



2001 NORTH FRONT STREET
BUILDING #1, SUITE 210
HARRISBURG, PA 17102
(717) 238-5416
FAX (717) 231-3912

FOUNDED 1912

PENNSYLVANIA DISTRICT ATTORNEYS ASSOCIATION

November 8, 1990

TESTIMONY OF PENNSYLVANIA DISTRICT ATTORNEYS ASSOCIATION BEFORE THE HOUSE JUDICIARY COMMITTEE IN SUPPORT OF SENATE BILL 634

PRESIDENT

JOHN C. PETTIT
Washington

VICE-PRESIDENT

ALAN M. RUBENSTEIN
Bucks

SECRETARY-TREASURER

J. MICHAEL EAKIN
Cumberland

IMMEDIATE-PAST PRESIDENT

JAMES P. MacELREE, II
Chester

EXECUTIVE COMMITTEE

RAYMOND L. HAMILL
WILLIAM H. RYAN, JR.
CLAUDE A. LORD SHIELDS
WILLIAM J. HABERSTROH
TED McKNIGHT

LEGISLATIVE CHAIRMAN

RONALD D. CASTILLE

CHAIRMAN OF APPEALS

ROBERT E. COLVILLE

DIRECTOR OF EDUCATION & TRAINING

JANICE MARTINO-GOTTSHALL

EXECUTIVE DIRECTOR

KIMBERLY B. CUNNINGHAM

CYNTHIA C. MARTELLI, CHIEF, CHILD ABUSE UNIT
PHILADELPHIA DISTRICT ATTORNEY'S OFFICE

Senate Bill No. 634, amending the tolling provisions of the statutes of limitation, serves to remedy existing problems with 42 Pa.C.S.A. 5554, and therefore should be supported. At the current time, the tolling statute presents two major obstacles to the successful prosecution of sexual assaults on children where the child fails to disclose the incident for a lengthy period of time.

First, as it presently reads, the tolling statute does not specifically apply to sexual offenses committed against children. The statute speaks of crimes involving "injuries to the person" caused by a "wrongful act, or neglect, or unlawful violence, or negligence". While this language is clearly sufficient to embrace physical injuries to children, the absence of any language specifically targeting sexual offenses against children has forced us to argue that sexual abuse is a "wrongful act", and that it involves "injuries to the person" in that a sexually abused child is injured emotionally and mentally. We predicate our argument on the fact

that the statute does not expressly require physical injury, and that the generic "injuries to the person" encompasses the full panoply of ways in which a person can be hurt. While we have been successful in convincing our trial courts with these arguments, it has often been an arduous and uphill battle. Our judges have been concerned by the absence of any language in the statute that specifically relates to sexual offenses, and some judges are inclined toward concrete thinking, i.e., that "injuries to the person" means injuries that can be seen, such as bruises, burns, and so forth. Senate Bill No. 634 alleviates this significant problem by clearly delineating the full range of sexual activity against children that would be actionable.

Once we have persuaded the trial court that sexual offenses fall within the purview of the statute, we must then overcome the second major obstacle. We must next address the issue of whether the perpetrator is a "parent", a "person responsible for the child's welfare", an "individual residing in the same home", or a "paramour of the child's parent". Unfortunately, unless the perpetrator clearly falls into one of these categories, the tolling statute is routinely found by the court to not apply. Frequently, the person who has molested a child has been a visiting family member, an adult who takes the child on a brief outing, a neighbor, a friend of the family, or some other adult who has access to the child for a short period of time and is alone with the child for that period of time, but is not a caretaker per se. While we have argued that an adult who takes a child away from the child's home assumes responsibility

for the child's welfare until the child is returned to the parent or primary caretaker, our courts have declined to find that such a person falls within the meaning of the statute. Due to the context in which the phrase "person responsible for the child's welfare" is used, it takes on the coloring and hue of the surrounding nouns, namely, "parent", "paramour of parent", and "individual residing in the same home". Our trial courts have refused to hold that any adult who has limited and unsupervised access to a child becomes a "person responsible for the child's welfare", and especially so where the adult is merely a visitor in the child's home, or a neighbor, or a friend. Senate Bill No. 634 corrects this fatal obstacle by eliminating any provision that in order to be actionable, sexual offenses against children must have been committed by one who stands in a caretaking relationship with the child.

