

The Adam Walsh Child Protection and Safety Act of 2006 -- Part I (2006)

Statute of Limitations Excerpt

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Statute of Limitations

There is no longer a statute of limitations for any felony listed in Chapter 109A (Sexual Abuse), Chapter 110 (Sexual Exploitation and Other Abuse of Children) except for violations of the record-keeping requirements set forth in sections 2257 and 2257A, and Chapter 117 (Transportation for Illegal Sexual Activity and Related Crimes), or for charges under sections 1201 (kidnapping of a minor) or 1591 (sex trafficking).

This will violate the *Ex Post Facto* Clause in any case in which the statute of limitations ran before the law was enacted. *See Stogner v. California*, 539 U.S. 607, 611, 617-18 (2003) (holding that application of a California law permitting prosecution for sex-related child abuse within one year of the victim's report to police to an offense whose prosecution was time-barred at the time the law was enacted was unconstitutionally *ex post facto*).

The lack of any statute of limitations for sex crimes can also be challenged under the Equal Protection Clause. 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.” *Toussie v. United States*, 397 U.S. 112, 114-15 (1970). Currently, the most serious and difficult to detect offenses in the criminal code are subject to a five-year statute of limitations. *See* 18 U.S.C. § 3282. Terrorism offenses are subject to an eight-year statute of limitations. *See* 18 U.S.C. § 3286. There seems to be no rational justification for subjecting defendants in sex offense cases to extraordinary unfairness.

The lack of any statute of limitations may create a due process problem, assuming that the defendant proves actual prejudice to the defense *and* the reason for the delay is not sufficiently justifiable. *See United States v. Lovasco*, 431 U.S. 783, 789-90 (1979) (actual prejudice from a delayed charge is not enough to establish a due process violation). Most circuits, however, have interpreted *Lovasco* to require a showing that the government acted in bad faith in delaying the indictment.