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HB 282 - Preservation of Sexual Assault Evidence

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CRIMINAL PROCEDURE

Searches and Seizures: Amend Article 4 of Chapter 5 of Title 17 of the Official Code of Georgia Annotated, Relating to Investigation of Sexual Assault, so as to Revise the Amount of Time that Law Enforcement Agencies are Required to Preserve Certain Evidence of Sexual Assault; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes

CODE SECTION: O.C.G.A. § 17-5-71 (amended)

BILL NUMBER: HB 282 ACT NUMBER: 238

GEORGIA LAWS: 2019 Ga. Laws 721

SUMMARY: This Act extends the time that law

enforcement agencies are required to preserve certain evidence of sexual assault. Physical evidence of a reported sexual assault will be preserved for fifty years, and if there is an arrest, for thirty years from the date of arrest or seven years from the sentence's

completion.

EFFECTIVE DATE: July 1, 2019

History

One of the first cases Representative Scott Holcomb (D-81st) prosecuted was that of a young woman who had been sexually assaulted.¹ After Representative Holcomb secured a guilty plea from the defendant, the judge issued a light sentence during the sentencing hearing.² The woman later told Representative Holcomb she felt as though she had been victimized again after having to testify.³ This

^{1.} Video Recording of House Proceedings at 3 hr., 8 min., 29 sec. (Mar. 7, 2019) (remarks by Rep. Scott Holcomb (D-81st)), https://www.youtube.com/watch?v=63pwSTR_rJw [hereinafter House Proceedings Video].

^{2.} Id.

^{3.} *Id*.

case sparked Representative Holcomb's desire to seek change in sexual assault legislation and still drives him today.⁴

In 2015, Representative Holcomb filed a bill addressing the backlog of sexual assault kits in Georgia.⁵ Before filing the bill, Representative Holcomb was unsure how severe Georgia's backlog would be; however, he knew there was a national problem concerning sexual assault kit backlogs and understood there to be a backlog in Georgia.⁶ Although the Atlanta Journal-Constitution (AJC) reported that the bill was in response to the AJC investigation into the backlog, Representative Holcomb filed the first draft of the legislation before the investigation began, and refiled as House Bill (HB) 827 in 2016 which garnered significant bipartisan support. ⁷ The investigation revealed over 1,400 untested sexual assault kits that survivors wanted tested.⁸ In March 2016, HB 827 passed unanimously through the House before being blocked in the Senate by State Senator Renee Unterman (R-45th). The former Chairperson of the Senate Health and Human Services Committee claimed statewide legislation was unnecessary for a backlog that stemmed primarily from one Atlanta hospital. 10 Her decision to block the bill was met with widespread disapproval, and Representative Holcomb and the Senate revived HB 827 as Senate Bill (SB) 304, which then passed unanimously. 11 Since the passage of SB 304, experts tested over 3,000 sexual assault kits, leading to the identification of serial rapists and positive identifications in the DNA database on hundreds of cases.12

^{4.} Id.

^{5.} Telephone Interview with Rep. Scott Holcomb (D-81st) (May 15, 2019) (on file with the Georgia State University Law Review) [hereinafter Holcomb Interview].

^{6.} *Id*.

^{7.} *Id*.

^{8.} Greg Bluestein, *Rape Kit Bill that was Nearly Blocked Now Set to Become Georgia Law*, ATLANTA J.-CONST. (Apr. 25, 2016), https://www.ajc.com/news/state—regional-govt—politics/rape-kit-bill-that-was-nearly-blocked-now-set-become-georgia-law/0iyPXNB9768b4iB5kWylTN/ [https://perma.cc/QG27-LDQT].

^{9.} *Id*.

^{10.} Willoughby Mariano, *Amid Cheers, Rape Kit Bill Clears Final Hurdle in Georgia*, ATLANTA J.-CONST. (Mar. 25, 2016), https://www.ajc.com/news/state—regional-govt—politics/amid-cheers-rape-kit-bill-clears-final-hurdle-georgia/nZa0VKILWfJhHwMnNh3gEP/ [https://perma.cc/8B3R-6684].

^{11.} Bluestein, supra note 8.

