2023 SOL House written testimony.pdf
Uploaded by: Abbie Schaub
Position: FAV

Testimony in Support of HB001

Civil Actions - Child Sexual Abuse - Definition, Damages, and Statute of Limitations (The Child Victims Act 0f 2023)

**** Support****

To: Chairman Luke H Clippinger, Vice Chairman David Moon and members of the House Judiciary Committee

From: Abbie Fitzgerald Schaub, with Baltimore's Archbishop Keough High School "The Keepers" Netflix documentary storytellers

Date: March 2, 2023

In 2013 I began doing historical research into the unsolved 1969 Baltimore murder of my high school English teacher, Sister Catherine Cesnik. With the help of others, this evolved into the tragic story of sexual abuse of minor aged students at Archbishop Keough High School. Our story demonstrates the failures of both church and state to hold the guilty accountable. The Emmy nominated Netflix documentary "The Keepers" tells our story. Our abuse survivors are the keepers of this trauma.

I had no understanding of the lifelong damage done by this intimate betrayal of trust. I thought it was something painful that you got over. I was very wrong about that. This betrayal of trust and intimate physical invasion creates permanent collateral damage which affects people their entire lives, and rolls over into harming relationships for generations within a family. Sexual abuse of a minor causes not just physical and mental difficulties but also takes a financial toll on those harmed. Under current Maryland SOL law, the people harmed have to bear those costs rather than the predator.

The problem is not just with religious organizations, though that is what I am most familiar with from our story. Abuse of minors within religious settings is the minority setting statistically; far more children are harmed by family members and acquaintances, usually people in positions of power and trust in their lives.

HB001 is not targeted at churches - rather it is a global child safety bill, aimed to protect Maryland children from hidden predators in all settings.

I most often hear objections to removing SOL age caps based on the idea that those who were harmed should come forward promptly to report the crime. This makes sense to those of us not harmed. Those who were harmed do not want to speak of it; they are embarrassed, ashamed, blame themselves and think others will blame them if they speak. Many were threatened to keep silent, as our Keough survivors were, and will never speak of it. They fear retribution by the one who harmed them, and do not want their parents or families to know. Abuse survivors may be more able to speak as mature adults, with an average age of disclosure of 52 years; some wait until their parents have died. At that point, the state will not file criminal charges without evidence and those harmed are time-barred from civil courts. The hidden predators remain in communities - passing screening to work with other children. Maryland's SOL time restrictions protect sexual abusers, allowing them to do more harm.

The Maryland Constitution's Declaration of Rights, Article 19, promises that "That every man, for any injury done to him in his person or property, ought to have remedy by the course of the Law of the Land, and ought to have justice and right, freely without sale, fully without any denial, and speedily without delay, according to the Law of the Land". I believe statute of limitation laws deny those sexually abused as minors from having that promised remedy for the injury. They are promised remedy "fully without any denial" - yet now in Maryland, purely because of their age, they are denied access to the civil court system.

I respectfully urge the Committee to issue a favorable report on HB001 without added amendments. Let lessons learned from our painful Keepers legacy allow other Maryland children to be better protected from sexual predators.

-Abbie Fitzgerald Schaub, resident of Maryland District 13.
Email abschaub@msn.com
Home address: 7672 Kindler Road, Laurel, MD 20723

HB0001 The Child Victims Act FAV.pdf
Uploaded by: Cecilia Plante
Position: FAV

MARYLAND LEGISLATIVE COALITION

TESTIMONY FOR HB0001
Civil Actions - Child Sexual Abuse - Definition, Damages, and Statute of Limitations (The Child Victims Act of 2023)

Bill Sponsor: Delegate Wilson
Committee: Judiciary
Organization Submitting: Maryland Legislative Coalition
Person Submitting: Cecilia Plante, co-chair
Position: FAVORABLE

I am submitting this testimony in strong support of HB0001 on behalf of the Maryland Legislative Coalition. The Maryland Legislative Coalition is an association of activists - individuals and grassroots groups in every district in the state. We are unpaid citizen lobbyists and our Coalition supports well over 30,000 members.

This is an important bill. It expands the definition of child sexual abuse as an adult allowing or encouraging a child to engage in a variety of sexual activities from obscene pornography to rape, incest, prostitution and other acts. It also allows the victim to file suit against the perpetrator at any time post-abuse and creates a two year lookback window to allow victims that were previously barred from filing a claim to do so for a limited period of time.

For those who have suffered sexual abuse as a child, this would be an amazing victory. We should never restrict them from getting justice because there is no greater crime than to prey on a child. We applaud Senator Smith for bringing this bill forward.

We strongly support this bill and recommend a **FAVORABLE** report in committee.

Maryland testimony HB1 revised.pdf
Uploaded by: Christopher Gavagan
Position: FAV

TESTIMONY IN SUPPORT OF HB 1
Civil Actions – Child Sexual Abuse – Definition, Damages, and Statute of Limitations
(The Child Victims Act of 2023)
****SUPPORT****

TO: Hon. Luke Clippinger, Chair, and members of the House Judiciary Committee

FROM: Christopher Gavagan

DATE: March 2, 2023

My name is Chris Gavagan I am an advisor with the US Olympic Committee's Safe Sport program and had the honor of delivering the keynote address at their inaugural SafeSport Leadership Conference. I have produced and directed a documentary project called *Coached into Silence* which deals specifically with sexual abuse in youth sports. The silence referred to in the title is threefold: the silence of *shame* victims can experience, the silence of *institutions* protecting themselves first, and finally the *legal silencing* of the victims in their search for justice.

Those who have suffered sexual abuse as children have become tragic experts in a field that the rest of the world wants to pretend does not exist. Yet survivors can be society's lifeguards. While millions of children splash about in the surf right now, there are sharks circling. Survivors bear the scars of these sharks. We are the ones who can say "There. There is the predator that attacked me." We must give those who know, the chance to say what they know.

The statute of limitations has taken the whistles from the lifeguards. Victims are forced to watch; helpless, mute—as predators sink their teeth into the next victim, and the next victim. While we scream on the sand, child after child is snatched from the sunlight and dragged to the darkness below. Not every child will survive to see the surface again. None will emerge from this fully intact.

The statute of limitations by its very existence in cases of child sex abuse—create more victims. Many lawmakers seem to cast their vote as if they believe a shark, once fed, will never eat again. The reality is that these predators will feed for a lifetime, on our children. And the short statute of limitations guarantees 30, 40, 50 more years of children—our children—your children—as prey. A generation of children that could so easily have been spared.

The most direct way that I can illustrate this point, is to provide this link to the video of an interview that I conducted with my own former coach and abuser. This 4 minute video shows him admitting sexual abuse, defending it as a "lesson", and then laughing with relief at the statute of limitations: https://vimeo.com/coachedintosilence/coachsolcva

I strongly support HB 1 as a tool to give survivors back their voice and bring accountability in the effort to prevent any child from becoming The Next Victim.

HB001_FAV - Claudia Remington.pdf
Uploaded by: Claudia Remington
Position: FAV

https://mdessentialsforchildhood.org/

TESTIMONY IN SUPPORT OF HB 1
Civil Actions – Child Sexual Abuse – Definition, Damages, and Statute of Limitations
(The Child Victims Act of 2023)
****SUPPORT****

TO: Hon. Luke Clippinger. Chair, and members of the House Judiciary Committee

FROM: Claudia Remington & Joan Stine, Co-Chairs, Maryland Essentials for Childhood

DATE: February 23, 2023

Maryland Essentials for Childhood strongly supports HB 1, Civil Actions- Child Sexual Abuse- Definition, Damages, and Statute of Limitations, The Child Victims Act of 2023, as amended by the sponsor. This bill has five key components: (1) Eliminate the statute of limitations for child sexual abuse; (2) Repeal the so-called "statute of repose"; (3) Establish a permanent lookback window to allow victims previously barred by the statute of limitations to file suit; (4) Allow both public and private entities to be sued; and (5) Eliminate the notice of claims deadlines for public entities in child sexual abuse cases.

Maryland Essentials for Childhood (EFC) is a statewide collective impact initiative to prevent child maltreatment and other adverse childhood experiences (ACEs).[1] The initiative grew out of the Prevention Committee of the State Council on Child Abuse and Neglect (SCCAN). It promotes relationships and environments that help children grow up to be healthy and productive citizens so that *they*, in turn, can build stronger and safer families and communities for *their* children (a multi-generation approach). Maryland EFC includes public and private partners from across the state and receives technical assistance from the U.S. Centers for Disease Control. The initiative provides members the opportunity to learn from national experts and leading states. Using advances in brain science, epigenetics, ACEs, resilience and principles of collective impact, the EFC leadership and working groups support policy and practice that prevent and mitigates childhood trauma.

[1] Channeling Change: Making Collective Impact Work, Stanford Social Innovation Review, https://ssir.org/articles/entry/channeling_change_making_collective_impact_work

https://mdessentialsforchildhood.org/

The goals of the legislation are directly in line with the mission and goals of Maryland Essentials for Childhood:

- Identify Hidden Perpetrators of Child Sexual Abuse
- Disclose the Facts of Child Sexual Abuse to the Public
- Arm Trusted Adults to Protect Children
- Shift the Cost of Abuse from the Victims and the Taxpayer to Those Who Caused It
- Provide Justice for Victims When They are Ready to Come Forward

We have attached the factsheets of Justice 4 Survivors coalition in which Maryland Essentials for Childhood participates, as well as a PowerPoint regarding the legislative history of HB642 (2017) for your consideration.

For the reasons cited here and in the attached fact sheets and PowerPoint, Maryland Essentials for Childhood respectfully urges a favorable report on HB 1 with sponsor amendments.

THE CHILD VICTIMS ACT OF 2023 (HB1/SB686)

Will Maryland protect its children or protect its predators?

GOALS OF THE CHILD VICTIMS ACT (HB1/SB686)

- Identify Hidden Predators
- Disclose Facts of Sex Abuse Epidemic to Public
- Arm Trusted Adults to Protect Children
- Shift Cost of Abuse from Victim to Those Who Caused It
- Justice for Victims Ready to Come Forward

WHAT WILL THE CHILD VICTIMS ACT (HB1/SB686) DO?

- Eliminate the civil statute of limitations for child sex abuse.
- Repeal the so-called "statute-of-repose."
- Create a permanent window for older claims.
- Allow both public and private entities to be sued.
- Eliminate the notice of claims deadlines for public entities in child sexual abuse cases.
- The legislation will have some limitations on liability to a single claimant for injuries arising from a single incident or occurrence:
  - For retroactive claims (the statute of limitations has already run):
    - For private entities:
      - $1.5 million cap on non-economic damages
      - No cap on economic damages
    - For public entities:
      - $850,000 cap for damages
  - For prospective claims (the statute of limitations has not run):
    - For private entities:
      - No caps on either economic or non-economic claims
    - For public entities
      - $850,000 cap for damages

In 2017, did the Maryland General Assembly intend to include a “statute of repose” in the legislation?

A: A “statute of repose” gives constitutionality protected property rights to a defendant. It is intended to be used in product liability cases to limit the length of time that the builder or inventor may be held responsible for problems or defects. It was never intended to protect wrongdoing by sexual predators and those that protect them from prosecution or discovery. In 2017 There was no discussion or debate of the constitutional implications of the “statute of repose” in committee or on the floor of either chamber. Neither the Fiscal and Policy Note, nor the Revised Fiscal and Policy Note, make any notice of the pivotal constitutional implications to this law. Neither the constitutionality of a lookback window nor a “statute of repose” in child sexual abuse cases has been decided by the Maryland courts. Constitutionality should be determined by the courts.

The Child Victims Act (HB1/SB686) removes the “statute of repose” language making it clear to the courts, the public, and survivors that the Maryland General Assembly did not intend to vest constitutionally protected property rights in child sexual predators nor the individuals and organizations that hid predators from discovery and prosecution.

How will the permanent window impact institutions that provide education and social services to low-income individuals and communities?

A: Many institutions receive a large percentage of their funding from government agencies as payment for services provided. This bill would have no effect on that funding or the ability to provide those social services. For example, nearly 77% of Catholic Charities revenue comes from governmental agencies. In rare circumstances, an organization may choose to seek legal relief under the bankruptcy code to reorganize their debt. This legal relief does not cause operations to close.

THE CHILD VICTIMS ACT OF 2023 (HB1/SB686)

FACT: There is a national shift towards exposing hidden predators through civil SOL lookback windows.

In 2019, Washington D.C.:

- Extended the civil SOL where victim was under 35-40 with a 5 year discovery rule
- Opened 2 year revival window for victims abused as minors and adults
- **16** states + D.C. have passed "lookback windows" or revival laws and **9** states, including MD, have introduced these laws in 2020

In 2019, New Jersey:

- Extended the civil SOL for child sex abuse to age 55 or 7 years from discovery for claims against individuals, public and private institutions
- Removed claim presentment requirement for claims against public entities
- Opened 2 year revival window for victims abused as minors or adults against perpetrators and institutions

FACT: In other states lookback windows have exposed hidden predators.

In Delaware:

- During 2 year lookback window ('07-'09), **175** survivors filed claims
- Under follow-up window for healthcare providers, **1,000** claims made solely against Pediatrician Dr. Earl V. Bradley, the most active previously undisclosed predator to date

In Minnesota:

- **125+** predators identified, including the predator in the high-profile cold case of Jacob Wetterling
- During the 3 year lookback window ('13-'16), **1,006** claims were filed

In California:

- **300+** predators were identified
- During the 1 year look back window in '03, **1,150** survivors filed claims

SOL Legislation for CSA in the United States - 2022

Is there a need for further civil SOL reform?

A: Criminal and civil proceedings provide different solutions and both are needed for justice to be served. Criminal prosecutions are at the discretion of prosecutors and law enforcement with limited resources and are often not pursued. If pursued, the remedy is a criminal sentence for perpetrators. Civil suits empower victims to initiate a court case to shift the cost from the victim to those who caused the harm.

How will this bill help Maryland prosper?

A: The average age for adults to disclose childhood sexual abuse is 52. Research shows that children who experience an Adverse Childhood Experience (ACEs) can have poor long-term mental and physical health, educational, and employment outcomes at enormous cost to individuals and the state. The trauma from childhood sexual abuse may lead to PTSD, alcohol and opioid abuse, depression, suicide, and poor educational and employment outcomes. The lookback window provides survivors a window of time to access justice and shifts the costs of healing to those who caused the harm. It also provides protection for our children who may still be at risk from formerly unknown abusers and leads to improved institutional practices that keep children safe from sexual predators.

