

SB

47

Senator Hollis French

Capitol Room 417
465-3892
465-6595 fax



MEMORANDUM

Date: 1/29/2009

To: Senator Bettye Davis, Chair
Senate Health and Social Services Committee

From: Senator Hollis French *(KSF)*

RE: Request for Hearing – SB 47 Statute of Limitations for Sexual Offenses

This is a request that you schedule a hearing on SB 47 "Statute of Limitations for Sexual Offenses" at the earliest possible date.

I have attached a copy of the bill, a sponsor statement, and a sectional analysis for your use. I appreciate your consideration.

Attachments

Lynda Zaugg

From: Cindy Smith
Sent: Thursday, February 26, 2009 8:32 AM
To: Lynda Zaugg
Subject: tomorrow's hearing

I had this lame notion that I'd catch up with you yesterday but that did not really account for the Key Campaign's arrival!

For tomorrow's hearing we will have 3 in-person witnesses and one person on-line -- all adult survivors of child sexual abuse, and all originally from villages, so I wanted to let you know that if Senator Davis is willing, right after the basic bill presentation we'd like these folks to testify just because it's hard testimony to give, so that way they can get it done and not sit and be terrified any longer than they need to be.

In person witnesses are: Florence Penny, from Juneau (originally from Holy Cross)
Elsie Boudreau (I can't remember where Elsie was originally from but she went to school in Nome)
Henry Napoleon, Hooper Bay

On line will be Delbert Ackerman from Stebbins. He is using the offnet number.

Finally, I'd expect in-person testimony from a woman named Joelle Castix, who will talk about how this kind of bill worked in California, and the Alaska Women's Lobby and the Network on Domestic Violence may be there and may offer brief testimony in support.

Let me know if you need anything else from me. I will be bringing one brief handout for the committee and will bring an adequate number for them and for handouts. :)

Cindy Smith
Office of Senator Hollis French
(907) 465-3892
www.aksenate.org

Lynda Zaugg

From: Cindy Smith
Sent: Wednesday, February 04, 2009 8:32 AM
To: Lynda Zaugg
Subject: SB47

Hi!

I will be carrying SB47 for Hollis and I wanted to let you know that we will need some time to put together witnesses for this bill hearing (it's kind of complicated because we need to get witnesses in from some rural communities and I also want an attorney on line who can speak to the provisions of the bill), --- so although I know Andy dropped off a hearing request, we actually will not be ready to have it heard for a week or so.

Please don't schedule us next week and I'll let you know sometime next week if we've been able to get everybody organized for the week of the 16th or after that.

Thanks!

Cindy Smith
Office of Senator Hollis French
(907) 465-3892
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Alaska State Legislature



Senator Hollis French

SB 47 - Statute of Limitations for Sexual Offenses

Senate Bill 47 creates a one year period in which civil action may be brought in felony sexual assault cases that have been time barred by the formerly restrictive statute of limitation laws in Alaska. During the 2001 legislative session, both the House and Senate voted unanimously to remove the statute of limitations for felony sexual offenses that were still open to prosecution at that time. For instances of felony sexual assault where the statute of limitations had expired, no recourse was given to the victims of the crime.

SB 47 allows the victims of felony sexual assault to have their day in court. Experts have found there are several reasons that a victim, especially a child, will not report sexual abuse for years after it occurred. Multiple studies have shown:

- Victims of childhood sexual assault are often extremely embarrassed by the abuse, and may not disclose the crime against them until adulthood.
- Children who are victims will often fail to report sexual abuse due to fear of the consequences; a child may also feel guilty for reporting the perpetrator or fear retaliation from his or her abuser.
- It can take years for a victim to understand the connection between the problems they are experiencing as an adult and the abuse they experienced as a child.
- Among victims of sexual assault, an inability to trust is common. This inability can prevent many victims from disclosing abuse.
- Many victims of childhood sexual abuse have repressed all memory of the abuse for years; it is often only under the guidance of professional counseling or therapy that the victim may come to realize that a crime against them took place.

SB 47 allows past victims of sexual abuse the same rights they would have under today's law - the right to file charges against their perpetrators no matter when the abuse occurred. I urge your support for this important bill that provides closure for victims of sexual assault, while holding the perpetrators for these crimes accountable.

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB47-DOC-OC-02-20-09
 () Publish Date: _____

Identifier (file name): SB47-DOC-OC-02-20-09 Dept. Affected: DOC
 Title: "Act relating to the statute of limitations for certain sexual offenses and permitting causes of actions otherwise barred by statute" RDU: Administration & Support
 Sponsor: Senator French Component: Office of the Commissioner
 Requester: _____ Governor _____ Component Number: 694

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2010	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
OPERATING EXPENDITURES								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES ()								
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2009) cost: _____

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)

Passage of this legislation will should have no impact to the Department of Corrections.

Prepared by: Leslie Houston, Director
 Division: Administration and Support
 Approved by: Dwayne Peeples, Deputy Commissioner
Department of Corrections

Phone (907) 465-3339
 Date/Time 2/20/2009 17:33:00 PM
 Date 2/20/2009

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: SB047
() Publish Date: _____

Identifier (file name): SB047-LAW-CIV-2-27-09
Title: An Act relating to the statute of limitations for certain sexual offenses.
Sponsor: SENATOR(S) FRENCH
Requester: Health & Social Services
Dept. Affected: LAW
RDU: Civil
Component: Torts & Workers Compensation
Component Number: 2719

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
		FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
OPERATING EXPENDITURES							
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES							
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CHANGE IN REVENUES ()							
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FUND SOURCE (Thousands of Dollars)

	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other Interagency Receipts						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2009) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The bill would amend the statute of limitations for civil actions involving certain sexual offenses, so that actions that are pending in court on the effective date or are filed within one year after the effective date of the bill would be considered timely. Enactment of the bill is not anticipated to fiscally impact the Department of Law.

Prepared by: Robert Meiners, Deputy Director
Division: Administrative Services Division
Approved by: Richard Svobodny, Acting Attorney General
Department of Law

Phone 907-465-5427
Date/Time 2/27/09 10:15 AM
Date 2/27/2009

LEGISLATIVE RESEARCH REPORT

MARCH 13, 2007



REPORT NUMBER 07.156

HISTORY OF ALASKA STATUTES OF LIMITATIONS FOR CIVIL ACTIONS RELATED TO SEXUAL OFFENSES

PREPARED FOR SENATOR HOLLIS FRENCH

BY CHUCK BURNHAM, LEGISLATIVE ANALYST

You asked about Alaska statutes of limitations. Specifically, you wanted a history of statutes involving time limitations for bringing civil actions related to sexual offenses.

