

Not Enough Time?: The Constitutionality of Short Statutes of Limitations for Civil Child Sexual Abuse Litigation

I. INTRODUCTION

Plaintiffs who bring tort claims against those who have sexually abused them as children often face a formidable legal obstacle: the pertinent civil statute of limitations.¹ Plaintiffs have attempted to sidestep statutes of limitations by claiming these statutes were “tolled” because they had repressed the knowledge of their sexual injuries and had only recently “discovered” them.² Other victims of abuse have claimed that, though they were cognizant of their abuse, they failed to connect their emotional injuries with their abuse until they received therapy as adults; therefore, they argue that “discovery” rules should apply.³ Although sympathetic to these victims’ plight, courts typically have refused to apply discovery rules and allow these tort actions.⁴

In deciding these cases, courts often discuss the policies behind statutes of limitations.⁵ These policies include: Concern that evidence will become stale, lost, or destroyed if actions are delayed;⁶ recognition of judicial economy by limiting the time to bring claims;⁷ the possibility of continuing “blackmail” by potential plaintiffs;⁸ perceived unfairness to potential defendants who may be forced to defend themselves long after the alleged act;⁹ the concept of grace;¹⁰ and recognition of self-reformation by potential defendants.¹¹

It is the legislature’s role to balance these policies and to determine the length of statutes of limitations.¹² Injuries likely to become known to a plaintiff with relative

1. See, e.g., *Smith v. Smith*, 830 F.2d 11, 12 (2d Cir. 1987); *Johnson v. Johnson*, 701 F. Supp. 1363, 1369–70 (N.D. Ill. 1988); *State v. Bentley*, 239 Kan. 334, 339, 721 P.2d 227, 230 (1986); *Tyson v. Tyson*, 107 Wash. 2d 72, 76–80, 727 P.2d 226, 228–30 (1986); *Hammer v. Hammer*, 142 Wis. 2d 257, 264–67, 418 N.W. 2d 23, 26–27 (1987).

2. See *supra* note 1 (cases cited). The discovery rule generally states that a statute of limitations does not run until a victim discovers, or with reasonable care should discover, his injury. *Urie v. Thompson*, 337 U.S. 163, 168–71 (1949).

3. E.g., *DeRose v. Carswell*, 196 Cal. App. 3d 1011, 1017–18, 242 Cal. Rptr. 368, 371 (1987); *Raymond v. Ingram*, 47 Wash. App. 781, 785–86, 737 P.2d 314, 316–17 (1987).

4. See, e.g., *Smith*, 830 F.2d at 13; *Bentley*, 239 Kan. at 339, 721 P.2d at 230; *Tyson*, 107 Wash. 2d at 79–80, 727 P.2d at 230. *But see Johnson*, 701 F. Supp. 1363; *Hammer*, 142 Wis. 2d 257, 418 N.W.2d 23.

5. See *Tyson*, 107 Wash. 2d at 75–76, 727 P.2d at 227–28 (Goodloe, J., concurring); *Hammer*, 142 Wis. 2d at 267, 418 N.W.2d at 27.

6. “The purpose of the various statutes of limitations in law is to require one to present his claim before evidence to rebut it is apt to be destroyed or lost.” *City of Houston v. Bergstrom*, 468 S.W.2d 588, 590 (Tex. Ct. App. 1971).

7. *People v. Zamora*, 18 Cal. 3d 538, 547, 557 P.2d 75, 81, 134 Cal. Rptr. 784, 790 (1976).

8. *Id.*

9. See *id.* at 546, 557 P.2d at 80, 134 Cal. Rptr. at 789; *Tyson*, 107 Wash. 2d at 75–76, 727 P.2d at 228.

10. See *Chase Securities Corp. v. Donaldson*, 325 U.S. 304, 314 (1945); 22 C.J.S. *Criminal Law* § 223, at 573–74 n.88 (1961) (cases cited).

11. “There comes a time when [the defendant] ought to be secure in his reasonable expectation that the slate has been wiped clean of ancient obligations, and he ought not to be called on to resist a claim when ‘evidence has been lost, memories have faded, and witnesses have disappeared.’” *Rosenberg v. Town of N. Bergen*, 61 N.J. 190, 201, 293 A.2d 662, 667–68 (1972) (quoting *Developments in the Law: Statutes of Limitations*, 63 HARV. L. REV. 1177, 1185 (1950)). See also *Zamora*, 18 Cal. 3d at 547, 557 P.2d at 81, 134 Cal. Rptr. at 790.

12. See *Tyson*, 107 Wash. 2d at 80, 727 P.2d at 230 (Goodloe, J., concurring); *Hammer v. Hammer*, 142 Wis. 2d 257, 267, 418 N.W.2d 23, 27 (1987). The *Hammer* court quoted the trial court judge: “The legislature is free to carve out an exception for cases of incestuous abuse involving minors in Chapter 893 of the Wisconsin Statutes.” *Id.* at 264, 418 N.W.2d at 25. See also Fuschberg, *Our Court Disposes, Defendant Reposes*, 14 TRIAL LAW. Q. 3, 4 (1982).

speed, such as those resulting from defamation or assault and battery, are afforded short statutes of limitations.¹³ Injuries that might not become apparent for some time, such as those resulting from breach of contract or negligence, have longer statutes of limitations or are governed by discovery rules.¹⁴ Legislatures have enacted tolling statutes that allow a plaintiff to proceed with an otherwise barred action,¹⁵ based on justifications such as continued relationship,¹⁶ minority,¹⁷ mental incapacity,¹⁸ or fraud by the defendant.¹⁹

Some judges believe courts should play a more active role in interpreting the boundaries of discovery rules, particularly in cases involving child sexual abuse.²⁰ A Wisconsin appellate court recently allowed a woman sexually abused as a child to bring an action against her father after the statute of limitations had run.²¹ The court applied discovery rules so as to allow the claim.²² Moreover, the United States Court of Appeals for the Ninth Circuit recently allowed a person sexually abused as an *adult* to bring an action after the statute of limitations for personal injuries had run.²³ The court held that her cause of action accrued only upon her being advised by her psychiatrist that the abuse had been the cause of her emotional injuries.²⁴ In addition, a number of legal commentators have recommended that the discovery rules apply to child sexual abuse actions brought by now-adult victims.²⁵

Given the prevalence of child sexual abuse,²⁶ the issues these cases present will be considered by an increasing number of state and federal courts.²⁷ This Note

13. See generally Epstein, *The Temporal Dimension in Tort Law*, 53 U. CHI. L. REV. 1175, 1184-88 (1986); Rubinfeld, *On Determining the Optimal Magnitude and Length of Liability in Torts*, 13 J. LEGAL STUD. 551, 558 (1984).

