

## More Than a Year: The Need to Extend the Civil Statute of Limitations for Sex Crimes Cases in Louisiana

Julia Aucoin

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**More Than a Year: The Need to Extend the Civil Statute of Limitations for Sex Crimes Cases in Louisiana**

*Julia Aucoin\**

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INTRODUCTION

Every American citizen encounters the justice system at some point in their life. These experiences range from quick brushes, such as paying taxes and following traffic laws, to life-altering experiences, like being involved in a criminal trial. For some, encountering the justice system is not a choice, but something that happens at the lowest point in their lives. To make matters worse, those who do brave the system may not see justice served in the end. Statutes of limitations, alternatively known as prescriptive periods in Louisiana, govern how long a victim of a crime or other wrong has to bring a claim. These differ widely depending on the

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\* J.D./D.C.L. candidate 2024, Paul M. Hebert Law Center, Louisiana State University. I would like to thank Professor Lisa Avalos for her support and inspiration throughout my law school journey.

crime or claim, the state where the claims are brought, and whether the case is brought in criminal or civil court.<sup>1</sup> The statutes of limitations are a brief one year in Louisiana for most sexual assault claims brought in civil court.<sup>2</sup>

Common ways to bring civil sexual abuse claims are through personal injury tort law claims of assault, battery, or intentional infliction of emotional distress.<sup>3</sup> While many states have eliminated or extended their statute of limitations to bring a civil sexual assault claim under state-specific tort statutes, Louisiana's prescriptive period remains just one year after the date of discovery or one year after the victim turns eighteen, whichever period is longer, under the applicable statute.<sup>4</sup> This issue emphasizes the continued lack of attention afforded sexual assault survivors who may prefer or be limited in bringing a civil claim in Louisiana.

This Note addresses why an adult sexual assault survivor may bring a civil claim as opposed to a criminal claim, as well as the psychology behind trauma and trauma responses which necessitate expanding the civil relief afforded to survivors. This Note will focus particularly on sexual assault claims in civil court, which typically fall under tort statutes of limitations and are classified as personal injury.<sup>5</sup> This Note will then address how Louisiana currently handles civil sexual assault cases, how other states respond to these cases, and how many states have changed over time to improve their responses to sexual assault. Finally, this Note proposes Louisiana's ideal response and how solutions, namely eliminating or extending the short statute of limitations, might be implemented.

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1. The terms "victim" and "survivor" may be interchangeable or may represent different stages of the recovery process; there is no general consensus, and an established convention suggests asking individuals which they prefer. *Key Terms and Phrases*, RAINN, <https://www.rainn.org/articles/key-terms-and-phrases> [https://perma.cc/WT2F-4XS2] (last visited Mar. 8, 2024).

2. LA. CIV. CODE ANN. art. 3492 (1992); *Statute of Limitations for Sexual Assault: State-by-State Breakdown*, LAWTERYX, <https://www.lawteryx.com/knowledge-center/criminal-law/statute-limitations-sexual-assault/> [https://perma.cc/53S9-E836] (last visited Mar. 8, 2024) [hereinafter *Statute of Limitations*].

3. *Id.*

4. LA. CIV. CODE ANN. art. 3492 (1992); *Statute of Limitations*, *supra* note 3.

5. *What Survivors Must Know About Filing a Civil Sexual Abuse Claim*, ENJURIS, <https://www.enjuris.com/personal-injury/sexual-abuse-lawsuits/> [https://perma.cc/M3WY-YY5L] (last visited Mar. 8, 2024).

## I. BACKGROUND

When a sexual assault occurs, a survivor has two avenues of redress: route their case through the criminal justice system or pursue civil remedies.<sup>6</sup> Only 310 out of every 1,000 sexual assaults are reported to police. Of those 310, only 50 will lead to arrests, 28 will lead to felony convictions, and 25 perpetrators will be incarcerated.<sup>7</sup> Those survivors who do not report the crime may still have a wide variety of legal needs including physical safety, employment or schooling concerns; thus, an alternative form of relief through the civil system may be necessary.<sup>8</sup>

Going through the criminal justice system is not the only avenue to seek justice for a multitude of crimes, including sex crimes. Civil remedies capable of meeting sexual assault victims' needs exist. The logistical steps, burden of proof, plaintiff involvement, and ultimate outcome differentiate the civil system from its criminal counterpart and make it a viable choice; that said, the statute of limitations in Louisiana need to be extended to make them more accessible to survivors.<sup>9</sup> The following distinctions illustrate what a survivor may consider when choosing one or both paths.

In criminal claims, elements and sentences depend on how an assault is categorized. In Louisiana, for example, possible claims include: rape, which includes first, second, and third degree; and sexual battery, which includes misdemeanor, first, and second degree.<sup>10</sup> In a civil case, however, a sexual assault survivor brings a tort claim for personal injury such as assault, battery, and/or the intentional infliction of emotional distress, rather than bringing a true sexual abuse cause of action.<sup>11</sup>

The burden of proof is very different in civil and criminal cases. In criminal cases, the prosecutor must prove beyond a reasonable doubt that

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6. *The Civil Legal System*, WASH. COAL. OF SEXUAL ASSAULT PROGRAMS, <https://www.wcsap.org/resources/advocacy/legal/civil-legal-system/system> [https://perma.cc/FD4A-YTZC] (last visited Mar. 8, 2024).

7. *The Criminal Justice System: Statistics*, RAINN, <https://www.rainn.org/statistics/criminal-justice-system> [https://perma.cc/UF9A-BB5F] (last visited Mar. 8, 2024).

8. *The Civil Legal System*, *supra* note 6.

9. *Criminal and Civil Law*, VICTIM CONNECT, <https://victimconnect.org/learn/criminal-and-civil-law/> [https://perma.cc/RWJ3-ZWK9] (last visited Mar. 9, 2024).