^{12.} House Proceedings Video, *supra* note 1, at 3 hr., 10 min., 5 sec. (remarks by Rep. Scott Holcomb (D-81st)).

2019] LEGISLATIVE REVIEW

Representative Holcomb's efforts addressing the treatment of sexual assault kits in Georgia did not end with the backlog. In the 2019 legislative session, Representative Holcomb filed HB 282, and Senator Unterman was the bill's Senate sponsor. HB 282 dealt with the time period the state stores sexual assault kit evidence. Prior to the passage of HB 282, Georgia only stored sexual assault kits for ten years after the sexual assault was reported. Often, this time limit did not give prosecutors and law enforcement adequate time to find justice for the sexual assault survivor. Thus, local advocacy groups, state representatives, and law enforcement officials continue to make sexual assault legislation a priority.

Bill Tracking of HB 282

Consideration and Passage by the House

Representative Scott Holcomb (D-81st) sponsored HB 282 in the House.¹⁷ HB 282 was assigned to the House Judiciary Non-Civil Committee.¹⁸ The House read the bill for the first time on February 13, 2019.¹⁹ On March 1, 2019, the House Judiciary Non-Civil Committee amended the bill in part and favorably reported the bill by Committee substitute.²⁰ The Committee offered the following two changes to the bill: (1) clarification on the time sexual assault kits shall be maintained for a crime without a statute of limitations; and

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^{13.} Jim Denery, Capitol Recap: After Rape-Kit Spat, Ex-Foes Bond over New Georgia Bill, ATLANTA J.-CONST. (Mar. 22, 2019), https://www.ajc.com/news/state—regional-govt—politics/capitol-recap-after-rape-kit-spat-foes-bond-over-new-georgia-bill/IptpMOzegxkOmdqeOUPsgJ/ [https://perma.cc/7HY7-N6KN].

^{14.} Mark Niesse, *Bill Signed to Save Georgia Rape Kit Evidence Until Cases Solved*, ATLANTA J.-CONST. (May 7, 2019), https://www.ajc.com/news/state—regional-govt—politics/bill-signed-save-georgia-rape-kit-evidence-until-cases-solved/WNIZQO57ELwujn52IbbSfM/ [https://perma.cc/AVE6-ZWCA].

^{15.} O.C.G.A. § 17-5-71(a) (2013).

^{16.} Holcomb Interview, supra note 5.

^{17.} Georgia General Assembly, HB 282, Bill Tracking, http://www.legis.ga.gov/Legislation/en-US/display/20192020/HB/282 [hereinafter HB 282, Bill Tracking].

^{18.} Id.

^{19.} State of Georgia Final Composite Status Sheet, HB 282, May 15, 2019.

^{20.} Id.; compare HB 282 (LC 28 8979), 2019 Ga. Gen. Assemb., with HB 282 (LC 28 9223S), 2019 Ga. Gen. Assemb.

(2) removal of Code section 17-5-71(a), which left only Code section 17-5-71(b).²¹

The Committee substitute did not significantly change the introduced bill's language.²² Instead, the Committee offered clarification for the amount of time a sexual assault kit needed to be kept if the crime has no statute of limitations by explaining that "such evidence shall be retained for fifty years after the report of the alleged sexual assault."²³

Code section 17-5-71(b) provides an exception for circumstances when the survivor does not cooperate with law enforcement in the investigation or prosecution of an alleged sexual assault.²⁴ When this circumstance arises, law enforcement need only maintain the physical evidence collected for "not less than 12 months from the date any such physical evidence is collected."²⁵ As introduced, the bill removed subsection (b), offering a consistent fifty-year retention period for all alleged sexual assaults unless the alleged crime's statute of limitations expires before fifty years.²⁶

Then, on March 7, 2019, the House passed the Rules Committee substitute by a vote of 173 to 0.²⁷ The Rules Committee's substitute removed subsection (a) in its entirety, leaving only the language from subsection (b).²⁸

Consideration and Passage by the Senate

Senator Renee Unterman (R-45th) sponsored HB 282 in the Senate.²⁹ On March 8, 2019, the Senate read the bill for the first time and referred HB 282 to the Senate Committee on Judiciary.³⁰ On

^{21.} HB 282 (LC 28 9223S), 2019 Ga. Gen. Assemb.