14. See *supra* notes 1-2. See also Epstein, *supra* note 13, at 1183 n.19.

15. Epstein, *supra* note 13, at 1183 n.19.

16. See Comment, *The Continuous Treatment Doctrine: A Toll on the Statute of Limitations for Medical Malpractice in New York*, 49 ALB. L. REV. 64 (1984).

17. See, e.g., *City of Houston v. Bergstrom*, 468 S.W.2d 588, 590 (Tex. Ct. App. 1971); *Hammer v. Hammer*, 142 Wis. 2d 257, 264, 418 N.W.2d 23, 25 (1987) (see *supra* note 12 for quote).

18. See Annotation, *Time of Existence of Mental Incompetency Which Will Prevent or Suspend Running of Statute of Limitations*, 41 A.L.R.2d 726 (1955).

19. See Comment, *Adult Incest Survivors and the Statute of Limitations: The Delayed Discovery Rule and the Long-Term Damages*, 25 SANTA CLARA L. REV. 191, 197 (1985).

20. *State v. Bentley*, 239 Kan. 334, 341, 721 P.2d 227, 231 (1986) (Herd, J., dissenting); *Tyson v. Tyson*, 107 Wash. 2d 72, 90, 727 P.2d 226, 235 (1986) (Pearson, J., dissenting).

21. *Hammer v. Hammer*, 142 Wis. 2d 257, 418 N.W.2d 23 (1987).

22. *Id.* at 264, 418 N.W.2d at 26.

23. *Simmons v. United States*, 805 F.2d 1363, 1367-68 (9th Cir. 1986).

24. *Id.* at 1368.

25. See Note, *Statutes of Limitations in Civil Incest Suits: Preserving the Victim's Remedy*, 7 HARV. WOMEN'S L.J. 189 (1984). See also Comment, *Tort Remedies for Incestuous Abuse*, 13 GOLDEN GATE U. L. REV. 609, 628-31 (1983); Comment, *Adult Incest Survivors*, *supra* note 19, at 195-97.

26. The National Committee for Prevention of Child Abuse states that "[r]etrospective studies of adult populations estimate that anywhere from 15% to 38% of females suffered some form of sexual maltreatment prior to reaching the age of eighteen; the number of male victims is often cited at 10%." National Committee for Prevention of Child Abuse, *A Fact Sheet: The Most Frequently "Asked-About" Issues Regarding Child Abuse and Neglect* (1988). See also Pierce & Pierce, *The Sexually Abused Child: A Comparison of Male and Female Victims*, in 9 CHILD ABUSE AND NEGLECT 191, 191-92 (1985). Child sexual abuse for purposes of this Note is defined as "contacts or interactions between a child and an adult when the child is being used as an object of gratification for adult sexual needs or desires." Note, *Minnesota's Hearsay Exception for Child Victims of Sexual Abuse*, 11 WM. MITCHELL L. REV. 799, 799 n.1 (1985) (quoting SEXUAL ABUSE OF CHILDREN: SELECTED READINGS 1 (1980)).

27. In fact, there may be wrestling among each other; the court in *Simmons v. United States*, 805 F.2d 1363 (9th Cir. 1986), expressly took an opposite position to the Washington Supreme Court.

suggests a legal approach to these issues, other than expanding discovery rules, that would allow more sexually abused children to bring personal injury claims, even after they have reached adulthood. Relying on a line of United States Supreme Court cases starting with *Mills v. Habluetzel*,²⁸ this Note will show that short personal injury statutes of limitations for child sexual abuse injuries may be challenged as unconstitutional. While recognizing the oft stated policies for statutes of limitations, these cases consider other factors in determining the constitutional validity of a statute of limitations and provide courts a rationale to recognize those factors of child sexual abuse that keep now-adult victims from taking timely legal action.²⁹ Part II of this Note discusses these factors and why courts should recognize the special impact of child sexual abuse on individuals and their subsequent inability to redress these wrongs. Part III asserts that judicial recognition of these factors should lead to a "heightened" constitutional evaluation of tort statutes of limitations for child sexual abuse claims under the equal protection clause. Finally, Part IV concludes that short statutes of limitations for child sexual abuse claims violate equal protection and must be lengthened to remedy that violation.³⁰

II. THE REALITIES OF CHILD SEXUAL ABUSE

Society's awareness of child sexual abuse has increased dramatically in the last few years.³¹ The American Humane Association estimates that there are 200,000 to 300,000 child sexual abuse cases per year.³² National Committee for the Prevention of Child Abuse statistics show that 315,000 child sexual abuse cases were officially reported in 1987.³³ National extrapolations from an intensive study in Santa Clara County, California, indicate that there may be as many as 400,000 cases of child sexual abuse each year.³⁴

The psychological trauma³⁵ of sexual abuse is recognized by the American Psychiatric Association. In 1980, the Association incorporated into its Diagnostic and Statistical Manual of Mental Disorders the term "Post-Traumatic Stress Disorder," which encompasses child sexual abuse.³⁶ A knowledge of this disorder is important to a discussion of laws limiting child sexual abuse litigation.

28. 456 U.S. 91 (1982). *Mills* held that a one-year period for establishing paternity denies equal protection of the law to illegitimate children. *Id.* at 101.

29. See *infra* notes 37-54 and accompanying text.

30. See *infra* notes 150-53 and accompanying text.

31. Walker & Edwall, *Domestic Violence and Determination of Visitation and Custody in Divorce*, in DOMESTIC VIOLENCE ON TRIAL: PSYCHOLOGICAL AND LEGAL DIMENSIONS OF FAMILY VIOLENCE 127, 135 (D. Sonkin ed. 1987); Kerns, *The Pediatric Perspective*, in FOUNDATIONS OF CHILD ADVOCACY 23, 33 (D. Bross & L. Michaels eds. 1987).

32. Kerns, *supra* note 31, at 33.

33. *Id.*

34. *Id.*

35. "Trauma" is defined as "an injury to the body or psyche by some type of shock, violence or unanticipated situation." R. BARKER, THE SOCIAL WORK DICTIONARY 166 (1987).

36. See J. JACOBSEN, PSYCHIATRIC SEQUALAE OF CHILD ABUSE 111 (1986) (describing the "child sexual abuse accommodation syndrome"); C. SCRIGNAR, POST-TRAUMATIC STRESS DISORDER: DIAGNOSIS, TREATMENT, AND LEGAL ISSUES 138 (1984). See also *Keri v. State*, 179 Ga. App. 664, 665, 347 S.E.2d 236, 237 (1986) (therapist allowed to testify on child abuse accommodation syndrome); AM. PSYCHIATRIC A., DIAGNOSTIC AND STATISTICAL MANUAL OF DISORDERS § 309.89 at 247 (3d rev. ed. 1987) [hereinafter DSM-III-R]; PROTECTION OF ABUSED VICTIMS: STATE LAWS AND DECISIONS 110-11 (1982) [hereinafter ABUSED VICTIMS] (describing the "sexually abused child syndrome").