As you know, pursuant to AS § 09.10.065, there currently exists no statutory time limitation on bringing a civil action resulting from the crimes of felony sexual abuse of a minor, felony sexual assault, or unlawful exploitation of a minor.¹ Other statutes that currently impact time limitations on civil actions for sexual offenses are provided in AS § 09.10.140 and AS § 09.55.650. We provide a review of the legislative histories of each of the three aforementioned statutes as follows.²

The state's general statute of limitations for civil actions related to "assault" contained in AS § 09.10.070 was enacted as § 1.07 ch 101 SLA 1962; however § 1.14 of the same chapter provided that the general limitation did not apply to a plaintiff who was under age 19 at the time of the cause for the action.³ This section, currently AS § 09.10.140, recognized "minority," that is, being under age 19, as a "disability" with regard to an individual's ability to bring civil action. The legislature therefore determined that the time spent in "disability," or the time period between the subject of the civil action and the date the plaintiff reaches age 19, should not be considered as part of the time limitation on the commencement of a civil action. In effect, this section implemented a two-year limit beginning on the plaintiff's 19th birthday. In 1979, the age clause of AS § 09.10.140 was changed from "19 years of age" to the age of "majority," which is currently age 18 (AS § 25.20.010).

¹ These crimes are enumerated in statute as follows: felony sexual abuse of a minor—AS §§ 11.41.434-438; felony sexual assault—AS §§ 11.41.410-425; unlawful exploitation of a minor—AS § 11.41.455.

² We include copies of AS § 09.10.65, AS § 09.10.140, and AS § 09.55.650 as Attachment A.

³ We include a copy of each of the session laws mentioned in this report as Attachment B.

With the enactment of §§ 1-4 ch 4 SLA 1990, the legislature expanded time limitations for civil actions for most serious sexual offenses, particularly offenses involving minors. Section 1 added a new subsection to what is currently AS § 09.10.065 to provide that a victim of sexual assault or sexual abuse of a minor may not maintain an action for damages against a perpetrator unless the action is commenced within three years of the act or knowledge of the act. This section alone extended the time limitation by just one year; however, § 4 added AS § 09.55.650 to provide that a victim who was under sixteen years of age at the time of the abuse may "maintain an action for recovery of damages" for an injury or condition that is the result of the abuse. This new section also provided that if more than one act of abuse has occurred, the plaintiff need not prove which act caused the damage or injury. Finally, §§ 2-3 amended AS § 09.10.140 to provide that a victim whose abuse is subject to AS § 09.55.650 (under age sixteen at the time of abuse) is exempt from the three-year limitation under AS § 09.10.065 if an action is commenced within three years of the time the plaintiff "discovered" or should have reasonably discovered that an act, or series of acts, of abuse caused the injury or condition underlying the action.

The intent of the 1990 legislation was to maintain a general limitation on bringing civil actions—three years—but to provide a mechanism by which individuals who, as adults, discovered that they were sexually abused as children could pursue civil remedies for damages and injuries resulting from that abuse. Testimony on the enacting legislation before the House Judiciary Committee wide acceptance that many victims of sexual abuse "block-out" memories, or are otherwise unaware, of the abuse until they discover the negative impacts resulting from that abuse years later. Legislators, therefore, determined that the period of time limitation on civil actions stemming from the impacts of sexual abuse should commence at the point of a plaintiff's "discovery" of the abuse rather than from the time of the offense or the age of majority.⁴

The legislature removed time limitations for bringing a civil action for felony sexual abuse of a minor and felony sexual assault with the enactment of § 1 ch 86 SLA 2001, which repealed and reenacted AS § 09.10.065. This statute was further amended by § 2 ch 40 SLA 2003 by removing time limitations on actions for unlawful exploitation and adding subsection (b) to provide a three-year limitation on bringing actions for misdemeanor sexual offenses, incest, and felony indecent exposure. This new language was also referenced in AS § 09.10.140(b). The result was the exemption of misdemeanor sexual offenses against victims who were under age sixteen at the time of the abuse from the three-year limitation provided in AS § 09.10.065(b), permitted that action for those offenses is commenced within three years of the time the plaintiff "discovered" or should have reasonably discovered that an act, or series of acts, of abuse caused injury or damage.

The attached table provides a brief summary of the history of statutes related to time limitations for bringing civil actions related to sexual offenses.

I hope you find this information to be useful. Please do not hesitate to contact us if you have questions or need additional information.

⁴ Testimony before the House Judiciary Committee, April 6 and 19, 1989.

History of Statutes of Limitation for Civil Actions Related to Sexual Offenses

Session Law	AS § 09.10.140		
§ 1.14 ch 101 SLA 1962	Provided that the general limitation of two years for bringing action for an "assault" (as established in § 1.07) did not apply to a victim under age 19; however, the exemption was limited to not more than two years following the 19th birthday.		
§ 1 ch 46 SLA 1979	Changed the age clause from "19 years" to the age of "majority."		
	AS § 09.10.065	AS § 09.10.140	AS § 09.55.650
§§ 1-4 ch 4 SLA 1990	Added subsection (c) to provide that a victim of sexual assault or sexual abuse of a minor may not maintain an action for damages against a perpetrator unless the action is commenced within three years of the act or knowledge of the act.	Provided that a victim whose abuse is subject to AS § 09.55.650 (under age sixteen at the time of abuse) is exempt from the three-year limitation under AS § 09.10.065 if an action is commenced within three years of the time the plaintiff "discovered" or should have reasonably discovered that an act, or series of acts, of abuse caused the injury or condition underlying the action.	Added section to provide that a victim who was under sixteen years of age at the time of the abuse may "maintain an action for recovery of damages" for an injury or condition that is the result of the abuse. Also provides that if more than one act of abuse has occurred, the plaintiff need not prove which act caused the damage or injury.
§§ 1-2 ch 81 SLA 1998	Added the crime of indecent exposure in the first degree [provided by § 3] to the crimes to which subsection (c) applies.	Section not amended.	Added the crime of indecent exposure in the first degree to the definitions of the "sexual abuse" crimes to which the section applies.
§ 1 ch 86 SLA 2001	Removed time limitations on bringing actions for felony sexual abuse of a minor and felony sexual assault.	Section not amended.	Section not amended.
§§ 1-3 ch 40 SLA 2003	Removed time limitations on bringing action for unlawful exploitation of a minor. Added subsection (b) to provide a three-year limitation on bringing an action for misdemeanor sexual offenses, incest, and felony indecent exposure.	Referenced AS § 09.10.065(b) in subsection (b), to provide that a victim who was under age sixteen at the time of a sexual abuse misdemeanor or felony indecent exposure is exempt from the three-year limitation under subsection (a) if an action is commenced within three years of the time the plaintiff "discovered" or should have reasonably discovered that an act, or series of acts, of abuse caused the injury or condition underlying the action.	Section not amended.
Sources: Session Laws of Alaska and Alaska Statutes.			

adn.com

Anchorage Daily News

Judge says sex suit filed too late -

DISMISSED: Victim claimed priest got her pregnant in 1977.