^{22.} *Id*.

^{23.} Id. § 1(a), p. 1, ll. 18-19.

^{24.} *Id.* § 1(b), p. 1, ll. 20–25.

^{25.} *Id.* § 1(b), p. 1, ll. 24–25.

^{26.} HB 282 (LC 28 8979), 2019 Ga. Gen. Assemb.

^{27.} Georgia House of Representatives Voting Record, HB 282, #192 (Mar. 7, 2019).

^{28.} Compare HB 282 (LC 28 9223S), 2019 Ga. Gen. Assemb., with HB 282 (LC 28 9318S), 2019 Ga. Gen. Assemb.

^{29.} HB 282, Bill Tracking, supra note 17.

^{30.} State of Georgia Final Composite Status Sheet, HB 282, May 15, 2019.

2019] LEGISLATIVE REVIEW

March 21, 2019, the Committee favorably reported the bill by substitute.³¹

55

The Senate Committee substitute added a significant amount of text and clarity to the bill.³² Five amendments occurred in this substitute: (1) the addition of subsection (a); (2) modification of the introductory language; (3) a change to the time evidence must be maintained if there is an arrest; (4) a change to the time evidence must be maintained once a sentence is completed; and (5) removal of any language about statute of limitations.³³ The substitute maintained subsection (b) in its entirety as passed by the House.³⁴

The Committee added subsection (a), modifying it substantially from both of its previous iterations—the bill as introduced and the House Judiciary Non-Civil Committee substitute.35 First, the Committee modified the introductory language to state that the bill applied "[i]n cases in which the victim reports an alleged sexual assault to law enforcement...."36 The language of the bill as introduced instead began: "Except as otherwise provided in Code [s]ection 17-5-55 or 17-5-56, on or after May 12, 2008...."³⁷ Alternatively, the House Judiciary Non-Civil Committee substitution's introductory language referenced its reintroduction of the exception in subsection (b).³⁸ Second, the Committee amended the bill to specify how long law enforcement must maintain evidence where there has been an arrest—"30 years from the date of arrest." 39 Third, the Committee substitute also specified how long law enforcement must maintain evidence where a sentence is completed: "seven years from completion of sentence." Then, the Committee substitute further clarified the time evidence must be maintained when there is both an arrest and the completion of a sentence:

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^{31.} *Id*.

^{32.} Compare HB 282 (LC 28 9318S), 2019 Ga. Gen. Assemb., with HB 282 (LC 41 1983S), 2019 Ga. Gen. Assemb.

^{33.} HB 282 (LC 41 1983S), 2019 Ga. Gen. Assemb.

^{34.} Id.

^{35.} Compare HB 282 (LC 41 1983S), 2019 Ga. Gen. Assemb., with HB 282 (LC 28 8979), 2019 Ga. Gen. Assemb. and HB 282 (LC 28 9223S), 2019 Ga. Gen. Assemb.

^{36.} HB 282 (LC 41 1983S), § 1(a), p. 1, ll. 12-13, 2019 Ga. Gen. Assemb.

^{37.} HB 282 (LC 28 8979), § 1, p. 1, ll. 11–12, 2019 Ga. Gen. Assemb.

^{38.} HB 282 (LC 28 9223S), § 1(b), p. 1, ll. 20–25, 2019 Ga. Gen. Assemb.

^{39.} HB 282 (LC 41 1983S), § 1(a), p. 1, l. 17, 2019 Ga. Gen. Assemb.

^{40.} *Id.* § 1(a), p. 1, ll. 17–18.

"whichever occurs last." Next, the Committee's amendment provided that when there is no arrest, the evidence shall be maintained for fifty years. Finally, the Committee's substitute removed language referring to any statute of limitations.