The term "Post-Traumatic Stress Disorder" (PTSD) is used to describe the psychological impact of traumatic events on a person.³⁷ The disorders resulting from these events may be either a combination of physical and mental disorders, or solely a residual mental incapacity continuing after a physical injury has healed.³⁸ PTSD can exist even when a trauma victim has not suffered demonstrable physical injury.³⁹ A sexually abused child who suffers from this disorder may exhibit symptoms of unnatural secrecy, feelings of helplessness or entrapment, delayed or conflicting disclosure, retraction, and various phobias.⁴⁰ A practical consequence is that the child may repress or delay disclosing the sexual abuse until after the pertinent personal injury statute of limitations has run.

The possibility of the sexually abused child suffering from a PTSD increases when her⁴¹ sexual abuser is (and he often is) a parent⁴² or other trusted adult,⁴³ such as a relative or family friend.⁴⁴ In one study of 583 child sexual abuse cases, the offender was a family member in forty-seven percent of the cases, an acquaintance in forty-two percent of the cases, and a stranger in only eight percent of the cases.⁴⁵ The abuse twists the child's perception of normality in relationships⁴⁶ and breaks down the child's ability to trust others.⁴⁷ The intimacy of the sexual acts further accentuates the intertwined mind and body damage the child suffers due to the abuse.⁴⁸

The child's damaged psyche and weakened ability to perceive right and wrong⁴⁹

37. DSM-III-R, *supra* note 36, at 247-48.

38. *Id.* at 247-51; Lindberg & Distad, *Post-Traumatic Stress Disorders in Women Who Experienced Childhood Incest*, in 9 CHILD ABUSE AND NEGLECT 329, 329-30 (1985).

39. C. SCRIGNAR, *supra* note 36, at 138.

40. *Id.* See also J. JACOBSEN, *supra* note 36, at 113; Lindberg & Distad, *supra* note 38, at 334.

41. HEW statistics show that 90% of child sexual abuse victims are females from infants through adolescents. NATIONAL CENTER ON CHILD ABUSE AND NEGLECT, U.S. DEP'T OF HEALTH, EDUCATION, AND WELFARE, PUB. NO. 75-30073, in 1 CHILD ABUSE AND NEGLECT: THE PROBLEM AND ITS MANAGEMENT 7 (1976) [hereinafter CHILD ABUSE PROBLEM]. National studies show that in 1982, 83% of child sexual abuse cases involved females. A. RUSSELL & C. TRAINOR, TRENDS IN CHILD ABUSE AND NEGLECT: A NATIONAL PERSPECTIVE 106 (1984). In recognition of this fact, this Note will use feminine pronouns when referring to sexual abuse victims.

42. G. THORMAN, INCESTUOUS FAMILIES 138 (1983); Becker & Abel, *The Rights and Treatment of the Sexually Abused Client*, in PRESERVATION OF CLIENT RIGHTS 136, 143 (G. Hannah, W. Christian & H. Clark eds. 1981).

43. Approximately 75% of sexual offenders, usually males, are known to the child or the child's family. CHILD ABUSE PROBLEM, *supra* note 41, at 7. See also U.S. DEP'T OF JUSTICE, NATIONAL SYMPOSIUM ON CHILD MOLESTATION I (1984) [hereinafter SYMPOSIUM]; A. RUSSELL & C. TRAINOR, *supra* note 41, at 98; Kerns, *supra* note 31, at 34; National studies show that in 1982, 30% of child sexual abuse cases involved a parent or a relative. *Id.*

44. Note, *The Testimony of Child Victims in Sex Abuse Prosecutions: Two Legislative Innovations*, 98 HARV. L. REV. 806, 807 n.14 (1985).

45. *Id.*

46. Children are taught from an early age to be obedient to adults. They learn that if they do what the adult tells them to do, they will be rewarded by gaining the adult's approval. Not to obey an adult may result in punishment. . . . [O]ffenders can pressure children into sexual activity by telling them that it is 'okay to do.' . . . In the case of a 30-year-old boyfriend of the mother who lived with the family, the six-year-old daughter was told, '[g]ood girls do what their Daddy tells them to do.' The reward in this situation, for over a six-year period, was the gain of the father-surrogate's approval.

A. BURGESS, A. GROTH, L. HOLMTRÖM & S. SGROI, SEXUAL ASSAULT OF CHILDREN AND ADOLESCENTS 86-87 (1978) [hereinafter A. BURGESS]. See also G. THORMAN, *supra* note 42, at 138.

47. G. THORMAN, *supra* note 42, at 139.

48. Kerns, *supra* note 31, at 33.

49. See A. BURGESS, *supra* note 46; M. CHESTERMAN, CHILD SEXUAL ABUSE AND SOCIAL WORK 3 (Social Work Monograph No. 33, 1985).

hinders the child from taking self-protective measures. It is fundamental that in order for a person to take action for a wrong, that person must perceive it as a wrong.⁵⁰ Even after she perceives the wrong, she must also distinguish what kind of wrong it is—a moral wrong, a social wrong, or a legal wrong—in order to take appropriate action.⁵¹ The sexually abused child's world is very often a confused one and thus she may be greatly disabled both in her ability to perceive wrongs⁵² and to take appropriate legal action.⁵³ The people she normally should be able to trust for protection and moral guidance are often the ones hurting her.⁵⁴

The child's pain or pleasure from the sexual abuse may further confuse her perception of her abuse, her abuser, and her relationship to the abuser.⁵⁵ This confusion may be compounded by any conflicting verbal information she receives. The abuser may tell the child that this conduct is normal and is an act of love.⁵⁶ The abuser may also threaten that harm will come to the child or someone she loves if she tells anyone about the abuse.⁵⁷ The child's confusion and fear work to the abuser's benefit. The abuse may continue unnoticed and more time will pass before the child reestablishes emotional and psychological equilibrium and takes protective action.⁵⁸

A victim may be years into her adulthood before she acknowledges and deals with her sexual abuse as a child.⁵⁹ Even when a victim recognizes and acknowledges her abuser's conduct, she may not understand how that conduct has damaged her.⁶⁰ A sexual abuse victim often needs a psychiatrist to discover the existence, nature, cause, and extent of her injuries.⁶¹ By the time she sees a therapist, it is often too late; the applicable statute of limitations has run.⁶²

The sexual abuse victim has understandable reasons for delay in seeing a

50. L. HOULGATE, *THE CHILD AND THE STATE: A NORMATIVE THEORY OF JUVENILE RIGHTS* 70 (1980).

51. *Id.*

52. As one woman said, in recounting her childhood experience with her father, 'I think the reason why a lot of kids don't do anything, don't tell anybody, is because an adult is an authority figure, and somehow they have been forced to do something wrong by an authority, and therefore it must have been right.'