10. LA. REV. STATS, §§ 14:42, 14:42.1, 14:43, 14:43.1, 14:43.1.1, 14:43.2 (2022).

11. Travis Peeler, *Statute of Limitations on Sexual Abuse in Louisiana*, LEGAL MATCH, <https://www.legalmatch.com/law-library/article/louisianas-statute-of-limitations-for-sexual-abuse.html> [https://perma.cc/5NQ6-WV8V] (last visited Mar. 8, 2024).

the perpetrator committed the crime.<sup>12</sup> This standard requires the prosecution to “convince the jury that there is no other reasonable explanation that can come from the evidence presented at trial,” meaning that it must be essentially certain that the defendant is guilty of the charged crime.<sup>13</sup> Beyond a reasonable doubt is a very high legal standard, and is far from foolproof at convicting perpetrators for their crimes, as evidenced by the fact that only 25 out of every 310 perpetrators of reported sexual assault claims will be incarcerated.<sup>14</sup>

In a civil suit, the burden of proof is typically a preponderance of the evidence, a much lower standard.<sup>15</sup> Under a preponderance of the evidence standard, a party satisfies this burden by convincing the fact finder that “there is a greater than 50% chance that the claim is true.”<sup>16</sup> Essentially, a plaintiff may prevail if there is even a 51% chance the alleged conduct occurred. This standard means that a plaintiff bringing both a civil and criminal claim may prevail in civil court and obtain relief even when the evidence cannot meet the very high burden of beyond a reasonable doubt in the criminal case.<sup>17</sup>

In a criminal case, the state controls the proceedings with the victim merely acting as a witness.<sup>18</sup> The prosecutor represents the interests of the state to determine whether a defendant is guilty of the crime they are accused of.<sup>19</sup> The goal is to hold the offender accountable for the crime,

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12. Case Barnett, *What to Expect From a Sexual Assault Civil Lawsuit*, CASE BARNETT LAW, <https://www.casebarnettlaw.com/blog/how-sexual-assault-survivors-can-get-justice-in-civil-court.cfm> [<https://perma.cc/DUK2-562X>] (last visited Mar. 9, 2024).

13. *Beyond a Reasonable Doubt*, CORNELL LAW SCHOOL (May 2020), [https://www.law.cornell.edu/wex/beyond\\_a\\_reasonable\\_doubt](https://www.law.cornell.edu/wex/beyond_a_reasonable_doubt) [<https://perma.cc/F3QX-QMFY>].

14. *The Criminal Justice System: Statistics*, *supra* note 7.

15. *Burden of Proof*, CORNELL LAW SCHOOL (June 2022), [https://www.law.cornell.edu/wex/burden\\_of\\_proof](https://www.law.cornell.edu/wex/burden_of_proof) [<https://perma.cc/BCC7-VCJW>].

16. *Preponderance of the Evidence*, CORNELL LAW SCHOOL (Mar. 2022), [https://www.law.cornell.edu/wex/preponderance\\_of\\_the\\_evidence](https://www.law.cornell.edu/wex/preponderance_of_the_evidence) [<https://perma.cc/WZ78-N7WC>].

17. For example, O.J. Simpson was acquitted in a criminal murder trial but found liable for \$33.5 million in civil restitution. Ember Milstead, *The O.J. Simpson Trial: Distinctions Between Criminal and Civil Law*, PENN. STATE UNIV. (Jan. 30, 2020), <https://sites.psu.edu/emberpassion/2020/01/30/the-o-j-simpson-trial-distinctions-between-criminal-and-civil-law/> [<https://perma.cc/SXJ3-SPBP>].

18. *Criminal and Civil Justice*, NAT'L CTR. FOR VICTIMS OF CRIME, <https://victimsofcrime.org/criminal-and-civil-justice/> [<https://perma.cc/MRC5-C KW9>] (last visited Mar. 9, 2024).

19. *Id.*

ultimately condemning and punishing the act for purposes of public safety, deterrence, and retribution.<sup>20</sup>

The civil system notably differs in structure from the criminal system in the way that it places the focus on the individual survivor rather than broader government interests.<sup>21</sup> Complaints are filed by individuals or groups who seek to hold the offender accountable either for committing the crime or for allowing the crime to happen.<sup>22</sup> The victim controls “essential decisions shaping the case, including whether to sue, accept a settlement offer or go to trial.”<sup>23</sup> They seek not to convict the defendant, but to receive compensation needed to rebuild their lives; often in the form of “medical care, counseling, or repairing and replacing property.”<sup>24</sup> Factors that may influence the settlement amounts include the severity of the abuse, the impact of the abuse on the victim, the length of the abuse, the victim’s age, the jurisdiction, the ability of the abuser to pay, and the strength of the evidence.<sup>25</sup>

Finally, the prescriptive periods are very different in criminal and civil cases and may lead to survivors being limited in their options. Every state handles its criminal statute of limitations for sexual assault differently and with some level of controversiality.<sup>26</sup> A state may choose to eliminate its statute of limitations for felony sex crimes, require that a victim report in order for the time to start “running,” make exceptions to extend when DNA evidence is made available, and adjust the time limit based on the degree of the crime.<sup>27</sup>

The statute of limitations for criminal cases in Louisiana are as follows: no time limit to institute prosecution for first or second-degree rape; six years for third degree rape; four to six years for non-juvenile sexual battery, depending on whether the felony is punishable by hard labor; two years for misdemeanor sexual battery; and four to six years for

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20. *Sentencing*, CORNELL LAW SCHOOL, <https://www.law.cornell.edu/wex/sentencing> [https://perma.cc/T384-SR9A] (last visited Mar. 8, 2024).

21. *Criminal and Civil Law*, *supra* note 9.

22. *Id.* “Groups” here refers to multiple people who may bring a claim against a particular perpetrator or system.

23. *Criminal and Civil Justice*, *supra* note 18.

24. *Criminal and Civil Law*, *supra* note 9.

25. Ronald Miller, Jr., *Settlement Amounts of Sex Abuse Lawsuits*, LAWSUIT INFORMATION CTR., <https://www.lawsuit-information-center.com/sexual-abuse-settlement.html> [https://perma.cc/2ZF2-FQPJ] (last visited Mar. 9, 2024).

26. *State by State Guide on Statutes of Limitations*, RAINN, <https://www.rainn.org/state-state-guide-statutes-limitations> (last visited Mar. 9, 2024).

