

APSAC Amicus Brief on Child Sexual Abuse in U.S. Supreme Court

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The American Professional Society on the Abuse of Children filed an amicus brief with the U.S. Supreme Court in the case of *Stogner v. California*. The case involves the constitutionality of an extended statute of limitations for child sexual abuse, which allows cases to be prosecuted within one year of being reported to the police, despite the fact that the original limitations period has run. Joining APSAC on the brief were the American Psychological Association, the National Association of Counsel for Children, and the California Professional Society on the Abuse of Children.

The brief explained the rationale for a long statute of limitations period for child sexual abuse by reviewing research that 1) a substantial percentage of child sexual abuse victims never disclose their abuse to anyone until they are adults, 2) child molesters often remain at risk of reoffending for substantial periods of time, and 3) the ill-effects of child sexual abuse often last into adulthood.

In 1994, the California legislature adopted a special statute of limitations for certain child sexual abuse crimes, allowing charges to be brought within one year of the time that the victim reported the crime to the police. Careful not to encourage false allegations, the legislature required that cases brought under the special statute must have “independent evidence that clearly and convincingly corroborates the victim’s allegation.” One justification for the special statute of limitations was that many children delay reporting sexual abuse until they are adults, after the standard statute of limitations has run. Another justification is that child molesters often pose a risk for a substantial period of time, justifying delayed prosecution of their offenses.

The legislation was worded to apply retroactively, that is, to cases for which the standard statute of limitations had already run at the time the new statute was enacted. The legislature made it quite clear that it wanted all victims to have their day in court. It is the application of the statute to these sorts of cases that is at issue in this case. The U.S. Supreme Court is considering whether it is constitutional to revive a criminal cause of action for child sexual abuse after the statute of limitations has run. Technically, does revising a criminal cause of action constitute an ex post facto law or a denial of substantive due process? Of course, to a large extent the Court’s decision will be based on legal precedents and the somewhat abstract issue regarding the application of rules against ex post facto laws to changes in the statute of limitations.

The amicus brief did not address these arcane legal issues. Rather, amici sought to assist the Court in assessing the legitimacy of the reasons for the special statute of limitations. An understanding of the dynamics of sexual abuse may assist the Court in determining whether retrospective application of the special statute of limitations is fair.

The brief reviewed the research on disclosure of abuse, demonstrating that most child sexual abuse victims never disclose their abuse, and that those who do often delay for years. The brief explained the reasons for delay, which include ignorance, fear, and embarrassment. Second, the brief discussed research showing how child molesters do not “age out” of their offenses at the same rate as other sexual offenders, thus presenting a continuing risk at later ages. Third, the brief reviewed the research on the long-term effects of child sexual abuse. The brief emphasized recent research documenting harms controlling for family dysfunction and noted that the cases at issue—cases involving “substantial sexual contact” that are reported to the police—are unlikely to be benign.

Tom Lyon helped coauthor the brief, working with Nathalie Gilfoyle, counsel for the APA, and Kathleen Behan, Christopher Man, and Anthony Franze of the law firm Arnold and Porter. Several other child maltreatment professionals also provided assistance, including Kathleen Kendall-Tackett, Mark Chaffin, Jodi Quas, Angela Crossman, and Sharon Portwood. A copy of the brief can be found at: www.psyclaw.org/stogner-v-california.pdf. Other information about the case (including briefs and the oral argument) can be found at: www.supreme.lp.findlaw.com/supreme_court/docket/2002/march.html#01-1757.