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LEGISLATIVE TESTIMONY

To: Members of the Joint Committee on the Judiciary
From: Edward F. Saunders, Jr., Esq., Executive Director
Re: Civil Statutory Limitations Bills—House 1331, 1332, 1333
Date: February 26, 2008

The Massachusetts Catholic Conference (“Conference”) respectfully submits this testimony in opposition to House 1331, 1332 and 1333.

Description of the Bills

House 1331, 1332, and 1333, each entitled “An Act Relative to Actions for Assault and Battery Alleging a Defendant Sexually Abused a Minor,” would eliminate the three-year civil statute of limitations and discovery rule applied in cases of sexual abuse against minors in Massachusetts as currently provided for by M.G.L. c. 260, § 4C and would instead allow such actions to be commenced at any time. These bills would also allow actions for negligent supervision resulting in the sexual abuse of a minor, or for actions that “caused or contributed to” the sexual abuse of a minor, to be brought at any time.

In addition, these bills would apply to all claims “which have accrued, and to all actions which are pending” on its effective date and should be deemed retroactive “to the fullest extent permitted” under the federal and state Constitutions.

There are some differences between the bills. House 1332 would require for any complaint filed more than 27 years after the plaintiff’s 16th birthday, the introduction of “independent evidence” (e.g., the opinion of a mental health professional) to corroborate the plaintiff’s allegation. House 1333 appears to contemplate a three-year revival window after passage, during which all claims brought under § 4C would not be subject to a statute of limitations or laches defense regardless of the date on which the underlying tort occurred.

In sum, the bills propose to alter or abolish statutory limitations on civil claims arising from allegations of sexual abuse of minors with some differences, thus removing the critical protections for would-be defendants offered by civil statutes of limitation.

The Critical Importance of Civil Statutes of Limitation

The United States Supreme Court has observed that “[s]tatutes of limitation are not simply technicalities. On the contrary, they have long been respected as fundamental to a well-ordered judicial system.” Board of Regents v. Tomanio, 446 U.S. 478, 487 (1980). That is, limiting the time within which a claim may be brought increases the public’s confidence in the ability of the

courts to adjudge factual disputes by guaranteeing that testimony and other evidence “is relatively fresh.” *Id.*

The Massachusetts Supreme Judicial Court has affirmed the “strong public policy” considerations behind statutes of limitations:

While strong public policy favors protecting the beneficiaries of a fiduciary relationship [from sexual misconduct], equally strong public policy favors imposing reasonable limits on liability. Statutes of limitation provide the temporal finality necessary for the orderly conduct of human affairs. They represent society’s considered, although often far from perfect, compromise between a plaintiff’s need to remediate wrongs and society’s need for closure and forward movement. By permitting beneficiaries to bank causes of action until such time as the beneficiary attains a lawyer’s knowledge of fiduciary obligations, [Plaintiff’s] theory would skew the limitations balance decidedly in favor of plaintiffs. Fiduciaries would become perpetual defendants-in-waiting, and one would expect as a result that fewer individuals would elect to undertake a fiduciary’s weighty responsibilities.¹

In addition, just this past fall, the SJC further commented that “We sympathize with the victims of abuse. However, ‘the United States Supreme Court has long recognized . . . [that statutes of limitation are] vital to the welfare of society. . . . They provide repose by giving security and stability to human affairs.’”²

Finally, just weeks ago on February 8, 2008, the Rhode Island Supreme Court affirmed the dismissal of a child abuse claim barred by a statute of limitation, stating:

“Statutes of limitation are vital to the welfare of society and are favored in the law. They are found and approved in all systems of enlightened jurisprudence. . . . An important public policy lies at their foundation. They stimulate to activity and punish negligence. While time is constantly destroying the evidence of rights, they supply its place by a presumption which renders proof unnecessary. Mere delay, extending to the limit prescribed, is itself a conclusive bar.” . . . Statutes of limitation “are designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared.” . . . They are the product of a balancing of the individual person’s right to seek redress for past grievances against the need of society and the judicial system for finality—for a closing of the books.”³

In general, then, statutes of limitation acknowledge the increasing risk over time of inaccurate verdicts based on “stale” evidence, and reflect the reasonable judgment that after a certain

¹ *Doe v. Harbor Schools, Inc.*, 446 Mass. 245, 843 N.E.2d 1058, 1066 (2006).

² *Koe v. Mercer*, 450 Mass. 97, 106, 876 N.E.2d 831, 840 (2007) (citations omitted).