Kathryn Robb, Esq. CHILD USAdvocacy

WHY CRIMINAL REFORMS & THE CRIMINAL SYSTEM ARE NOT ENOUGH

ISSUE	CRIMINAL	CIVIL
Burden of Proof	"Beyond a Reasonable Doubt" A much higher & more challenging standard. ***Fewer than 20% of sexual crimes are referred to prosecution, only ½ result in a conviction***[1]	"Preponderance of the Evidence" (51% or greater) Easier to expose hidden sexual predators.
Who is Legally Harmed	Crime Against the State State initiates the action.	Wrongs Against the Victim Victim initiates the action
Power & Voice of Victim	The victims have little power, voice, or control. Victims are witnesses. The DA makes all the decisions DA's often decline to go forward because of 1) difficulty, 2) burden on system, or 3) political issues.	Victims are parties to the action. Victims have more control, voice and power which aids healing. Victims decide whether to move forward to trial or settle.
Jail Time	Institutions & organizations do not face incarceration or penalties. Executives rarely face jail time.	The civil justice system holds institutions and organizations accountable. It forces bad actors to do better
Incentives to change	Limited penalties and jail time impede institutional change	Jury verdicts motivate institutions & bad actors to change their policies, practices & procedures that fail our children. They allow victims to re-build their lives – to pay for medical and psychological care.
Discovery	Lessor included offenses and plea deals limit discovery into the actions that failed to protect children	There is full discovery into all facts and information leading to relevant evidence

[1] https://www.ojp.gov/library/publications/prosecution-child-sexual-abuse-partnership-improve-outcomes

Revival Laws & Exposure of hidden Sexual predators	Acts that are felonies now were considered misdemeanors at the time they were perpetuated. Only felonies have no statute of limitations in Maryland, whereas misdemeanors have a one-year SOL. Under the ex post facto clause of the U.S. Constitution criminal laws cannot be retroactively applied, therefore, victims who were silenced cannot identify and expose hidden sexual predators under criminal laws. *Stogner v. California*, 539 U.S. 607 (2003)	Civil SOL laws can be applied retroactively. Given the science of traumatology and delayed disclosure victims who were silenced by their predator can come forward when they are able and the doors to justice will be open thereby exposing hidden sexual predators and those that concealed them.
Financial Burden & Cost	The cost of investigating, arresting, formally charging, prosecuting, & incarcerating sexual predators falls entirely on the state. The financial burdens of abuse fall upon the state – impacting social services, education, law enforcement & penal system	The sexual predators and institutions that fail to protect children pay for the cost of abuse and damages.
Insurance Companies	Non-parties	Become liable third parties to the action. Increased premiums or denial of coverage incentivize child protection changes

CHILD USAdvocacy

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THE CHILD VICTIMS' ACT OF 2023

JUSTIFICATION FOR THE DIFFERENT CAPS FOR PUBLIC V. PRIVATE ENTITIES

The bill proposes to cap non-economic damages for revived claims at $850,000 for public defendants and $1.5 million for private defendants. There are several justifications for this difference:

1. The State and local governments have already born significant costs associated with the harm done to victims of child sexual assault—those for whom the government bears responsibility and those harmed by private entities as well. There are myriad costs imposed, including those associated with: 1) health care, including emergency services and mental health care; 2) substance use treatment; 3) law enforcement engagement and incarceration; 4) domestic violence intervention; 5) needing additional resources for trauma-informed care and educational accommodations in schools; 6) disability services; and 7) loss of productivity from victims who struggle to remain employed and independent.[1]

2. When the State or local government pays monies in settlement or because of a court judgment, those monies come from public funds. Protection of public funds is important to maintain Maryland's consistently strong financial condition at the state and county level.

3. Private organizations can file for Chapter 11 bankruptcy, discharging debt at pennies on the dollar and reorganizing to remain in business. A State may not declare bankruptcy and municipal governments have limited access to a constrained form of bankruptcy. Governmental entities are not able to limit liability through the Chapter 11 process.

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[1] Elizabeth J. Letourneau et al., *The Economic Burden of Child Sexual Abuse in the United States*, 79 CHILD ABUSE NEGL. 413 (2018).

Cora Peterson et al., *The Economic Burden of Child Maltreatment in the United States, 2015*, 86 CHILD ABUSE NEGL. 178 (2018).

Peterson et al. (2018) estimated the population economic burden of all investigated cases of child maltreatment (all types) in the US in 2015. They estimated that the aggregate economic burden rose to $2 trillion. The per-victim cost estimate for each non-fatal abuse victim was **$830,928**.

Letourneau et al. (2018) estimated lifetime cost to society of child sexual abuse cases occurring in the US in 2015 at $9.3 billion, and the average cost of non-fatal per female victim was estimated at **$262,347**.

Fundamentally, there is a difference between suing the State or local government and suing a private entity. Governmental entities are entitled to sovereign immunity and cannot be sued unless the legislature permits an action and only to the extent permitted by that statute. Since the General Assembly is considering, through The Child Victims' Act of 2023, opening the State and local governments to liability, the legislature should also consider the extent of that liability. Setting a cap for governmental liability at lower than for private entities reflects the existence of sovereign immunity and the factors listed above.

Prepared by Kathleen Hoke, Kathryn Robb, and Vanessa Milio

CHILD USA
THE THINK TANK FOR CHILD PROTECTION

PARITY BETWEEN PUBLIC AND PRIVATE ENTITIES?

PUBLIC ENTITIES HAVE BEEN PAYING MORE THAN THEIR FAIR SHARE OF THE COSTS FOR DECADES!

CHILD USAdvocacy

CHILD USA
THE NATIONAL THINK TANK FOR CHILD PROTECTION

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Chapter 11 Bankruptcy: In theory versus in practice

THE PROBLEM

Chapter 11 is inhumane for child sex abuse (CSA) survivors. The Boy Scouts, USA Gymnastics, and 32 U.S. Catholic dioceses and religious orders have deployed Chapter 11 as a shield while silencing and re victimizing the CSA victims they created. It is time to amend the Bankruptcy Code to make Chapter 11 humane for these brave CSA survivors.

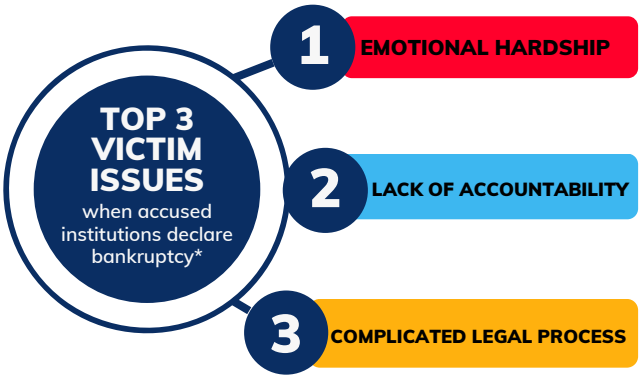
How is the bankruptcy system meant to work?

The Code was designed to provide an honest debtor reprieve from debilitating debt while Chapter 11 is intended to enable an organization to remain operational until it can restructure its debts through a reorganization plan.

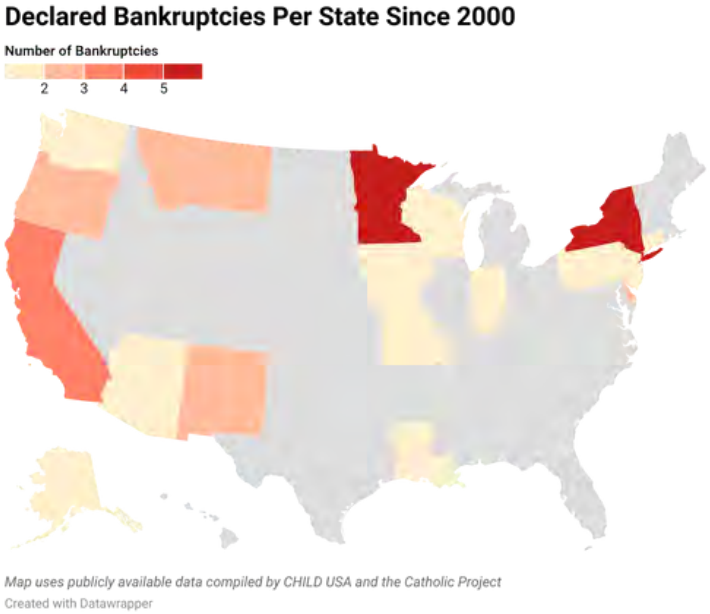
How does the bankruptcy system work in practice?

In CSA cases, **Chapter 11 has been transmogrified into a system that flips the roles**: the bad actors are the ones who are offered assistance to put their problems behind them while the victims are herded into a system where they are denied discovery, given no voice during the process, and reduced to mere creditors when what they deserve is justice in the service of the public interest that will compensate them fairly and provide meaningful leverage to force the bad actor to protect all children in the future

The beneficiaries of Chapter 11 include the bad actor debtors and their related organizations that can obtain the benefits of Chapter 11 without the obligations. It has been interpreted to allow for "blanket immunity" to non-debtor third parties who can be released from liability without having to file as a debtor or revealing their assets and wealth. The system is geared to make the debtor and non-debtors whole and unaccountable. **The victims and the public lose out.**



*Based on a survey of 26 victims of sexual abuse who brought claims against Catholic church dioceses in the United States and were subsequently involved in Chapter 11 bankruptcy proceedings filed by the dioceses as part of the settlement process.



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Financial Consequences of Diocesan Bankruptcies

As of 12/1/2020

How is financial impact to churches determined?

- Tax exempt organizations with gross receipts >$50,000 must file a Form 990 to the IRS.
- Religious institutions are exempt from disclosing any financial information to the public so we can't 'see' directly into the finances of the Catholic Church.
- Catholic Charities
  - Considered the primary charitable arm of the Catholic Church, operating as 501c3 organizations
  - Operated under the management of the diocese(s) in which they are located
  - They receive funds from public, private and philanthropic donations
  - Therefore these organizations must file IRS Form 990

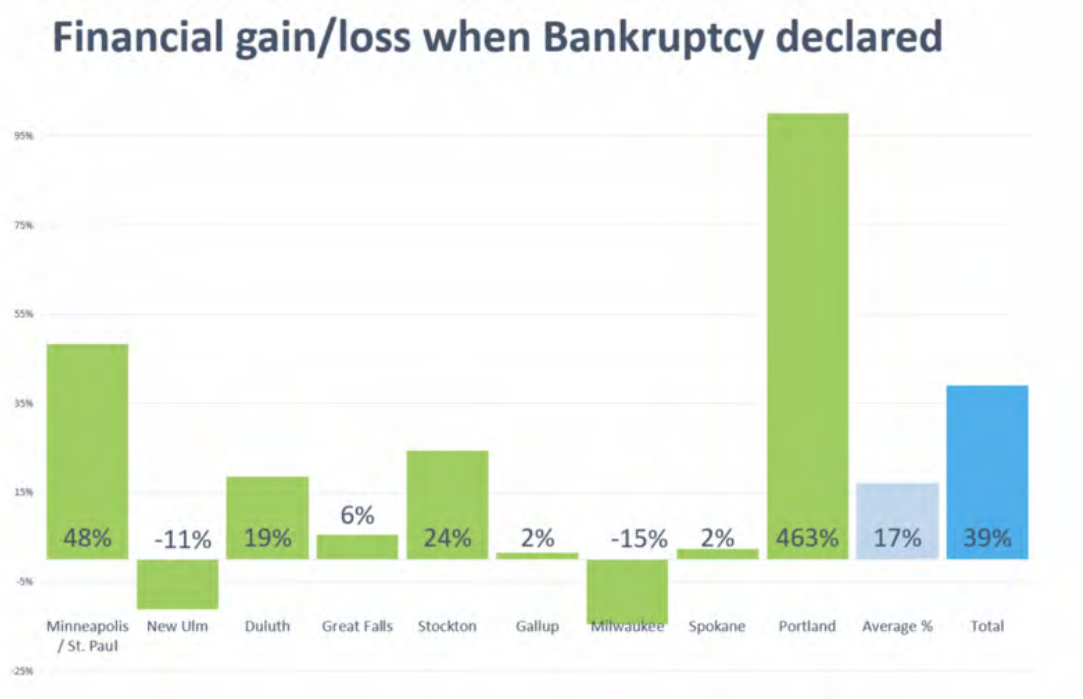
Catholic Charities financial status can serve as a proxy to the financial status of the diocese.

What happened to dioceses that have declared bankruptcy?

- There are 10 (9) dioceses that have declared bankruptcy in the last 10 years.
  - Stockton, CA; Helena,MT & Great Falls Billings, MT; Saint Paul/Minneapolis,MN; Duluth MN; New Ulm MN, Gallup NM, Milwaukee WI, Spokane WA, and Portland OR
    - Helena and Great Falls were grouped together because together they operate the statewide Catholic Charities organization. These 2 diocese did NOT declare bankruptcy at the same time.
- Reviewed the 990 forms for all of these diocese to discern financial status of Catholic Charities and thereby some visibility into the financial status of the diocese.

Summarizing the Data

Chart below shows the percentage income change for the 2 years prior to bankruptcy and the 2 years following bankruptcy for Catholic Charities Inc.



Financial Consequences of Diocesan Bankruptcies

- On average, when a diocese declares bankruptcy, the associated Catholic Charities has a net increase in contributions of **39%.**
- Bankruptcy actually appears to have a significant positive influence on the charitable arm of the Catholic Church.

Tabular Data

Shows donations to charitable arms of the Catholic dioceses for 2 years just prior to bankruptcy filing and 2 years following bankruptcy filing.

DIOCESE	2 YEARS PRIOR	2 YEARS AFTER	% CHANGE
Minneapolis / St. Paul	$20,816,637.00	$30,883,568.50	48%
New Ulm	$2,771,750.00	$2,463,443.00	-11%
Duluth	$13,627.00	$16,154.00	19%
Great Falls	$350,733.00	$370,151.50	6%
Stockton	$2,983,580.50	$3,710,849.00	24%
Gallup	$562,111.50	$570,919.00	2%
Milwaukee	$5,354,155.50	$4,577,721.00	-15%
Spokane	$5,442,108.50	$5,569,832.50	2%
Portland	$114,311.00	$643,484.50	463%
Average %			**17%**
Total	**$26,936,327.50**	**$37,444,166.00**	**39%**

- Significant disparity between income for large and small dioceses
- Only 2 dioceses show loss
- **50%** of the Catholic Charities associated with each diocese show significant increase in income within 2 years of their respective diocese declaring bankruptcy

Caveat

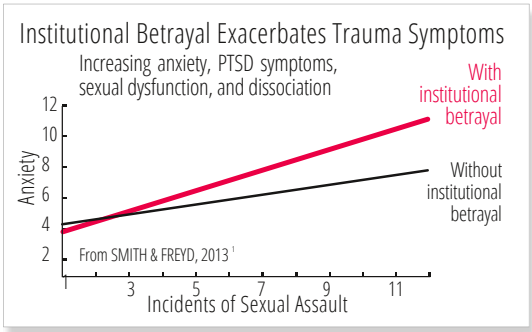
Data from bankruptcies less than 2 years ago simply hasn't been filed yet.

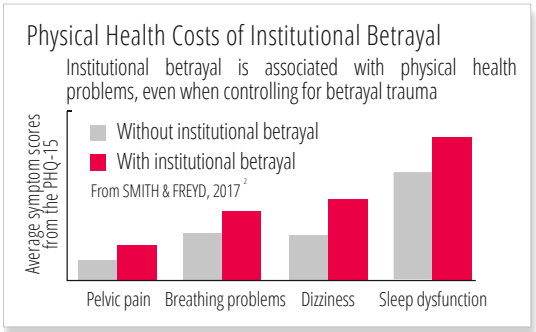
When a child is sexually abused within the context of a trusted institution, such as a school or church, the way the institution responds is predictive of how the child will fare. The institution's response has the power to exacerbate or mitigate the harm of the original trauma. When institutions respond with denial, silencing, shaming, or ostracization, the child experiences this breach of trust as a profound betrayal that research shows causes psychological and even physical harm.

Institutional Betrayal

All too often, institutions fail the very people they should protect.

Institutional Betrayal is a concept described by psychologist Jennifer Freyd referring to "wrongdoings perpetrated by an institution upon individuals dependent on that institution, including failure to prevent or respond supportively to wrongdoings by individuals (e.g. sexual assault) committed within the context of the institution." In a landmark study, Carly P. Smith and Jennifer Freyd (2013) documented psychological harm caused by institutional betrayal. When institutions cover up violations such as child sexual abuse, this institutional betrayal undermines survivors' recovery, increasing anxiety, PTSD symptoms, sexual dysfunction, and dissociation.





Common Examples

- Failure to prevent abuse
- Normalizing abusive contexts
- Difficult reporting procedures
- Inadequate responses
- Covering up the abuse
- Denying the abuse
- Punishing the child
- Suggesting the child's experience might affect the reputation of the institution
- Creating an environment where the child no longer feels like a valued member of the institution
- Creating an environment where continued membership is difficult for the child.

[1] Smith, C.P. & Freyd, J.J. (2013). Dangerous Safe Havens: Institutional Betrayal Exacerbates Sexual Trauma. Journal of Traumatic Stress, 26, 119-124.
[2] Smith, C. P., & Freyd, J.J. (2017). Insult, then injury: Interpersonal and institutional betrayal linked to health and dissociation. Journal of Aggression, Maltreatment, & Trauma, 26, 1117-1131.

INSTITUTIONAL DARVO is a particularly aggressive form of institutional betrayal.