A. BURGESS, *supra* note 46, at 89. See also G. THORMAN, *supra* note 42, at 139; M. CHESTERMAN, *supra* note 49, at 3.

53. "Laura had not perceived the incestuous conduct as injurious because (1) it was of such a long duration and frequency that it had been perceived by her as natural behavior. . . ." *Hammer v. Hammer*, 142 Wis. 2d 257, 262, 418 N.W.2d 23, 25 (1987).

54. See *supra* notes 42-47 and accompanying text. See generally G. THORMAN, *supra* note 42. The offender is typically a family member, and other family members often acquiesce in protecting the offender.

55. M. CHESTERMAN, *supra* note 49, at 4; Thorton, *Preface to I NEVER TOLD ANYONE: WRITINGS BY WOMEN SURVIVORS OF CHILD SEXUAL ABUSE* 15, 19 (E. Bass & L. Thornton 1st ed. 1983); Steele & Alexander, *The Long Term Effects of Sexual Abuse in Childhood*, in *SEXUALLY ABUSED CHILDREN AND THEIR FAMILIES* 223, 228 (P. Mrazek & C. Kempe 1st ed. 1981).

56. A. BURGESS, *supra* note 46, at 86-87.

57. "Sexual abuse is in the nature of a violent physical assault. Any victim of intrafamilial abuse is likely to view the perpetrator as unpredictable and threatening." *State v. French*, 392 N.W.2d 596, 599 (Minn. Ct. App. 1986) (quoting the trial court).

"[T]hreats are commonplace in sexual assaults on children." *State v. Bentley*, 239 Kan. 334, 335, 721 P.2d 227, 227 (1986). See also SYMPOSIUM, *supra* note 43, at 2.

58. SYMPOSIUM, *supra* note 43, at 1. See generally A. BURGESS, *supra* note 46.

59. See *supra* note 1 (cases cited). See also J. JACOBSEN, *supra* note 36, at 117.

60. Paulson, Strouse & Chaleff, *Intrafamilial Incest and Sexual Molestation of Children*, in *THE RIGHTS OF CHILDREN: LEGAL AND PSYCHOLOGICAL PERSPECTIVES* 39, 56-60 (J. Henning ed. 1982).

61. *Id.*

62. See *Bentley*, 239 Kan. at 341, 721 P.2d at 231; *Tyson v. Tyson*, 107 Wash. 2d 72, 89, 727 P.2d 226, 235 (1986) (Pearson, J., dissenting).

therapist. The victim is naturally reluctant to find out or confirm that someone she trusted has wronged her.⁶³ She may blame herself for her abuser's conduct.⁶⁴ The sexual abuse victim may fear the consequences of exposure.⁶⁵ She may think or may have been told that she will have to leave the family.⁶⁶ She may even fear that a therapist will not believe her.⁶⁷ These fears and insecurities work to delay both therapy and legal action.

Even though the legal period for the victim's action may end, her sexual abuse will continue to play a dramatic part in her adulthood.⁶⁸ The victim is often riddled with shame, guilt, embarrassment, and fear.⁶⁹ Her ability to trust and develop relationships with the opposite sex may be severely hindered.⁷⁰ Of course, the effect of the abuse on her sexual attitudes is most devastating. In one study, eighty-seven percent of young female victims of father-daughter incest had serious sexual problems as adults with prostitution, promiscuity, and orgasmic dysfunction.⁷¹

Tolling a statute of limitations until the age of majority is no answer to these problems.⁷² The law presumes that upon reaching majority the child understands enough about herself, the wrong, its nature, and the law to file an action against her abuser.⁷³ This presumption incorrectly assumes that the age of majority is the age of maturity.⁷⁴ The child may have knowledge of the sexual acts. However, the child needs the maturity to know how to act on that knowledge. If a child is abused most of her "under majority" life, her maturity and her psyche are often drastically affected.

In addition, the practical difficulties facing a person sexually abused as a child do not disappear when she reaches the age of majority. As noted, the typical victim

63. See Becker & Abel, *supra* note 42, at 144.

64. A. BURGESS, *supra* note 46, at 88-90.

65. Psychologists have identified the following fears and factors that keep children from disclosing the abuse: 1) fear of punishment; 2) fear of not being believed; 3) fear of being blamed; 4) fear of abandonment or rejection; 5) fear of or belief in the authority of adults; and 6) communication barrier in discussing sexual acts when unfamiliar with terminology. *Id.* at 88-90.

66. *Id.*

67. In one national study on the incidence and severity of child abuse and neglect it was found that "two thirds of [abuse] cases were not reported to the appropriate authorities even though a professional source—mandated by law to report child maltreatment—had identified the child as maltreated." A. RUSSELL & C. TRAINOR, *supra* note 41, at 14. For an example of one woman's experience, see Thorton, *supra* note 55, at 18. One Pennsylvania court found as fact that: "Reports by children of incest or rape to family members or public authorities are viewed as suspect by those to whom the event is reported because adults frequently perceive that children tend to imagine or fantasize the event." *Fischer v. Dep't of Pub. Welfare*, 85 Pa. Commw. 215, 227, 482 A.2d 1137, 1142 (1984).

68. Paulson, Strouse & Chaleff, *supra* note 60, at 42-43. See also J. JACOBSEN, *supra* note 36, at 115-26 (finding the three classifications of problems resulting from incest: relational imbalance, increased intergenerational risk, and symptoms of Post-Traumatic Stress Disorder); M. CHESTERMAN, *supra* note 49, at 3.

69. Paulson, Strouse & Chaleff, *supra* note 60, at 43.

70. G. THORMAN, *supra* note 42, at 139; Steele & Alexander, *supra* note 55, at 227-29.

71. Paulson, Strouse & Chaleff, *supra* note 60, at 43.

72. The need for maturity of the survivor before she can confront her childhood incest experience results in a general lack of ability to file suit within the statutory period. . . . As has been seen, the maximum age at which an adult survivor of incest may file suit in this state is 21. Since many survivors are simply incapable of discovering a cause of action by the time they are 21 years old, they are effectively denied a legal remedy unless they are given the benefit of the discovery rule.

Tyson v. Tyson, 107 Wash. 2d 72, 89, 727 P.2d 226, 235 (1986) (Pearson, J., dissenting).

73. *Id.* at 92-93, 727 P.2d at 236.

74. See *supra* notes 23-29 and accompanying text.

is abused by someone she knows and trusts.⁷⁵ These relationships do not necessarily end upon a victim's reaching the age of eighteen, particularly if the abuser is a parent. Many people still live at home at the age of eighteen.⁷⁶ They may have the right to vote and drink alcohol, but they may still rely on their parents for shelter, food, and transportation. Children who rely on their parents for these necessities are, for all practical purposes, under their parents' control. They may feel forced to stay in a sexually abusive environment until they can gain financial independence.

