State Removes Statute Of Limitations For Rape Cases

by {ga=ejgoodman}
Monday, June 05, 2006 09:41 AM

New York's criminal law is about to undergo a major change following the legislature's elimination of the statute of limitations for rape cases.

Until now, unless charges of rape were brought within five years, there could be no prosecution. When the new law goes into effect, there will be no time limit in New York State for apprehending, arresting and prosecuting rape in the first degree. This is already the case with murder charges.

While efforts to expand or end the statute are not new, the issue catapulted into public awareness â€“ and became the subject of intense lobbying -- during the 2005 Manhattan trial of People v. Fletcher Worrell. In 1973, Worrell was indicted on charges that he climbed through a bedroom window and raped Kathleen Ham, then 26. Yet, he was on trial more than three decades later.

Worrell first had been tried 33 years ago, in the same courthouse. But that trial resulted in a hung -- or undecided -- jury, and Worrell then was released on bail. He jumped bail and vanished. The presiding judge issued a bench warrant for Worrell's arrest, and he became a fugitive.

In this particular case, the commencement of the first prosecution tolled -- or stopped -- the statute of limitations. Even if the first trial had not taken place, Worrell’s fugitive status, once charges were brought, would have kept the prosecution viable.

Worrell was rearrested in Georgia when he tried to purchase a gun. The required background check revealed the New York warrant, and he was extradited to New York to face the original charges.

In the meantime, damaging DNA evidence implicating Worrell was found. The evidence was not useful 33 years ago, as the science of DNA had not yet developed for forensic purposes.

Even though the statute of limitations did not stop prosecution in the Worrell case, the trial illustrated that someone accused of rape, but arrested six after years after the assault would be free from prosecution under the five-year statute of limitations. This would be the case even though the use of DNA could link a suspect to a crime such as rape indefinitely.

Statutes of limitations in both criminal and civil law refer to the period of time during which an action or prosecution can be brought. While the change removes the statute of limitations in criminal cases, it increases the time limit for civil actions for rape from one to five years.

There have been exceptions to the statute of limitations for certain crimes -- those considered the most serious, such as murder, arson and kidnapping -- but rape was never included in this group of crimes.

Until the women's liberation movement of the late 1960s and early 1970s focused on violence against women and made the issue of rape a top priority, prosecution of rape cases was extraordinarily difficult for the victim. The culture and beliefs surrounding rape made legislators, prosecutors, police, judges and jurors, believe that, when a rape occurred, it must have been the woman's fault; she must have consented or "wanted it." The law also required corroboration by another witness or other evidence that the victim tried to fight off the attacker. The victim's past sexual history and reputation were fair game for cross-examination. And if the assault did not occur between strangers, it was not viewed as rape. What is now known as "date rape" was not acknowledged, and certainly it was not accepted that a woman could be raped by her husband or a prostitute by a "John."

In the 1970s, this began to change, and it became easier to successfully prosecute rape. But in New York, the statute of limitations remained five years.

Susan Brownmiller, author of “Against Our Will: Men, Women and Rape,” which is considered the classic work on the subject of rape, says the change in the time limit should have happened in the 1970s and finally occurred because of an “incredibly active” lobbying effort by the National Organization for Women. Ending the statute of limitations, she says is, “more important now because of DNA. You can eventually find the guy who couldn't be found by other means. "

But criminal defense lawyers, who do not want their clients exposed to arrest, prosecution and

conviction indefinitely, disagree. David Feige, a criminal defense lawyer and author of “Indefensible,” says, "There has to be some finality.” He says he is “squeamish” about cases being prosecuted 20 to 25 years after the crime: “It makes it basically impossible for the defendant, because usually the defense will be â€ consent,’ and who will remember where they were, what happened? â€¦ The accused is effectively prevented from presenting a defense."

Other defense lawyers and civil libertarians are concerned about the increased collection of DNA samples and its implications, such as the use of DNA evidence many years after the fact and invasions of privacy.

New York's statute of limitations has been one of the shortest in the nation. According to NOW New York City, as of 2005, there were 690 rape cases that could not be prosecuted because of the time limit. The change in law, the group says, will "finally bring justice to some victims of rape."

Emily Jane Goodman is a New York State Supreme Court Justice