Following these amendments, on March 29, 2019, the Senate tabled HB 282.⁴⁴ Then on April 2, 2019, the Senate took HB 282 from the table and read the bill for the third time.⁴⁵ That same day, the Senate voted, passed, and adopted the bill by Committee substitute by a vote of 55 to 0.⁴⁶ Finally, on April 2, 2019, the House agreed to the Senate substitute by a vote of 156 to 0.⁴⁷ The House sent the bill to Governor Brian Kemp (R) on April 11, 2019.⁴⁸ The Governor signed the bill into law on May 7, 2019.⁴⁹ The bill went into effect on July 1, 2019.⁵⁰

The Act

The Act amends the following portion of the Official Code of Georgia Annotated: Article 4 of Chapter 5 of Title 17, relating to criminal procedure.⁵¹ The overall purpose of the Act is to revise and extend the amount of time that law enforcement agencies are required to preserve certain evidence of sexual assault. ⁵²

Section 1

Section 1 of the Act revises subsection (a) of Code section 17-5-71, which discusses the maintenance of sexual assault kit evidence and the length of time the evidence must be stored by the state.⁵³ Specifically, the Act changes the language at the beginning of

^{41.} Id. § 1(a), p. 1, 1. 18.

^{42.} *Id*.

⁴³ Id

^{44.} State of Georgia Final Composite Status Sheet, HB 282, May 15, 2019.

^{45.} Id.

^{46.} Georgia Senate Voting Record, HB 282, #392 (Apr. 2, 2019).

^{47.} Georgia House of Representatives Voting Record, HB 282, #404 (Apr. 2, 2019).

^{48.} State of Georgia Final Composite Status Sheet, HB 282, May 15, 2019.

^{49.} Id.

^{50.} O.C.G.A. § 17-5-71 (Supp. 2019).

^{51. 2019} Ga. Laws 721, §§ 1-2, at 721–22.

^{52. 2019} Ga. Laws 721, at 721.

^{53. 2019} Ga. Laws 238, § 1, at 721–22 (codified at O.C.G.A. § 17-5-71).

2019] LEGISLATIVE REVIEW

the subsection from "[e]xcept as otherwise provided in subsection (b) of this Code section or 17-5-55 or 17-5-56, on or after May 12, 2008," to "[i]n cases in which the victim reports an alleged sexual assault to law enforcement." The Act also modifies subsection (a), changing the period of time law enforcement must store sexual assault kit evidence. Originally, the language read "ten years after report of the alleged assault." The Act revised the statute to read "30 years from the date of arrest, or seven years from completion of the sentence, whichever occurs last, and if no arrests, then for 50 years," allowing enough time for law enforcement to secure a suspect and probable cause.

Analysis

The passage of HB 282 has illuminated several pathways for future sexual assault legislation—including issues with storage and changes in language.

Storage Wars

An unexpected discovery occurred during HB 282's legislative process—that many law enforcement facilities had issues storing evidence.⁵⁸ Representative Scott Holcomb (D-81st) explained:

[W]e did hear something that I think the state will have to examine, which is—I heard concerns about the quality of some storage rooms across the state. And as a former prosecutor, that definitely made me a little bit nervous—not just on sexual assault cases, but cases across the board.⁵⁹

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^{54. § 17-5-71; 2008} Ga. Laws 486, § 3, at 488 (formerly found at O.C.G.A. § 17-5-71 (2013)).

^{55. 2019} Ga. Laws 721, § 1, at 721.

^{56. 2008} Ga. Laws 486, § 3, at 488 (formerly found at O.C.G.A. § 17-5-71(a) (2013)).

^{57.} O.C.G.A. § 17-5-71(a) (Supp. 2019)).

^{58.} Video Recording of House Judiciary Non-Civil Committee Meeting at 36 min., 15 sec. (Mar. 1, 2019) (remarks by Rep. Scott Holcomb (D-81st)), https://www.youtube.com/watch?v=JkR5zMc0HHI&ioRiCc [hereinafter House Judiciary Non-Civil Committee Video].

^{59.} Holcomb Interview, supra note 5.