Anchorage Daily News (AK)

February 22, 2006

Author: SHEILA TOOMEY

Anchorage Daily News

A Nome judge on Tuesday dismissed a sex abuse lawsuit against the Jesuits and the Fairbanks Catholic diocese, ruling that a woman who says former Nome priest James Poole got her pregnant when she was 14 waited too long to take legal action.

Superior Court Judge Ben Esch said the woman, known as Jane Doe 2, should have known when Poole told her to get an abortion that he and the church had done something wrong to her. In legal terms, that knowledge triggered her "duty to inquire" and set in motion the civil statute of limitations, which required her to file suit no more than two years after she turned 18.

"This will be seen as unjust by many people," Esch wrote in his dismissal, "but is, I believe, required by the laws of the State of Alaska." The decision came less than a week before trial was scheduled to begin.

Both sides reacted to the dismissal as might be expected. In a written statement, the Jesuits -- formally the Society of Jesus, Oregon Province -- said the ruling confirms "the justice of our position" but vowed to seek healing for "those who have suffered from abuse."

"(W)e still hope to find a path to reconciliation," the statement said.

"We do not celebrate today's decision."

Attorney Ken Roosa, who represents Jane Doe 2 and dozens of other litigants reporting childhood abuse by Alaska-based priests, said he will appeal the dismissal to the Alaska Supreme Court.

"I think Judge Each is a fine judge, but I think he called it wrong here," Roosa said. The decision is based on the facts of this case and does not imperil other pending cases, he said.

"This is just one skirmish in a long battle."

In her 2004 lawsuit, Jane Doe 2 said Poole abused her in the late 1970s and got her pregnant in 1977. She said she had an abortion in 1978 at Poole's urging.

Roosa said the woman reported the abuse to two different local priests within the

allowed time period and was told to do penance.

Both religious organizations have said they knew nothing of such accusations at the time.

In 2001, the Alaska Legislature eliminated the statute of limitation for child sex abuse cases. That means anyone abused after that date has no deadline for filing suit.

Roosa claims, and is arguing in another case before the state Supreme Court, that the law is retroactive and covers people like Jane Doe 2. Esch apparently did not agree.

In December, he removed Poole as a defendant in the case, saying Jane Doe 2 should have known something wrong was done to her and needed to take action within two years of her 18th birthday.

He left the Jesuits and the Fairbanks diocese as defendants, saying it was not clear she should have known she had a case against the two organizations, according to Roosa.

The case was scheduled to go to trial in Nome next week. In the meantime, the Alaska Supreme Court in an unrelated case ruled that judges, not juries, must decide statute-of-limitation questions, Roosa said.

Forced to decide, Esch concluded Jane Doe 2 should also have taken timely action against the two organizations.

On Tuesday, Roosa seemed bitter that the church even raised the timing question. "Would Christ assert the statute of limitations against a victim who had been sexually abused by a priest?" he said. "I just don't think so."

In their statement, the Jesuits spoke of a resolution better than a "legal dispensation."

"There remains, at this time, a woman whose suffering and story deserve our respect and our pastoral care. ... we continue to pray that we will find together a deeper justice, based not on adversarial strife but on our shared concern for the well-being and healing of all those involved."

In addition to the dismissed case, two other suits against Poole have been settled and two remain.

The Associated Press and the Fairbanks Daily News-Miner contributed to this story. Sheila Toomey can be reached at 907-257-5341 or stoomey@adn.com.

adn.com

Anchorage Daily News

28 men allege abuse by monk -

1965 TO 1975: Western Alaska men sue Fairbanks Catholic Diocese, Jesuits.

Anchorage Daily News (AK)

November 12, 2004

Author: RICHARD MAUER

Anchorage Daily News

Staff

Estimated printed pages: 4

Twenty-eight Alaska men say that when they were children, a religious brother who served several Western Alaska villages bought sexual favors from them with candy, better grades, sacramental wine and coins from collection plates.

The men, now mostly in their 40s, say in a lawsuit filed in Bethel that the former Trappist monk, Joseph Lundowski, abused their trust as deacon and religious instructor and engaged them in sexual misconduct, including oral sex. One man said he was also raped.

The men's identities are not disclosed in the lawsuit, which seeks monetary damages from the Fairbanks Catholic Diocese and the Jesuit province in Oregon, which has a historical affiliation with the Fairbanks diocese. At the time of the alleged abuse, from 1965 to 1975, the victims ranged in age from 6 to 24, with most of them in their adolescence.

The lawsuit says that Lundowski was forced from Alaska by church authorities in 1975. He is believed to have died. He was born in 1918.

A spokeswoman for the Fairbanks diocese said it had not received a copy of the suit and couldn't comment on the allegations.

"From the best I can figure, he left in the mid-'70s," said Ronnie Rosenberg, the director of human resources. "There are not many people here now who even remember him. As for the victims, all them are 'James Doe,' and we don't know who they are now. We do pray for healing for anyone who may have been injured."

In a prepared statement, the Jesuits denied any direct connection to Lundowski.

"The Society of Jesus learned this morning about the filing of litigation alleging multiple instances of sexual misconduct several years ago by Mr. Joseph Lundowski. As we have been committed to healing in the Church, we are saddened by these new allegations, and keep all who have suffered in our prayers. However, the Society wishes to clarify that Mr. Joseph Lundowski was at no time a member of the Society of Jesus nor in any way subject to the authority of any Jesuit superior or Provincial," it said.

According to the lawsuit, Lundowski was kicked out of his monastery "because of his

inability to withstand the rigors of monastic life." The lawsuit asserted that the language was code for "his improper and illegal sexual involvement with young boys."

Lundowski was recruited to Alaska by The Rev. George Endal for the Holy Rosary Mission School in Dillingham around 1949. Endal put Lundowski in charge of the boys' dormitory.

In 1963, when Endal went to the Western Alaska village of Nulato, Lundowski followed, the lawsuit said. It was there that Lundowski was "involved in a scandal with a person 'who is not a woman,'" the lawsuit said, quoting from a 1965 letter written to another priest in Western Alaska by his superior. The letter, discovered by the plaintiffs' attorney, Ken Roosa of Anchorage, in another abuse case, suggested that Lundowski's behavior was already established and known, though nothing was done about it other than complaining.

"Rather," the lawsuit continued, "he was transferred to Hooper Bay with Father Endal in 1965, where he continued to molest and sexually assault boys and young men."

Lundowski was deacon and religious instructor over the next 10 years at parishes in Hooper Bay, Stebbins and St. Michael. He also left a trail of abuse, according to the suit. Six of the victims were from Little Flower of Jesus parish at Hooper Bay; 11 attended St. Michael's parish at St. Michael; and 11 were from St. Bernard's parish in Stebbins.

His "sexual predation accelerated" when he was transferred to St. Michael and Stebbins in 1968, the lawsuit said. "He continued to serve as a deacon and catechist, often molesting boys after Mass or catechism."