27. *Id.*

second degree sexual battery.<sup>28</sup> Meanwhile, the civil statute of limitations is merely a single year for intentional torts, leading to the conclusion that survivors must act quickly or risk losing their ability to recover financially in civil court.<sup>29</sup>

## II. WHY A SURVIVOR MAY DELAY BRINGING A CLAIM

A survivor may delay reporting a sexual assault or bringing a claim for multiple reasons, including lack of knowledge that a defendant has injured them (such as in institutional cases), being influenced by trauma and trauma responses, and societal factors.<sup>30</sup> In institutional cases where assault could have been prevented or is handled improperly, victims may not have necessary information concerning who hurt them or how they were hurt, necessary elements elaborated in the Fifth Circuit cases below.<sup>31</sup> Additionally, physiological and psychological trauma may hamper evidentiary findings as the sexual misconduct may effect a victim through memory loss, body disassociation, and PTSD.<sup>32</sup> Louisiana's one-year statute of limitations in civil cases, one of the shortest in the country, takes away a survivor's ability to pursue their case in their own time frame and receive necessary support and funds to rebuild their lives.

### A. Complications in Title IX Cases

Title IX was enacted to prevent discrimination on the basis of sex in colleges, universities, elementary and secondary schools, and any education or training program operated by a recipient of federal financial assistance.<sup>33</sup> There are three general types of prohibited discrimination under Title IX: disparate treatment, disparate impact, and retaliation.<sup>34</sup> An

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28. LA. CODE CRIM. PROC. ANN. art. 571 (2024); *Id.* at art. 571.1; *Id.* at art. 572.

29. LA. CIV. CODE ANN. art. 3492 (2024).

30. *Trauma-Informed Care in Behavioral Health Services*, SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMIN. (2014), [https://www.ncbi.nlm.nih.gov/books/NBK207191/table/part1\\_ch3.t1/](https://www.ncbi.nlm.nih.gov/books/NBK207191/table/part1_ch3.t1/) [<https://perma.cc/68DW-S6EK>].

31. *Doe v. Bd. of Supervisors of Univ. of La. Sys.*, 650 F. Supp. 3d 452, 458 (M.D. La. 2023); *Doe 1 v. Baylor Univ.*, 240 F. Supp. 3d 646, 652 (W.D. Tex. 2017).

32. JESSICA MINDLIN & SUSAN VICKERS, VICTIM RTS. LAW CTR, INC., *BEYOND THE CRIMINAL JUSTICE SYSTEM: USING THE LAW TO HELP RESTORE THE LIVES OF SEXUAL ASSAULT VICTIM'S, A PRACTICAL GUIDE FOR ATTORNEYS AND ADVOCATES* 4-7 (2008).

33. 20 U.S.C.A. § 1681.

34. *Id.*

example of a Title IX violation would be a school which is “deliberately indifferent in the face of actual knowledge of [sexual] misconduct.”<sup>35</sup>

In Title IX cases that concern educational sex-based discrimination at federally funded schools, the issues of whom is responsible for an assault and when the prescriptive period begins to run can be unclear and the subject of much debate, leading to delays in bringing suit.<sup>36</sup> For example, a school may fail to take steps to prevent harassment to an extent that it directly leads to a student sustaining an injury they otherwise would not have suffered, but the student could lack the knowledge that the school had failed to act until it is uncovered at a later time.<sup>37</sup> In another scenario, a school official could cover threaten or retaliate against a student reporting a Title IX violation in a way that causes an excessive delay.<sup>38</sup> As discussed in further detail below, victims in Title IX cases may not realize an institution had a hand in their injury until a later point in time.

### *B. Trauma Responses*

Trauma responses are the reactions caused by a traumatic event and may lead to delayed claims.<sup>39</sup> Trauma responses may be divided into two categories: immediate and delayed.<sup>40</sup> These responses can further be divided into emotional, physical, cognitive, or behavioral trauma and may vary widely from person to person.<sup>41</sup>

Immediate reactions comprise those which society and first responders often think of first: numbness, sadness, helplessness, disorientation, and denial.<sup>42</sup> Delayed reactions include those which are

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35. The deliberate indifference standard was established in two Supreme Court Cases, *Gebser v. Lago Vista ISD*, 524 U.S. 274 (1998) and *Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999); *Title IX Legal Manual*, U.S. DEPT. OF JUST., CIV. RTS. DIV., <https://www.justice.gov/crt/title-ix#Introduction> (last visited Mar. 9, 2024).

36. *The Effects of Sexual Assault*, WASH. COALITION OF SEXUAL ASSAULT PROGRAMS, <https://www.wcsap.org/help/about-sexual-assault/effects-sexual-assault> [<https://perma.cc/3QW7-L8X9>] (last visited Mar. 9, 2024).

37. *Title IX and Sex Discrimination*, U.S. DEPT. OF EDUC., [https://www2.ed.gov/about/offices/list/ocr/docs/tix\\_dis.html](https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html) [<https://perma.cc/G578-YVJ8>] (last visited Mar. 9, 2024).

38. *Id.*

39. *Common Reactions After Trauma*, U.S. DEPT. OF VETERANS AFFS., [https://www.ptsd.va.gov/understand/isitptsd/common\\_reactions.asp](https://www.ptsd.va.gov/understand/isitptsd/common_reactions.asp) [<https://perma.cc/PA9D-W7V7>] (last visited Mar. 9, 2024).

40. *Trauma-Informed Care in Behavioral Health Services*, *supra* note 30.

41. *Id.*

42. *Id.*



more likely to come with the risk of a survivor not being believed, such as hostility, depression, mood swings, self-blame, shame, fatigue, and emotional detachment.<sup>43</sup> Since proper trauma-informed training is neither in place nationwide nor uniformly required in Louisiana, legislatures should lengthen the statute of limitations to provide survivors with the extra time their circumstances require.