³ *Ryan v. Roman Catholic Bishop of Providence*, No. 2004-49-Appeal (PC 95-6524), slip op. at 8-9 (R.I. Feb. 8, 2008) (citations omitted).

period, the risk becomes unacceptable. The time, money and effort required to separate out the truly meritorious claims will expand exponentially while the odds of accurate fact-finding by judges will continue to shrink as the years pass.

Eliminating filing deadlines altogether ignores these critical interests. Those bills before this Committee that propose such an extreme measure would, if enacted, expose potential defendants and society itself to an open-ended threat of litigation based on presumably unreliable evidence and the consequent uncertainty.

As noted by the SJC in its Doe decision, the interests at stake are not limited, of course, to those asserted by potential defendants. Injured plaintiffs deserve every reasonable opportunity to become aware that there has been an injury, to realize the cause of the injury, and to gather the evidence needed to establish their right to a remedy. The interests of tort victims, however, have been accommodated in Massachusetts through the institution of the “discovery rule.”⁴

Under this rule, the clock does not start to run towards the three-year limit on tort actions as long as an individual is reasonably unaware of being harmed by another’s conduct. *Doe v. Harbor Schools, Inc*, supra; *Riley v. Presnell*, 409 Mass. 239, 243 (1991) (applying rule generally to tort claims against perpetrators); M.G.L. c. 260, § 4C (specifically applying rule to civil actions against perpetrators alleging sexual assault of a minor); *Phinney v. Morgan*, 39 Mass. App. Ct. 202, 204 (1995) (finding “no reason in the absence of a statute not to apply the discovery rule to tort actions arising out of incestuous child abuse against the nonperpetrator” who failed to exercise a duty to protect the victim from the abuse). The three-year window opens when the victim discovered or reasonably should have discovered the injury caused by the defendant. *Doe v. Harbor Schools, Inc.*, supra.

Consequently, tort claims may survive for a significant time in Massachusetts. For example, in *Ross v. Garabedian*, 433 Mass. 360 (2001), the Supreme Judicial Court allowed a claim seeking damages for child abuse to be brought more than thirty years after the misconduct occurred. Thus, the discovery rule affords aggrieved individuals ample opportunity to bring suit outside the three year filing limit.

At the same time the Massachusetts courts have created safeguards against unchecked delays. See *Doe v. Harbor Schools, Inc.*, supra (rejecting plaintiff’s argument that the statute of limitations should be tolled until the time she acquired the knowledge of the legal consequences of her injury “(i.e.,[when she learned that she had] a legal claim against the fiduciary)” rather than the time she realized that she was injured); *Doe v. Creighton*, 439 Mass. 281 (2003) (holding that “a plaintiff who brings suit beyond the normal statutory limitations period may not reach a jury simply by presenting evidence that sexual abuse took place” and emphasizing that the delay in discovering the injury must be shown to be objectively reasonable).

Thus, there remain real, and important practical differences between the allowances permitted under the “discovery rule” and the abolition of all time-limits as proposed by the legislation

⁴ The discovery rule augments another provision of Massachusetts law that tolls the statute of limitations until a victim reaches the age of majority. See M.G.L. c. 260, §§ 4, 7.

before this Committee. In no way could such legislation be accurately characterized as simply codifying judicial rules. Rather, by extending the potential liability of would-be defendants into perpetuity, such bills would, in the words of the Doe decision, supra, “skew the limitations balance decidedly in favor of plaintiffs,” to the detriment of all potential “defendants-in-waiting” and society itself.

An additional serious problem of fairness arises when a legislative alteration weighing so “decidedly in favor of plaintiffs” is directed not only prospectively but retroactively, such as to revive lapsed past claims or to extend the time on existing, yet-to-lapse claims. To the issues of staleness and social uncertainty is added the unfairness of imposing a new burden retroactively. Based on existing legal expectations, potential defendants are led to believe that their vulnerability will exist for a certain period of time, but that then it will end: then they will be free to cease gathering and preserving evidence of their innocence and direct their attention and resources to the future.

Present Massachusetts law regarding the limitation period for civil claims already accommodates in a fair manner the competing interests of plaintiffs, defendants, and society as a whole. The scales do not tilt entirely in either direction between plaintiffs and defendants. The bills before this Committee, if passed, would destroy the careful balance currently struck by the legislature and the courts.

Conference Position

For these reasons, the Conference urges the Committee to give House 1331, House 1332, and House 1333 unfavorable reports recommending that these bills ought not pass.

The Massachusetts Catholic Conference is the public policy office of the Roman Catholic Bishops in the Commonwealth, representing the Archdiocese of Boston and the Dioceses of Fall River, Springfield, and Worcester.