In addition to financial dependence, the continuing emotional attachment to the abuser⁷⁷ may also delay a victim's legal action. It is very difficult to take a relative or close acquaintance to court and expose the sordid and embarrassing details of the abuse. The suit will have obvious implications for the child's future relationship with the parent, relative, or close acquaintance. Moreover, the potential effect of litigation on innocent family members and third parties, who may be unaware of the abuse, is a factor in delaying action for many victims.⁷⁸

One woman's experience best summarizes the many factors that may contribute to late legal action by a child sexual abuse victim:

Laura had not perceived the incestuous conduct as injurious because (1) it was of such a long duration and frequency that it had been perceived by her as natural behavior; (2) Warren [her father] had imposed isolation and secrecy on her; (3) the abuse had depersonalizing effects which had made her think of herself as an object to be used rather than as a person with rights; (4) she had been told by her father that the conduct was normal and his right, and (5) the abuse by an authority figure on whom she was dependent had made her distrustful of other authority figures who might have helped her.⁷⁹

The unique plight of people sexually abused as children, the potential effects of post-traumatic stress disorders⁸⁰ on their ability to acknowledge and understand their injuries,⁸¹ and the practical factors that inhibit them from taking action upon reaching majority are all important reasons why tort statutes of limitations as applied to child abuse cases should be constitutionally reexamined.

75. Approximately 78% of sexual abuse and molestation takes place within the home by members of either the nuclear or extended family. Paulson, Strouse & Chaleff, *supra* note 60, at 42.

76. This may be particularly true where the child comes from an impoverished background. According to 1983 statistics, 22% of all children under 18 live in poverty. The child's options for financial support and thus the ability to move away from home upon reaching 18 may be slim or none. For a breakdown of these statistics, see Cook & Laub, *Trends in Child Abuse and Juvenile Delinquency*, in 2 FROM CHILDREN TO CITIZENS: THE ROLE OF THE JUVENILE COURT 109, 122 (F. Hartmann ed. 1987).

77. See *supra* note 43.

78. "In addition to disorders in personality development, victims frequently feel to blame for the incarceration of the father, for break up of the family, and for the stigma the community directs to the victimized family." Paulson, Strouse & Chaleff, *supra* note 60, at 43.

79. Hammer v. Hammer, 142 Wis. 2d 257, 262, 418 N.W.2d 23, 25 (1987).

80. See *supra* notes 36-39 and accompanying text.

81. See *supra* note 40 and accompanying text.

III. CONSTITUTIONAL EVALUATION UNDER THE EQUAL PROTECTION CLAUSE OF STATUTES OF LIMITATIONS FOR CHILD SEXUAL ABUSE LITIGATION

“Children have a very special place in life which law should reflect.”⁸²

By failing to account for the distinctive obstacles to taking legal action encountered by child sexual abuse victims, personal injury statutes of limitations may violate equal protection. To show that a statute violates the equal protection clause of the Constitution, plaintiffs must demonstrate that the state has created arbitrary and unreasonable distinctions by treating similarly situated plaintiffs differently, or by treating dissimilarly situated plaintiffs similarly.⁸³ This Note maintains that states treat dissimilarly situated people similarly when the same personal injury statute of limitations applies to plaintiffs sexually *abused* as children as to plaintiffs sexually *violated* as adults.⁸⁴

The level of review given to a statute under the equal protection clause depends upon the nature of the statute. If it involves social or economic legislation, the Supreme Court generally applies a “rational basis” level of scrutiny.⁸⁵ That is, the statute will stand unless there is no rational relation between a legitimate legislative objective and the means selected by the legislature to achieve that objective.⁸⁶ If the statute involves gender or illegitimacy, and in some cases alienage, the Court will apply a type of intermediate level review.⁸⁷ For the statute to be upheld under intermediate level review, the means chosen by the legislature must serve an important governmental objective and be substantially related to the achievement of that objective.⁸⁸ If the statute is based upon a suspect classification, such as race, or if it impairs a fundamental right, the Court will apply a “strict scrutiny” standard of review.⁸⁹ The classification will be upheld only if it is necessary to promote a compelling governmental interest.⁹⁰

As noted, the majority of equal protection cases are analyzed under rational basis scrutiny and the Court has applied greater scrutiny in only a limited number of areas. One of the areas to which the Supreme Court has applied greater scrutiny is illegitimacy. The Supreme Court cases which have considered this area provide strong reasons for the application of intermediate level scrutiny to statutes of

82. *May v. Anderson*, 345 U.S. 528, 536 (1953) (Frankfurter, J., concurring).

83. L. TRIBE, *AMERICAN CONSTITUTIONAL LAW* 1438-39 (1988).

84. *See infra* notes 111-22 and accompanying text.

85. *Kadrmas v. Dickinson Pub. Schools*, 108 S. Ct. 2481, 2487 (1988).

86. *Id.*

87. *See Mills v. Habluetzel*, 456 U.S. 91, 99 (1982) (illegitimacy); *Mississippi Univ. for Women v. Hogan*, 458 U.S. 718, 723-24 & n. 9 (1982) (gender); *Craig v. Boren*, 429 U.S. 190, 197 (1976) (gender); *Matthews v. Lucas*, 427 U.S. 495, 505-06 (1976) (illegitimacy).

88. *See supra* note 87 (cases cited).

89. *See Zablocki v. Redhail*, 434 U.S. 374, 386-88 (1978) (marriage); *Loving v. Virginia*, 388 U.S. 1, 11 (1967) (race); *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 670 (1966) (voting); *Yick Wo v. Hopkins*, 118 U.S. 356, 369-74 (1886) (alienage).