DARVO stands for "Deny, Attack, and **Reverse Victim** and **Offender."**
It refers to a reaction perpetrators, particularly sexual offenders, or institutions that protect perpetrators and themselves may display in response to being held accountable. The perpetrator/institution may Deny the behavior, Attack the individual doing the confronting, and Reverse the roles of Victim and Offender such that the perpetrator/institution assumes the victim role and turns the true victim, or the whistle-blower, into an alleged offender. **DARVO not only exacerbates the original harm, it also inflicts another entirely separate one, often in ways that are ongoing in the victim's life.**

This short video is a powerful depiction of institutional betrayal in action with aspects of DARVO

Copy link into your browser: https://vimeo.com/337408766

Institutional betrayal is one reason why many victims delay reporting of sexual abuse. While reporting can lead to a good outcome, reporting can be risky. A bad response can make things worse for the victim. A bad response can be a new betrayal trauma. Often times survivors hold off reporting until they are strong enough to weather the blowback of an unsupportive response.

MARYLAND

essentials for childhood

LEGISLATIVE HISTORY OF STATUTE OF REPOSE IN CJ-§117(D)

How was the STATUTE OF REPOSE language included in HB 642 in 2017?

SENATE JUDICIAL PROCEEDINGS COMMITTEE BRIEFING

JANUARY 19, 2023

2017 Bills:
HB642 by Wilson
SB505 by Kelley
SB585 by Young

March 2, 2017 – Senator Young withdrew SB585

- All 3 bills applied PROSPECTIVELY and NOT retroactively.
- Controversy at the Senate Hearing on how Senator Kelley became privy to the exact text that Senator Young had spent the previous summer negotiating with the Senate President and his Chief of Staff; dropping a bill identical Senator Young's legislation.
- Senator Young was chided by Committee to have the conversation behind closed doors vs at the public hearing.

March 9, 2017
1st appearance of proposed amendments with "statute of repose" language

From: "Morton, April" <April.Morton@mlis.state.md.us>
Date: March 9, 2017 at 6:09:30 PM EST
To: 'Mary Ellen Russell' <MRussell@mdcathcon.org>, John Stierhoff <jstierhoff@venable.com>
Subject: SB 505 - current copy of proposed amendments

As requested, the revised amendments are attached. Let me know if there is anything else I can do.

Best,
April

April Morton
Committee Counsel | Judicial Proceedings Committee
Maryland General Assembly | Annapolis, MD 21401
p: 410 841-3623 or 301 858-3623 | e: april.morton@mlis.state.md.us

SB0505/818470/2 **APRM**

BY: Senator Zirkin
(To be offered in the Judicial Proceedings Committee)

AMENDMENTS TO SENATE BILL 505
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 5, after the semicolon insert "establishing a statute of repose for certain civil actions relating to child sexual abuse;"; and in the same line, after "action" insert "filed more than a certain number of years after the victim reaches the age of majority".

March 9, 2017

- MCC forwarded JPR staff email and SB505 amendments to Delegate Atterbeary
- Delegate Atterbeary forwarded emails and SB505 amendments to Delegate Wilson

From: C Wilson [mailto:ctwilson22@gmail.com]
Sent: Friday, March 10, 2017 2:45 PM
To: Wilson, C.T. Delegate <CT.Wilson@house.state.md.us>
Subject: Fwd: SB 505 - current copy of proposed amendments

---------- Forwarded message ----------
From: "VEAESQ" <veaesq@gmail.com>
Date: Mar 9, 2017 9:24 PM
Subject: Fwd: SB 505 - current copy of proposed amendments
To: "C Wilson" <ctwilson22@gmail.com>
Cc:

---------- Forwarded message ----------
From: "Mary Ellen Russell" <MRussell@mdcathcon.org>
Date: Mar 9, 2017 9:15 PM
Subject: Fwd: SB 505 - current copy of proposed amendments
To: "Vanessa Atterbeary" <veaesq@gmail.com>
Cc: "John Stierhoff" <jstierhoff@venable.com>

Hi Vanessa,
Here's the language JPR may be voting on tomorrow. We'll see you at 10 but feel free to call me at any time before then if you want to talk.
Thanks,
Mary Ellen

Begin forwarded message:

From: "Morton, April" <April.Morton@mlis.state.md.us>
Date: March 9, 2017 at 6:09:30 PM EST
To: 'Mary Ellen Russell' <MRussell@mdcathcon.org>, John Stierhoff <jstierhoff@venable.com>
Subject: SB 505 - current copy of proposed amendments

Quick Path to Passage

- 3/13- SB505 JPR Favorable w/amendments
- 3/15- SB505 Passed 3rd Reading 47-0
- 3/15- HB642 JUD Favorable w/amendments
- 3/17- HB642 Passed 3rd Reading 140-0
- 3/24- HB642 Passed 3rd Reading in Senate 47-0
- 4/4- SB505 Passed 3rd Reading in House 139-0

SIGNIFICANT CONSTITUTIONAL & POLICY IMPLICATIONS OF SO-CALLED STATUTE OF REPOSE*

- Committee
- Floor
- Committee Bill Files
- Revised Fiscal & Policy Notes

*potentially irreversible by MGA

ABSOLUTELY NOTHING

PENNSYLVANIA GRAND JURY REPORT RELEASED

Report I of the 40th Statewide
Investigating Grand Jury

REDACTED

By order of PA Supreme Court July 27, 2018

January 2019 Speaker Busch requests Delegate Wilson reintroduce his bill to eliminate the SOL

January 14, 2019 Venable sends 13-page legal brief to Maryland Catholic Conference on SOR

VENABLE® LLP

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T 410.494.6200 F 410.821.0147 www.Venable.com

Kurt J. Fischer

T 410.494.6353
F 410.821.0147
kjfischer@venable.com

January 14, 2019

VIA E-MAIL AND FIRST CLASS MAIL

Jennifer L. Briemann, Executive Director
Maryland Catholic Conference
10 Francis Street
Annapolis, Maryland 21401

Re: Statute of Repose in Md. Code, Ann., Cts. & Jud. Proc. ("CJP") § 5-117(d)

Dear Ms. Briemann:

In Chapter 12, Section 1, of the Laws of 2017 (House Bill 642), the General Assembly repealed and reenacted CJP § 5-117 to adopt a statute of repose in subsection (d) barring child sexual abuse claims against persons and governmental entities not alleged to be the perpetrator of the abuse that are filed more than 20 years after the victim reaches the age of majority. Further, Chapter 12, Section 3, stated that the statute of repose "shall be construed to apply both prospectively and retroactively to provide repose to defendants regarding actions that were barred by the application of the period of limitations applicable before October 1, 2017."

You have asked us whether the General Assembly can enact retroactive legislation to repeal or amend CJP § 5-117(d) and revive causes of action that are barred under its terms. We have concluded that such legislation would be unconstitutional under Article 24 of the Maryland Declaration of Rights and Article III, § 40 of the Maryland Constitution because the legislation would violate substantive, vested rights of defendants to raise the statute of repose defense enacted in Chapter 12. Under Maryland law, a statute of repose creates a substantive right or immunity to

February 7, 2019 HB687 by Delegate Wilson Introduced on 1st Reading

No retroactivity/look back window

HOUSE BILL 687

D3, D4 9lr1025

By: **Delegates Wilson, Atterbeary, Bromwell, and D.E. Davis**
Introduced and read first time: February 7, 2019
Assigned to: Judiciary

A BILL ENTITLED

AN ACT concerning

Civil Actions – Child Sexual Abuse – Statute of Limitations

SECTION 2. AND BE IT FURTHER ENACTED, That this Act may not be construed to apply retroactively to revive any action that was barred by the application of the period of limitation applicable before October 1, 2019.

Mid-February 2019 HB687 amended by Delegate Wilson and argued in Committee Hearing February 28th

Look Back Window/Retroactivity Added

HB0687/172213/1

BY: House Judiciary Committee

AMENDMENTS TO HOUSE BILL 687
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in the sponsor line, strike "and D.E. Davis" and substitute "D.E. Davis, Moon, Lopez, Grammer, Bartlett, Crutchfield, McComas, R. Watson, Arikan, Shetty, and W. Fisher"; in line 2, after "Abuse –" insert "Definition and"; after line 2, insert "(Hidden Predator Act of 2019)"; in line 3, after the first "of" insert "altering the definition of "sexual abuse";"; and in lines 4 and 5, strike "providing for the application of this Act" and substitute "providing for the retroactive application of this Act under certain circumstances".

March 12, 2019 AG Letter of Advice to Chairman Clippinger - Constitutionality of Look-Back Window Unclear

THE ATTORNEY GENERAL OF MARYLAND
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

March 12, 2019

The Honorable Luke Clippinger
101 House Office Building
Annapolis, Maryland 21401-1991

Dear Delegate Clippinger:

You have asked for advice about a proposed amendment to House Bill 687, "Civil Actions - Child Sexual Abuse - Statute of Limitations," which permits an action for damages arising out of an alleged incident or incidents that occurred while the victim was a minor to be filed "at any time." Specifically, you have asked whether this elimination of the statute of limitations could constitutionally be applied to cases that were barred by the statute of limitations prior to the effective date of the bill. In 2003, in a letter to the then Chairman of the Judicial Proceedings Committee, I advised that the answer to that question was not clear, but that it was possible that retroactive application to barred cases could be found to violate the due process requirements of the Maryland Constitution. Letter to the Honorable Brian E. Frosh from Kathryn M. Rowe, Assistant Attorney General dated March 10, 2003 ("the 2003 letter"). This remains the state of the law.

March 15, 2019
Delegate Dumais (Vice Chair in 2017)

Suggests:	Look Back Window (retroactivity) is unconstitutional, because of “statute of repose”
	Requested an AG Letter of Advice to support
	Large DC law firm brief to support it
	Will propose amendment to remove Look Back Window

January 14th Venable Brief

VENABLE® LLP

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January 14, 2019

VIA E-MAIL AND FIRST CLASS MAIL

Jennifer L. Briemann, Executive Director
Maryland Catholic Conference
10 Francis Street
Annapolis, Maryland 21401

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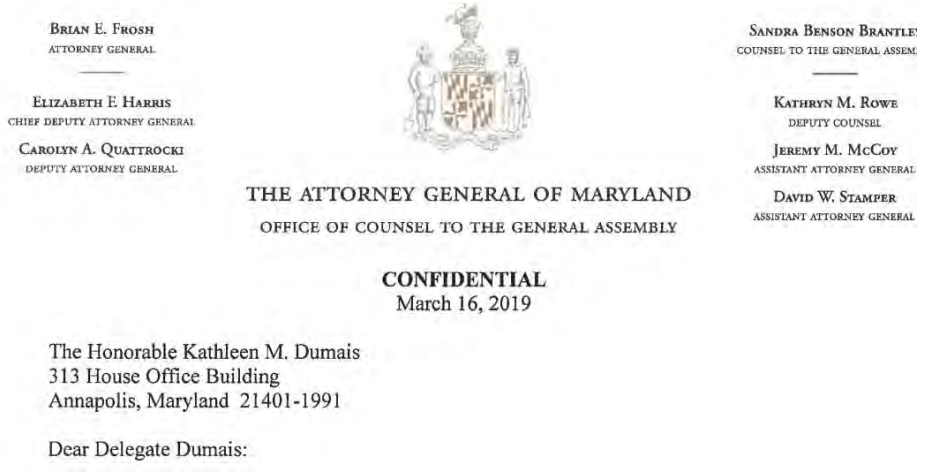
You have asked us whether the General Assembly can enact retroactive legislation to repeal or amend CJP § 5-117(d) and revive causes of action that are barred under its terms. We have concluded that such legislation would be unconstitutional under Article 24 of the Maryland Declaration of Rights and Article III, § 40 of the Maryland Constitution because the legislation would violate substantive, vested rights of defendants to raise the statute of repose defense enacted in Chapter 12. Under Maryland law, a statute of repose creates a substantive right or immunity to

March 16, 2019 Delegate Dumais– Floor Amendment Striking Lookback Window as Unconstitutional – 2nd AG Letter of Advice



BRIAN E. FROSH
ATTORNEY GENERAL

ELIZABETH F. HARRIS
CHIEF DEPUTY ATTORNEY GENERAL
CAROLYN A. QUATTROCKI
DEPUTY ATTORNEY GENERAL

SANDRA BENSON BRANTLEY
COUNSEL TO THE GENERAL ASSEMBLY

KATHRYN M. ROWE
DEPUTY COUNSEL
JEREMY M. MCCOY
ASSISTANT ATTORNEY GENERAL
DAVID W. STAMPER
ASSISTANT ATTORNEY GENERAL

THE ATTORNEY GENERAL OF MARYLAND
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

CONFIDENTIAL
March 16, 2019

The Honorable Kathleen M. Dumais
313 House Office Building
Annapolis, Maryland 21401-1991

Dear Delegate Dumais:

In significant part read:

It is my view that these provisions would most likely be found unconstitutional as interfering with vested rights as applied to cases that were covered by CJ § 5-117(d) and Section 3 of Chapter 12 of 2017.[1]

[1] In a letter to The Honorable Luke Clippinger March 12, 2019, I advised the constitutional status of retroactive application of the bill as amended was not clear, but that it could possibly be upheld. This is essentially the same advice I gave to then Chairman Frosh in 2003. I admit, however, that I was unaware of Chapter 12 of 2017 which has the effect of making CJ § 5-117(d) a statute of repose rather than a statute of limitation. A copy of the Clippinger letter is attached.

March 16, 2019 -HOUSE FLOOR DEBATE on DUMAIS AMENDMENT (rejected 3-131)

"A statute of repose was never my intention. You know when I learned about statute of repose? Yesterday."

-Delegate C.T. Wilson

"We should speak…clearly in a bi-partisan fashion with one voice that we want to give those victims [of child sexual abuse] every opportunity possible to present their claims. If the people who sit on the Maryland Court of Appeals determine that is impossible, leave that up to them. Let's do our job." *–Gentleman from Western Maryland*

March 18, 2019 – HB687 PASSED HOUSE (135-3)

March 28, 2019 – HB687 HEARING IN JPR
April 3, 2019 – JPR -UNFAVORABLE REPORT – (5-5, Senator Smith excused for deployment)

- Zirkin, a lawyer, introduced the amendments in 2017 that included the repose statute. He said "it wasn't anyone's intent" to grant permanent immunity.*
- Permanent immunity "was never discussed," said Del. Vanessa E. Atterbeary, (D-Howard), a lawyer who is vice chair of the Judiciary Committee."I was in meetings with the Archbishop of Baltimore," she said. "That's the sort of conversation I would have remembered."*

*When Maryland Gave Abuse Victims More Time to Sue, it May Have Also Protected Institutions, Including the Catholic Church, WASH POST (Mar. 31, 2019).

March 28, 2019 – HB687 HEARING IN JPR
April 3, 2019 – JPR -UNFAVORABLE REPORT – (5-5, Senator Smith excused for deployment)

Of the 2017 Bill:
"I was working with them in good faith," Wilson, a lawyer, said of the church. "They were behind the scenes, crafting language that protects them forever." "It wasn't the intent of the people and therefore they defrauded the Body and the citizens of this state." Delegate C.T. Wilson

2020 SESSION– HB974

- Passed the House (127-0)

2021 SESSION- SB134/HB263

- Hearing in Senate- no JPR vote
- House bill withdrawn

MARYLAND

THANK YOU

Claudia Remington, JD,
Co-Chair, Maryland Essentials for Childhood
claudia.mdefc@gmail.com
240-506-3050

Senate Bill 686 / House Bill 1
Senate Judicial Proceedings Committee/House Judiciary Committee
Civil Actions – Child Sexual Abuse – Definition and Statute of Limitations
(The Child Victims Act of 2023)
**** SUPPORT ****

February 21, 2023

Dear Committee Members:

We know the statistics that 1 in 5 girls and 1 in 13 boys will experience child sexual abuse before reaching adulthood. We have learned through research that the adverse experiences we face in childhood (ACEs) change the structure and function of our brains and have lasting individual and societal impacts into adulthood. The trauma associated with childhood sexual abuse too often leads to PTSD, alcohol and opioid abuse, depression, suicide, and poor educational and employment outcomes. The impact is felt by all of us. According to the CDC, the economic burden of child sexual abuse is over $9 billion annually. Endorsed by a broad coalition of support and buoyed by the strong national trend on this issue, we are writing to ask for your support for HB01 The Child Victims Act of 2023.

