice).

<sup>14</sup> *See* Hoylman Letter, *supra* note 5, at 1 (“Tolling the civil and criminal statutes of limitations for the duration of the COVID-19 disaster emergency will give New Yorkers the time they need to prepare their claims, consult with their attorneys, and report crimes at a time when we are encouraging unnecessary travel and in-person gatherings, and the court system has shut down for all but the most essential purposes.”).

<sup>15</sup> *See In re the Matter of Administrative Rule 17 Emergency Relief for Indiana Trial Courts Relating to the 2019 Novel Coronavirus (COVID-19)*, Ind. Case No. 20S-CB-00123 (Order) (Mar. 16, 2020), <https://www.in.gov/judiciary/files/order-other-2020-20S-CB-123.pdf> (recognizing that “[a]ppropriate public health responses to the COVID-19 outbreak will likely require limiting trial court operations and inhibit litigants’ and courts’ ability to comply with statutory deadlines and rules of procedure applicable to courts in this state”).