90. *See supra* note 89 (cases cited).

limitations that block damage actions for sexual injuries suffered as a child. These cases are *Clark v. Jeter*,⁹¹ *Pickett v. Brown*,⁹² and *Mills v. Habluetzel*.⁹³

In *Jeter*, the Court stated that it “has developed a particular framework for evaluating equal protection challenges to statutes of limitations that apply to suits to establish paternity, and thereby limit the ability of illegitimate children to obtain support.”⁹⁴ The Court used a two-step analysis:

First, the period for obtaining support . . . must be sufficiently long in duration to present a reasonable opportunity for those with an interest in such children to assert claims on their behalf. Second, any time limitation placed on that opportunity must be substantially related to the state’s interest in avoiding the litigation of stale or fraudulent claims.⁹⁵

In *Pickett*, the Court considered whether a two-year Tennessee limitations period for paternity and child support actions, brought on behalf of certain illegitimate children, afforded a reasonable opportunity to bring such suits.⁹⁶ The Court deemed the emotional condition of the mother of the illegitimate child to be extremely significant in determining the constitutional adequacy of the statute’s time period.⁹⁷ The Court stated:

The mother may experience financial difficulties caused not only by the child’s birth, but also by a loss of income attributable to the need to care for the child. Moreover, ‘continuing affection for the child’s father, a desire to avoid disapproval of family and community, or the emotional strain and confusion that often attend the birth of an illegitimate child,’ . . . may inhibit a mother from filing a paternity suit on behalf of the child within two years after the child’s birth.⁹⁸

The duration of the mother’s condition was also important in the Court’s consideration of the validity of the statute of limitations.⁹⁹ The Court stated that the statute did not provide an adequate opportunity for the mother to recover in time to take legal action.¹⁰⁰ Quoting Justice O’Connor’s opinion in *Mills*,¹⁰¹ the *Pickett* Court stated these “practical obstacles to filing suit within one year of birth could as easily exist several years after the birth of the illegitimate child.”¹⁰² In *Clark*, the Supreme Court followed *Pickett* and *Mills* and held that six years was too short a period to remove “practical obstacles” to filing suit for support.¹⁰³

If it can be perceived that the mother of an illegitimate child cannot emotionally recover within six years from pregnancy to file suit (even though the mother may be over eighteen), it should be easy to accept the proposition that a sexually abused *child*

91. 108 S. Ct. 1910 (1988), *rev'g and remanding* 358 Pa. Super. 550, 518 A.2d 276 (1986).

92. 462 U.S. 1 (1983).

93. 456 U.S. 91 (1982).

94. *Jeter*, 108 S. Ct. at 1914.

95. *Id.* (citing *Mills v. Habluetzel*, 456 U.S. 91, 99–100 (1982)).

96. *Pickett v. Brown*, 462 U.S. 1 (1982).

97. *Id.* at 12–13.

98. *Id.* (quoting *Mills v. Habluetzel*, 456 U.S. 91, 100 (1982)).

99. *Id.* at 13.

100. *Id.* at 12–13.

101. *Mills v. Habluetzel*, 456 U.S. 91, 103 (1982).

102. 462 U.S. 1, 11 (1983) (emphasis added).

103. *Clark v. Jeter*, 108 S. Ct. 1910, 1915 (1988).

cannot emotionally recover within the appropriate legal period to file suit for *her* injuries. Many of the practical obstacles mentioned in *Pickett*¹⁰⁴ exist for people sexually abused as children. The factors mentioned by the Court, such as confusion, fear of family and community disapproval, emotional strain, and possible continuing affection, are present a fortiori in child sexual abuse cases.¹⁰⁵ As mentioned previously, the Court in *Pickett* recognized that these obstacles can exist for years and can preclude a person from filing suit within the statutory time limit.¹⁰⁶

As noted, short personal injury statutes of limitations do not allow for the practical obstacles to taking legal action encountered by child sexual abuse victims, the distinctiveness of sexual injuries sustained as a child, and their continuing impact through adulthood.¹⁰⁷ These statutes impermissibly treat people sexually abused as children the same as those sexually violated as adults.¹⁰⁸

A sexual injury to a child deserves to be distinguished from other types of injuries. Sexual abuse involves the most intimate aspects of a child's person: the perpetrator has preyed upon the special vulnerabilities of a child.¹⁰⁹ Although initially physical, the child's injuries are unique in their mental aspects.¹¹⁰ Sexual abuse of a child often continues for years.¹¹¹ Generally, a sexual wrong to an adult is performed over a much shorter period of time. Arguably, any victim's outlook on life changes after the crime, but a child's outlook is uniquely developing.¹¹² Her abilities to relate to and to trust others are in the process of being formed.¹¹³ An adult sexual abuse victim is presumably more developed in her self-perception when the sexual attack happens, whereas child sexual abuse occurs when the victim is still developing her identity.¹¹⁴ Thus, the sexual abuse's impact upon the child is different in its formative

104. See *supra* text accompanying notes 97-103.

105. See *supra* notes 37-78 and accompanying text.

106. See *supra* text accompanying notes 100-02.

107. See *supra* text accompanying notes 68-71.

108. See *infra* text accompanying notes 111-22.

109. See, e.g., *Tyson v. Tyson*, 107 Wash. 2d 72, 91-94, 727 P.2d 226, 234-37 (1986) (Pearson, J., dissenting). In many cases it could be classified as fraudulent, in that the perpetrator (often a family member or trusted acquaintance) misrepresents his fiduciary nature, the child relies on the misrepresentation, and is subsequently injured.

110. *Id.*

111. ABUSED VICTIMS, *supra* note 36, at 135. Hunter, Kilstrom & Loda, *Sexually Abused Children: Identifying Masked Presentations in a Medical Setting*, in 9 CHILD ABUSE AND NEGLECT 17, 23 (1985) (reporting that "when detected, sexual abuse in children has frequently been ongoing for an average of two to three years.").

112. Many mental health professionals agree that the reactions of adolescent rape victims are in many ways similar to the reactions of adult victims, but emphasize that there are important differences that must be recognized in treating teenage rape victims. Primary among these differences are the developmental tasks of adolescence which complicate recovery.

Otey, *Adolescent Victims of Rape*, 6 RESPONSE TO VIOLENCE IN THE FAMILY & SEXUAL ASSAULT 7 (1983).

113. *Id.*

114. *Id.* The average age of a child sexual abuse victim according to one study was 10 years old. A. RUSSELL & C. TRAINOR, *supra* note 41, at 106. See also Pierce & Pierce, *supra* note 26, at 193. In one report of child sexual abuse cases from 1979-1985, one third of the children were ages birth to six, one third were ages seven to twelve, and one third were ages thirteen to eighteen. Incest accounted for approximately 50% of the cases. J. JACOBSEN, *supra* note 36, at 101.

role than sexual injuries to an adult.¹¹⁵ The child does not automatically shed herself of the formative impact of sexual abuse upon reaching adulthood.¹¹⁶

Admittedly, some factors found in child sexual abuse cases can also be found in adult sexual abuse cases, such as the trust of and submission to authority figures.¹¹⁷ In fact, the United States Court of Appeals for the Ninth Circuit recently tolled a statute of limitations for a woman abused by her psychologist, based upon her abuser's position of authority.¹¹⁸ The court described the relationship as a "symbolic, sometimes conscious sometimes not, parent-child relationship."¹¹⁹ There may be similarities between adult and child sexual abuse victims, but there are also important distinctions.