Across the country, state legislators are recognizing that change needs to happen. Since 2002, 50% (27 jurisdictions) of U.S. jurisdictions have passed revival legislation. Seventeen states, D.C., and Congress have eliminated civil statutes of limitation for child sexual abuse. In September 2022, Congress passed the bipartisan "Eliminating Limits to Justice for Child Sex Abuse Victims Act of 2022." Changes in these laws have given adult survivors of child sexual abuse another pathway to healing and justice. Most importantly, SOL reform, especially revival legislation, protects children now by exposing hidden predators and those that conceal them.

The Child Victims Act of 2023 would:

1. Eliminate the statute of limitations for child sexual abuse.
2. Repeal the so-called "statute of repose".
3. Create a permanent window for older claims.
4. Allow both public and private entities to be sued.
5. Eliminate the notice of claims deadlines for public entities in child sexual abuse cases. 6. The legislation will have some limitations on liability to a single claimant for injuries arising from a single incident or occurrence:
    a. for retroactive claims (the statute of limitations has already run):
        i. for private entities:
            1. $1.5 million cap on non-economic damages
            2. no cap on economic damages
        ii. for public entities:

1. $850,000 cap for damages

b. for prospective claims (the statute of limitations has not run):

i. for private entities

1. no caps on either economic or non-economic claims

ii. for public entities

1. $850,000 cap for damages

Maryland has no criminal statute of limitations for felonies, including those involving child sexual abuse. However, criminal and civil proceedings provide different remedies, and both are necessary for justice to be served. Certainly, we can all agree that survivors should have every option available to heal.

Not only does this bill provide support and access for adult survivors, it provides preventative protection to children. In states where windows are opened, hidden predators are exposed. In Minnesota, under their 3-year lookback window, 125 predators were identified, In California, under their 1-year lookback window, 300 predators were identified. For our neighbors in Delaware, the lookback window uncovered Dr. Earl Bradley, the most active, previously undisclosed predator to date, who as a pediatrician had 1,000 victims.

Collectively, we are saying enough is enough. Those who sexually abuse children, and the institutions that protect abusers, must be held accountable. Survivors deserve access to justice. Maryland can and must do better. We urge you to support the passage of The Child Victims Act of 2023 in the Maryland General Assembly this year.

JUSTICE 4 MD SURVIVORS
PROTECT KIDS, NOT PREDATORS

MARYLAND essentials for childhood

NAACP Maryland STATE CONFERENCE

CASA Court Appointed Special Advocates FOR CHILDREN
MARYLAND CASA ASSOCIATION

Maryland Chapter
INCORPORATED IN MARYLAND
American Academy of Pediatrics
DEDICATED TO THE HEALTH OF ALL CHILDREN
Speaking for Maryland Kids!

DELAWARE-MARYLAND SYNOD

baltimore county progressive bcpdc democrats club

CHILDUSA
THE NATIONAL THINK TANK FOR CHILD PROTECTION


GBMC


A LIFEBRIDGE HEALTH GROUP
CENTER FOR HOPE


MARYLAND
FAMILY
NETWORK


MCF
maryland coalition of families


Maryland Children's Alliance, Inc.


Child
justice
PROTECTING CHILDREN, PROVIDING SUPPORT, PROMOTING CHANGE


CENTER for CHILDREN


BOYS & GIRLS CLUBS
OF HARFORD & CECIL COUNTIES


CITI Ministries
Celibacy Is The Issue


HARRITY4CHARITY


The Family Tree


AG
ASHLAR GOVERNMENT RELATIONS

JOHNS HOPKINS BLOOMBERG SCHOOL OF PUBLIC HEALTH
The Moore Center for the Prevention of Child Sexual Abuse

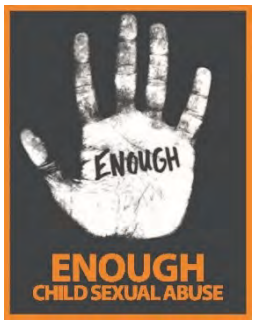
SNAP

THE EPISCOPAL DIOCESE OF MARYLAND

MCASA
Maryland Coalition Against Sexual Assault

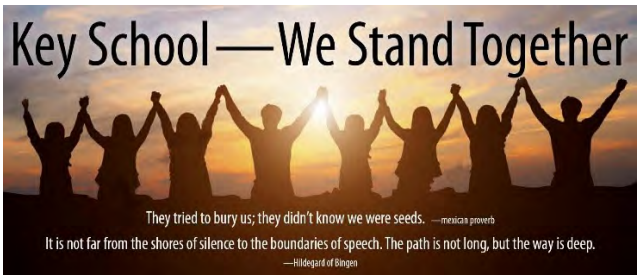
1968 Celebrating 50 yrs 2018
Celebrating New Ministries
For A New Millennium
Federation of Christian Ministries

MEPPN
Maryland Episcopal Public Policy Network



Housing Authority of the City of Frederick

Heartly House, Inc.
Serving survivors of domestic violence, sexual assault, human trafficking, and child abuse



CHILD USAdvocacy


first
star
INSTITUTE


MOST
NETWORK
Leaders in Youth Development


Mid-Atlantic
P.A.N.D.A.
midatlanticpanda.org


KROS
LEARNING GROUP


HARRITY
THE GO-TO FIRM FOR THE PATENT 300™


BEAU BIDEN FOUNDATION®
FOR THE PROTECTION OF CHILDREN


CRBC
Citizens Review
Board for Children


Prevent Child Abuse
Maryland™


Needworking


circle of parents®
Sharing Ideas. Sharing Support.


Maryland Catholics for Action

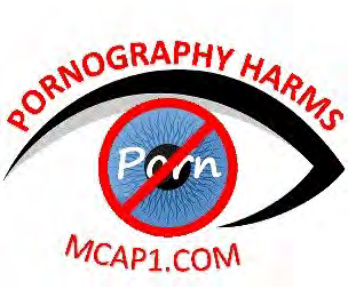

ProMD Health


RENEW YOUR CORE
WITH TRAUMA HEALING


PARENTS' COALITION
of Montgomery County

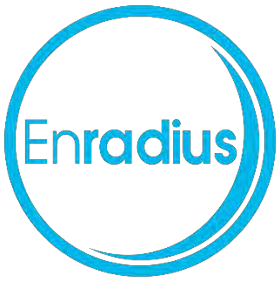

No
More
Stolen
Childhoods


M C
MONTGOMERY COUNTY
YOUNG DEMOCRATS
Y D


PORNOGRAPHY HARMS
Porn
MCAP1.COM


MAROON PR
Creative Communications


ProMD
helps


Enradius


Progressive Neighbors

HB 1_MFN_FAV_Macsherry Civil Actions Child Abuse.p

Uploaded by: Clinton Macsherry

Position: FAV

MARYLAND
FAMILY
NETWORK

1001 EASTERN AVENUE, 2ND FLOOR
BALTIMORE, MARYLAND 21202-4325
tel 410.659.7701 *fax* 410.783.0814

marylandfamilynetwork.org

Testimony Concerning HB 1
"Civil Actions - Child Sexual Abuse - Definition and Statute of Limitations (The Child Victims Act of 2023)"
Submitted to the House Judiciary Committee
March 2, 2023

Position: Support

Maryland Family Network (MFN) supports HB 1, which would eliminate the civil statute of limitations on child sexual abuse, create a temporary "look-back window" for victims who were previously barred from seeking redress by the existing statute of limitations, and clarify that those who perpetrate child sexual abuse are not entitled to constitutionally protected property rights.

As Maryland's largest and oldest statewide child advocacy organization, MFN is strongly committed to ensuring the health and well-being of children across our state. MFN has worked since 1945 to improve the quality of life for Maryland children and their families. We are committed to a process that identifies and addresses factors affecting the well-being of children and youth, including the prevention of child abuse and neglect.

Studies indicate that one in five girls and one in 13 boys will experience child sexual abuse. Recent research also shows that adverse experiences faced in childhood change the structure and function of brains and have lasting impacts into adulthood. The trauma associated with childhood sexual abuse too often leads to PTSD, alcohol and opioid abuse, depression, suicide, and poor educational and employment outcomes. The impact is felt by individuals and by society as a whole. According to the CDC, the economic burden of child sexual abuse is over $9 billion annually.

Maryland has no criminal statute of limitations for felonies, including those involving child sexual abuse. However, criminal and civil proceedings provide different remedies, and both are necessary for justice to be served. Certainly, we can all agree that survivors should have every option available to heal. Not only does this bill provide support and access for adult survivors, it provides preventative protection to children. In states such as California, Delaware, and Minnesota where "look-back windows" have been opened, hidden predators have been exposed.

MFN respectfully urges the Committee's favorable consideration of HB 1.

Buddy Robson (HB 0001) 03-02-23.pdf
Uploaded by: Daniel Robson
Position: FAV

TESTIMONY IN SUPPORT OF HB 0001:
CIVIL ACTIONS – CHILD SEXUAL ABUSE – DEFINITION AND STATUTE OF LIMITATIONS
****SUPPORT****

TO: HON. Luke H. Clippinger Chair, and Members of the House Judiciary Committee.

FROM: Daniel F. "Buddy" Robson Jr.

March 2, 2023

Dear Delegate Clippinger and Members of the Committee:

As you look at the attached picture I'm sure it seems innocuous enough. It's a picture of my son and me who is attending his first day of school as a 6th grade student on August 29th 2019. His birth date is January 15, 2008 and he is 11 years old in this picture. Thousands of fathers Nationwide most likely pose for same picture with their son(s) every school year but unlike the others, there's a backstory to this picture.

My son, Sean, was the EXACT SAME AGE I was when I was sexually abused by a Catholic priest by the name of Timothy P. Slevin, who at the time was assigned to St. James Church/School in Mt. Rainier, MD (Prince Georges County). The pain of my abuse laid dormant in my memory for many years but has come back full force with the revelations of Theodore McCarrick and the subsequent resignation of Donald Wuerl for his part in covering up the abuse of children as revealed in the Pennsylvania Grand Jury Report. It is still too painful for me to talk about and I really thought I'd take my "secret" to my grave. I will turn 68 in December this year and STILL live with my "secret". It's been a very hard road to have to live through the pain of my abuse again.

As a father and a parent, I look at my son and I sometimes cry, but I mostly pray that he'll never know the pain of what I went through and what I am going through now. Nothing, and no one will ever be able to take back what was done to me but if I can do anything at all to prevent my son, or anyone's son/daughter from having to experience the pain of sexual abuse at the hands of a pedophile predator then my efforts today and everyday will be worth it.

For these reasons I urge a favorable committee report and passage of House Bill 0001 without amendments.

Most sincerely,
Daniel F. "Buddy" Robson Jr.


Today is Tues.
Homeroom
Science
Math
Social Studies
Literature
English
Homeroom
6th
GRADE

T. Slevin Article (04-1986).pdf
Uploaded by: Daniel Robson
Position: FAV

Ex-Priest Pleads Guilty to Sodomy

Court Records Show He Admits Abusing 7 Boys

By John Ward Anderson

Washington Post
April 13, 1986

A former priest who later worked as a basketball coach at Sacred Heart Catholic School in Northwest Washington has pleaded guilty to four counts of sodomizing a minor and has told police he sexually abused six other boys more than 50 times in the past six years, according to court documents, police sources and other law enforcement officials.

Many of the boys, who ranged in age from 10 to 16 when the incidents occurred, were associated with the Sacred Heart parish basketball team and met the man, Timothy Slevin, through athletic activities in the elementary school's gymnasium, court documents state. Some of the boys were abused as many as 20 times, according to the court documents.

Slevin, 47, was ordained a priest in 1965, took an extended leave of absence from the church in 1974 and was formally separated from the priesthood later that year. He subsequently worked as a personnel management specialist with the D.C. Office of Personnel and was a volunteer basketball coach at Sacred Heart when he was arrested last August.

On Dec. 2, before D.C. Superior Court Judge Bruce Mencher, he pleaded guilty to four counts of sodomizing a minor. On Feb. 19 he received a preliminary sentence of three to nine years in prison on one of the counts, pending a psychiatric evaluation.

He is to appear April 29 for final sentencing on the other three counts, each of which carries a prison term of up to 20 years and a $1,000 fine. All the charges involve a single youth. Slevin is being held at the federal prison in Butner, N.C.

In exchange for his preindictment guilty plea, Slevin received immunity from prosecution for allegedly abusing the six other boys on many occasions since 1980. Slevin identified the boys in an Oct. 22 interview with D.C. police, according to a police report filed in court.

According to a sentencing memorandum filed with the court by the U.S. attorney's office, "Mr. Slevin has engaged in repeated, constant and calculated pedophilia [sexual child abuse] for 20 years." The memorandum, quoting from a presentencing report filed with the court, states that, while still a priest, "Slevin went through 'treatment' once before in 1972 following the discovery that he had been 'fondling children' connected with the Nativity Catholic Church" at 6000 Georgia Ave. NW.

Brady Johnson, Slevin's lawyer, said that about 15 years ago his client "was in therapy for other problems . . . but he had never received treatment" for pedophilia until recently. He said there was no evidence that Slevin's problem dates back 20 years.

He said that Slevin's pedophilia is compounded by alcoholism and that Slevin is receiving counseling and undergoing drug therapy for both.

The U.S. attorney's sentencing memo states that the boy Slevin pleaded guilty to abusing was a student at Sacred Heart, that the boy's family is "unable to comprehend how the church could not have known about Slevin's long history of pedophilia," and that if the church did know, how could it "still interpose him with young boys in a church-sanctioned activity?"

Asked if the church had been aware of the 1972 allegations, and, if so, what actions had been taken, Barrett McGurn, communications director for the Archdiocese of Washington, said, "In any case of that sort, you can be sure the archdiocese reacted in a responsible manner, but I would not have anything more for you on that."

Msgr. Joaquin Bazan, who was pastor of Sacred Heart Church, 16th Street and Park Road NW, from 1976 to 1984, said that Slevin's involvement with children "comes as a complete surprise . . . . I had no idea there was a problem.

"What I find so difficult to understand is why nobody has said anything" about the incidents and Slevin's guilty plea, he said.

Sister Dorothy Victor, principal of Sacred Heart School, said that she had been unaware that more than one child had been sexually abused by Slevin. She said the school had not notified parents of the incidents.

Court documents state that the boy Slevin pleaded guilty to abusing first met Slevin in the fall of 1983, that the incidents took place at Slevin's apartment, and that at times he paid the boy money. The boy's grades suffered and he became increasingly morose, the sentencing memo states, adding that the boy has enrolled in another school and is receiving therapy.

HB1 testimony written David Lorenz.pdf
Uploaded by: David Lorenz
Position: FAV

TESTIMONY IN SUPPORT OF HB 1
Civil Actions – Child Sexual Abuse – Definition, Damages, and Statute of Limitations
(The Child Victims Act of 2023)
****SUPPORT****

TO: Hon. Luke Clippinger, Chair, and members of the House Judiciary Committee

FROM: David Lorenz

DATE: March 2, 2023

My Name is David Lorenz, I am a survivor of child sexual abuse at the hands of a priest and I am also the Maryland director for SNAP (Survivors Network of those Abused by Priests).

On Thursday, March 23, the Judicial Proceedings committee heard testimony for the senate version of the bill. Dozens of child sexual abuse survivors and experts testified on behalf of the HB686. While the Maryland Catholic Conference (MCC) has lobbied hard against the bill in the shadows, they submitted only written testimony and did not appear in public with oral testimony. However, what is not appropriate is for the MCC to misrepresent what the bill does and does not do.

Their written testimony states "While there is clearly no financial compensation that can ever rectify the harm done to a survivor of sexual abuse, the devastating impact that the retroactive window provision will potentially have by exposing public and private institutions — and the communities they serve — to unsubstantiated claims of abuse, cannot be ignored,"

Nothing in this bill allows for unsubstantiated claims. In fact, if you ask anyone of the dozens of survivors who testified or the hundreds or thousands of survivors in the state of Maryland, none of them expect that they could file a claim and expect to receive an award without substantiating their claim with a preponderance of evidence. These survivors only want the doors of justice to be open to them so that they can present their case before a judge and jury, not that they are allowed to be the judge and jury.

