

# Virginia State Crime Commission

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## Statute of Limitations for Sexual Crimes Against Minors

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2015

# Statute of Limitations for Sexual Crimes Against Minors

## Executive Summary

During the Regular Session of the 2015 General Assembly, Senator R. Creigh Deeds introduced Senate Bill 1253, which would have increased the statute of limitations for certain misdemeanor sexual offenses committed against a victim who was a minor at the time of the offense. The bill was referred to the Senate Finance Committee. The bill was left in Committee, and a letter was sent by the Committee requesting that the Crime Commission review the bill.

The focus of SB 1253 was to increase the statute of limitations of six misdemeanor sexual offenses to one year after the victim reached the age of majority. The general rule in Virginia is that the statute of limitations for a misdemeanor offense is one year. The Virginia Code contains numerous exceptions to the general rule.

Crime Commission staff reviewed current Virginia law on the statute of limitations and the Virginia Code sections impacted by Senate Bill 1253. Staff also reviewed the laws of the surrounding states of Kentucky, Maryland, North Carolina, Tennessee and West Virginia to determine whether those jurisdictions had crafted legislation regarding the statute of limitations for misdemeanor sexual offenses against minors.

The Crime Commission reviewed the study findings at its September 2015 meeting. As a result of the study effort, the Crime Commission endorsed the following policy option at its September 2015 meeting and unanimously voted its favor at its December 2015 meetings:

**Policy Option 1:** Should the statute of limitations for certain misdemeanor sex offenses, where the victim is a minor, be increased from 1 year to no later than 1 year after the victim turns 18 years of age?

Identical bills bearing the recommendation of the Crime Commission were introduced in both the Senate and the House of Delegates during the Regular Session of the 2016 General Assembly. The bills passed the General Assembly and were signed by the governor.

## Background

During the Regular Session of the 2015 General Assembly, Senator R. Creigh Deeds introduced Senate Bill 1253 (SB 1253). This bill stemmed from a request for legislation by the Commonwealth's Attorney for Alleghany County as a result of sexual assault claims against an elder at a church. The Commonwealth was able to prosecute the elder for multiple felonies against minors; however, the statute of limitations had tolled on a number of the misdemeanor sexual offenses the elder had committed against some of the minors.<sup>1</sup>

Senate Bill 1253 would have increased the statute of limitations for certain misdemeanor sexual offenses to be prosecuted if the victim was a minor at the time of the offense. The bill specifically provided that the statute of limitations for certain misdemeanor sexual offenses against minors would be increased to “...no later than one year after the victim reaches majority.” If enacted, SB 1253 would increase the statute of limitations for six offenses under Virginia law:

- (i) Carnal knowledge of an inmate, parolee, probationer, detainee, or pretrial or posttrial offender;<sup>2</sup>
- (ii) Sexual battery;<sup>3</sup>
- (iii) Infected sexual battery;<sup>4</sup>
- (iv) Sexual abuse of a child under 15 years of age;<sup>5</sup>
- (v) Attempted sexual battery;<sup>6</sup> and,
- (vi) Penetration of mouth of child with lascivious intent.<sup>7</sup>

Currently the statute of limitations for these offenses is one year.<sup>8</sup>

## Virginia Law

There is no statute of limitations for the prosecution of a felony offense in Virginia. Generally the prosecution of a misdemeanor offense must commence within one year of the date of the occurrence of the offense.<sup>9</sup> Virginia law includes a number of exceptions to this general rule.

The misdemeanor offenses currently exempted from the general rule include:<sup>10</sup> petit larceny;<sup>11</sup> attempt to produce an abortion;<sup>12</sup> practicing law without a license;<sup>13</sup> placing a child for adoption without a license;<sup>14</sup> committing fraud in connection with the Virginia Unemployment Compensation Act;<sup>15</sup> discharge, dumping or emission of toxic substances;<sup>16</sup> Building Code violations under Virginia Code § 36-106;<sup>17</sup> violation of any professional or occupational license requirements;<sup>18</sup> violation of any professional licensure requirement imposed by a locality;<sup>19</sup> malfeasance in office;<sup>20</sup> violation of the Condominium Act;<sup>21</sup> illegal sale or purchase of wild animals;<sup>22</sup> tax evasion;<sup>23</sup> cruelty to non-agricultural animals;<sup>24</sup> unlawfully taking a nude video or photo of another;<sup>25</sup> violation of the Campaign Finance Disclosure Act;<sup>26</sup> violation of the Computer Crimes Act or an offense involving identity theft;<sup>27</sup> falsifying patient medical records;<sup>28</sup> and, desertion of a spouse or child or for neglect or refusal to provide support and maintenance for a spouse or child.<sup>29</sup>

The statute of limitations is tolled if a person has fled from justice or concealed themselves to avoid arrest.<sup>30</sup>

## Legal Review of Surrounding States

Staff reviewed the laws of surrounding states to determine whether they had statutes of limitations applicable to misdemeanor sexual offenses against minors that are longer than for misdemeanors, generally. Two states, Kentucky and Maryland, have increased their usual statutes of limitations for misdemeanors if the misdemeanor involves the sexual abuse of a minor.