It is logical for courts to treat injuries sustained as a child differently from injuries sustained as an adult. The Supreme Court has already recognized that children have unique disabilities as compared to adults.¹²⁰ Their mental capabilities have been understood to be less than those of adults.¹²¹ The Court has also noted their vulnerability, limited knowledge, and limited experience.¹²²

To find evidence that children are treated differently by the law, we need only to look at our juvenile courts. The punishment meted out to a child is usually less severe than that given to an adult for the same crime. To ensure that the punishment will not have a permanent impact on the child's future, the child's record is expunged at the age of majority. In light of this judicial leniency towards children, personal injury statutes of limitations should also be more accommodating when applied to persons sexually abused as children than they are for people sexually violated as adults.

The unique disabilities of children, the context of child sexual abuse, and the continuing and debilitating effect of child sexual abuse present strong justifications for greater scrutiny of these statutes. This type of statute of limitations should be required, as were the statutes in *Jeter*,¹²³ *Pickett*,¹²⁴ and *Mills*,¹²⁵ to "be sufficiently long in duration to present a reasonable opportunity for those with an interest in such children to assert claims on their behalf."¹²⁶

The second prong of equal protection analysis that the Court employed in *Jeter* was that "any time limitation placed on that opportunity [to sue for child support] must be substantially related to the State's interest in avoiding the litigation of stale or

115. Admittedly, the impact of sexual assault on adult victims may be severe. In one case study, a four-to-six-year follow-up of 91 female adult victims, researchers found that 37% of the victims felt that they recovered in months, 37% felt that it took years to recover, and 26% did not consider themselves recovered. Ferris, *Long Term Consequences of Adult Rape*, 6 RESPONSE TO VIOLENCE IN THE FAMILY & SEXUAL ASSAULT 5 (1983).

116. Paulson, Strouse & Chaleff, *supra* note 60, at 42-43; Steele & Alexander, *supra* note 55, at 226-27.

117. See *Simmons v. United States*, 805 F.2d 1363, 1364-66 (9th Cir. 1986) (discussing trust relationship in psychiatric and psychological transference phenomenon).

118. *Id.*

119. *Id.* at 1365 (quoting testimony of clinical psychologist at trial).

120. *Bellotti v. Baird*, 443 U.S. 622, 633-39 (1978).

121. *Id.*

122. *Id.*

123. *Clark v. Jeter*, 108 S. Ct. 1910, 1914-15 (1988).

124. *Pickett v. Brown*, 462 U.S. 1, 12-18 (1983).

125. *Mills v. Habluetzel*, 456 U.S. 91, 98-101 (1982).

126. *Jeter*, 108 S. Ct. at 1914 (quoting *Mills*, 456 U.S. at 99-100).

fraudulent claims."¹²⁷ In *Pickett*, the Court looked at the proof that would be offered in paternity cases to determine if a short statute of limitations was necessary to avoid stale or fraudulent claims. The Court stated: "We can conceive of no evidence essential to paternity suits that invariably will be lost in only [two years], nor is it evident that the passage of [twenty-four] months will appreciably increase the likelihood of fraudulent claims."¹²⁸ A few months after *Pickett*, the Court used the same reasoning to strike down a similar Michigan statute with a six-year limitation period.¹²⁹

The typical paternity claim such as the one in *Pickett* may be proved by blood tests.¹³⁰ Child sexual abuse claims, however, are more difficult to prove and often lack "objective, verifiable evidence."¹³¹ Because physical evidence for these cases is hard to get and disappears quickly, a tort statute of limitations for sexual abuse based on the production of physical evidence would lead to extremely short limitations periods of days, or even hours.

Production of physical evidence should not be a major concern for the courts in evaluating tort statutes of limitations for child sexual abuse claims. Essentially, most child sexual abuse cases involve a determination of the credibility of the parties.¹³² There is nothing unique about cases being resolved by "swearing contests," as one judge noted.¹³³ Oral contract disputes are typical "swearing contests."¹³⁴ These types of disputes may extend back many years. In the context of a criminal sexual offense, where the burden of proof is greater, the jury is usually permitted to base its decision on the uncorroborated testimony of a child.¹³⁵ Therefore, in *civil* child sexual abuse cases, courts should allow decisions to be made on the credibility of the parties.

Besides looking at the type of proof that would be offered, the *Pickett* Court looked at the state interest in preventing fraudulent claims.¹³⁶ The amount of time between the abuse and the legal action may be significant in child sexual abuse litigation for determining whether fraudulent claims are brought. However, the claim should be analyzed in the context of the reasons for delay¹³⁷ rather than being summarily dismissed. The passage of time may not be prejudicial to the civil defendant.¹³⁸ One author notes that the passage of time actually works to the defendant's advantage, since juries will be suspicious of a plaintiff who brings her action long after the alleged acts occurred.¹³⁹ As the Court in *Clark* noted, the fact

127. *Id.*

128. *Pickett*, 462 U.S. at 13-14 (citing *Mills*, 456 U.S. at 101).

129. *Daniel v. Collier*, 464 U.S. 805 (1983), *vacating and remanding* 113 Mich. App. 74, 317 N.W.2d 293 (1982) (in light of *Pickett v. Brown*, 462 U.S. 1 (1983)).

130. *Pickett*, 462 U.S. at 11.

131. *Tyson v. Tyson*, 107 Wash. 2d 72, 82, 722 P.2d 226, 231 (1986) (Pearson, J., dissenting).

132. *Id.*

133. *Id.* at 232.

134. *Id.*

135. "Only three jurisdictions, the District of Columbia, Nebraska, and New York, require the government to provide corroboration in its *prima facie* case in prosecutions for all sex offenses committed upon children." ABUSED VICTIMS, *supra* note 36, at 103.

136. *Pickett v. Brown*, 462 U.S. 1, 10 (1983).

137. See *supra* text accompanying notes 104-13.

138. See Hicks, *Constitutionality of Statutes of Repose: Federalism Reigns*, 38 VAND. L. REV. 627, 633-35 (1985).

139. *Id.* at 634.

that most states have tolling statutes casts serious “doubt on the State’s purported interest in avoiding the litigation of stale or fraudulent claims.”¹⁴⁰ It is irrational to allow a person sexually abused at age five to pursue a tort claim at age eighteen, while at the same time denying access to the court to a twenty-two year old who was sexually abused at eleven. The memory of an eleven year old is presumably greater and more reliable than the memory of a five year old, and the time between the abuse and the suit is shorter in the former case.

The Supreme Court has also stated that the state’s interest in preventing the prosecution of stale or fraudulent claims can be “undercut by [other] countervailing state interest[s].”¹⁴¹ These interests include the “desire to see that justice is done” and to “ensur[e] that genuine claims” are satisfied.¹⁴² The “desire to see that justice is done” is particularly pertinent in child sexual abuse claims. The majority of sexual offenses committed against children are not even reported, let alone prosecuted.¹⁴³ If an individual is brought to trial, conviction is unlikely because of the difficult burden of proof in criminal proceedings.¹⁴⁴ The National Committee for the Prevention of Child Abuse reports that “[i]n practical terms, sexual offenses against children go unreported, unprosecuted, unconvicted; offenders and children go untreated; society goes unprotected.”¹⁴⁵ The state has a valid interest in encouraging, rather than discouraging, the bringing of genuine *civil* claims so that justice may be done.