A common trauma response to sexual assault is to minimize, compartmentalize, or rationalize the event, resulting in delayed disclosure.<sup>44</sup> In a Washington Post article, Natalie Compton details her own experience with realizing she was sexually assaulted 12 years after the event.<sup>45</sup> Compton was watching the movie “Promising Young Woman,” which features a woman taking revenge on predators who prey on vulnerable young women, when she realized the plot “felt familiar.”<sup>46</sup> Previously, “nothing resembled her experience close enough to make the connection;” her idea of rape, like many, was the “life-threatening kind” where “a strange, masked man attacks a woman in an alley at gunpoint.”<sup>47</sup> The man that reminded her of the predators in the movie was a “rich, handsome college graduate” then-18-year-old Compton met at work.<sup>48</sup> This man invited her to his house one night where they drank and made out “for a moment” before he grabbed and started opening a condom.<sup>49</sup>

She told him not to and that she didn’t want to have sex, but he didn’t stop.<sup>50</sup> She didn’t remember how she got home after that, and theorizes this was because of the alcohol, how trauma impacted her memory, or just the fact that the trauma took her years to understand and process.<sup>51</sup> She developed depression and “bottled up” her experience, avoiding social opportunities and drinking excessively.<sup>52</sup> When she saw the movie 12 years after her assault, she was finally able to connect and label her

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43. *Id.*

44. *The Effects of Sexual Assault*, *supra* note 36.

45. *It Took me 12 Years to Realize I’d Been Raped. ‘Promising Young Woman’ Triggered that Breakthrough*, WASH. POST (April 23, 2021 9:14 A.M.), <https://www.washingtonpost.com/gender-identity/it-took-me-12-years-to-realize-id-been-raped-promising-young-woman-triggered-that-breakthrough/> [https://perma.cc/PM9K-FVRB].

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

experience as rape.<sup>53</sup> While Compton's account ends with her analyzing her options, she would be barred bringing any civil suit in a state like Texas or Louisiana where claimants must bring suit one year or earlier from the date of the alleged sexual assault.<sup>54</sup> Her late realization is not unusual or even uncommon for a survivor of sexual trauma. Dozens of articles pop up under a quick Google search with titles, such as "How Do I Know if I Was Raped or Sexually Assaulted" and "What is Considered Sexual Assault," and contain headings, such as "Common Scenarios," "Signs of a Perpetrator," and "What to do."<sup>55</sup>

In cases where the survivor may already have memory gaps or may try to bury or rationalize their experience, they may suffer from an additional fear that they will not be believed, especially if they do not have a "textbook" experience to portray to a court and the opposing party.<sup>56</sup> In 2018, Dr. Christine Blasey Ford faced the Senate Judiciary Committee and alleged that then-Judge Brett Kavanaugh had sexually assaulted her when the two were in high school together.<sup>57</sup> She was promptly attacked for a "gap" in her story, the fact that she did not remember how she got from the party where the incident took place to her house.<sup>58</sup> Not only do survivors like Ford have to relive the most traumatic events of their lives in public settings when they do come forward, but they risk not being believed or even villainized. This pressure proves to be too much for many survivors, especially when they must decide to enter the public fray via lawsuit in a time frame as narrow as Louisiana's.<sup>59</sup>

Incomplete memories are common and even expected in the realm of sexual trauma and its psychological aftermath and should rarely, if ever,

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53. *Id.*

54. *Id.*

55. Kimberly Holland, *How Do I Know if I Was Raped or Sexually Assaulted*, HEALTHLINE (Oct. 18, 2019), <https://www.healthline.com/health/was-i-raped> [<https://perma.cc/7VFE-CYQR>]; Taylor Roebig, *What is Considered Sexual Assault? A Guide on Sexual Assault*, FLORIN ROEBIG (Dec. 7, 2022), <https://florinroebig.com/sexual-assault-guide/> [<https://perma.cc/QM79-SVEH>]; *Signs of Sexual Assault and Rape*, JOYFUL HEART FOUND., <https://www.joyfulheartfoundation.org/learn/sexual-assault-and-rape/about-issue/know-signs> [<https://perma.cc/8XMR-TUQH>] (last visited Mar. 9, 2024).

56. *See, e.g.*, Haley Edwards, *How Christine Blasey Ford's Testimony Changed America*, TIME (Oct. 4, 2018), <https://time.com/5415027/christine-blasey-ford-testimony/> [<https://perma.cc/8T9V-EYP3>].

57. *Id.*

58. *Id.*

59. *Id.*

be a factor when evaluating a survivor's credibility.<sup>60</sup> Dr. Jim Hopper, expert on psychological trauma and Harvard Medical School professor, says such missing or mistaken memories “should be expected” and “are similar to the memories of soldiers and police officers for things they’ve experienced in the line of fire.”<sup>61</sup> This is largely due to differences in how our brains process and store memory.<sup>62</sup> Our brain encodes certain “central” details, often those with emotional significance, while encoding “peripheral,” details—those more on the edge of our perception—poorly or not at all.<sup>63</sup>

When dealing with an experience as traumatic as sexual assault, the brain may pick up and store “central” details that are not those we might expect, such as the perpetrator's eyes or the sounds of traffic.<sup>64</sup> Conversely, evidentially relevant experiences, such as what was done to the victim's body, may instead be stored peripherally or even be filtered out.<sup>65</sup> This leads into another memory phenomenon known in the common lexicon as tunnel vision.<sup>66</sup> Essentially, the brain focuses on storing the central details of the traumatic experience, whether it be a sexual assault or an enemy ambush.<sup>67</sup> These central details may be what the survivor was focused on at the time, but not necessarily what we would expect from someone absorbing their experience rationally.<sup>68</sup>

### C. Societal Factors

Survivors may especially fear retaliation or disbelief when persons of power or hierarchical systems are involved. For example, Christa Hayburn was sexually assaulted by a superior when working as a law enforcement officer.<sup>69</sup> For the next two years, she did not report the assault for fear of losing her job.<sup>70</sup> After experiencing an injury and becoming unable to

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60. Jim Hopper, *How Reliable are the Memories of Sexual Assault Victims?: The Expert Testimony Excluded from the Kavanaugh Hearing*, SCI. AMERICAN (Sept. 27, 2018), <https://blogs.scientificamerican.com/observations/how-reliable-are-the-memories-of-sexual-assault-victims/> [https://perma.cc/M77K-HJDP].

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. *Christa's Story*, RAINN, <https://www.rainn.org/survivor-stories/christas-story> [https://perma.cc/364T-JZVC] (last visited Mar. 9, 2024).

