

Recommendations

Based upon the stated findings of fact and all of the evidence heretofore had before this grand jury and in order to protect children from the scourge of childhood sexual abuse, to provide improved statutory remedies where it occurs; to provide increased accountability for individuals and institutions responsible for children and to aid in the prosecution of individuals and institutions that fail in these responsibilities; NOW THEREFORE, by the authority vested in this grand jury by Criminal Procedure Law; Section 190.85(1)(c); the following legislative, executive, and administrative actions are recommended in the public interest:

Legislative

- I. New York State Criminal Procedure Law section 30.10 should be amended to eliminate the statute of limitations in cases involving a sexual offense as defined in article one hundred thirty of the penal law committed against a child less than the age of eighteen, use of a child in a sexual performance as defined in section 263.05 of the penal law or conspiracy to commit these crimes under New York State Penal Law Article 105.
- II In the alternative, in light of the fact that the Code of Canon Law allows for commencement of actions against priests for a period of ten years after the child's eighteenth birthday, New York State Criminal Procedure Law section 30.10 should be amended to extend the statute of limitations in cases involving a sexual offense as defined in article one hundred thirty of the penal law committed against a child less than the age of eighteen, use of a child in a sexual performance as defined in section 263.05 of the penal law or conspiracy to commit these crimes under New York State Penal Law Article 105, for fifteen years after the child's eighteenth birthday.

- III. New York State Criminal Procedure Law section 30.10 should be amended to eliminate the statute of limitations for the crime of Hindering Prosecution pursuant to Penal Law section 205.50, where the prosecution hindered involved a sexual offense as defined in article one hundred thirty of the penal law committed against a child less than the age of eighteen or use of a child in a sexual performance as defined in section 263.05 of the Penal Law.
- IV. In the alternative New York State Criminal Procedure Law section 30.10 should be amended to extend the statute of limitations for the crime of Hindering Prosecution under Penal Law section 205.50 where the prosecution hindered involved a sexual offense defined in article one hundred thirty of the penal law committed against a child less than eighteen or use of a child in a sexual performance as defined in section 263.05 of the penal law, as consistent with Recommendation II.
- V. New York State Criminal Procedure Law section 30.10(4) which provides an exclusionary period of not more than five years beyond the applicable statute of limitations where a defendant was continuously outside the state or his whereabouts were continuously unknown and continuously unascertainable by the exercise of reasonable diligence, should be increased to a minimum of fifteen years beyond the applicable statute of limitations.
- VI. New York State Criminal Procedure Law section 60.40 should be amended to provide that where a defendant is charged with a sexual offense under Article 130, Article 260 or Article 263 the court may permit evidence of a conviction for any offense under Article 130 of the penal law to prove the defendant's propensity to commit the crime.

- VII. New York State Penal Law section 10.00(7) defining “person” should be amended to include a religious corporation or not-for-profit corporation or any other corporate entity not heretofore referenced.
- VIII. New York State Penal Law section 130.05 (3)(h), Sex Offenses; Lack of Consent, should be amended to include among the list of individuals with whom an individual is incapable of consenting to sexual contact, a “client or patient and the actor is a health care provider, mental health care provider or *anyone representing themselves as a member of the clergy who provides health care or mental health care services.*”
- IX. New York State Penal Law section 20.00, Accessorial Liability, currently provides for accessorial liability for only the commission of the crime itself. The Grand Jury recommends that this statute be amended to allow for accessorial liability for conduct that occurs after the commission of the crime that conceals or hinders discovery of the crime or the discovery of evidence of the crime.
- X. New York State Penal Law Article 260 should be amended to include a new crime of Endangering the Welfare of a Child as a felony, when the conduct which is injurious to the physical, mental or moral welfare of a child less than seventeen years old, consists of a sexual offense in violation of Article 130 of the Penal Law or Use of a Child in a Sexual Performance as defined in section 263.05 of the penal law.
- XI. The New York State legislature must enact a statutory scheme that provides for the mandatory reporting directly to law enforcement, of abuse, including sexual abuse, of **any** child, not just those children abused by parents, guardians or other persons legally responsible for them as currently exists under the obligations of the New York State Social Services Law.

- XII. The New York State legislature must include in this statutory scheme a legal responsibility by a priest, minister, rabbi or any other person serving a religious institution or Diocese in ministry, employment or a volunteer position to immediately and directly report to law enforcement the abuse of a child.
- XIII. The statutory scheme enacted by the legislature should define “law enforcement” as the local law enforcement agency where the incident occurred or where the suspect is currently located.
- XIV. The reporting responsibility of the mandatory reporters in this statutory scheme must be triggered where the alleged victim is or was less than seventeen at the time of the abuse regardless of whether the individual required to report knows the identity of the alleged victim or whether the alleged victim is currently less than the age of seventeen.
- XV. The New York State legislature must include in this statutory scheme penalties for the failure of any mandatory reporter to report the abuse of any child. These penalties should also be reflected in the enactment of an amendment adding a new crime under the Penal Law for a violation of these reporting requirements. Repeated violations of the mandatory reporting requirements must elevate the crime from a misdemeanor to a felony. Failure of a mandatory reporter to report the **sexual** abuse of a child or the use of a child in a sexual performance must be a felony.
- XVI. The statutory scheme should provide that if a person as defined in New York State penal law section 10.00(7), is convicted of violating the mandatory reporting requirements of the penal law on more than three occasions the District Attorney of the County may apply to the Court for the appointment of a monitor to insure compliance with the mandatory reporting requirements.

- XVII. The New York State legislature must establish by law a state registry of individuals similar to the State Central Registry of Child Abuse and Maltreatment as provided in the Social Services Law for the purpose of listing those individuals involved in the abuse of children who are not the parent, guardian or other person legally responsible for the child.
- XVII. The New York State legislature should require that any person who applies for a position involving children under the age of eighteen be screened through this new registry in a manner consistent with the provisions currently in existence for the screening of employees and others through the State Central Register of Child Abuse and Maltreatment.
- XIX. The New York State Civil Practice Law and Rules should be amended to extend the statute of limitations in an action to recover money damages against a defendant based on the sexual abuse of a child.
- XX. The New York State Civil Practice Law and Rules should be amended to prohibit as a matter of public policy confidentiality agreements in any action for damages resulting from the sexual abuse of a child.
- XXI. The Diocese of Rockville Centre acted in a manner that resulted in plaintiffs being deprived of their right to legal recourse based on their abuse as children by priests in the Diocese. To remedy this situation, the Grand Jury recommends that the New York State legislature should enact a statute similar to Section 340.1 of the Code of Civil Procedure for the State of California that revives civil actions for damages for a period of one year that are otherwise time barred solely because the applicable statute of limitations has or had expired. This statute would pertain only to actions for the recovery of damages suffered as a result of childhood sexual abuse.

Executive

- I. The Governor of the State of New York should introduce legislation consistent with the legislative recommendations in this report or, in the alternative, he should support legislation introduced by others. The Governor should commit appropriate budgetary resources necessary to implement the legislative recommendations including appropriating additional resources to law enforcement.

Administrative

- I. State and local agencies affected by the changes implied in the legislative recommendations should be given the necessary authority to adopt administrative rules and regulations necessary for the effective implementation and execution of the legislative recommendations.