There are strong reasons to conclude that a state’s interest in preventing stale claims is not “substantially related” to a short statute of limitations that treats sexually abused children the same as sexually abused adults. Given the countervailing state interests,¹⁴⁶ the special emotional characteristics of the child,¹⁴⁷ the presence of the practical obstacles mentioned in *Pickett*,¹⁴⁸ and other obstacles unique to child sexual abuse victims,¹⁴⁹ the Supreme Court when presented with the issue may conclude that a short statute of limitations fails a “substantial basis” test and thus violates equal protection.

IV. CONCLUSION

Current state personal injury statutes of limitations are typically short¹⁵⁰ and do not take into account the special obstacles to legal action unique to people sexually

140. *Clark v. Jeter*, 108 S. Ct. 1910, 1916 (1988).

141. *Pickett v. Brown*, 462 U.S. 1, 10 (1983) (quoting Justice O’Connor in *Mills v. Habluetzel*, 456 U.S. 91, 103 (1982)).

142. *Id.*

143. A. RUSSELL & C. TRAINOR, *supra* note 41, at 13–19, 47; National Committee for Prevention of Child Abuse, *Basic Facts About Sexual Child Abuse* (1982).

144. *Id.*

145. *Id.*

146. *See supra* text accompanying notes 141–143.

147. *See supra* notes 37–61 and accompanying text.

148. *See supra* text accompanying notes 104–05.

149. *See supra* notes 37–78 and accompanying text.

150. Statutes of limitations for personal injuries range from one to six years in the United States. ALA. CODE § 6-2-39 (1975) (1 year); ALASKA STAT. § .09.10.070 (1983) (2 years); ARIZ. REV. STAT. ANN. § 12-542(1) (1) (1982) (2 years); ARK. STAT. ANN. § 16-56-115 (1987) (5 years); CAL. CIV. PROC. CODE § 340(3) (West 1982) (1 year); COLO. REV. STAT. § 13-80-102(a) (1987) (2 years); CONN. GEN. STAT. ANN. § 52-584 (West Supp. 1988) (2 years); DEL. CODE ANN. tit. 10, § 8119 (1974) (2 years); D.C. CODE ANN. § 12-301(4) (1981) (1 year); FLA. STAT. ANN. § 95-11(3) (West 1982) (4 years);

abused as children.¹⁵¹ It is suggested here that, in light of *Mills* and subsequent cases, statutes of limitations for actions based on sexual injuries to a child should be extended six to ten years beyond the age of majority. This would allow for the personal obstacles encountered by,¹⁵² and the traumatic psychological disorders suffered by,¹⁵³ sexually abused children. Also, a six- to ten-year extension of the limitations period would not be so long as to offend one's sensibilities or to seriously prejudice potential defendants. Finally, the extension of these statutes for these cases will help to ensure that "justice will be done" for victims of child sexual abuse.

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GA. CODE ANN. § 9-3-33 (1982) (2 years); HAW. REV. STAT. § 657-7 (1985) (2 years); IDAHO CODE § 5-219(4) (1979) (2 years); ILL. ANN. STAT. ch. 83, para. 15 (Smith-Hurd Supp. 1983) (2 years); IND. CODE ANN. § 34-1-2-2(1) (West 1983) (2 years); IOWA CODE ANN. § 614.1(3) (West 1950) (2 years); KAN. STAT. ANN. § 60-513(a) (1983) (2 years); KY. REV. STAT. ANN. § 413.140(1) (Michie/Bobbs-Merrill 1972) (1 year); LA. CIV. CODE ANN. art. 3492 (West Supp. 1989) (1 year); ME. REV. STAT. ANN. tit. 14, § 752 (1980) (6 years); MD. CTS. & JUD. PROC. CODE ANN. § 5-101 (1984) (3 years); MASS. ANN. LAWS ch. 260, § 2A (Law. Coop. 1980) (3 years); MICH. COMP. LAWS ANN. § 600.5805 (West 1987) (2-3 years); MINN. STAT. ANN. § 541.07(1) (West 1988) (2 years); MISS. CODE ANN. § 15-1-49 (1972) (6 years); MO. ANN. STAT. § 516.120 (Vernon 1952) (5 years); MONT. CODE ANN. § 27-2-204(1) (1983) (3 years); NEB. REV. STAT. § 25-207 (1985) (4 years); NEV. REV. STAT. ANN. § 11.190(4)(e) (Michie 1986) (2 years); N.H. REV. STAT. ANN. § 508:4 (1983) (6 years); N.J. STAT. ANN. § 2A:14-2 (West 1987) (2 years); N.M. STAT. ANN. § 37-1-8 (1978) (3 years); N.Y. CIV. PRAC. L. & R. § 214(5) (McKinney 1972) (3 years); N.C. GEN. STAT. § 1-52(5) (1983) (3 years); N.D. CENT. CODE § 28-01-16(5) (1974) (6 years); OHIO REV. CODE ANN. § 2305.10 (Anderson 1981) (2 years); OKLA. STAT. ANN. tit. 12, § 95 (West 1988) (2 years); OR. REV. STAT. § 12.110(1) (1988) (2 years); PA. STAT. ANN. tit. 42, § 5524 (Purdon Supp. 1982) (2 years); R.I. GEN. LAWS § 9-1-14(6) (Supp. 1985) (3 years); S.C. CODE ANN. § 15-3-530(5) (Law. Co-op Supp. 1988) (3 years); S.D. CODIFIED LAWS ANN. § 15-2-14(3) (1984) (3 years); TENN. CODE ANN. § 28-3-104 (1980) (1 year); TEX. CIV. PRAC. & REM. CODE ANN. § 16.003(a) (Vernon 1986) (2 years); UTAH CODE ANN. § 78-12-25(3) (Supp. 1988) (4 years); VT. STAT. ANN. tit. 12, § 512(4) (Supp. 1987) (3 years); VA. CODE § 8.01-243(A) (1984) (2 years); WASH. REV. CODE ANN. § 4.16.080(2) (1988) (3 years); W. VA. CODE § 55-2-12 (1981) (2 years); WIS. STAT. ANN. § 893.54(1) (West 1983) (3 years); WYO. STAT. § 1-3-105(a)(iv) (Supp. 1988) (4 years).

151. See *supra* notes 37-78 and accompanying text.

152. See *supra* notes 37-78 and accompanying text.

153. See *supra* notes 37-54 and accompanying text.

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