70. *Id.*

continue her work as a police officer, Hayburn finally reported the assault to the Internal Affairs Department, who questioned her for six to eight hours.<sup>71</sup> She claimed that the department did not take her report seriously, expressed doubt about the medical reports of her injury, and appointed a private investigator to follow her.<sup>72</sup> She spent the next four years trying to make sure her assault was properly investigated.<sup>73</sup> Two other women ultimately came forward and reported being assaulted by the same perpetrator, who had been promoted since Hayburn's assault.<sup>74</sup>

Fear of retaliation or disbelief often applies in cases of marital rape or rape that occurs in other close personal relationships, as seen in Hayburn's case, or in cases where an institution is in power. There are many other considerations that may factor in to delayed reporting or bringing of a claim. For example, male survivors may face particular challenges when and if they do decide to report a sexual assault.<sup>75</sup>

Sexual violence does not discriminate based on age, sexual orientation, or gender identity.<sup>76</sup> One out of every ten rape victims is male.<sup>77</sup> Approximately one in thirty-three men in the U.S. have experienced an attempted or completed rape in their lifetime.<sup>78</sup> Males who have been sexually assaulted can face unique challenges due to societal pressures.<sup>79</sup> They may not believe it is possible for them to be victims of sexual violence or may be influenced by stereotypes about masculinity, such as thinking they "didn't fight hard enough."<sup>80</sup>

The story of James Landrith, former U.S. Marine and member of the RAINN (Rape, Abuse, & Incest National Network), is just one of many highlighted in RAINN's survivor stories.<sup>81</sup> James was sexually assaulted

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71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. *Sexual Assault of Men and Boys*, RAINN, <https://www.rainn.org/articles/sexual-assault-men-and-boys> [<https://perma.cc/2SUR-HYCB>] (last visited Mar. 9, 2024).

76. *Id.*

77. *Victims of Sexual Violence: Statistics*, RAINN, <https://www.rainn.org/statistics/victims-sexual-violence> [<https://perma.cc/3MKX-QRUA>] (last visited Mar. 9, 2024).

78. *Id.*

79. *Sexual Assault of Men and Boys*, *supra* note 75.

80. *Id.*

81. *Military Sexual Assault Survivor: James*, RAINN, <https://www.rainn.org/survivor-stories/military-sexual-assault-survivor-james> [<https://perma.cc/6QAM-QCS9>] (last visited Mar. 9, 2024).

by an acquaintance while on an active-duty assignment when he was 19.<sup>82</sup> Because his perpetrator was a woman, he did not “feel he would be believed or taken seriously if he told anyone.”<sup>83</sup> He did not tell anyone about the assault for 17 years and struggled with unhealthy coping mechanisms, as well as difficulty identifying as a survivor.<sup>84</sup> When he began speaking out, in hopes of raising awareness and support for other male survivors, he received comments like, “You’re a man, how could you have let this happen to you?”<sup>85</sup>

As discussed above, any factors including insufficient information; memory gaps; fear, retaliation, or disbelief; and societal ideals influence a survivor’s ability or willingness to bring a claim in a timely fashion.<sup>86</sup> These should be researched and considered to highlight Louisiana’s need for reforming the one-year statute of limitations for civil sexual assault claims.<sup>87</sup>

### III. CIVIL SEXUAL ASSAULT CLAIMS IN LOUISIANA

Louisiana is one of only three states that have a one-year personal injury statute of limitations for sexual assaults of adults, along with Kentucky and Tennessee.<sup>88</sup> Twenty-two others use a two-year statute of limitations, seventeen have a three-year limit, eight states use four or more years, and Colorado has eliminated its statute of limitations for civil sexual assault cases entirely.<sup>89</sup> Since Louisiana’s statute of limitations is so short, bringing a civil case following a sexual assault may be extremely difficult or impossible and may result in survivors failing to gain access to critical resources needed to rebuild their lives.

In Louisiana and many other states, civil cases for sexual assault fall under the tort statutes.<sup>90</sup> Delictual actions, Louisiana’s term for tort actions, have a liberative prescription of one year.<sup>91</sup> This prescription commences to run from the day the injury or damage is sustained, absent

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82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

88. *Statute of Limitations for Sexual Assault: State-by-State Breakdown*, *supra* note 2.

89. *Id.*

90. LA CIV. CODE ANN. art. 3492 (1992).

91. *Id.*

any special exceptions.<sup>92</sup> It notably does not run against minors, whom Louisiana has created an exception.<sup>93</sup> An example of a way to bring a civil claim for sexual assault or harassment would be Title IX, an education-based statute which prohibits sex discrimination in federally funded schools.<sup>94</sup> When a federal statute such as Title IX does not contain its own limitations period, the “settled practice is to borrow an ‘appropriate’ statute of limitations from state law.”<sup>95</sup> Since Title IX does not set out an explicit statute of limitations, courts use the “most analogous law” (often the personal injury statute) of the state governing the Title IX claims, which would make it one year in Louisiana.<sup>96</sup>

Louisiana has passed an exception for child victims, indicating that movement towards leniency is possible. In 2021, a law passed that removed the time limit to bring lawsuits for child sex abuse.<sup>97</sup> House Bill 402 (now Act No. 386) amended R.S. 2800.9 and allowed victims of childhood abuse to bring suit no matter their current age, when they previously only had until they were 28 years old.<sup>98</sup> The goal of the bill was to make it easier to sue institutions “such as the Catholic Church and Boy Scouts of America” as new instances of abuse continued to arise.<sup>99</sup> The new law also established a three-year “lookback window” designed to “allow any adult victim of child sex abuse to file a lawsuit by the middle 2024 if they had run out of time to do so under prior law” and “give older victims, who had not grappled with their abuse until later in life, a shot at compensation.”<sup>100</sup> While similar legislation could be passed for adults, it is currently nonexistent.

In *Doe v. Board of Supervisors of the University of Louisiana System*, a female student brought an action alleging violations of Title IX and negligence under state law, ultimately raising questions about

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92. *Id.*

93. *Id.*

94. Nicole Wiitala, *Statute of Limitations Under Title IX*, SANFORD, HEISLER, SHARP, LLP., (May 1, 2020).

95. *King-White v. Humble Indep. Sch. Dist.*, 803 F.3d 754, 758 (5th Cir. 2015).

96. Wiitala, *supra* note 94.

97. Julie O’Donoghue, *Louisiana Legislature Passes “Fix” to Make it Easier for Sex Abuse Victims to Sue*, LOUISIANA ILLUMINATOR (June 1, 2022), <https://lailluminator.com/2022/06/01/louisiana-legislature-passes-fix-to-make-it-easier-for-sex-abuse-victims-to-sue/> [<https://perma.cc/24RT-V34F>].