The suit charged he engaged in oral copulation with each of the victims, "and forced many to submit to anal sodomy and required them to masturbate him." The boys were rewarded with candy, money stolen from collection plates, cooked and baked foods, beer, sacramental wine "and better grades on their catechism assignments."

He also warned them against telling. He said "no one would believe them because he worked for God," the suit said.

His abuse finally came to an end when a resident of St. Michael, Martha Abochook, caught him in the act with the 24-year-old, the suit said. Abochook, who is now dead, "raised a fuss" that resulted in the Fairbanks diocese removing Lundowski from Alaska.

Each of the men still lives in Western Alaska. Until other lawsuits against priests in the area became known, the men didn't understand their depression, anxiety, self-blame, shame and guilt were caused by Lundowski, the suit said. "They didn't know they had the right to sue the diocese until they heard of the others."

Church officials should have stopped the abuse and reported Lundowski's felonies to authorities, but failed, the lawsuit said.

Senator Hollis French

Capitol Room 417
465-3892
465-6595 fax



MEMORANDUM

Date: February 12, 2008

To: All Senators

From: Senator Hollis French

HSF

RE: SB 112

I would like to draw your attention to the following court decision.

The case was one of many involving alleged abuse committed by a priest against young Alaskans. The case was dismissed by the court after defendants in the case successfully used the statute of limitations as a defense. If the abuse had happened under today's laws, no statute of limitations would apply - the victim could bring suit at any time in the future.

The judge in the case was aware of the unfairness of the old statute of limitations. In reaching his decision, he wrote:

"The court believes that a legislative remedy to the conundrum these cases present might be fair and reasonable. Perhaps something akin to SB 112, presented in the most recent legislative session, will allow individuals who have been victimized to obtain fair redress these many years later."

I urge you to support SB 112.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

SECOND JUDICIAL DISTRICT AT NOME

JANE DOE J,

Plaintiff,

vs.

JAMES E. POOLE, S.J.; CATHOLIC
BISHOP OF NORTHERN ALASKA;
THE SOCIETY OF JESUS, OREGON
PROVENCE; and THE SOCIETY OF
JESUS, ALASKA,

Defendants.

Case No. 2NO-05- 56 CI

RULING ON STATUTE OF LIMITATIONS

The defendants have moved to dismiss this action based upon the statute of limitations and the motion was opposed by the plaintiff. The plaintiff has also cross-moved for summary judgment on the claim that fraudulent concealment precludes the Catholic Bishop and the Jesuits from relying on the statute. The parties have briefed the issues and an evidentiary hearing was held. The court considered the arguments of counsel and the testimony presented at the hearing, the exhibits offered and admitted, and the deposition testimony filed with the court.

FACTS:

The circumstances giving rise to the plaintiff's claims begin in the 1960s. Ms. Doe lived in Nome. Her life, at that time, was impacted by emotional and sexual abuse perpetrated by others. Her first direct contact with Fr. Poole arose at a junior high dance at which he was a chaperone. Fr. Poole was an ordained priest and member of the Society of Jesus working under their supervision. He was employed by the Bishop of Northern Alaska to establish a radio station in Nome. Ms. Doe was fourteen years old. He asked her to dance and she testified that during the dance he had an erection and rubbed against her. This same conduct occurred at another dance later

in the school year. On another occasion during that school year, Poole invited Doe to participate in a musical group. When she arrived at Poole's office, there were none of her contemporaries present. She described events that transpired as Poole sitting close to her and then rubbing his groin area through his clothing. The incident was interrupted when Poole's mother entered the room and asked Ms. Doe to leave. Finally, some months later, after a man who had been sexually abusing her murdered her aunt, she met Poole on the street. Doe had witnessed the murder and was despondent. Poole offered her solace at the Catholic church. Doe testified that when the two arrived at the Church, they went to his office and spoke for some time. She said that he then took her to a nearby dark hallway, pulled up her shirt, pulled down her pants and sexually penetrated her with his penis. This attack was interrupted by the sound of some men approaching the hallway. This incident occurred in 1969, when Doe was fifteen. Doe had no further direct contact with Poole.

Ms. Doe graduated from high school in Nome, attended college in Fairbanks for two years, and then married. She and her husband lived in Nome from their marriage in about 1975 until the late 1980s. They then moved to Florida for about two years and over the next few years moved between Florida and Anchorage at least twice. They have been residents of Anchorage since the mid-1990s.

Ms. Doe testified that while she and her husband lived in Nome, she worked for Kawarek, Inc. and for Norton Sound Health Corporation. In these jobs she provided training for village counselors on mental health issues, was an alcoholism counselor and provided training to members of various tribal councils. Doe became involved in issues of child abuse from very early in her career with Kawarek. She attended workshops on the issue and got intensive on-the-job training from psychologists and other professional. As part of her job, she wrote articles which were published in the Nome paper on the subject of child abuse. A number of these articles discussed the

emotional and physical consequences of sexual abuse. On one occasion, she reported sexual abuse by a foster parent. On another occasion, in the early 1980s, Ms. Doe learned that her brother was sexually abusing her daughter. She reported the abuse, got her children involved in individual counseling, she and her husband got couples counseling, and all participated in family counseling. At another time, after she moved to Anchorage, she was fired for trying to report sexual abuse by a superior on a young girl.

By 2000, Ms. Doe began to see mental health counselors on a regular basis. Shortly thereafter she was hospitalized at Alaska Psychiatric Institute. There were other hospitalizations subsequently. She received initial therapy from Joelle Werner, transferred to Tim Mannen and then returned to Ms. Werner in 2003. Her initial therapy focused on the death of her aunt and the sexual abuse that her aunt's murder had perpetrated upon her. In May 2004 she reported Poole's alleged abuse to Anchorage Police after reading an article about allegations of abuse by Poole asserted by another woman. This suit followed thereafter.

LEGAL STANDARD:

First, the plaintiff suggests that AS 09.10.065 is the statute of limitations to be applied in this case. However, in *Catholic Bishop Of Northern Alaska v. Does 1-6*, 141 P.3d 719 (Alaska 2006) our Supreme Court concluded that AS 09.10.065 does not revive civil claims that were time-barred before the effective date of the statute, October 1, 2001. Consequently, that argument has no merit.¹

The plaintiff argues that the discovery rule excuses her delay in filing the complaint. The defendants argue the discovery rule cannot operate to extend the statute for the more than thirty

¹ At oral argument, the plaintiff withdrew the claim that AS 09.10.130 tolled the statute for the time that Fr. Poole was outside the state of Alaska.

years that passed between the abuse and when the complaint was filed.

The Alaska Supreme Court has formulated the discovery rule in three possible ways:

- (1) a cause of action accrues when a person discovers, or reasonably should have discovered, the existence of all elements essential to the cause of action;
- (2) a person reasonably should know of his cause of action when he has sufficient information to prompt an inquiry into the cause of action, if all of the essential elements of the cause of action may reasonably be discovered within the statutory period at a point when a reasonable time remains within which to file suit.