Now let's review how the how the Church defines at what is a substantiated claim based on independent investigations from around the country. In one diocese, the church assumed the allegation was unsubstantiated unless the priest confessed. No further investigation was necessary. In another diocese, the case was unsubstantiated because the priest was deceased and could not defend himself despite a mountain of evidence to the contrary. In another diocese, they assigned other priests to investigate the priest. The problem here was the investigating priest was not just biased but also a pedophile himself. If I were bound by the Church's rather unique and self-serving definition of 'unsubstantiated', I would tend to agree that this bill, along with almost every civil litigation law, allows for unsubstantiated claims.

It isn't just the concept of substantiated where the Church 'redefines' words to suit their needs. According to these investigations, the Church has used phrases like 'inappropriate touching' when any other person would have used the word 'raped orally, raped anally or raped vaginally'. This included the rape of girls as young as 3. Another diocese actually instructed their personnel to never use the word rape but rather use words like 'inappropriate touching' or 'boundary

issues'. The diocese instructed perpetrators to only be labeled as pedophiles based on the priest self-evaluation regardless of whether he raped a child or not. In the Philadelphia diocese the Attorney General actually said it was not credible when the Cardinal stated several times that he could not recall or did not know about a priest's behavior or his claims that he did not knowingly move a predator priest. Finally there are multiple reports that the Church simply did not perform even cursory investigations into allegations of abuse – they did not interview the victim and they did not interview staff or colleagues.

It appears that the dioceses around the country, indeed around the world, show a pattern of redefining words and concepts like 'unsubstantiated', 'investigations', 'rape' and 'boundary issues'. The Church will knowingly and willfully redefine words and phrases to meet their objective of covering up and minimizing child sexual abuse. Just this last November, we learned about the rampant sexual abuse of children in the Baltimore archdiocese from the states Attorney General's investigation. More than 600 children were abused (the report indicates that this probably represents one fifth of the actual number), no parish was safe and it stated that there 43 priest-pedophiles that the diocese had not previously identified. When questioned, the diocese stated that 30 of the 43 were deceased and did not need to be named – in other words, they still believe that if a priest is deceased, you can't substantiate a claim. Despite their claims that they are a changed Church and have reformed, they reveal that they still deal in deception and untruths when they testify before the Senate Judicial Proceedings and in their public statements. That is how they can state 'The devastating impact … to <u>unsubstantiated</u> claims of abuse, cannot be ignored'. Simply put, the bill does NOT allow for unsubstantiated claims (using the common definition of unsubstantiated rather than the Church's revised definition) and the Church continues to engage in creative dissembling.

The Church also claims that they are much more pastoral to victims who come forward and they are treated with dignity, respect and compassion. Unfortunately, these are just words. There actions speak louder and tell a much different story. Just this last November a women, 17 years of age, finally found the courage to come forward and tell parents, authorities and the Church about the brutal sexual assault that this victim suffered 10 years earlier at the hands of a teacher at a Saint Bernadette School in Silver Spring, MD. This young child of 7 did not know how to handle or process what had happened but eventually found the strength to come forward. Was the victim shown compassion? Understanding? Respect? Concern? None of these were forthcoming from the Church, in fact the opposite was true. While they did put the teacher on administrative leave (where he remains) Church officials reverted to their old ways of dodging the accusation, shaming the victim and they have NOT informed parents of what had happened. Even while an active investigation was ongoing, the pastor of the Church, Monsignor Bartholomew Smith abused his position as a pastor, never having talked with the victim, and penned more than a full page letter in the Sunday Church bulletin to vent his rage at the accusation (See below for an image of his letter). He excoriated anyone who would make false accusation (he assumed the allegation was false), quotes often from the Catechism about the preserving the reputation of people, and ultimately points a finger at the victim and claims the accuser is 'the Devil himself'. Church officials can make all the claims they want about how they have reformed, that they are committed to the truth, and that they treat survivors with compassion. The fact is they are the same old Church that believes the institution is of utmost importance and that sexual abuse is the price we have to pay to maintain that institution.

Citations:

1) Philadelphia Grand Jury Report September 26, 2003 (pages 2,5, 16, &32) www.bishop-accountability.org/reports/2003_09_25_First_Philadelphia_Grand_Jury_Report.pdf
2) Altoona-Johnstown March 16,2016 (p. 33) www.bishop-accountability.org/reports/2016_03_01_Pennsylvania_Grand_Jury_Report_on_Diocese_of_Altoona_Johnstown.pdf
3) Pennsylvania Grand Jury Report July 17, 2018 (pages 3 & 8) https://www.attorneygeneral.gov/report/

Bulletin letter From Monsignor Smith:

In our time, the weight given to accusations of many sorts, and the instantaneity of transmission of accusations of every sort, have multiplied the impact of false accusation to people in every walk of life. The burden for all who are falsely accused that it is literally and logically impossible to prove a negative, that is, to demonstrate beyond doubt that something does not exist or did not occur. Even when the accusation later be found unsupported, it cannot ever be demonstrated to be false, and therefore can never be expunged from memory or opinion. This crushing and inescapable burden does grave damage not only to their lives, but to their communities and relations as people pull away from one another in opprobrium and suspicion.

The accusations that fly are not limited to actions that are objectively wrong and harmful, but include now also dispositions that are subjective in nature, such as being 'offensive' or 'hurtful', based on the supposition that if someone is hurt even in feelings, there must one who is guilty of inflicting the hurt. These accusations are often accompanied by an assertion of motivation, such 'racism,' 'hate,' 'sexism,' or even just 'insensitivity,' all of which are now treated as grave crimes despite the pure impossibility of demonstrating their nonexistence.

The recklessness with which these accusations are made, and the readiness with which they are accepted, is a sign of sickness in our culture and our communities. It is difficult, if not impossible, to remain merely a spectator in what has become a national pastime akin to blood sport. We will be drawn into this mob-driven mutually assured destruction unless we cling, conscientiously and consistently, to the life giving commandments given us by God.

You shall not bear false witness against your neighbor. (*Ex 20:16*) **The eighth commandment** *forbids misrepresenting the truth in our relations with others. This moral prescription flows from the vocation of the holy people to bear witness to their God who is the truth and wills the truth. Offenses against the truth … are fundamental infidelities to God and, in this sense, they undermine the foundations of the covenant.* (*Catechism of the Catholic Church 2464*)

As simple as that seems, because it is so simply stated, it requires both moral instruction and constant vigilance to avoid doing what may seem harmless but in fact does the very damage described by the commandment:

Respect for the reputation of persons forbids every attitude and word likely to cause them unjust injury. ***He becomes guilty: of rash judgment*** *who, even tacitly, assumes as true, without sufficient foundation, the moral fault of a neighbor;* ***of detraction*** *who, without objectively valid reason, discloses another's faults and failings to persons who did not know them;* ***of calumny*** *who, by remarks contrary to the truth, harms the reputation of others and gives occasion for false judgments concerning them.* (*CCC 2477*)

To avoid rash judgment, everyone should be careful to interpret insofar as possible his neighbor's thoughts, words, and deeds in a favorable way: *Every good Christian ought to be more ready to give a favorable interpretation to another's statement than to condemn it. (CCC 2478)*

Common as it has become in our day, the burden of false accusation is no mere hypothetical, either to me or to many of my friends in the Church. When the accusation remains private, it still does violence. When the accusation is comparatively minor and not life-ending, it is still soul-crushing as by its very nature there is no escape. When the accusation is accepted and believed, that acceptance can never be erased. At the very least, one is left wondering, *how could anyone who knows me believe that I could do such a thing?*

Living as we do in a time and place where calumny is the chief product of one of our largest industries, and detraction an expected element of almost every conversation, rash judgement is nearly impossible to avoid, but only nearly. *For with God, nothing will be impossible*. (Lk 1:37)

Offenses against the truth … are fundamental infidelities to God and, in this sense, they undermine the foundations of the covenant. That means, they make our lives *hell.* "The accuser" is a name given to the Devil himself, and we all long for the day when we hear *a loud voice in heaven, saying, "Now the salvation and the power and the kingdom of our God and the authority of his Christ have come,* ***for the accuser of our brethren has been thrown down, who accuses them day and night before our God.*** *(Rev 12:10) The Spirit and the Bride say, "Come." And let him who hears say, "Come." He who testifies to these things says, "Surely I am coming soon." Amen. Come, Lord Jesus! (Rev. 22:17, 20)*

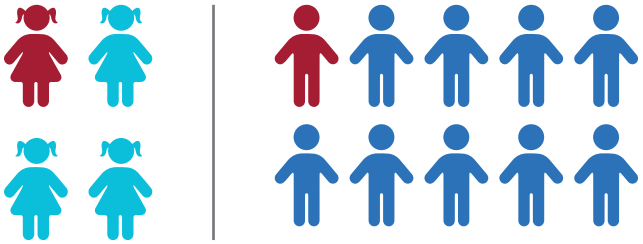
Monsignor Smith

JH Moore Center Flyer_2022.pdf
Uploaded by: Elizabeth Letourneau
Position: FAV

Our Mission: Prevent Child Sexual Abuse

The Situation

Child sexual abuse remains disturbingly common. As many as one in four girls, and one in 10 boys, will experience some form of child sexual abuse during their childhood. Research indicates only one in three of these incidents are reported to a parent or other trusted adult, and only one in five are reported to police. This abuse often leads to long-term physical and mental health problems. Fortunately child sexual abuse is preventable, not inevitable—and that is the mission of the Moore Center for the Prevention of Child Sexual Abuse.



Our Strategy

- **Research** to advance the primary prevention of child sexual abuse, including the development and rigorous evaluation of prevention interventions;
- **Education** for policymakers, funders, advocates, educators, health and social service practitioners, media, parents and other stakeholder, to work in collaboration, share, and deliver the message that child sexual abuse prevention is both essential and achievable;
- **Communication** that delivers clear, unbiased, objective information on all aspects of child sexual abuse, including victimization, perpetration and prevention;
- **Advocacy** that secures resources and support for evidence-based policies and practices that prevent child sexual abuse;
- **Policy** efforts that support a public health approach to child sexual abuse prevention.

JOHNS HOPKINS
BLOOMBERG SCHOOL
of PUBLIC HEALTH

Moore Center for the Prevention of Child Sexual Abuse

Our Projects

Responsible Behavior with Younger Children

This middle school prevention program is designed to reduce the prevalence of child sexual abuse by providing students, their educators, and parents with the knowledge and skills to promote appropriate and responsible behaviors with younger children and peers. RBYC has been adapted for teens with intellectual and developmental disabilities.

Parent ProPS

Parents Promoting Positive Sexual Development is a parent-focused intervention designed to promote the healthy sexual development of children and reduce child sexual abuse by teaching parents how to talk with their children about their sexual development and appropriate sexual behaviors with others.

Help Wanted

An online prevention program designed to provide people with a sexual attraction to children with the support and resources to live fulfilling and non-offending lives.

Learn more at **helpwantedprevention.org**

Preventing Child Sexual Abuse in Youth Serving Organizations

A collaboration with the nation's largest youth serving organizations to optimize child sexual abuse prevention strategies in organizational settings. Informed by the first in-depth characterization of current youth serving organizations' child sexual abuse prevention strategies, we developed a novel set of best practices.

Learn more at **americanhealth.jhu.edu/youth-serving-organizations**

Our Team

For more information, please visit
jhsph.edu/moorecenter
@MooreCenter_JHU

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of PUBLIC HEALTH

Moore Center for the Prevention of Child Sexual Abuse

JHU_Moore_Center_House testimony in support of Chi
Uploaded by: Elizabeth Letourneau
Position: FAV

TESTIMONY IN SUPPORT OF HB 1
Civil Actions – Child Sexual Abuse – Definition, Damages, and Statute of Limitations
(The Child Victims Act of 2023)
****SUPPORT****

TO: Hon. Luke Clippinger, Chair, and members of the House Judiciary Committee

FROM: Elizabeth Letourneau, PhD, Director, Moore Center for the Prevention of Child Sexual Abuse, and Professor, Department of Mental Health, Johns Hopkins Bloomberg School of Public Health

Rebecca Fix, PhD, Faculty Affiliate, Moore Center for the Prevention of Child Sexual Abuse, and Assistant Professor, Department of Mental Health, Johns Hopkins Bloomberg School of Public Health

DATE: March 2, 2023

We are Elizabeth Letourneau and Rebecca Fix of the Moore Center for the Prevention of Child Sexual Abuse at the Johns Hopkins Bloomberg School of Public Health. Dr. Letourneau has 35 years of experience as a clinically trained researcher focused on child sexual abuse prevention, practice, and policy. She is an internationally recognized leader who has advised the National Academies of Science, the World Health Organization, and other state, national, international and Big Tech governance bodies. Dr. Fix is a child and forensic psychologist whose expertise on child sexual abuse is evidenced by more than 60 publications in scientific journals.

The views expressed here are our own and do not necessarily reflect the policies or positions of Johns Hopkins University.

We urge a favorable report on HB 1, Civil Actions - Child Sexual Abuse - Definition, Damages, and Statute of Limitations (The Child Victims Act of 2023).

The provisions proposed in HB 1 are critical because research by Dr. Letourneau and others shows that most survivors of child sexual abuse delay disclosing their abuse until years and even decades after it occurred; many never disclose at all. Even when disclosures do occur, they are typically to friends or family and not to authorities.

Approximately 1 in 4 girls and 1 in 13 boys in the United States will become victims of child sexual abuse. Abuse increases risk for health problems including but not limited to PTSD, heart disease, cervical cancer, and smoking, thereby increasing morbidity and mortality, and reducing quality of life.

Our research also found that abuse costs each victim more than $280,000 in lost earnings and other economic impacts.

HB 1 provides survivors with an avenue for seeking justice and redress; it also serves as a motivator for others to avoid engaging in or shielding abusive behaviors. History has shown that many institutions invest in preventing and addressing child sexual abuse **only after being held accountable** for shielding the actions of their members.

For these reasons, we respectfully urge a favorable report on HB 1 with the Sponsor's amendments. Thank you for your time and consideration.

Emily_K_Rose_Testimony_HB0001.pdf
Uploaded by: Emily Rose
Position: FAV

HB0001 Ms. Emily K. Rose

Thank you for allowing me to share my story in support of HB0001.

You have already heard the moving testimonies of many adult survivors of childhood sexual abuse.

Sexual assault at any age and under any circumstance is traumatic. This trauma never ends and speaking as a victim myself, this trauma resurrects over the years and takes on a life of its own.

My personal trauma occurred in 1994, when I was 16 years old and was a victim of date rape. This was someone whom I met through my trusted group of friends and started dating. After dealing with the shock for a while, I shared this information with my mother. I reported the rape to the local police station and their report included the fact that I had bruising on my thighs from being physically restrained during the attack. Two police detectives later came to our home after confronting my assailant at his home. They dissuaded us from pressing charges, stating that his family had money and that a trial would probably be another traumatic event for me.

I was in high school, an already challenging time for teenagers, and quickly found myself in a deep depression, consumed by my sadness. I attempted suicide, started seeing a therapist and taking antidepressants and eventually dropped out of school.

I developed PTSD and trust issues and I am still on antidepressants. Every single day I am reminded of what happened, but at age 45, I am currently unable to consider filing a civil suit.

The truth is, the trauma of that event is still with me, almost 30 years later. Remember, trauma has no statute of limitations. It has a life well beyond age 25 or 38, and its victims deserve closure.

Thank you.

Frank Schindler House of Delegates Judiciary Commi

Uploaded by: Francis Schindler

Position: FAV

TESTIMONY IN SUPPORT OF HB 1
THE CHILD VICTIMS ACT
Civil Actions – Child Sexual Abuse – Definitions, Damages, and Statute of Limitations
(The Child Victims Act of 2023)
****SUPPORT****

TO: Hon. Luke Clippinger, Chair, and members of the House Judiciary Committee

FROM: Frank Schindler

DATE: March 2, 2023

My name is Frank Schindler, and I am a member of the Survivors Network of those Abused by Priests (SNAP). I strongly support HB 1 as it will send a strong message to all survivors and their abusers that the gross violation of the basic civil right of children not to be abused will no longer be tolerated in Maryland, no matter how powerful the source of that abuse.