98. *Id.*; LA. STAT. ANN. § 9:2800.9.

99. *Id.*; H.B. 402, 2022 Leg., Reg. Sess. (La. 2022).

100. *Id.*

Louisiana's statute of limitations.<sup>101</sup> Plaintiff, proceeding under the pseudonym Jane Doe, was raped in September 2018 by a fellow student, Victor Daniel Silva, while attending Louisiana Tech University.<sup>102</sup> Doe was not aware that Silva was a repeat sexual predator who had been reported for "rape and other sexual misconduct on five prior occasions" at the time of her rape; however it was alleged that defendants, the Board of Supervisors of Louisiana State University ("LSU") and University of Louisiana System, ("ULS"), which manages both University of Louisiana at Lafayette (UL Lafayette) and Louisiana Tech University (Louisiana Tech), were aware of Silva's past and failed to take action.<sup>103</sup>

Silva began his college career at LSU, where he was quickly banned after being reported twice for rape.<sup>104</sup> He then transferred repeatedly between UL Lafayette and Louisiana Tech until he was placed on academic probation after being arrested for rape.<sup>105</sup> During his time at UL Lafayette, three women reported him for sex crimes to the Lafayette Police Department.<sup>106</sup> Silva quickly established himself as a repeat and incredibly dangerous predator who presented a very real threat of bodily harm, psychological damage, and lost educational opportunity to young women at the involved universities.<sup>107</sup> Meanwhile, he was not meaningfully investigated and was allowed to transfer repeatedly between LSU, UL Lafayette, and Louisiana Tech where he victimized multiple women, yet still graduated with a clean academic record from UL Lafayette after Doe's rape, his sixth alleged assault.<sup>108</sup>

The *Doe* defendants argued that Doe's claim was not timely under Louisiana's one-year prescriptive period for personal injury actions, even if the events alleged met the required plausibility standards.<sup>109</sup> The United States District Court for the Middle District of Louisiana was hesitant to dismiss for limitations issues at the pleadings stage, stating: "[a]s a rule, a limitations defense is not favored at the pleadings stage because the dispositive issue of when the plaintiff became aware of her claim involves questions of fact that generally cannot be resolved without evidentiary

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101. *Doe v. Bd. of Supervisors of Univ. of La. Sys.*, 650 F. Supp. 3d 452, 458 (M.D. La. 2023).

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.* at 459.

109. *Id.* at 471.

development.”<sup>110</sup> Additionally, “a defendant may prevail on a limitations defense at Rule 12 only if ‘it appears beyond doubt that the plaintiff can prove no set of facts in support of [her claim] that would entitle [her] to relief.’”<sup>111</sup>

The Middle District adopted the U.S. Court of Appeals for the Sixth Circuit’s statement in *Snyder-Hill v. The Ohio State University* that “the claim does not accrue until the plaintiff knows or has reason to know that the defendant institution injured them.”<sup>112</sup> This effectively allows a rare window in institutional cases where plaintiffs may not know of defendant’s conduct at the time of their assault, while still enforcing a strict standard based on “when a reasonable person knows, or... should have known” the facts of his injury and its cause.”<sup>113</sup> A question of when plaintiff should have reasonably known of her injury is raised, since she did not bring suit until May of 2022.<sup>114</sup>

Ultimately, the Middle District dismissed the case on jurisdictional grounds, leaving the state court to decide the divisive timing issue in the coming months.<sup>115</sup> Should the state court decide that Doe brought the case within a year of discovering the institutions effectively causes her injury, the decision will only help Louisiana continue to ignore the much larger issue of allowing survivor access to the justice system and preventing harmful conduct. Should it be decided that the case was untimely, Doe will be denied recovery for her trauma, mental pain and anguish, subsequent educational difficulties, and ultimate betrayal by the institutional system which was supposed to protect her and ensure that she received a safe and equal-opportunity education.

In the notable 2017 case *Doe v. Baylor University*, ten university students alleged that they were sexually assaulted while enrolled at Baylor University, and the university moved to dismiss on the basis that the case had prescribed.<sup>116</sup> The plaintiffs brought the case under Title IX and alleged that they had been sexually assaulted while students, had sought protection from the school which discouraged them from reporting their assaults, that the school had failed to investigate each of the incidents, failed to take steps to ensure the students would be safe from “be[ing] subjected to continuing assault and harassment,” and had “ultimately

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110. *Id.* at 472.

111. *Id.*

112. *Id.*

113. *Id.* (citing *Snyder v. The Ohio State University*, 48 F.4th 686, 704 (6th Cir. 2022)).

114. *Id.* at 466.

115. *Id.* at 482.

116. *Doe 1 v. Baylor Univ.*, 240 F. Supp. 3d 646, 652 (W.D. Tex. 2017).



created a harassing educational environment that deprived Plaintiffs of a normal college education and other educational opportunities.”<sup>117</sup>

Each plaintiff alleged being sexually assaulted at various times spanning from 2004 to 2014 by different perpetrators; all felt failed by Baylor’s responses.<sup>118</sup> Plaintiffs alleged a cause of action under Title IX.<sup>119</sup> The Fifth Circuit held that for Title IX cases in Texas, the two-year personal injury statute of limitations controlled.<sup>120</sup> Under federal law, a claim accrues and the statute of limitations begins to run “the moment a plaintiff becomes aware that he has suffered an injury or has sufficient information to know he has been injured.”<sup>121</sup> Awareness is made up of two elements, “the existence of the injury” and “causation, that is, the connection between the injury and the defendant’s actions,” in this case, Baylor’s inaction.<sup>122</sup>

The United States District Court for the Western District of Texas held that plaintiffs were “aware of their injuries from the time the assaults occurred,” but that they “had no reason to know of Baylor’s alleged causal connection to their assaults until the spring of 2016, when media reports regarding the rampant nature of sexual assault on Baylor’s campus first came to light.”<sup>123</sup> Therefore, the statute of limitations would have begun to run in spring 2016. Four of the plaintiffs’ claims fell outside of the statute of limitations because they did not occur within the two-year period before the case was filed and were therefore dismissed.<sup>124</sup> Because their claims were dismissed, the survivors were denied restitution for Baylor’s inaction, even though the court concluded the claims were plausible on their face and, if true, “inflict[ed] the injury of which plaintiffs complain.”<sup>125</sup>

In *Baylor*, the conditions the case was brought under were more favorable to plaintiffs than Louisiana’s would have been.<sup>126</sup> In Louisiana, the plaintiffs would only have been able to bring the case until Spring

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117. *Id.*

118. *Id.* at 656.