Cameron v. State, 822 P.2d 1362, 1366 (Alaska 1991).

- (3) where a person makes a reasonable inquiry which does not reveal the elements of the cause of action within the statutory period at a point where there remains a reasonable time within which to file suit, the limitations period is tolled until a reasonable person discovers actual knowledge of, or would again be prompted to inquire into, the cause of action.

Pedersen v. Zielski, 822 P.2d 903, 908 (Alaska 1991).³

The plaintiff offers an additional way in which a discovery rule could delay the filing deadline. Alaska Statute 09.10.140(b) states:

An action based on a claim of sexual abuse under AS 09.55.650 that is subject to AS 09.10.065(b) may be brought more than three years after the plaintiff reaches the age of majority if it is brought under the following circumstances:

- (1) if the claim asserts that the defendant committed one act of sexual abuse on the plaintiff, the plaintiff shall commence the action within three years after the plaintiff discovered or through use of reasonable diligence should have discovered that the act caused the injury or condition;
- (2) if the claim asserts that the defendant committed more than one act of sexual abuse on the plaintiff, the plaintiff shall

³No evidence exists in this case that Ms. Doe made any inquiry into the existence of a claim, let alone a reasonable inquiry. Consequently, the third method for extending the deadline of the statute of limitations has no application in this case.

commence the action within three years after the plaintiff discovered or through use of reasonable diligence should have discovered the effect of the injury or condition attributable to the series of acts; a claim based on an assertion of more than one act of sexual abuse is not limited to plaintiff's first discovery of the relationship between any one of those acts and the injury or condition, but may be based on plaintiff's discovery of the effect of the series of acts.

This statutory formulation of the discovery rule was adopted in 1990, but was specifically made fully retroactive. Alaska Statute 09.55.650 states that an individual who "as a minor under 16 years of age, was the victim of a sexual abuse may maintain an action for recovery of damages against the perpetrator of the act or acts of sexual abuse based on the perpetrator's intentional conduct for an injury or condition suffered as a result of the sexual abuse."

However formulated, the discovery rule allows an individual to maintain an action on a claim that would otherwise be barred.

Where the plaintiff does not actually know of the existence of elements essential to her cause of action, under the "discovery rule," the limitations period does not begin to run until "a reasonable person [in like circumstances would have] enough information to alert that person that he or she has a potential cause of action or should begin an inquiry to protect his or her rights."

Alaska Tae Woong Venture, Inc. v. Westward Seafoods, Inc., 963 P.2d 1055, 1065 (Alaska 1998).

The discovery rule is measured by an objective not subjective standard, requiring the court to determine what a reasonable person in Ms. Doe's circumstances would have known. None of the legislative history submitted by the plaintiff regarding the operation of the statutory formulation of the rule suggests that a subjective standard should be used in its operation.

The determination of which of the various formulations of the discovery rule should be used and how it operates in the particular case is an issue that must be resolved by the court. In

Cikan v. ARCO Alaska, Inc., 125 P.3d 335, 342 (Alaska 2005) our Supreme Court stated:

disputes concerning the statute of limitations raise preliminary questions of fact that should ordinarily be decided by the court after conducting an evidentiary hearing. In the present case, then, the superior court should conduct a pretrial evidentiary hearing on remand to resolve ARCO's statute-of-limitations defense.

In determining these preliminary evidentiary issues, the court will use the preponderance of evidence standard.

The cross-motion for summary judgment on fraudulent concealment seeks to prevent reliance on the statute of limitations due to the active concealment of facts that would prevent the plaintiff from being aware of her cause of action.

"A party who fraudulently conceals from a plaintiff the existence of a cause of action may be estopped to plead the statute of limitation if the plaintiff's delay in bringing suit was occasioned by reliance on the false or fraudulent representation." To establish equitable estoppel, the plaintiff must show (1) fraudulent conduct, which may take the form of either an affirmative misrepresentation or a failure to disclose facts where there is a duty to do so; (2) justifiable reliance; and (3) damage.

Williams v. Williams, 129 P.3d 428, 432 (Alaska 2006).

Summary judgment may be entered for a party under Civil Rule 56 when there is no genuine issue as to any material fact and ... [the] party is entitled to judgment as a matter of law. All reasonable inferences of fact are drawn in favor of the party opposing the motion [for summary judgment] and against the moving party. *Kaiser v. Unialik Ins.*, 108 P.3d 876, 879 (Alaska 2005)(citations omitted).

ANALYSIS:

The plaintiff asks the court to use the date of Ms. Doe's psychological counseling with Ms. Werner when she disclosed Poole's conduct as the discovery date. It was only then that

she asserts that she learned that the sexual abuse she suffered at the hands of Poole was a cause of her ongoing mental injuries. Ms. Doe testified that she failed to discuss her abuse by Poole in her initial counseling with Mr. Mannen because he was Irish and Catholic. She also stated that her initial counseling with Ms. Werner was focused on crisis management and she did not consider disclosing about Poole. The plaintiff argues that the legislative history of AS 09.10.140 discloses that many people only connect their later life problems with earlier sexual abuse when in counseling. The testimony of Dr. Sperbeck at the evidentiary hearing was equivocal and not overly helpful regarding the issue of when a person in similar straits as Ms. Doe would objectively know that she had been injured by the sort of abuse that Poole allegedly visited upon her.

In his direct examination, the doctor discussed his opinion that Ms. Doe was suffering from serious psychological problems and that Poole's abuse was a cause of those problems. The doctor did testify at one point that Ms. Doe "couldn't connect the dots" to really understand the relationship between Poole's abuse and why she developed as she did. However, in response to the court's question he indicated that she may have understood the effect of the abuse but couldn't come forward to disclose it. He testified on several other occasions that the sexual abuse she suffered made it difficult or impossible to come forward and disclose what had happened. He also testified that is normal or common for adult victims of childhood sexual abuse to disclose in adulthood, often in the context of therapy, what had happened to them. He conceded that therapy is not a necessary prerequisite to disclosure. However, the court finds this testimony to be unhelpful to resolving the issue of the statute of limitations. The testimony concerning Ms. Doe's individual issues is directed to her subjective ability to discover the claims against the defendants. The testimony about the circumstances that objectively allow others to disclose abuse is likewise of little concern. The issue is not the time that an individual discloses abuse, but rather the time a victim objectively understands

that injury flows from the abuse that triggers the duty to inquire.

An individual has a duty to investigate when they are aware that another has wrongfully visited injury upon them. That duty to inquire does not await full recognition of the extent of the injury. *Sopko v. Dowell Schlumberger, Inc.*, 21 P.3d 1265, 1272 (Alaska 2001). Here, the plaintiff makes no assertion that she believed that Poole's action in sexually penetrating her was not wrong. Doe stated in her deposition that she knew what he did was wrong. Her action in avoiding even walking by him on the street demonstrates that she was aware that he had injured her. The court believes that any victim of such abuse would objectively feel these emotions. The central question of whether a victim would know that the abuse would cause psychological injuries that would manifest themselves years later is not so clear.