In 1954 a 5-year-old boy climbed a dark staircase and entered a room to start kindergarten. A short time later, a nun, a trusted figure in a Catholic school, escorted this boy into a room where a Catholic priest was waiting. The boy had been told a priest is a representative of God on earth, whose actions were not to be questioned, and who could never do anything wrong, & the boy believed this. Shortly thereafter the boy was subjected by this priest to repeated and painful sexual abuse which occurred 2 to 3 times a week over a period of approximately 5 months. The basic right of a powerless 5-year-old child not to be abused was violated over and over for the gratification of a priest whose powerful position was unquestioned. I was that 5-year-old. I am now 73 years old. For close to 70 years and for whatever remains of my life, I will suffer the consequences of that abuse.

As a psychologist specializing in neurocognition and neuroscience I could describe for you the long-term dysregulation of neurochemical systems and of brain regions including the amygdala, hippocampus, and medial prefrontal cortex. I could describe the distortion of emotions, interpersonal relationships, and self-perception produced by such dysregulation. And how the dysregulation contributes to the reality that most survivors only fully recall their abuse years after it occurs. Neurobiologically, the experience of trauma bears no “time stamp”, unlike other memories. But this information is well-established, well-known, and easily accessible to any of you. It is sufficient to say that my life, and the lives of others subjected to sexual abuse and trauma are never the same – biologically, emotionally, or socially. The effects are pervasive and life-long.

Like so many others I’ve struggled with depression, shame, self-loathing, and persistent, often very powerful, thoughts of suicide. I have been lucky enough to have received support from my wife, from family, and from other survivors and advocates. Otherwise, I am quite sure I would not be here.

For too long, the Roman Catholic Church has fostered the systematic, institutionalized sexual abuse of children and has enabled priests, bishops, and others to avoid accountability for criminal actions. This has been well-documented by the reports of States Attorneys General and other sources. The Catholic Church has persisted in its policy of using completely arbitrary time limits to silence the attempts of survivors to obtain justice. Despite countless opportunities to acknowledge their history and finally take responsibility for their reprehensible behavior, this morally bankrupt institution has persisted in re-traumatizing survivors through their lies and cover-ups.

The Child Victims Act will enhance the basic right of children not to be abused for the pleasure and power of those entrusted with their care. It will finally enable survivors and their supporters to hold those who perpetrate and are complicit in those atrocities accountable for their actions. I consider this both a moral and a civil rights issue. Passage of this legislation will send a strong message to all survivors and to their abusers that this gross violation of the basic right of children not to be abused will no longer be tolerated in Maryland, no matter how powerful the source of that abuse.

For those reasons, I respectfully urge a favorable report on HB 1.

House Bill 1 Testimony Child Victims Act of 2023 F

Uploaded by: Frank Kros

Position: FAV

TO: Maryland House Judiciary Committee

FROM: Frank J. Kros, MSW, JD

RE: HB1: Child Victims Act of 2023

DATE: February 28, 2023

Dear Members of the House Judiciary Committee,

Thank you for the opportunity to submit testimony regarding HB1, which will increase access to justice for victims of child sexual abuse and enhance protection for children in Maryland.

By way of introduction, I am a career child advocate with 40 years of experience working with children, youth and families. I have served as a childcare worker, child abuse investigator, children's home administrator, consultant, professor, attorney, writer and speaker. In April 2019, I started my own professional development, coaching and consulting agency, the Kros Learning Group (KLG). Prior to opening KLG, I served as president of the Transformation Education Institute, Director of the National At-Risk Education Network, and Executive Vice President of the Children's Guild Alliance, a multi-service children's organization headquartered in Maryland. My work is focused on trauma and resilience, and I was awarded a Maryland Governor's Citation for his presentations on adolescent suicide prevention. In recognition of presentations on childhood trauma, I was also the recipient of the 2019 Advocate of the Year Award from the Maryland State Council on Child Abuse and Neglect and Maryland Essentials for Childhood. I am member of an elite group of Marylanders trained by principal investigator Dr. Robert Anda on the Adverse Childhood Experiences Study and added the title of "Master ACEs Trainer" to my bio in 2018. In 2021, I was appointed Frank to Maryland's first- ever Commission on Trauma Informed Care. I have also co-authored the books Creating the Upside Down Organization: Transforming Staff to Save Troubled Children (2005) and The Upside Down Organization: Reinventing Group Care (2008). I have created scores of professional development courses for child-serving professionals and parents, including a curriculum on trauma-informed care adopted by Sacramento County, California in 2020 for its public service employees. My professional development presentations have been hosted in 45 states and 8 foreign countries.

I received my undergraduate degree at Creighton University, my Master's of Social Work degree from the University of Nebraska-Omaha, and my law degree from the University of Notre Dame.

I am also a survivor of child maltreatment.

I am grateful that the Judiciary Committee is taking up HB1, which would revive all expired claims for child sexual abuse. I submit this testimony in support of passing this bill.

One of the arguments consistently made against efforts like HB1 is that child maltreatment victims should have filed their claims earlier—during the existing statute of limitations (SOL) guidelines. Because they did not do so, they lacked responsibility, were uneducated about the law, or are attempting to manipulate the legal system for personal financial gain.

This view reflects a fundamental misunderstanding of trauma. Delayed disclosure of child maltreatment, particularly child sexual abuse, is common. In fact, science has long supported that recovery from the trauma of child sexual abuse is often a long and complex path. There is no identifiable time when a victim is emotionally and psychologically ready to tell their story. To try and impose one, as in the current law, reflects a misunderstanding of the impact of this type of traumatic experience and is, in my view, cruel.

The trauma stemming from child sexual abuse is complex and individualized, and it impacts victims throughout their lifetimes. There is an overwhelming body of science exposing the ways in which the trauma of sexual abuse during childhood impacts memory formation and the repression of memories. . (van der Kolk, B. The Body Keeps the Score: Memory & the Evolving Psychobiology of Posttraumatic Stress. Harvard Review of Psychiatry (1994) 1(5), 253-65). It is now well-established in science that post-traumatic stress disorder (PTSD), memory deficits, and complete disassociation are common coping mechanisms for child sexual abuse victims.

Research supports that many victims, as much as 33%, never tell anyone they were abused. In fact, the average age of disclosure of child sexual abuse in a study of 1,000 victims was 52 years-old. (CHILD USA, Delayed Disclosure: A Factsheet Based on Cutting-Edge Research on Child Sex Abuse, CHILDUSA.ORG, 3 (Mar. 2020) available at https://childusa.org/wpcontent/uploads/2020/04/Delayed-DisclosureFactsheet-2020.pdf., citing N. Spröber et. al., Child sexual abuse in religiously affiliated and secular institutions, 14 BMC PUB. HEALTH 282, 282 (2014). However, until recently, many states blocked criminal charges and civil lawsuits well before age 52. By the time most victims were ready to come forward, the courthouse doors were locked and victim's opportunity to obtain justice was prohibited by law. HB1 provides the vehicle to restore to victims their opportunity to seek justice by recognizing that childhood trauma creates multiple, varied, and often overwhelming challenges for victims.

Passing this law levels the playing field as the justice system itself protects all parties through its rules, processes and trial procedures. What this bill does is provide victims access to that system. Providing the victims the unfettered opportunity to seek justice is the very least that Maryland could do for them.

Respectfully submitted,

Frank J. Kros, MSW, JD

President, Kros Learning Group

HB001TheChildVictimsActof2023_GloriaLarkin022023.p
Uploaded by: Gloria Larkin
Position: FAV

TESTIMONY IN SUPPORT OF HB 1

Civil Actions – Child Sexual Abuse – Definition, Damages, and Statute of Limitations

(The Child Victims Act of 2023)
****SUPPORT****

TO: Hon. Luke Clippinger, Chair, and members of the House Judiciary Committee

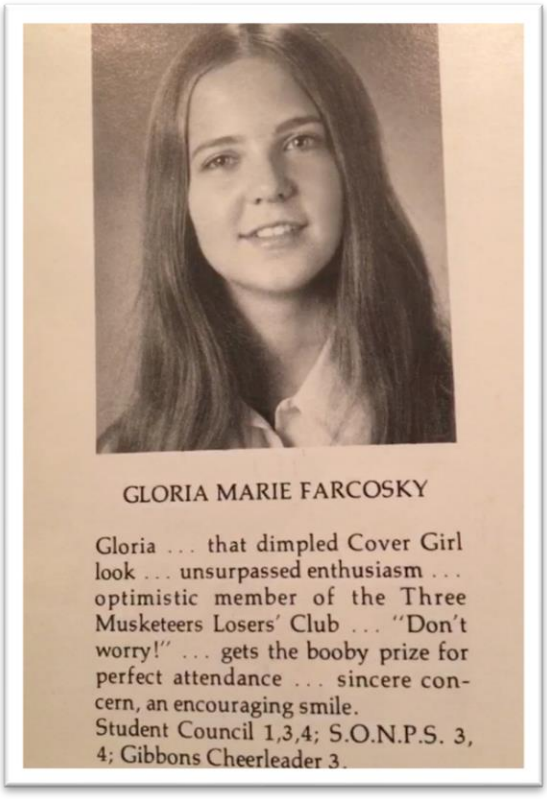
FROM: Gloria Larkin, Survivor
DATE: March 2, 2023

I am Gloria Larkin, resident of Howard County, Maryland for over 45 years. I am imploring you to eliminate the statue of limitation on reporting the heinous crime of child sexual abuse. When a child is abused whether once or repeatedly, it is impossible for her to know that the abuse is illegal and that she should report it. She is a child, dependent upon adults to protect and care for her. Often it is exactly those adults who are the abusers. In fact her entire childhood is destroyed because she has no one to confide in, to trust, to report to.

That child only knows she has been harmed, and often the only way to survive is to pretend she is OK, to create a survival mentality, even if the abuse continues for a long period of time. With no one to trust, no safe place, no understanding of law and her own rights, she is truly voiceless.

Medical science has proven that the human brain survives extraordinary trauma by shielding the person from the memory of abuse, at least initially. However, post-traumatic stress disorder is often the result.

For those that experience sexual abuse as a child, they become experts at survival, only focusing on the now and future, seeming to thrive, but when in reality, the past sexual abuse becomes a cancer that causes personal misery and dysfunction.



GLORIA MARIE FARCOSKY

Gloria ... that dimpled Cover Girl look ... unsurpassed enthusiasm ... optimistic member of the Three Musketeers Losers' Club ... "Don't worry!" ... gets the booby prize for perfect attendance ... sincere concern, an encouraging smile.
Student Council 1,3,4; S.O.N.P.S. 3, 4; Gibbons Cheerleader 3.

Some victims cannot exist with the pain, they kill themselves. Others struggle in every aspect of their life, turn to alcohol, to drugs, to risky behavior to mask the pain of childhood sexual abuse. Until the day when it is no longer possible to hide the abuse, when it is necessary to, as an adult, to acknowledge the root cause of the pain and name the abuse, name the abuser, living or dead.

And finally, realize, that it was not our fault, it was 100% the fault and responsibility of the abuser.

I know this because I am a survivor. The crime committed against me was the emotional, psychological and sexual abuse by my trusted counselors and protectors, Fr Maskell and Fr Magnus

and a police officer, while I was a student at the Catholic Archbishop Keough High School, in the Archdiocese of Baltimore, Maryland, from the Fall of 1970 into Spring 1972, when I graduated.

Now is the time for you to act responsibly to protect all children from today forward by repealing the unreasonable statute of limitations previously purchased by the lobbying efforts of the catholic church. And to add a “look back” window to allow all existing survivors to have their voice heard no matter how long ago the abuse occurred or what individual or organization was involved. And alter the definition of "sexual abuse" for purposes relating to civil actions for child sexual abuse to include any act that involves an adult allowing or encouraging a child to engage in certain activities; repealing a statute of repose for certain civil actions relating to child sexual abuse; and providing for the retroactive application of the Act under certain circumstances and other details provided in the legislation.

Gloria (Farcosky) Larkin
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HB1 HIdden Predator Act CPMC FAV.pdf
Uploaded by: J Lombardi
Position: FAV

THE COALITION TO PROTECT MARYLAND'S CHILDREN

Our Mission: To combine and amplify the power of organizations and citizens working together to keep children safe from abuse and neglect. We strive to secure the budgetary and public policy resources to make meaningful and measurable improvements in safety, permanence, and well-being.

Testimony before the House Judiciary Committee on

HB1 Civil Actions – Child Sexual Abuse – Definition and Statute of Limitations (Hidden Predator Act of 2023)

SUPPORT

March 2, 2023

The Coalition to Protect Maryland's Children (CPMC) is a consortium of Maryland organizations and individuals formed in 1996 to promote meaningful child welfare reform. We strongly support HB1.

Members in support of this position include the State Council on Child Abuse and Neglect (SCCAN), Md. Chapter of American Academy of Pediatrics, Child Justice, Maryland Chapter of the National Association of Social Workers (NASW-MD), the Family Tree, Center for Hope, the Maryland Children's Alliance, and the Citizens Review Board for Children.

House Bill 1 would eliminate the statute of limitations in civil actions related to child sexual abuse. This statute of limitations had previously been extended in 2017 by House Bill 642, to 20 years from the age of majority from 7 years from the age of majority – i.e. from age 25 to age 38 years. It also raised the standard of proof to sue employers from ordinary negligence to gross negligence, making it much more difficult to sue institutions for failure to protect children in their care from sexual abuse.

HB1 bill would also create a permanent lookback window for those victims who have previously been barred by the statute of limitations. Finally, it would remove or challenge the contested "statute of repose" language inserted into the 2017 bill, which inappropriately attempts to vest property rights in sexual predators and the institutions that protect these sexual predators from discovery and prosecution. This provision has been the subject of legal debate. The Maryland Supreme Court, as it is now named, can decide the constitutionality of that matter. The Office of the Maryland Attorney General has opined that it can defend the constitutionality of HB1.[1]

We know from extensive research that sexual abuse can have profound and long-lasting, even lifetime negative effects on children. During childhood, victims may exhibit anxiety, social withdrawal, school failure, and inappropriate sexual behavior.[2] In adolescence, sexually abused teens are at increased risk for depression, self-injury, suicide attempts, eating disorders, risky

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[1] Ford, William, "Maryland attorney general says he would 'in good faith' defend law to lift statute of limitations on sexual abuse claims," Maryland Matters (February 24, 2023)

[2] Trickett PK, Noll JG, Putnam FW. The impact of sexual abuse on female development: Lessons from a multigenerational, longitudinal research study. Development & Psychopathology. 2011;23:453-476.

sexual behavior, and teen pregnancy.[3] Adults who experience child sexual abuse and exploitation are more likely to have alcohol and/or drug dependence, chronic abdominal and pelvic pain, and poor overall health.[4]

Delayed disclosure in child sexual abuse is extremely common.[5] Children commonly wait months and even years before disclosing. There are numerous reasons for this delayed disclosure. Victims will frequently cite shame, fear of social stigmatization or ridicule, and fear of not being believed. Perpetrators of sexual abuse may threaten the child or family with physical harm, or may threaten the child that she will be taken away from her family. Perpetrators often blame the child for the abuse, and the child internalizes this self-blame. Abused infants, toddlers, and other very young children may not understand that what is going on is abuse. And finally, a child may attempt disclosure to an adult who is distracted, disbelieving, or in denial, and no further action is taken. For all of these reasons, children may tell no one for decades. As noted above, adults who were sexually abused as children are often left with long-term physical and mental health problems that can be extremely costly. Under current law, adults who were abused as children are often left with no legal remedy, and no way to make them whole. Elimination of the statute of limitations would allow adults who were sexually abused as children to seek justice for the harm that they have suffered. In addition to helping adults who were abused as children, HB1 very importantly also protects our current children. Abusers frequently abuse multiple children. Identification of a predator can stop his ongoing contact with children and prevent additional victimization. For example, lookback windows enabled the identification of 125 predators in Minnesota and 300 in California.