In this vein, it is important to recognize the artificiality of any distinction between a caretaker who sexually abuses children and a non-caretaker who sexually abuses children. What is significant is the fact that a child has been sexually abused, not who the perpetrator was. Prosecution should not be made to rest on the perpetrator falling within a certain category of offenders; all offenders should be prosecuted and all cases of child sexual assault should be actionable. Senate Bill No. 634 represents an endorsement of this philosophy, and allows Pennsylvania to join the large number of states who either have special statutes of limitation for sexual offenses committed against children, or have a tolling provision which allows for

successful prosecution of such cases when they finally come to light.

The primary need for tolling the statute of limitations in child sexual assault cases is the well-established and well-documented fact that most children simply do not disclose improper contact in a prompt and timely fashion. The reasons for this phenomenon are varied, complex, and insidious. First and foremost, let us not forget the truism that children are children. As such, they lack the emotional, educational and maturity developmental levels to assume responsibility, make decisions and act logically in a situation that is strange, frightening, confusing and beyond their comprehension. Children are simply not in control; they are taught to be polite, obedient and respectful to their elders.

Second, the range of emotions experienced by victimized children can be paralyzing: guilt, shame, embarrassment, fear, love, hate, a sense of being tainted or branded, lack of self-esteem, self-loathing, resignation, depression, and so forth. Especially where the abuse is ongoing, children become trapped by their failure to have disclosed after the first time, and many find that the easiest course of action is no action. Many children delude themselves into believing that it won't happen again, or that they can prevent it from reoccurring by avoiding being alone with the perpetrator.

Third, in every single case, there are overt and covert factors working either to ensure the child's silence or to induce the child's cooperation. In a great majority of the cases, the perpetrator will directly threaten the child, such as, "I'll kill you if you tell", or "I'll kill all your family if you tell". Because children are magical thinkers, they keep their secret, secure in the belief that if they do tell, they or all their family members really will be killed. Aside from direct threats or physical coercion such as slapping and hitting, the perpetrator is invariably an authority figure, in the sense that he is older, larger, stronger, and smarter than the child victim; he may also be a person to whom the child naturally turns for guidance, and/or a person who normally dispenses discipline. In most cases involving intra-familial child sexual abuse, there is a pattern of subtle seduction, consisting of a gradual introduction of sexual contact and a gradual escalation of sexual activity, accompanied by repeated reassurances such as "it's okay", or "this is normal, this is what all daddies do with their daughters", or "this is our secret, something special between you and me". For these children, the activity is initially perceived as not wrong, and when they are finally old enough to realize the truth, they are locked into keeping the secret. These children are often torn between their dislike for the activity and their desire to have it stop, and their love for and loyalty to their parent, as well as their concern that disclosure would be disastrous to the family.

the child will confide in a friend who is sworn to secrecy, but who later tells because he or she feels it is the right thing to do. Sometimes children disclose because they've been exposed to "good touch/bad touch" educational programs in their schools or neighborhoods or on television.

With all untimely disclosures, the prosecution problems inherent in such a situation are self-evident. While the majority of child sexual assault cases involve abuse by a parent or paramour of a parent, thus tolling the period of limitation for all crimes, a significant portion of these cases involve abuse by a non-caretaker family member, or a friend of the family, or a neighbor, or some other person who is not "responsible for the child's welfare". In such cases, if the child does not disclose within two (2) years of the most recent incident, all the misdemeanor charges are lost, and if the child does not disclose within five (5) years of the most recent incident, all the felony charges are lost, thus making any prosecution impossible. Senate Bill No. 634 will remedy this unjust situation. It is for this reason, namely, the revival of prosecution of misdemeanors and felonies for children who disclose outside the applicable periods of limitation, that this Bill has the support of the Pennsylvania District Attorneys Association.