Kentucky has a one year statute of limitations for all misdemeanor offenses except for offenses involving the sexual abuse of a minor.<sup>31</sup> A prosecution for a misdemeanor offense involving the sexual abuse of a minor in Kentucky must commence within five years after the victim attains the

age of eighteen (18) years.<sup>32</sup> Maryland has a one year statute of limitations on misdemeanor offenses but includes a number of exceptions within the statute.<sup>33</sup> One such exception in Maryland is a three year statute of limitations from the date of the occurrence of the offense for the sexual abuse of a minor student by a person in a position of authority.<sup>34</sup>

North Carolina, Tennessee and West Virginia do not extend their usual statutes of limitations for misdemeanors in instances where the sexual abuse of a minor has occurred. North Carolina has, in practice, a two year statute of limitations for all misdemeanors.<sup>35</sup> Tennessee has a one year statute of limitations for nearly all misdemeanor offenses.<sup>36</sup> West Virginia has a one year statute of limitations for all misdemeanor offenses except for perjury.<sup>37</sup>

## Conclusion

Statutes of limitations in criminal prosecutions provide a balance between the need to ensure that justice is served and the right of a criminal defendant to have a prompt resolution of the case and the ability to access and present evidence on his behalf. The United States Supreme Court has noted that statutes of limitations “...protect individuals from having to defend themselves against charges when the basic facts may have become obscured by the passage of time and to minimize the danger of official punishment because of acts in the far-distant past.”<sup>38</sup> The Court further reasoned that the imposition of a statute of limitations may “...have the salutary effect of encouraging law enforcement officials promptly to investigate suspected criminal activity.”<sup>39</sup>

The determination of whether to extend the statute of limitations for misdemeanor sexual offenses against minors is a policy question. The general rule in Virginia is that the statute of limitations for a misdemeanor offense is one year. Numerous exceptions to this general rule exist under current Virginia law.

As a result of the study effort, the Crime Commission endorsed the following policy option at its September 2015 meeting and unanimously voted in favor at its December 2015 meeting.

**Policy Option 1:** Should the statute of limitations for certain misdemeanor sex offenses, where the victim is a minor, be increased from 1 year to no later than 1 year after the victim turns 18 years of age?

Identical bills bearing the recommendation of the Crime Commission were introduced in both the Senate and the House of Delegates during the Regular Session of the 2016 General Assembly. Senator R. Creigh Deeds introduced Senate Bill 354. Delegates Charniele L. Herring and C. Todd Gilbert introduced House Bills 510 and 769, respectively. Senate Bill 354 and House Bill 510 were passed by the General Assembly and were signed by the governor. House Bill 769 was left in the House Courts of Justice Committee.

<sup>1</sup> The background on the origins of the legislation was provided by Senator R. Creigh Deeds during his statement at the Crime Commission meeting on September 29, 2015.

<sup>2</sup> VA. CODE ANN. § 18.2-64.2 (2015).

<sup>3</sup> VA. CODE ANN. § 18.2-67.4 (2015).

<sup>4</sup> VA. CODE ANN. § 18.2-67.4:1 (2015).

<sup>5</sup> VA. CODE ANN. § 18.2-67.4:2 (2015).

<sup>6</sup> VA. CODE ANN. § 18.2-67.5(C) (2015).

<sup>7</sup> VA. CODE ANN. § 18.2-370.6 (2015).

<sup>8</sup> VA. CODE ANN. § 19.2-8 (2015).

<sup>9</sup> Id.

<sup>10</sup> Id. (All of the exceptions are listed in this code section).

<sup>11</sup> The statute of limitations for petit larceny is five years from the date of the offense.

<sup>12</sup> The statute of limitations for an attempt to produce an abortion is two years from the date of the offense.

<sup>13</sup> The statute of limitations for practicing law without a license is two years after the discovery of the offense.

