

The Hidden Predator Act

What Will The Hidden Predator Act Do?

- Eliminate the civil statute of limitations for child sexual abuse claims going forward (for claims arising October 1, 2020 or later).
- Create a lookback window for those victims who have been previously barred by the statute of limitations, allowing them to file suit for a period of two years (any such claims must be filed by October 1, 2022).
- Make clear to the courts, the public, and survivors that the General Assembly was unaware of the constitutional implications of a so-called “statute of repose” included in 2017 revisions to the child sexual abuse statute of limitations, and did not intend to vest constitutionally protected property rights in child sexual predators or those individuals and organizations that hid predators from discovery and prosecution, allowing them to continue to victimize children.

THE CLAIM	THE FACTS
<p>Maryland would be an outlier among states if it passes a “lookback window.”</p>	<ul style="list-style-type: none"> • 16 states and DC have passed lookback windows or revival laws ⁱ; and 9 states including Maryland, have already introduced windows or revival laws in 2020.ⁱⁱ • Hidden predators have been discovered through the civil discovery process in all states that have passed lookback windows.ⁱⁱⁱ California identified 300+ with a one-year look-back window and Minnesota identified 125+ with a three-year lookback window.^{iv} • After Delaware enacted the Child Victim’s Act in 2007, putting in place a two-year window for expired claims, nearly 1,000 victims of pediatrician Earl Bradley came forward during the window.^v
<p>The bill will add nothing to protect children today that improving reporting and training on reporting can’t do.</p>	<p>Even with improved reporting and training, some children will fall victim to sexual abusers. These children who have fallen through the cracks of our protection may not fully realize the harm done to them for decades. Their claims should never be terminated.</p>
<p>There is no need for further civil SOL reform, there’s no criminal SOL for child sexual abuse, so perpetrators may be prosecuted at any time.</p>	<ul style="list-style-type: none"> • Criminal and Civil Proceedings provide different remedies, and both are needed for justice to be served. • Criminal prosecutions are at the discretion of prosecutors and law enforcement with limited resources so are often not pursued; when pursued, the result may be punishment, which is not remedial for the victim. • Criminal prosecution typically focuses on the individual perpetrator, not the institution that hid the predator. • Civil suits empower victims to initiate a court case to shift the cost from the victim to those who caused the harm (institutions who hid predators, as well as the predators). It is unfair to force the victim to bear the costs of the harm caused by a perpetrator of child sexual abuse. • The costs that victims of child sexual abuse bear include counseling, medical expenses, and difficulty maintaining employment or schooling.
<p>The lookback window opens institutions up to false claims.</p>	<p>A review by ChildUSA at the University of Pennsylvania revealed that in the 9 states that have passed lookback windows, “there have been no false claims reported in the courts.”^{vi}</p>
<p>The legislation is aimed at “punishing” one institution.</p>	<p>All individuals and organizations are included in the scope of the bill. No one is exempt.^{vii}</p>
<p>Institutions have gone bankrupt and been unable to provide needed educational & social services to low-income individuals and others.</p>	<ul style="list-style-type: none"> • Institutions that filed bankruptcy did so as a tool to re-organize their debt and are still in operation. • Nearly 77% of Catholic Charities of Baltimore revenue comes from governmental agencies as payment for services provided; these funds may not be used to pay victims settlements or judgments. This bill would have no effect on that funding or their ability to provide those social services.^{viii} • Of the 170 civil lawsuits that were filed during the two-year lookback window in Delaware, no more than 75 suits implicated the Catholic church; the rest involved the Protestant church, public and private schools, Boy Scouts of America, neighbors, family members, a judge, and a physician.^{ix}

The 2017 revisions to the child sexual abuse statute of limitations included a so-called “statute of repose” that was not fully debated nor analyzed when the bill was passed. To fully appreciate the legal purpose of a “statute of repose” and what it means in the context of child sexual abuse, we offer the following facts.

THE CLAIM	THE FACTS
<p>Members of the Maryland General Assembly were aware of the constitutional implications of a so-called “statute of repose” and intended to vest constitutionally protected property rights in child sexual predators or those individuals and organizations that hid predators from discovery and prosecution, allowing them to continue to victimize children.</p>	<ul style="list-style-type: none"> • In 2017, there was no discussion or debate of the constitutional implications of the so called “statute of repose” found in the amended version of HB642 either in committee or on the floor of the House or Senate. Neither the 2017 committee bill files, nor the hearing and floor recordings reflect any discussion of the constitutional implications of the “statute of repose.” Additionally, the Revised Fiscal and Policy Note for the amended 2017 bill makes no mention of the constitutional significance of a “statute of repose.” • In 2019, the sponsor of HB687 (which included the same two year look back window, as the current bill) and other Members spoke on the House Floor saying that legislators had no understanding of the constitutional significance of the wording “statute of repose” (found in the uncodified section of the 2017 bill). In passing HB687 in 2019 by a vote of 135-3, the House affirmed that there was no intent in 2017 to create a so called “statute of repose” creating constitutionally protected property rights in child sexual abuse predators. • The bill sponsor and the Chair of the Senate Judicial Proceedings (JPR) Committee agreed during the 2019 JPR Committee Hearing that there was no understanding, mention, or discussion during the Committee hearings, meetings, or on the Floor of either Chamber of the “statute of repose”, including, and most significantly, its constitutional consequence. In 2017, there was no clear intent by the Body to vest constitutionally protected rights in perpetrators and organizations. The Legislature’s apparent intent in 2017 was to implement a procedural remedy for child sexual abuse cases, not to create a vested right for defendants. • A vested right typically refers to a present or future property interest, and a “statute of repose” protects a defendant’s property interests in contracts, construction, products liability, and medical malpractice claims. Most state statutes of repose afford protection to architects, engineers, builders, contractors, subcontractors, and designers of improvements to real property, who were subjected to increasing litigation for construction defects in projects that had been completed long before the suit was filed. • The Maryland Court of Appeals has not considered a “statute of repose” or a “look back window” in the context of a child sexual abuse case and has declined to rule on the constitutionality of a time-barred claim in this situation.^x • The U.S. Supreme Court ruled that revival of a time-barred action is constitutional as long as it does not infringe on a defendant’s vested right^{xi}, and the Maryland courts have not established that a “statute of repose” protecting a defendant from a child sexual abuse claim creates such a vested right. • Victims of child sexual abuse take years to recognize and disclose their trauma to others. Victims often develop coping mechanisms to deal with their child sexual abuse; the most common being memory repression, denial, and dissociation. As such, lifting time-barred limitations on seeking compensation for child sexual abuse may reveal hidden predators who might still be offending or organizations that are not taking adequate protective measures.

ⁱ <https://www.childusa.org/sol-report-2019>

ⁱⁱ <https://www.childusa.org/sol>

ⁱⁱⁱ The Relative Success of Civil SOL Window and Revival Statutes_Jan 2019.pdf, <https://www.childusa.org/law?rq=RELATIVE%20SUCCESS%20OF%20CIVIL%20SOL%20>

^{iv} *Id.*,

^v <https://childusa.org/law/delaware>

^{vi} *supra* note iii,

^{vii} See current bill

^{viii} <http://www.catholiccharities-md.org/wp-content/uploads/2018/10/ACC-FS-Final.pdf>,

^{ix} <https://bartdaltonlaw.com/news/in-its-two-years-child-victims-act-brings-170-lawsuits-alleging-abuse/>

^x *Doe v. Roe*, 20 A.3d 787, 799 (Md. 2011)

^{xi} *Chase Sec. Corp v. Donaldson*, 325 U.S. 304, 316 (1945)