GEORGIA STATE UNIVERSITY LAW REVIEW

These newly discovered storage issues resulted in some concern over whether or not maintaining sexual assault kits for an extended period of time would take up too much room in evidence storage.⁶⁰ Most sexual assault kits, however, typically only contain biological samples and are about the size of a "Ziploc bag." Representative Holcomb responded to concerns about potential storage burdens by (1) emphasizing sexual assault is a very serious crime, (2) maintaining the legislation would help law enforcement pursue justice for sexual assault survivors, and (3) reminding his colleagues that, in 2016, "Georgia had to pass a law to get sexual assault kit evidence off the shelves," which demonstrated finding sufficient space was not an issue when there backlog.⁶² Ultimately, the bill passed without addressing the storage issues; however, future legislation on storage may be necessary. 63 For now, more information and data on statewide storage issues is necessary to determine whether or not there is a need for a statewide solution.⁶⁴

Several states have considered creating statewide law enforcement storage facilities that would house sexual assault kits and other types of evidence. Although a statewide storage facility could ensure consistent climate and pest control throughout different jurisdictions, other concerns could arise, such as evidentiary chain of custody issues. Ultimately, because of HB 282, these storage issues were discovered; however, the next step in addressing the storage issues is a matter of future discussion and debate.

58

https://readingroom.law.gsu.edu/gsulr/vol36/iss1/4

[Vol. 36:1

^{60.} House Judiciary Non-Civil Committee Video, *supra* note 58, at 36 min., 44 sec. (remarks by Rep. Martin Momtahan (R-17th)).

^{61.} Telephone Interview with Helen Robinson, Dir. of Advocacy, YWCA of Greater Atlanta (June 20, 2019) (on file with the Georgia State University Law Review) [hereinafter Robinson Interview].

^{62.} Holcomb Interview, supra note 5.

^{63.} House Judiciary Non-Civil Committee Video, *supra* note 58, at 38 min., 10 sec. (remarks by Rep. Scott Holcomb (D-81st)).

^{64.} *Id*.

^{65.} Martin Finucane, *Mass. High Court Calls for State-of-the-Art Storage Facility for Evidence*, Bos. Globe (May 28, 2019, 12:57 PM), https://www.bostonglobe.com/metro/2019/05/28/mass-high-court-calls-for-state-art-storage-facility-for-evidence/HhNKpG6ykNM85G4Mj6m2VN/story.html [https://perma.cc/WB5A-F9EW]; Memorandum from Erik A. Hooks, Sec'y, to Joint Legislative Oversight Comm. on Justice and Pub. Safety regarding Sexual Assault Evidence Collection Kits (Dec. 1, 2018) (on file with the Georgia State University Law Review), https://www.ncleg.gov/documentsites/committees/JLOCJPS/Reports/FY%202018-19/DPS-SAECK_Working_Group_Final_Report-2018_11_30.pdf [https://perma.cc/544X-HA8M].

^{66.} Holcomb Interview, supra note 5.

2019] LEGISLATIVE REVIEW

Effect on Law Enforcement

The changes the Act made to the Code section affect law enforcement in various ways. A key reason for the change to the beginning of subsection (a) is that advocates believed that the best way to enforce the statute would be to eliminate the cross-referencing between statutes.⁶⁷ With this change, all the necessary language is located in one statute, and no additional referencing is needed.⁶⁸

Furthermore, Representative Holcomb worked with advocates and prosecutors to define the term "unsolved." Representative Holcomb felt clear guidelines needed to be given to law enforcement on how long to hold evidence because "unsolved" is not a set period of time. In some situations, law enforcement does not believe the victim, and in others, no arrest is ever made. The new wording of the Code section answers the question on how to proceed under all circumstances.

Future Legislation

Both representatives and advocates believe HB 282 was an important step and envision more changes down the road for sexual assault legislation. Re-defining Georgia's outdated definition of rape is an important change that legislators and advocates plan to work on.⁷³ Under current Georgia law, the definition of rape is gender specific and based on force.⁷⁴ Georgia needs a definition that uses the more modern understanding of sexual assault.⁷⁵ In 2013, the Federal Bureau of Investigation (FBI) rewrote its definition of rape in gender neutral terms.⁷⁶ The new FBI definition, "[the] penetration, no matter

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^{67.} *Id*.

^{68.} *Id*.

^{69.} *Id*.

^{70.} Id.

^{71.} *Id*.

^{72.} O.C.G.A. § 17-5-71 (2013 & Supp. 2019).

^{73.} Holcomb Interview, supra note 5; Robinson Interview, supra note 61.

^{74.} Holcomb Interview, supra note 5.

^{75.} Robinson Interview, supra note 61.