119. *Id.* at 658.

120. *Id.* at 662.

121. *Id.* at 663 (quoting *Spotts v. United States*, 613 F.3d 559, 574 (5th Cir. 2010)).

122. *Id.* at 663.

123. *Id.*

124. *Id.*

125. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly v. Bell Atlantic*, 550 U.S. at 570); *Doe 1 v. Baylor Univ.*, 240 F. Supp. 3d 646, 662 (W.D. Tex. 2017).

126. *Id.*

2018, one year after they “should have known” that Baylor’s inaction led to their injury.<sup>127</sup> While the case was not heard in Louisiana, the conditions the case was brought under were more favorable to the plaintiffs and therefore support a finding that there is all the more reason for Louisiana to consider changing its laws to be more lenient on plaintiffs.

#### IV. CIVIL SEXUAL ASSAULT CLAIMS IN OTHER STATES AND TERRITORIES

The states and territories discussed below provide policymakers and other thinkers a wide canvas of considerations to think about when looking to extend Louisiana’s statute of imitations. A comparative analysis will allow Louisiana to more properly tailor its law to meet the needs of sexual assault victims.

The 2021 Colorado legislature enacted Senate Bills 73 and 88, officially removing the statute of limitations for civil cases against both public and private entities.<sup>128</sup> The bills also remove the requirement that a victim of a series of assaults must establish the specific act that caused their injuries, another roadblock which can create major prescriptive issues.<sup>129</sup> The Director of Public Affairs for the Colorado Coalition Against Sexual Assault commented on the decision: “the statute of limitations is an arbitrary timeline that prevents access to the single system that provides the monetary relief necessary to recover from trauma. Just as trauma has no limit, neither should the civil system... Eliminating the statute of limitations... would shift those costs from survivors to perpetrators.”<sup>130</sup>

In 2022, a New York law temporarily lifted the statute of limitations on sexual abuse and harassment claims and rekindled the spark in victims

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127. *Doe 1*, 240 F. Supp. 3d at 661.

128. Autumn Jones, *Colorado Law Allows Sex Abuse Victims to Collect Restitution in Civil Court From Public, Private Institutions*, CATHOLIC NEWS AGENCY (July 9, 2021), <https://www.catholicnewsagency.com/news/248332/colorado-law-allows-sex-abuse-victims-to-collect-restitution-in-civil-court-from-public-private-institutions> [<https://perma.cc/3CCW-392Y>].

129. *How Did the Statute of Limitations for Sexual Misconduct Civil Cases Change in Colorado in 2022?*, THE LUX LAW FIRM (Nov. 17, 2022), <https://theluxlawfirm.com/how-did-the-statute-of-limitations-for-sexual-misconduct-civil-cases-change-in-colorado-in-2022/> [<https://perma.cc/FV8T-PVT7>].

130. *Colorado Bill Eliminating Statute of Limitations for Civil Sexual Assaults Passes Senate Committee Unanimously*, CBS COLORADO (Feb. 25, 2021, 10:34 AM), <https://www.cbsnews.com/colorado/news/sexual-assault-limitations-colorado/> [<https://perma.cc/RBW8-76MG>].

“from decades earlier” in allowing them to finally seek justice.<sup>131</sup> The Adult Survivors Act provides a one year “lookback window” for survivors to assert their claims, after advocates protested that “the previous sexual assault laws did not align with how victims process their trauma,” particularly citing that “many fear retaliation, violence or being made a pariah,” and “some don’t even realize they were assaulted until many years later.”<sup>132</sup>

States like Louisiana should also look to international solutions in considering revising statutes of limitations. In Ontario, Canada, civil causes of action for sexual assault fall under their own category of human right complaints.<sup>133</sup> In 2016, Bill 132 of the Sexual Violence and Harassment Action Plan Act amended the 2002 Limitations Act to eliminate the period of limitations for all claims based on sexual assault.<sup>134</sup> The statute of limitations for other civil claims remains two years after the incident occurred or a victim becomes aware that they have been injured in some way, subject to certain exceptions.<sup>135</sup> Should the suit go to court however long after the incident, the victim may seek necessary compensation for pain and suffering, future income loss, diminution of earning capacity, and punitive damages.<sup>136</sup>

Other jurisdictions have retained but lengthened their time limits by varying amounts. For example, California has not entirely disposed of its civil statute of limitations, but recent changes have lengthened it

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131. Erik Larson, *NY Law Opens Way for Flood of Sex-Abuse Suits, No Matter How Old*, BLOOMBERG LAW (Dec. 9, 2022, 7:00 AM), <https://news.bloomberglaw.com/white-collar-and-criminal-law/ny-law-opens-way-for-flood-of-sex-abuse-suits-no-matter-how-old> [<https://perma.cc/KT2K-9AFW>].

132. N.Y. C.P.L.R. 214-j; Douglas Wigdor, *Statute of Limitations on Sexual Assault Eliminated for One Year in New York Following Passage of the Adult Survivors Act*, FORBES (May 25, 2022, 1:34 PM), <https://www.forbes.com/sites/douglaswigdor/2022/05/25/statute-of-limitations-on-sexual-assault-eliminated-for-one-year-in-new-york-following-passage-of-the-adult-survivors-act/?sh=2b663d0e46fd> [<https://perma.cc/9RCT-UDB6>].

133. *Sexual Assault: What are my Legal Options?*, ONTARIO WOMEN’S JUST. NETWORK, <https://owjn.org/2016/08/01/sexual-assault-what-are-my-legal-options/> [<https://perma.cc/5YTC-2SQ5>] (last visited Mar. 9, 2024).