<sup>14</sup> The statute of limitations for placing a child for adoption without a license is one year after the date of the filing of the petition for adoption.

<sup>15</sup> The statute of limitations for fraud in connection with the Virginia Unemployment Compensation Act is three years from the date of the offense.

<sup>16</sup> The statute of limitations for the discharge, dumping or emission of toxic substances is three years from the date of the offense.

<sup>17</sup> The statute of limitations for Building Code violations under Virginia Code § 36-106 is one year after discovery of the offense, provided that such discovery occurs within two years of the date of initial occupancy or use after construction of the building or structure, or the issuance of a certificate of use and occupancy for the building or structure, whichever is later. However, prosecutions relating to the maintenance of existing buildings or structures shall commence within one year of the issuance of a notice of violation.

<sup>18</sup> The statute of limitations for violation of any professional or occupational license requirements is one year from discovery of the offense, but no later than five years from the date of the offense.

<sup>19</sup> The statute of limitations for violation of any professional licensure requirement imposed by a locality is one year from discovery of the offense, but in no case later than five years from the date of the offense.

<sup>20</sup> The statute of limitations for malfeasance in office is two years from the date of the offense.

<sup>21</sup> The statute of limitations for violations of the Condominium Act is three years from the date of the offense.

<sup>22</sup> The statute of limitations for illegal sales or purchases of wild birds, wild animals and freshwater fish is three years from the date of the offense.

<sup>23</sup> The statute of limitations for tax evasion related offenses under Title 58.1 is three years from the date of the offense unless a longer period is otherwise prescribed.

<sup>24</sup> The statute of limitations for cruelty to non-agricultural animals is five years from the date of the offense.

<sup>25</sup> The statute of limitations for unlawfully taking the videographic or still image of any nonconsenting person is five years from the date of the offense.

<sup>26</sup> The statute of limitations for a violation of the Campaign Finance Disclosure Act is one year from the discovery of the offense but in no case more than three years after the date of the offense.

<sup>27</sup> The statute of limitations for a violation of the Virginia Computer Crimes Act or for identity theft under Virginia Code § 18.2-186.3 is the earlier of either five years after the commission of the last act in the course of conduct constituting the violation of the article or one year after the existence of the illegal act and the identity of the offender are discovered by the Commonwealth, by the owner, or by anyone else who is damaged by such violation.

<sup>28</sup> The statute of limitations for falsifying patient records is three years from the date of the offense.

<sup>29</sup> There is no statutory time limitation for prosecutions for desertion of a spouse or child or for neglect or refusal or failure to provide for the support and maintenance of a spouse or child.

<sup>30</sup> VA. CODE ANN. § 19.2-8 (Lexis Advance 2015).

<sup>31</sup> KY. REV. STAT. ANN. § 500.050(2) (Lexis Advance 2015).

<sup>32</sup> KY. REV. STAT. ANN. § 500.050(3) (Lexis Advance 2015).

<sup>33</sup> MD. CODE ANN., CTS. & JUD. PROC. § 5-106 (Lexis Advance 2015).

<sup>34</sup> MD. CODE ANN., CTS. & JUD. PROC. § 5-106(z) (Lexis Advance 2015).

<sup>35</sup> N.C. GEN. STAT. § 15-1 (2015). While there is a stated exception for “malicious misdemeanors,” this verbiage is vestigial, and case law has made the phrase, practically speaking, irrelevant. *See State v. Brewer*, 258 N.C. 533 (1963); *State v. Frisbee*, 142 N.C. 671 (1906). For all intents, misdemeanor prosecutions in North Carolina, (and this includes all sexual misdemeanors), must be commenced within 2 years, unless there is a specific statute of limitations listed in an individual misdemeanor statute; e.g., N.C. GEN. STAT. § 105-236(9) (2015) (prosecution for failure to file a tax return must be commenced within six years).

<sup>36</sup> TENN. CODE ANN. § 40-2-102(a) (2015). *But see* TENN. CODE ANN. §§ 40-2-102(a), 40-2-102(b), 62-18-120(g) (2015) (Tennessee law includes exceptions to the one year statute of limitations for misdemeanor gaming offenses,

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criminal impersonation accomplished through the use of a fraudulently obtained driver license, and land surveying without a license).

<sup>37</sup> W. VA. CODE ANN. § 61-11-9 (Lexis Advance 2015).

<sup>38</sup> Toussie v. United States, 397 U.S. 112, 114-115 (1970).

<sup>39</sup> Id. at 115.