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CYRUS R. VANCE, JR.
DISTRICT ATTORNEY

April 2, 2018

The Honorable Andrew M. Cuomo
Governor of the State of New York
The Capitol
Albany, New York 12224

RE: Reforming New York's Sex Crimes Statutes

Dear Governor Cuomo:

Now that this fiscal year's budget has been signed into law, I write to ask that you turn your attention to much-needed legislative reform of New York's sex crimes statutes. We are grateful for your leadership in passage of the All-Crimes DNA and Aggravated Family Offense laws, which my Office and prosecutors around the state have used successfully in many cases to bring justice to victims. But in the area of sex crimes, the last time New York passed comprehensive reform was in 1995 with the enactment of the Sex Offender Registration Act (and amendments to that law in 2006). More than two decades later, we are at a moment in time when the nation's attention is on the need to better protect victims of sex crimes and to hold their abusers accountable. We are fully committed to bringing justice to these victims through prosecutions, innovative community based-programs, and investment initiatives. However, there are holes in the sex crimes statutes that require legislative change. Over the last several years, I have been urging the Legislature to strengthen these laws, and I continue that call today.

Specifically, we need the following legislation:

- 1) Amend the sex crimes law to remove the requirement that a victim's intoxication was caused involuntarily.**

Under current law, a voluntarily intoxicated individual is not considered "mentally incapacitated," even if he or she were unable to control his or her conduct due to that intoxication. Therefore, prosecutors cannot bring sex crime charges in cases where the victim became voluntarily intoxicated and was unable to consent, even if a reasonable person would have understood that the victim was incapacitated. But there is no difference between an intoxicated individual's ability to consent to sexual acts when he or she was drugged, and an intoxicated individual's ability to consent when he or she voluntarily drank alcohol or took narcotics. Victims of sexual assault should not be barred from obtaining justice because he or she voluntarily consumed drugs or alcohol. And perpetrators of sexual assault should not be shielded from prosecution just because the victim voluntarily consumed drugs or alcohol. The law should be amended to remove the requirement that the victim's intoxication was caused against his or

her own will, in cases where a reasonable person in the defendant's position should have known that the victim was incapacitated.

2) Eliminate the requirement to show evidence of force, fraud, or coercion in sex trafficking cases involving children.

New York's sex crimes laws properly recognize that children cannot consent to sex – except when the child is a victim of sex trafficking. Our state, unlike most states and the federal government, requires evidence of force, fraud, or coercion to prove that a child is a victim of sex trafficking. This requirement, which is in contravention of federal and international definitions of sex trafficking, often forces traumatized child victims to testify at trial before their abusers. Assembly Member Amy Paulin and Senator Andrew Lanza have introduced the “Sex Trafficking of a Child” bill (A.6823/S.5988) that removes this requirement. I urge you and our state legislators to pass and enact this bill without delay.

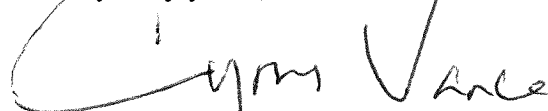
3) End, or at least extend, the statute of limitations for child victims of sexual assault.

Ending or extending the statute of limitations for child victims of sexual assault reflects what we know about child sexual assault today – that it can take a long time for a victim to be ready to report it to law enforcement – and that delay is common, it is understandable, and it should not bar a survivor from seeking justice. Abusers are frequently individuals who a child trusts the most: a family member, a guardian, a babysitter, or a teacher. The trauma of these betrayals, combined with the fear and shame in coming forward, present incredibly difficult hurdles for victims of child sex assault to overcome. It is no wonder that it can take years to process what happened – and our laws should reflect that reality.

We know that evidence and testimony may weaken as time passes. But in 2006, my Office successfully pushed for the elimination of New York's statute of limitations in the most serious sex offenses. Child victims of sexual assault deserve this same protection. I urge passage of the Child Victims Act, sponsored by Senator Brad Hoylman and Assembly Member Linda Rosenthal (S.6575/A.5885A).

These proposals are only a small part of much-needed comprehensive reform to our sex crimes laws. I hope to further discuss these reform measures with you at your earliest convenience.

Very truly yours,

A handwritten signature in black ink that reads "Cyrus Vance". The signature is written in a cursive style with a large, sweeping initial "C" and a long, vertical line extending downwards from the end of the name.

Cyrus R. Vance, Jr.