134. Lindsay Charles & Sonam Sapra, *The Limitation Period for Claims Based on Sexual Assault*, MO LAWYERS (Jan. 23, 2023), <https://www.mcleishorlando.com/personal-injury-lawyer/the-limitation-period-for-claims-based-on-sexual-assault/> [<https://perma.cc/6V6J-5LMP>].

135. *Sexual Assault: What are my Legal Options?*, *supra* note 133.

136. *Sue for Sexual Assault and Child Sex Abuse, Canada*, SEXASSAULT.CA, <https://www.sexassault.ca/lawsuit.htm> [<https://perma.cc/BGX5-KVFN>] (last visited Mar. 9, 2023).

significantly.<sup>137</sup> Assembly Bill No. 2777, which went into action in January 2023, lengthened the time to commence any action occurring after January 1, 2019, to “10 years from the date of the last act, attempted act, or assault with the intent to commit an act, of sexual assault against the plaintiff” or “within three years from the date plaintiff discovers... that an injury or illness resulted from an act, attempted act, or assault with the intent to commit and act of sexual assault,” whichever is later.<sup>138</sup>

#### IV. SOLUTIONS

Louisiana should follow the lead of states like Colorado and lengthen or remove the statute of limitations for bringing a civil case for sexual assault or harassment. Survivors already face great difficulties when encountering the justice system which are greatly magnified under such an unforgiving deadline as Louisiana’s, and are not outweighed by opposing considerations.

First and foremost, in looking at any of the following solutions, Louisiana should keep in mind the true reason why civil sexual assault cases exist in the first place: to deter and prevent future criminal conduct and provide victims with the resources necessary to move forward after traumatizing experiences. Such suits also serve to call attention both to the survivor’s needs and to the danger of the alleged predator and/or the institutions that allow predators access to victims or fail to respond in an adequate manner. Civil suits also shift the burden from the victim to the perpetrator in that they force perpetrators to compensate victims.

In the Title IX case involving Daniel Silva, several women might not have been victimized if the University Boards had behaved differently. It was because of the Board of Supervisors’ knowledge of Silva’s actions and failure to act that Doe was injured. While a criminal case might sentence Silva to a few years in jail, in bringing a civil case, Doe would be able to expose the Boards’ shortcomings, uncover a dangerous predator who was allowed to remain and even thrive in society, and receive compensation for expenses such as medical care, mental health treatment, loss of income, and emotional distress.

One solution to give survivors in Louisiana more time to bring suit would be to draw from Colorado and completely eliminate the statute of limitations. Another solution would be to extend the time to at minimum two or three years. A third solution would be to create an exception to the

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137. *California Statute of Limitations for Sexual Assault*, CUTTER LAW, <https://cutterlaw.com/california-laws/sexual-assault-statute-of-limitations/> [<https://perma.cc/9MQP-6EVG>] (last visited Mar. 9, 2024).

138. Cal. Assembly Bill No. 2777, ch. 442 (Sep. 19, 2022).

statute of limitations/prescriptive period like New York has for adults and Louisiana has for child sex-abuse.

Completely eliminating the statute of limitations would allow victims to come forward at any time after a sexual assault or incident of harassment, no matter how many years have passed. Further issues arise in deciding whether or not to make a new law eliminating the statute of limitations retroactive. If it was made retroactive, those who may have previously lost their chance due to the one-year limitation would get a second chance at finally getting retribution, but, on the other hand, there is a potential to overload the court system or re-open old cases where witnesses and possible evidence may have been lost. Statutes of limitation are enacted to “protect persons against claims made after disputes have become state, evidence has been lost, memories have faded, or witnesses have disappeared.”<sup>139</sup> This consideration must be balanced with the need to compensate victims for their suffering and deter harmful conduct.

Extending the statute of limitations from one year to two, three, or even ten would provide a compromise that would allow survivors to plead their case after having more time to effectively process their traumatic experience and potentially receive the help and advice that they need to feel confident moving forward against the accused. The risks that come along with this solution would involve overloading the court system, as mentioned above. This also risks the ‘new’ statute of limitations still not being long enough to provide victims with time to heal. This problem could be fixed by extensive research and legislative findings on survivor’s psychological needs and states as the survivor progresses over time, as well as societal influences that may delay bringing a claim.

The last potential solution would be to follow New York’s lead—and Louisiana’s past exception for child sex abuse—and create a “lookback” window that allows survivors to bring their cases no matter how much time has occurred since. Here, the problem of overloading and already-stressed court system is reduced because the lookback window is a set point in time that provided a clear deadline. The disadvantage of a shorter-than-ideal healing window for survivors remains.

Ultimately, it is clear that Louisiana’s one-year window to bring a civil sexual assault suit takes away opportunity from a multitude of survivors. It should be evaluated and updated through a scientific and trauma-informed lens and a solution, such as lengthening the time frame to bring suit, discarding it entirely, or creating a look-back window, should be

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139. *Statute of Limitations*, ENCYCLOPEDIA BRITANNICA (Feb. 29, 2024), <https://www.britannica.com/topic/statute-of-limitations> [<https://perma.cc/6BTD-C6PH>].

implemented. Lengthening the statute of limitations for civil sex crimes to even two or more years would constitute a “compromise” which would maintain the balance between fair warning concerns and survivor justice. After research and sufficient time to see the results of such a change, Louisiana may someday be ready to eliminate the statute of limitations entirely.

#### CONCLUSION

Louisiana offers a one-year prescriptive period for survivors desiring to bring a civil claim against their perpetrator or another entity who allowed the conduct to happen, which makes it one of the three states with the shortest statute of limitations.<sup>140</sup> Evidentiary standards, burdens of proof, and available remedies may make a civil claim a preferable or exclusive remedy in many cases. The civil remedy for sexual assault victims must be accessible in a way they Louisiana law does not currently provide. Survivors may be late or hesitant to bring a claim for multiple reasons, including lack of information, delayed realization, fear, societal pressures, and more, and Louisiana’s strict one year deadline allows almost no leniency in this manner. By lengthening or eliminating the one-year statute of limitations for sexual assaults or harassment brought in a civil case, a larger number of survivors would be able to access the resources they need and be granted the restitution, and, as a result, closure, that they deserve.

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140. LA. CIV. CODE AMEND art. 3492 (1992); *Statute of Limitations for Sexual Assault: State-by-State Breakdown*, *supra* note 2