In Ms. Doe's case, however, the answer is clearer. She later, in adulthood, received training in the issue of child abuse. She authored articles that specifically noted:

It is estimated that at least 50% of all sexually abused children never tell anyone about their abuse. . . . Many are later identified as having serious problems that interfere with their ability to cope with to [sic] pressures of adult life. Other victims, who lead normal, healthy lives are at risk for a number of other problems that interfere with personal happiness. Many suffer from low self-esteem, social skills and problems in trusting others, distorted attitudes toward sex resulting in poor sexual adjustment, problems with independence and mature judgment, and difficulties in providing proper parenting to their own children. More extreme problems may include mental illness, drug and alcohol abuse, suicide, physical abuse of children or partners, and sexual abuse of children or adults.

Evidentiary Hearing Exhibit AN (dated 2/16/89).

The court believes it must consider and attempt to determine if a reasonable person in a situation similar to Ms. Doe would have appreciated that the sexual abuse she experienced would have serious

long-standing consequences. By the time Ms. Doe wrote these things, she had graduated from high school, attended college, received extensive on-the-job training in child abuse, and worked in the field of child abuse prevention for years. That she could author articles like the one cited above demonstrates that she was aware of the problem of sexual abuse and its likely consequences. Dr. Sperbeck opined that these articles were merely unconscious "warning flags" raised for others, not evidence that she appreciated that these things were happening to her. The court believes, however, that a reasonable person who had received such training and worked in a similar job would be aware of the consequences of abuse. Perhaps not aware of the full extent of such consequences, but that knowledge is not necessary to trigger the duty to investigate.

However, in Ms. Doe's case, additional factors demonstrate that she subjectively knew that sexual abuse would likely result in psychological damage. In the early 1980s she discovered that her brother had sexually abused her daughter. Upon learning this, she reported his abuse to the authorities. She then arranged individual counseling for both of her children, enrolled in couples counseling with her husband and arranged counseling for the entire family. This seems to be evidence that Ms. Doe was aware of the potential for psychological injury from one or more instances of sexual abuse.

Ms. Doe asserts that the doctrine of fraudulent concealment prevents the assertion of the statute by the Catholic Bishop and the Jesuits. She argues that both the defendants were aware of conduct by Poole that suggested he was disposed to engage in sexual misconduct. The plaintiff asserts that the defendants were under a duty to disclose this information and their failure to do so is the sort of fraud by inaction that justifies application of the doctrine. The defendants deny a duty to disclose and the court fails to find such a duty exists. Additionally, a party generally cannot invoke estoppel "unless [they have] exercised due diligence in attempting to uncover the concealed

facts." *Waage v. Cutter Biological Div. of Miles Labs., Inc.*, 926 P.2d 1145, 1151 (Alaska 1996).

Here, the allegedly concealed fact is that Poole presented an unreasonable threat of perpetrating sexual assault against individuals similar to Ms. Doe. However, by 1990, Ms. Doe knew that Fr. Poole presented more than a threat. It would have been utterly unreasonable for her not to be aware of this because she had been abused. Because Ms. Doe is not entitled to judgment as a matter of law on the issue of fraudulent concealment, her motion for summary judgment will be denied.

The court will find that by 1990 Ms. Doe had sufficient information to prompt an inquiry into the existence of a claim of sexual abuse against Fr. Poole. The court will further find that had she used reasonable diligence by that time, she would have discovered the effect of Poole's injury and the condition attributable to the series of acts he perpetrated. Because Doe took another fifteen years to file this suit, the court finds that the claims of Count I are time-barred and will dismiss them.

Similarly, Ms. Doe knew that Fr. Poole was associated with the Catholic Church and KNOM radio. Tom Busch testified that it was common knowledge in the community that Poole was a member of the Jesuit order. Consequently, Ms. Doe was on inquiry notice as to those entities responsibility under theories of vicarious liability, by that time as well. Therefore, the court will dismiss the plaintiff's claims against defendants Catholic Bishop and the Jesuits set out in Counts II, III and IV. Finally, the plaintiff has indicated she has no opposition to the dismissal of the claims in Count VI and IX against Fr. Poole.

CONCLUSION:

The court believes that application of the facts of this case to the binding authority it is required to follow mandates the decision reached here. Had Ms. Doe's background and life experiences been different, another result would have been reached. That the court is taking the

actions it has is in no way a decision condoning the actions of Fr. Poole, assuming they occurred. The court believes that a legislative remedy to the conundrum these cases present might be fair and reasonable. Perhaps something akin to SB 112, introduced in the most recent legislative session, will allow individuals who have been victimized to obtain fair redress these many years later.

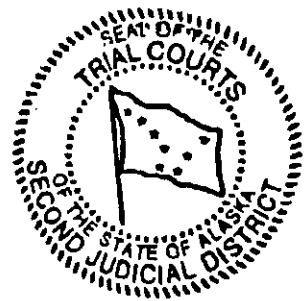
For the reasons set out herein, the defendants' motions to dismiss are GRANTED. The plaintiff's motion for summary judgement on fraudulent concealment is DENIED. And the claims against Fr. Poole set out in Counts VI and IX are DISMISSED. Since these are the last theories of liability asserted against Poole, the claim for punitive damages against him, asserted in Count V, is also DISMISSED.

DATED AT NOME, ALASKA This 12th Day of September, 2007.



BEN ESCH
Superior Court Judge

I certify that on 9/13/07
a copy of the foregoing was mailed/given to: BY FAX EXCEPT THOMAS
ROSEA GROSECLOSE, LYNCH (CET TRAV)
GORSKI, MANKY, THOMAS, HANSEN
Clerk EMP



SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 1/21/09

FURTHER: Judiciary

Date of 5-Day Notice: _____
 (in accordance with Uniform Rule 23)

DATE TURNED
 IN TO OFFICE: 2/22/09

Health and Social Services Committee considered SENATE BILL NO. 47

SB 47 STATUTE OF LIMITATION FOR SEXUAL OFFENSES

"An Act relating to the statute of limitations for certain sexual offenses and permitting causes of action for certain sexual offenses that would otherwise be barred by the statute of limitations to be brought during a certain one-year period."

and recommends:

- be replaced with SCS or CS _____ (_____)
- adopt previous SCS or CS _____ (_____)
- attached amendment(s)
- adopt _____ Letter of Intent
- further referral to _____ Committee

SENATE BILL:
<input type="checkbox"/> Same Title
<input type="checkbox"/> New Title
<hr/>
HOUSE BILL:
<input type="checkbox"/> Same Title
<input type="checkbox"/> Technical Title Change
<input type="checkbox"/> New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet	Zero	FN#
DOC	2/20			✓	
LAW	2/27			✓	