For all these reasons we urge a favorable committee report on HB 1.

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[3] Homma Y, Wang N Saewyc E, Kishor N. The relationship between sexual abuse & risky sexual behavior among adolescent boys: A meta-analysis. Journal of Adolescent Health. 2012;51:18-24. Sanci L, Coffey C, Olsson C, Reid S, Carlin JB, Patton G. Child sexual abuse & eating disorders in females. Arch Pediatr Adolesc Med. 2008;162:261-267. Pallitto CC, Murillo V. Abuse as a risk factor for adolescent pregnancy in El Salvador. J Adolescent Health. 2008;42:580- 586. Mills R, Alati R, O'Callaghan M. Child maltreatment and adolescent mental health problems in a large birth cohort. Child Abuse & Neglect. 2013;37:292-302

[4] Fergusson DM, McLeod GFH, Horwood LJ. Childhood sexual abuse and adult developmental outcomes: Findings from a 30-year longitudinal study in New Zealand. Child Abuse & Neglect. 2013;37:664-764.

[5] Munzer A, Fegert JM, Ganser HG, Loos S, Witt A, Goldbeck L. Please Tell! Barriers to disclosing sexual victimization and subsequent social support perceived by children and adolescents. J Interpersonal Violence 2016;3:355-377.

Victims HB01.pdf
Uploaded by: Jena Cochrane
Position: FAV

Why Don't Victims Come Forward?

My name is Jenipher Kollar Cochrane and I am a 51 year old incest survivor from childhood rape and molestation. I was 12 when first attacked. I am writing in support of HB01 for the Childs Victim's Act of 2023. By now, you already have a good idea of how you're going to vote on this bill. I wish there was something I could say to move you towards the affirmative. But despite how you vote, I hope you give me the courtesy of reading my victim impact statement because there are two points I would like to make. First, did you wonder why it takes survivors and victims' such a long time to come forward? The reason is because they don't want to become *me*. Unlike a lot of my fellow survivors testifying on this bill, I had my day in court, and I put my Stepfather, Steve Dwyer, behind bars when I was in high school. But the price for speaking the truth was a lifetime sentence of family destruction. I lost EVERYTHING. Most importantly, I lost my mom's love and maternal bond. I lost ALL four of my maternal siblings; And I lost the love of my close-knit Italian family. *Why did I have all this loss?* Because it's a lot easier for people to say I am a liar than it is for them to face the uncomfortable and disastrous truth of what happened to me when I was a young child.

Childhood sexual assault is like a hurricane that destroys everything in its wake. No one wants to believe that a nice man like my stepfather would do such a horrible thing to his own stepdaughter. Nor do they want to believe that my mother (their own flesh and blood) was an active part of the cover-up. My family would say, "They didn't want to pick sides." But, to me, that statement shows they did pick a side and it wasn't mine. When it comes down to it, my mother, my siblings, my aunts, my uncles and my cousins don't want to be upset so I'm the one who continues to be punished – even to this day - for what my stepfather did to me.

My telling the truth destroys the ability of everyone to have a nice Christmas, Easter or wedding. The truth makes them feel bad—so they manage that by ignoring the uncomfortable truth – which leaves me out in the cold. If they believe me, then they have to take at least some responsibility for the cover up and for actively ignoring the truth and marginalizing what happened over the years. This is difficult to do, so they continue to live their lives while I remain shunned from the family.

At the end of the day, I learned that families work a lot like corporations and churches. They just want to keep the status quo. They don't care about fairness or what's right or wrong. They just care about the uncomfortable truth going away. So, the response is usually to pressure the person that has been hurt the most to keep quiet using guilt and shame as their most lethal weapons heaping years of sadness on top of the abuse.

To complicate things, if people can't see the damage, then it's so much easier to convince themselves that nothing really happened. This is true in most childhood sexual assault cases.

In my teens, my mother even drove me to a notary republic to retract my statement saying that she would kill herself If I didn't recant. Then

she dropped me at a local police station alone to recant my statement. But, this hasn't gotten better over the years. Two years ago, at my grandmother's funeral, my mother told me that she hoped I died alone. And followed that up with 'this is the last time you will ever see me.' She has turned the majority of the people in my family against me despite the fact that my stepfather went to prison for his crime. This is the pain that victims and survivors most often deal with when they come forward. *And this is one of the many reasons they don't come forward until later in life.*

But the uncomfortable truth is that I do exist and so do all the other survivors testifying on this bill. I didn't lie, and neither did they. My stepfather did rape me in the dead of night in the back of my mother's gray Capri. He did shatter my innocence along with my hymen and the whole dirty matter broke my heart and threatened to take my soul.

The effects of childhood rape are disastrous over a lifetime. At 16, I tried to take my life and was admitted to Freehold Area Hospital. Today, I know I didn't want to die. I just wanted all the pain to stop. But the biggest obstacle to keeping a victim in pain is the silence and shame. And the threat of being broken again is almost too much to bear. But that is one thing you can change with the passage of this law—at least for the other victims and survivors that still need to tell their story.

This brings me to my second point. Every victim and survivor deserve to have a forum to speak their truth. No matter if that truth does not come out for 50 or 90 years. If victims are <u>brave</u> enough to come forward, then I'm asking you to be <u>brave</u> enough to give them a forum to tell their truth. It's time to let victims speak. It's time to shift the burden to the families, corporations, organizations, and the churches

that help cover up the harm every day. And most importantly, it's time for them to say their sorry.

Please vote in favor of HB01. Thank you for reading my testimony.

TESTIMONY IN SUPPORT OF HB0001.pdf
Uploaded by: jennifer Gross
Position: FAV

TESTIMONY IN SUPPORT OF HB0001

Civil Actions – Child Sexual Abuse – Definition, Damages, and Statute of Limitations

(The Child Victims Act of 2023)

SUPPORT

TO: Honorable Committee members.

FROM: Jennifer Gross (Licensed Certified Social Worker – Clinical, MD, Certified Sex Offender Treatment Provider, VA, Clinical Member, ATSA). Resident of Montgomery County, MD

DATE: February 28, 2023

As parents, as advocates and as lawmakers, we surround our children with people we trust to protect them. When a child is sexually abused, 9 times out of 10 it is that very person we trusted and thus entrusted our child to who committed this horrific abuse upon them.

When a child is abused by someone we told them was safe, a child naturally blames themselves for what happened as they believe they must have done something to deserve it. When the abuser is a leader in the child's community, the damage is compounded as that place, that organization, that religion, that group often cannot be avoided. Perhaps the abuser can be, but what they represent, a church, a youth group, a sport cannot be. Over the years, interactions with those groups cause further pain.

By the time a child realizes what happened was not their fault, they did not deserve it and they gather the courage to tell us what caused them such pain for so many years, what was behind their drinking, failed relationships, suicide attempts and more, by that time most people are 52 years old.

Imagine then, reaching out, telling and seeking help, only to learn there are far worse things than being abused by that one person. What can be worse than knowing one person viewed you as an object to be used, abused and discarded? What can be worse than knowing one person viewed you not as a human, worthy of dignity and love but viewed you as a thing to be used for their own deviant pleasure. What can be worse than that? What survivors tell us what is worse is

when they tell, when they seek understanding and kindness, the very people they turn to then commit a betrayal of greater order. The very organizations which were founded to help, serve and protect then turn with vengeance to protect, not the victim, but themselves. They lie, they hide, they dissemble; thus mimicking the perpetrator's use of power, control, blame shifting and more, thus they revictimize the victim.

Imagine, then being that survivor. Now you learn it was not just your abuser who does not see you as a human being, worthy of dignity and respect. Now you see it is an entire organization, a system, an institution. One person treating you like trash is damaging, an entire organization treating you like trash? This is institutional betrayal and it is abuse. It is devastating.

We stand before you today to ask you to open a door. That's all, just open a door to allow survivors to walk through and seek justice. We are not asking you to deliver that justice. This bill does not ask you to do anything other than open a door so adults can step through and access the legal system to seek healing and safety. If you open that door, all you are doing is giving survivors the ability to tell their story and let our justice system take over from there. That's all.

Abusers prey upon the innocence of children. When those abusers do so as employees or volunteers of an organization, far too often, when the abuse becomes known the institution choses to protect itself instead of the child. Children cannot protect themselves from either of these things from occurring. Children cannot. But adults can. Pass this bill so brave survivors can tell their story and seek justice. By doing so, this creates safety for the children still in the care of those abusers (many of whom are still alive) and from those institutions who sheltered and protected them.

You have heard from powerful groups that opening that door will have calamitous effects upon groups and communities. To that I say, nonsense. Plain and simple nonsense. Do not allow them to insult your intelligence.

I am a parent, a social worker, a certified sex offender treatment provider. I am the mother of 2 former boy scouts. I am a Catholic, a direct decedent of Archbishop William Gross. I am a former Director of Safe Environments for a nearby diocese. I am the former chair of a Catholic regional review board, a board that reviewed allegations of clergy abuse and reviewed safety

plans and victim outreach. I currently volunteer to teach the Catholic church's mandatory prevention class. I am here to tell you in no uncertain terms, it is not extending the statute of limitations which will hurt the church. The church, the boy scouts and other organizations have inflicted this damage upon itself. It is not the original abuse committed by clergy or a leader which is causing the damage, it is the coverup, the duplicity, the ongoing efforts to protect the institution and not those who serve. When powerful organizations continue to engage in subterfuge and secrecy, when they make veiled threats of lost funding for programs, they are committing further abuse upon not only survivors but all of us. It is time for that to end. As a Catholic, deeply involved in this issue, I am urging you to remove the statue of repose and pass this bill as written. Shamefully, my church has only taken steps to reform and protect when pressured to do so by survivors, lawmakers and the media. So be it. They had their chance to do the right thing, they chose not to. They chose to ignore a problem, they chose to cover up an issue. They chose to move danger around. They have done this to themselves. I urge you to open pass the bill and let survivors walk through to seek justice for themselves and safety for our children. Let them now face those once powerless children, those children who are now adults, who can now speak for themselves, defend themselves, protect themselves. Let the church, the scouts and all others now go toe to toe with adults . They made their choices. Let them now face the consequences. By doing so you will be sending a loud and clear message, you will not allow this Institutional betrayal and abuse to continue.

For these reasons, I urge a favorable committee report and passage of SB 686 without Amendments.

HB1 Child Sexual Abuse Definition Damages and Stat

Uploaded by: Joyce Lombardi

Position: FAV

A LIFEBRIDGE HEALTH GROUP
CENTER FOR HOPE
Advancing hope, healing and resilience

HB1- Civil Actions - Child Sexual Abuse - Definition, Damages, and Statute of Limitations (The Child Victims Act of 2023)
House Judiciary Committee – March 2, 2023
Testimony of Adam Rosenberg, Executive Director, LifeBridge Health Center for Hope
Position: **SUPPORT**

Center for Hope supports HB1. This bill extends Maryland's statute of limitations (SOL) to allow adult victims of child sexual abuse the ability to take civil action when they are ready to do so. It also caps damages, including for government agencies.

Center for Hope, a subsidiary of LifeBridge Health, is a comprehensive violence intervention program that provides trauma-informed crisis intervention and prevention services to over 6,000 patients and community members each year who have experienced child abuse, domestic violence, elder abuse, and community gun violence in the Baltimore region. Our services include Maryland's first nationally accredited child advocacy center that provides an evidence-based multidisciplinary team response to abuse and trafficking. Our team provides support for adult survivors of abuse and has trained thousands of professionals on how to prevent, identify and report child abuse.

Delayed reporting is the norm. Only 1/3 of child abuse victims report what happened to them while they are still minors. Some never report at all. A child may not have the emotional, mental and financial stability to confront their attackers – predators who almost always occupied a position of trust, power and care. The average disclosure age for reporting child abuse is 52 years old. CHILD USA (2022). Predators groom not just children, but also communities and institutions, helping ensure that their crimes continue undetected and unpunished, often for decades.

Statute of Repose issue can be decided by the courts. Legal experts disagree whether the language added to Maryland's 2017 statute of limitations law qualifies as a "statute of repose" that may be exempt from legislative action, or a "statute of limitations" subject to repeal.[1] This, arguably, is not a matter for the legislature to decide, but rather one for the Maryland Supreme Court (formerly called the Maryland Court of Appeals. The Office of the Attorney General of Maryland issued a new letter to the Maryland Senate, stating "It is our view that Senate Bill 686 is not clearly unconstitutional…If the General Assembly chooses to provide victims of child sexual abuse an expanded chance for justice, I can in good faith defend the legislation should it be challenged in court."[2]

We respectfully urge a favorable report on HB1.

Adam Rosenberg, Esq., Executive Director, Center for Hope
arosenberg@lifebridgehealth.org (410) 469-4664

Joyce Lombardi, Esq., Government Relations
Joyce@JRLaw.group (410) 429-7050

[1] Testimony of Kathleen Hoke, Esq. Public Health Law Clinic at the University of Maryland Carey School of Law and others during public briefing before the Senate Judicial Proceedings Committee, January 18. 2023
[2] Ford, William, "Maryland attorney general says he would 'in good faith' defend law to lift statute of limitations on sexual abuse claims," Maryland Matters (February 24, 2023)

March 2 Testimony 0001.pdf
Uploaded by: Judith Lorenz
Position: FAV

TESTIMONY IN SUPPORT OF HB0001
Civil Actions – Child Sexual Abuse – Definition, Damages, and Statute of Limitations
(The Child Victims Act of 2023)
****SUPPORT****

TO: Hon. Luke Clippinger - Chairman and Delegates on the House Judicial Proceedings Committee

FROM: Judy Lorenz

DATE: March 2, 2023

My name is Judy Lorenz and my spouse is a survivor of child sex abuse. I am a Family Support leader with SNAP (Survivors Network of those Abused by Priests). I strongly support HB0001 which would eliminate the statutes of limitations for civil cases of child sex abuse finally giving them an opportunity to seek justice. Here are my testimonies from past years. I recently stared at my computer and keyboard wondering: What can I say this year to make a difference? I couldn't think of a thing. So, this year, I'm giving you highlights from all of these. Because I realize it's up to *you* to make the difference.

2015

My husband *tried* to tell me of his abuse before we got married. His attempt was convoluted which often happens when survivors first tell their story. From the little bit he was able to share, my horrified reaction shut him down. Ten years later he was forced to tell me, as his perp was publicly accused.

2016

I come here again imploring this body to vote yes. I begged Chairman Velario to stop stuffing the drawer and allow a vote to happen. I shared with a shaky voice the

reasons why victims cannot come forward with their stories, until much later in life - if at all. I sat with stomach churning and blood pressure rising, as the opposition made up stories about how harmful this legislation will be; So, I ask - what are you going to do about it? I hope with all of my heart that I will not have to testify again next year.

2019

Survivors have been in this chamber for decades seeking this type of legislation. We need a look back window so past victims can finally be heard. This law will not guarantee all survivors a big cash reward; just the *opportunity* to be heard and *perhaps receive* just compensation, *if* a judge or jury deems it appropriate. *Give* them that chance.

2020

I am here to say **ENOUGH!**

2021

This last one I submitted on behalf of survivors due to covid rules. It starts with a survivor quote: "He then put a gun to my head and pulled the trigger"… I quoted 15 more survivors and ended with this one: "And then, *I* am blamed for not speaking out earlier".

2023

See the pattern? You were voted in to make a difference. Please vote yes to HB001 this year. Make 2023 my last appearance.