^{76.} Lois Norder, Georgia Doesn't Allow Some Men to be Charged with Rape. Here's Why, ATLANTA J.-CONST. (May 30, 2017), https://www.ajc.com/blog/investigations/georgia-doesn-allow-some-men-charged-with-rape-here-why/CR2INKaaUSQXJmIiaIC4qO/ [https://perma.cc/RVC9-T5TQ].

how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim,"⁷⁷ drastically differs from Georgia's definition: "when he has carnal knowledge of" a woman forcibly and against her will, or a girl under ten years old.⁷⁸ The definition further defines carnal knowledge as "any penetration of the female sex organ by the male sex organ."⁷⁹ Experts suggest legislators should rewrite this definition in order to continue moving sexual assault legislation in a positive direction.⁸⁰

Another potential change involves additional law enforcement training. Some advocates believe that law enforcement should receive additional training on trauma-informed interviewing techniques.⁸¹ Experts suggest that those interviewing sexual assault survivors keep in mind that

[t]he effects of trauma can influence behavior of a victim during an interview. Memory loss, lack of focus, emotional reactivity, and multiple versions of a story can all be signs of trauma exhibited during interviews. Interviewers should be familiar with the signs of trauma and not assume the victim is evading the truth.⁸²

Law enforcement must understand how trauma impacts memory and behavior and then proceed accordingly.⁸³

National Trends in Sexual Assault Kit Legislation

The passage of SB 304 and HB 282 places Georgia at the forefront of the national "End the Backlog Movement," which calls for states

^{77.} An Updated Definition of Rape, U.S. DEP'T OF JUST. (Jan. 6, 2012), https://www.justice.gov/archives/opa/blog/updated-definition-rape [https://perma.cc/8BX6-CB88].

^{78.} O.C.G.A. § 16-6-1(a) (2019).

^{79.} Id.

^{80.} Holcomb Interview, supra note 5.

^{81.} Robinson Interview, supra note 61.

^{82.} Trauma-Informed Victim Interviewing, OFF. FOR VICTIMS CRIMES: TRAINING & TECHNICAL ASSISTANCE CTR., https://www.ovcttac.gov/taskforceguide/eguide/5-building-strong-cases/53-victim-interview-preparation/trauma-informed-victim-interviewing/ [https://perma.cc/U839-4Y6Y] (last visited Sept. 10, 2019).

^{83.} Robinson Interview, supra note 61.

2019] LEGISLATIVE REVIEW

to eliminate sexual assault kit backlogs through legislative reform.⁸⁴ According to Endthebacklog.org, twenty-nine states have had limited legislative reform, eight states have proposed legislative reform, seven states have had comprehensive legislative reform, one state has completed an audit of their sexual assault kits, and five states have had no legislative reform.⁸⁵ The seven states with comprehensive sexual assault kit legislation are Hawaii, Kentucky, Massachusetts, Michigan, Nevada, Texas, and Washington.⁸⁶ These seven states have established systems for inventorying, testing, and tracking statewide sexual assault kits. Further, they have granted survivors a right to notice and to be informed, and provided appropriate funding for sexual assault kit reform.⁸⁷ Thus, although Georgia has successfully remedied some of the issues surrounding the state's backlog, different states have made further progress that Georgia could reference for future legislation.⁸⁸ Due to the passage of HB 282, Georgia is a national leader on the preservation of sexual assault evidence and other states may follow Georgia's example.

Rebecca A. Dickinson & Alessandra T. Palazzolo

61

Published by Reading Room, 2019

^{84.} About End the Backlog, END THE BACKLOG, http://www.endthebacklog.org/about-us/about-end-backlog [https://perma.cc/EQ56-29NV] (last visited Sept. 10, 2019).

^{85.} Where the Backlog Exists and What's Happening to End It, END THE BACKLOG, http://www.endthebacklog.org/backlog/where-backlog-exists-and-whats-happening-end-it [https://perma.cc/B2FG-8TPM] (last visited Sept. 10, 2019).

^{86.} *Id*.

^{87.} *Id*.

^{88.} Georgia, END THE BACKLOG, http://www.endthebacklog.org/Georgia [https://perma.cc/ZS4C-ULL5] (last visited Sept. 10, 2019).