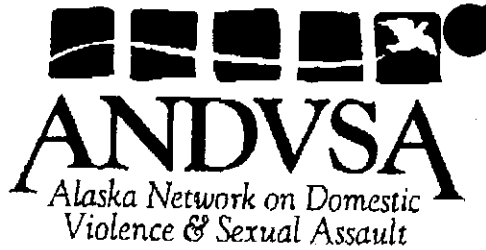
PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	Thomas	✓			
	DYSON				X
	DAVIS	✓			
CHAIR:	DAVIS	X			

Main Office
130 Seward St #214
Juneau, Alaska 99801
Phone: (907) 586-3650
Fax: (907) 463-4493
www.andvsa.org



Pro Bono Office
PO Box 6631
Sitka, Alaska 99835
Phone: (907) 747-7545
Fax: (907) 747-7547

February 26, 2009

Dear Senator French:

On behalf of the eighteen member domestic violence and sexual assault programs throughout the state that comprise the Alaska Network on Domestic Violence & Sexual Assault, we thank you for bringing forth SB 47.

As state-wide advocates for victims of sexual assault, we strongly support the right of all victims of sexual assault to pursue justice in our courts of law. SB 47 will allow past victims of sexual abuse, previously excluded by a statute of limitations, the right to file charges against their perpetrators no matter when the abuse occurred. This is the same right they would have today under current law.

The Network believes that this is a commonsense approach to ensure justice for all victims of sexual assault equally and in a timely manner. The Network is in full support of SB 47. Thank you for advocating for victims of sexual assault in our state, and if I may be of any assistance or provide you any information, please let me know.

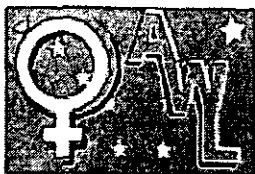
Sincerely,

Peggy Brown
Executive Director

Cc: Lisa Mariotti, Policy Associate

Member Programs

Anchorage AWAIC, STAR Barrow AWIC Bethel TWC Cordova CFRC Dillingham SAFE
Fairbanks IAC Homer SPHH Juneau AWARE Kenai LeeShore Center Ketchikan WISH Kodiak KWRCC
Kotzebue MFCC Nome BSWG Seward SCS Sitka SAJFV Unalaska USAFV Valdez AVV



ALASKA WOMEN'S LOBBY
AWL Mission: To defend and advance the rights and needs of Women, Children and Families in Alaska

**2009
AWL Steering
Committee
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Lobbyist

Geran Tarr,
Chair

Jayne Andreen

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Torie Foote

Cady Lister

Patricia Macklin

Rebecca Madison

Lauree Morton

Jorden Nigro

Taber Rehbaum

Nancy Scheetz-
Freymler

Libby Silberling

Rose Wysocki

P.O. Box 20891
Juneau, Alaska 99802-0891
www.akwomenslobby.org

**Letter of Support
SB 47: Statute of Limitations for Sexual Offenses**

The Alaska Women's Lobby, a statewide group defending and advancing the rights and needs of women, children and families, supports SB 47. It gives an important window of time to certain victims of felony sexual assault.

The statute of limitations for felony sexual assault was eliminated in 2001 for cases that were open at the time and for sexual assault that occurred after the passage of the bill. Unfortunately, the limitation was not lifted for those victims who were assaulted and the statute of limitations had already run. We applaud Senator French for introducing SB 47 which allows a one year period of time in which those victims may bring a civil action against the perpetrators who committed the sexual assault.

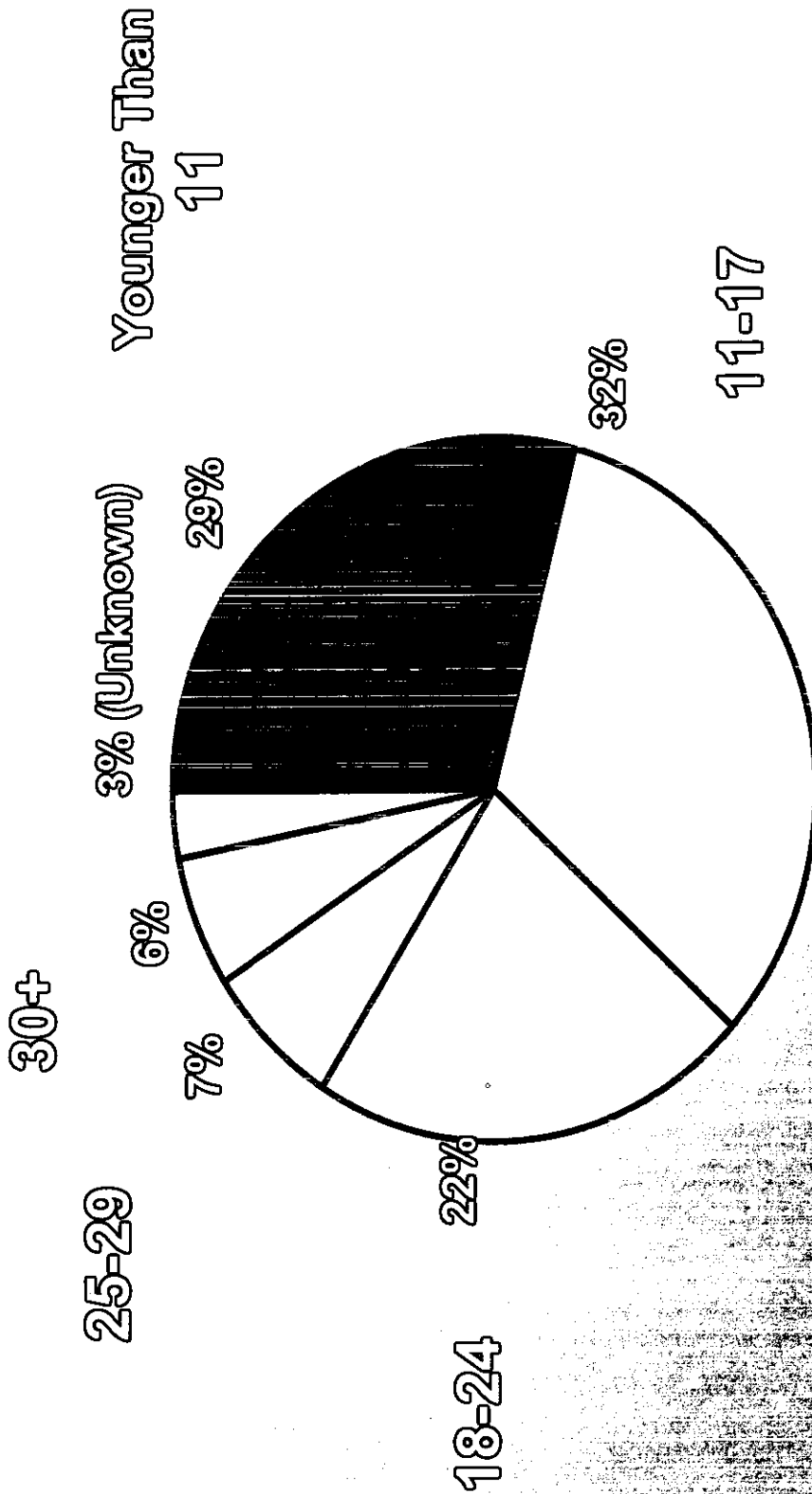
Sometimes civil actions are the only legal means to recover some measure of personal loss caused by the trauma of sexual assault and its emotional effects. The perpetrator or those responsible for an assault can be held accountable. The victim has a chance to tell her/his story and confront the perpetrator. The case can put the community on notice about the perpetrator. Having the perpetrator formally held accountable for his/her actions may provide relief to the victim and restore a sense of balance that has been missing for too long.

