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California Civil Liberties Advocacy
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Tuesday, March 5, 2019

Assembly Judiciary Committee
1020 N Street, Room 104
Sacramento, CA 95814

RE: Opposition to Assembly Bill 218

Dear Members:

The California Civil Liberties Advocacy opposes AB 218 because we feel that lifting the statutes of limitations in any matter will negatively impact civil defendants because the availability and reliability of evidence diminishes over time. A prior version of this bill, AB 3120 (Gonzales), was vetoed by Governor Brown not even six months ago, and California Code of Civil Procedure § 340.1 was amended to its current form by SB 1494, Public Safety Omnibus, authored by the Senate Public Safety Committee. The CCLA did not oppose SB 1494.

The kinds of cases that will be brought under the provisions of AB 218 are specifically the kinds of cases in which there is likely no DNA evidence available, meaning that plaintiffs' lawyers will be relying heavily on witness testimony.

The science behind repressed memories is far murkier than most of the public perceives. Dr. Elizabeth Loftus, one of the world's foremost experts on the subject, and other experts have found that psychologists are quite capable of implanting false memories into a patient's mind.ⁱ Patients are encouraged to accept any lurking memories of child abuse as an explanation for their normal everyday problems.ⁱⁱ And studies have shown that the power of suggestion and expectation can be projected on to the patient during hypnosis and therapy to increase the number of abuse reports.ⁱⁱⁱ

One study found that out of 136 cases of sexual assault reported over a 10-year period at Northeastern University, 5.9% turned out to be false allegations.^{iv} That study went on to conclude, in conjunction with previous research, that "the prevalence of false allegations is between 2% and 10%."^v Though small, this minority of cases will present problems for defendants who will be pressed to defend themselves against allegations of sexual abuse that occurred 15, 20, or 30 years ago. Where the defendant is innocent, it would be even more difficult to defend against such claims because they may not even know the accuser.

*"Indifference to personal liberty is but the precursor of the state's hostility to it."
— Justice Kennedy, U.S. Supreme Court*

Compounded by the abovementioned problems is that the standard of proof in civil suits requires only a preponderance of the evidence, a much lower standard than criminal prosecutions, potentially exposing innocent defendants to liability.

Extending the statutes of limitations also fails to address the oft overlooked problem of economics in such cases. A sexual abuse survivor will be hard-pressed to find a plaintiff's lawyer willing to take a case where the abuser is judgment proof, while only pursuing wealthy defendants, regardless of their innocence. Of course, there is the issue of vicarious liability, in which this bill will incentivize plaintiffs, and the lawyers who represent them, to bring claims only where the abuse rose in the course of employment, setting their sights on institutions with "deep pockets." Where does this leave the majority of survivors with legitimate claims where their abuser is judgment proof?

Nonetheless, institutional sexual abuse is a real problem facing our society and must be addressed by this Legislature. But the CCLA strongly feels that extending the statute of limitations in civil suits is in more in the interests of the plaintiffs' lawyer industry than that of the abuse survivors, in which the negative effects will be felt in the decades to come. If these provisions could be narrowed in scope, perhaps, we could revisit the issue. But we do not feel AB 218 is the solution to the problem.

For all of the reasons listed above, the CCLA is strongly opposed to AB 218.

Very truly yours,



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ⁱ Lushnat, Joshua, 13 Sexual Abuse Memory Repression: The Questionable Injustice Of Demeyer (2nd ed. The Journal of Law in Soc'y 2012).

ⁱⁱ Ibid.

ⁱⁱⁱ Ibid.

^{iv} Lisak, David, et al., False Allegations of Sexual Assault: An Analysis of Ten Years of Reported Cases (Violence Against Women 2010).

^v Ibid.