Creating this window of opportunity for justice and closure is the least we can do for those who continue to suffer in silence without a recourse that is available to anyone who has been assaulted since 2001. Please pass SB 47 this session.

Most Victims Are Young

61% of rapes victims are 17 years old or younger

Age at Time of Rape



16

National Women's Study (n=714)

Most Victims Know the Perpetrator

- Children
 - Fear of being disbelieved, punished or unprotected (Lawson & Chaffin, 1992)
 - Fear or experience of being blamed for break up of family
 - Often the outcome is more devastating to the child than to the perpetrator
 - Child is held responsible for the father's absence from the family
 - Almost 100% of children said they would not report the incident if they were molested again

(William Marshal presentation, Ass. Of the TX of Sex Abusers 1995)

Lag Time for Detection

<u>Study</u>	<u>Type of Offender</u>	<u># of Years</u>
- Freeman-Longo(1985)	Rapist	6
	Child Molester	13
- Elliot (1986)	Paraphiliacs	10
- Ahlmeyer et al.(2000)	Rapists and Child Molesters	16

PERSONAL & SOCIAL COSTS

- More than half of victims have been raped more than once
- Victims of sexual assault are:
 - 6x more likely to develop Post-Traumatic Stress Disorder
 - 3x more likely to develop major depression
 - 13x more likely to attempt suicide
 - 25 - 50% of rape and child sexual abuse victims receive some sort of mental health treatment as a result of the victimization (Miller, 1996)

Kilpatrick et al., 1992, Rape in America: Report to the Nation 1992

Senate Bill 47

Brad Thomson, Director
Alaska Department of Administration
Division of Risk Management
~~645-5723~~ →

SB 47

465-5723

What is the financial exposure to the State of Alaska and it's political subdivisions?

*for State issue would
my arguments*

*Matt GilY
Rep Cath P.*

*2/24 T.C. of Mr. Thomson - 235 - he does not
plan to testify - does not see impact on
state - will be listening*

POSITION STATEMENT IN OPPOSITION TO SB 47

The Society of Jesus, Oregon Province

Senate Bill 47 seeks to make a retroactive change to the statute of limitations for certain civil claims alleging felony sexual abuse. Sexual abuse is a serious crime which must be eradicated from our society. SB 47, however, does not assist with that goal. SB 47 does not deter or prevent sexual abuse. Instead, it seeks to create a retroactive suspension of the statute of limitations to allow lawsuits to be filed to collect monetary damages for acts that took place many decades ago on claims which have already expired under existing law.

The Society of Jesus, Oregon Province ("Province") has been dealing with claims arising out of alleged sexual abuse of minors; claims date back to the 1940s and continue through the early 1990s. The vast majority of the claims are from 30-40 years ago. Alaska law has a series of statutes of limitations which have been interpreted by our courts so as to strike a balance between insuring claimants have enough time to file a claim and protecting persons from due process concerns that arise when subjected to stale claims.

Courts (and common sense) long have recognized that adjudications become less reliable with the passage of time; both our Alaska Supreme Court and the United States Supreme Court have said so. Over time, the risk grows that evidence may be lost or that key witnesses may disappear or die. The testimony of available witnesses also becomes less reliable over time as memories fade and recollections of events are colored by intervening experiences.

What SB 47 does is create a one year period of time where no statute of limitations whatsoever would apply. If this bill were to become law, it would pose serious problems for the State of Alaska, as well as public and private organizations within the state. The problems generally are as follows:

- Retroactively suspending the statute of limitations would impair the integrity of Alaska's judicial system for dispute resolution. Retroactive suspension would allow plaintiffs to make allegations of past wrongdoing without any consideration to how long ago the alleged wrongdoing occurred. As a result, the State of Alaska, public entities (such as, schools, correctional facilities foster care programs, municipalities—any government program where adults work with minors under age 18) and non-profit entities that work with children (such as the Boy and Girl Scouts, Boys and Girls Clubs, sports and religious organizations) will be subjected to defending claims alleging misconduct many decades ago.
- SB 47 would significantly increase the risk of inaccurate adjudications or potentially fraudulent claims. Although a plaintiff making an allegation necessarily would be alive and available to testify, the passage of time makes it likely that other key witnesses and evidence would be unavailable to disprove plaintiff's allegations. Documents about supervision and attendance (or potential insurance) are regularly discarded over time. Our system of justice works only when witnesses on both sides can be heard and one party is not deprived of important evidence. Reviving decades-old claims where an important witness or party has died or is unable to testify as to the allegations is inherently unfair.

- Strong arguments exist that SB 47 is unconstitutional. Due process and other constitutional considerations weigh against, and sometimes prohibit, retroactive revival of time-barred claims.

The primary beneficiaries of SB 47 are not necessarily real victims of abuse. It is public knowledge that in the 2008 settlement the Province made with more than 100 plaintiffs in Northern Alaska, \$20 million of the \$50 million settlement went to two private law firms. Moreover, in testimony before the Alaska Senate Judiciary Committee in 2007, the Executive Director of a victim's advocacy group testified that the normal recovery to victims of sexual abuse is approximately 30% on every dollar.

The Alaska legislature previously modified the statute of limitations to allow claims for felony sexual abuse to be initiated at any time for any claim arising after October 1, 2001. In addition, under the current state of the law (and as the Province is well aware), access to the courts for child sexual abuse is still possible with the understanding that claimants are required to demonstrate why their claims are timely under the law as it presently exists.

While the Province has recently filed for protection under Chapter 11 of the Bankruptcy Code, the fact remains that numerous claims are outstanding and remain to be decided and ultimately handled through the legal processes available under the law. The full impact of SB 47 is being evaluated, but at this point in time, the Province believes, as it did in years past, that SB 47 does not serve the public good of state, private and public institutions, as well as religious institutions. Thus, the Province believes that SB 47 is a bill that should not be passed into law.