Business Liability on Transfer Hoke on HB 1.pdf
Uploaded by: Kathleen Hoke
Position: FAV

Law that Governs Transfer of Debts and Liabilities on Sale of a Corporation

Related to House Bill 1 (2023)

When a Maryland business is sold, Maryland corporate law and the agreement between the seller and buyer determine whether the new company bears the debts or liabilities of the old company. ***With four exceptions, a corporation that acquires the assets of another corporation is not liable for the debts and liabilities of the predecessor corporation.*** *Baltimore Luggage Co. v. Holtzman*, 80 Md. App. 282, 290 (1989). Exceptions include when: 1) there is an express or implied assumption of liability; 2) the transaction is a consolidation or merger; 3) the buyer is a mere continuation of the seller; or 4) the transaction is entered into fraudulently to escape liabilities for debts. *Id.*

The first exception reflects that the parties' agreement about the sale of the business governs. *See* §3-115 (c)(1) of the Md. Corps. & Ass'ns Code Ann. ("[T]he successor is liable for all the debts and obligations of the transferor *to the extent provided in the articles of transfer*."). If the documents governing the sale provide for the transfer of debts and liabilities, the successor corporation will be liable for the predecessor's debts. If the documents governing the sale do not provide for transfer of liability, such transfer may be implied based on other communications or conduct of the parties. Without explicit or implied transfer, the purchaser is not responsible for the debts and liabilities of the seller.

The second exception is for mergers and consolidations. A corporate merger or consolidation is governed by §3-114 of the Md. Corps & Ass'ns Code Ann., which provides that "the successor is liable for all the debts and obligations of each nonsurviving corporation, partnership, limited partnership, limited liability company, and business trust." Corporations that merge or consolidate under this section are bound by these statutory conditions. *Ramlall v. Mobilepro*, 202 Md. App. 20 (2011).

The third exception, for mere continuance of a company, is the most complicated and litigated exception because it requires an examination of the facts of the transfer—how the business was owned and operated originally and how it is now owned and operated. If the successor corporation is "substantially the same" as the predecessor corporation, a creditor may recover against the successor. *Baltimore Luggage,* 80 Md. App. at 297. 'Substantially the same' is described as a "change in form without a significant change in substance." *Id.* This exception protects creditors against business reorganization for the purpose of avoiding debts and liabilities.

The final exception is likewise designed to prevent a change in business that is designed to escape debts and liabilities. This is similarly a fact-specific analysis and is intended to protect creditors against fraudulent reorganization. Maryland courts have not had occasion to explain how a determination of fraud would be made but the *Baltimore Luggage* court did suggest that the Maryland Uniform Fraudulent Conveyance Act, Md. Comm. Code Ann. Title 15, Subtitle 2, could be helpful in making such a determination. 80 Md. App. at 618. For example, under the Act, a transaction for which no fair consideration is exchanged for assets is considered prima facie fraudulent.

There is ample Maryland statutory and case law to determine whether and when the sale of a corporation includes transfer of debts and liabilities. Nowhere in the Maryland Code are these rules altered for a particular type of tort or other civil claim.

Prepared by Professor Kathleen Hoke
University of Maryland Carey School of Law

Hoke PPT for January 19 Briefing FINAL.pdf
Uploaded by: Kathleen Hoke
Position: FAV

UNIVERSITY of MARYLAND
FRANCIS KING CAREY
SCHOOL OF LAW

Eliminating the So-Called Statute of Repose

Kathleen Hoke
*Law School Professor

January 19, 2023

*Any views expressed are those of Professor Hoke and do not represent the position of Maryland Carey Law; the University of Maryland, Baltimore; or the University of Maryland System

What is a Statute of Repose?

Long: A statute of repose establishes a time after which a person/entity is free from liability regardless of whether a claim has accrued. The limitations period begins to run at a specified time. Once the time expires, all claims of negligence are extinguished, even those that have not yet arisen.

Short: Statutes of repose ***set a date certain*** by which a person/entity is free of liability for negligence.

Purpose of a Statute of Repose

The purpose of a statute of repose is to ***prevent unpredictability*** for industry and professionals engaged in certain trades and professions and to protect insurers' ability to predict future claims. These protections allow for stability in the marketplace from which we all benefit.

Statute of Repose v. Statute of Limitations

Statute of Limitations (Procedural)

Sets a date by which a claim must be filed based on when the injured party knew or should have known of the harm and who caused it.

Statute of Repose (Procedural and Substantive)

Sets a date by which a claim must be filed regardless of whether the injured party is aware of injury and who caused it or whether the injury has even occurred.

Statute of Repose v. Statute of Limitations

Statutes of limitation may be changed by the legislature and those changes may be applied retroactively without constitutional concern in most circumstances.

Statutes of repose may be interpreted as providing a property right to a defendant whose negligence causes harm after passage of the established time. Altering a statute of repose retroactively may create additional burdens for a legislature.

Statute of Repose in Maryland: Purpose

In Maryland, the General Assembly uses statutes of repose to create vested property rights in "***consideration[] of the economic best interests of the public***."

SVF Riva Annapolis v. Gilroy, 459 Md. 632 (2018)

Maryland has only one statute of repose.

Statute of Repose in Maryland: Construction Industry

Courts & Judicial Proceedings §5-108 contains a "statute of repose" for ***improvements to real property and to related professionals*** who are ***highly regulated***.

Capital improvements are ***economic drivers***; this protection reflects the ***public interest in a strong economy***.

Statute of Repose: Construction Industry

Owner: No cause of action accrues for wrongful death, personal injury, or property damage caused by defective and unsafe condition if harm occurs ***more than 20 years after the date the improvement becomes available for use***.

Architect, Engineer, Contractor: ***10 years after the date the improvement becomes available.***

Exception: Asbestos; a public health concern.

Other Statutes of Repose in Maryland

Courts and Judicial Proceedings §5-117(d)

In no event may an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor be filed against a person or governmental entity that is not the alleged perpetrator more than 20 years after the date on which the victim reaches the age of majority.

Courts and Judicial Proceedings §5-117 Uncodified Section 3

That the statute of repose under § 5–117(d) shall be construed to apply both prospectively and retroactively to provide repose to defendants regarding actions that were barred by the application of the period of limitations applicable before October 1, 2017.

Questions for 2023

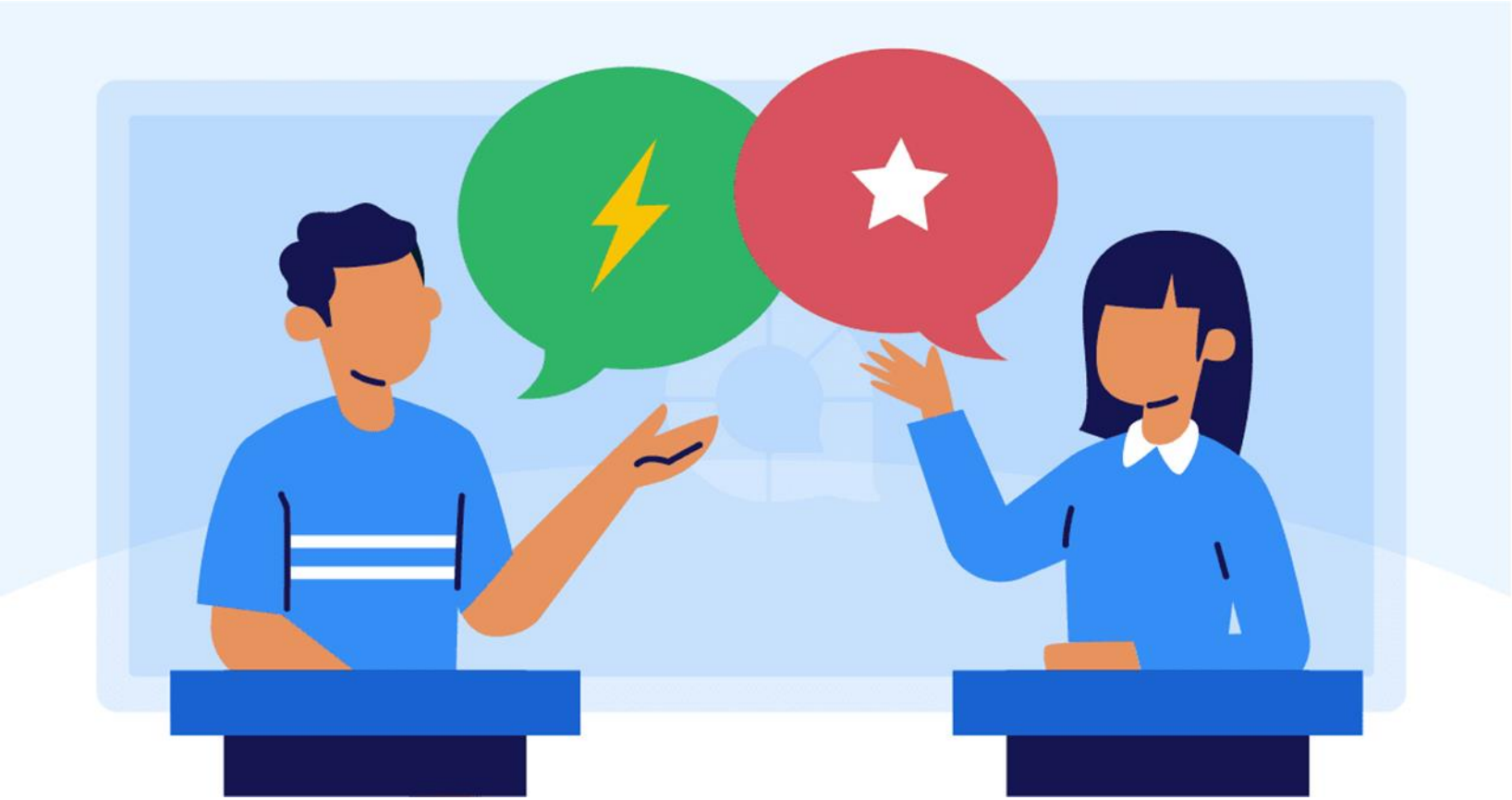
- ✓ ***Was a statute of repose created in 2017?***
- ✓ ***If so, what is the impact of repealing the statute of repose and having it apply retroactively?***

There is genuine debate on these questions.

The best answer is that the Supreme Court of Maryland will have to decide.

Was a Statute of Repose Created in 2017?

EARNEST DEBATE



Maryland Supremes on Statutes of Repose

Maryland courts look holistically to determine if a statute is one of limitation or one of repose.

Relevant in this inquiry are:

- ✓ what triggers the running of the period;
- ✓ whether the statute eliminates claims that have not yet accrued;
- ✓ purpose behind the statute; and
- ✓ legislative history surrounding passage.

***Anderson v. United States*, 427 Md. 99 (2012)**

Anderson: The trigger for a statute of repose period is unrelated to when injury occurs.

§5-108: Contractor/architect/engineer: once the building is available for use, the clock starts ticking. ***Completing the building—not the injury—starts the clock*** and ***claims for injuries that occur after 10 years are barred***.

§5-117: The ***injury must have occurred for the clock to start running***. There are no claims that could occur after the 20 years. ***Injury is the trigger.***

Language, history, and purpose support that no statute of repose was created.

The General Assembly is aware of the language used to create a statute of repose and does so in "***consideration[] of the economic best interests of the public***."

SVF Riva Annapolis v. Gilroy, 459 Md. 632 (2018)

Language Used in §5-117

Anderson: The General Assembly is aware of the language and conditions necessary to create a statute of repose and did so in §5-108 by using particular language that ***clearly extinguishes claims before they have accrued***.

No such language exists in §5-117; more like the medical malpractice statute in §5-109 found in *Anderson* to NOT be a statute of repose.

History: Intent of 2017 Legislature

The General Assembly never intended to create a vested right in entities that sheltered child sexual abusers.

- Full records for HB 642/SB 505 contain no discussion about constitutional implications of a statute of repose.
- Comments from members who passed the bill indicate no intention to grant permanent immunity.

History: Intent of 2017 Legislature

Delegate Atterbeary noted that permanent immunity from liability "***was never discussed***," and ***then JPR Chair Zirkin*** stated "***it wasn't anyone's intent" to grant permanent immunity***.

Erin Cox and Justin Moyer, *When Maryland Gave Abuse Victims More Time to Sue, it May Have Also Protected Institutions, Including the Catholic Church*, WASH POST (Mar. 31, 2019).

2019 and 2020 House Repeal

HB 687 (2019) and HB 974 (2020) would have repealed the so-called statute of repose:

- ✓ 2019: Passed House by a vote of 135-3 before failing in the Senate Judicial Proceedings Committee (5-5).
- ✓ 2020: Passed the House 127-0; not voted in the Senate Judicial Proceedings Committee (early closure due to the pandemic).

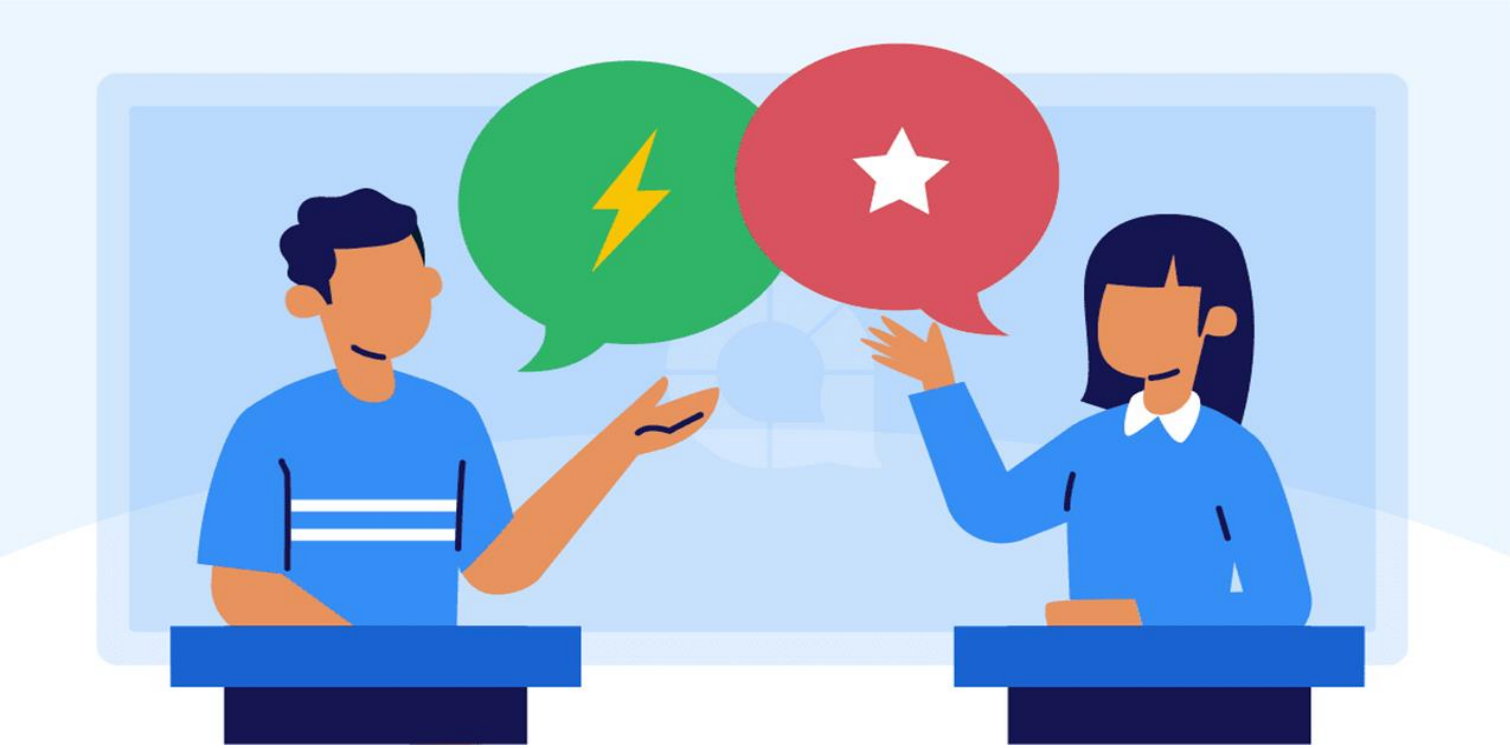
Purpose: To Protect Those Who Failed to Protect Children?

What could possibly be the purpose—the public benefit—of creating extraordinary protection through a statute of repose to **EVERY ORGANIZATION** that **NEGLIGENTLY** failed to protect children from sexual abuse?

Why would this protection exist even when such protection does not exist for medical malpractice or lesser torts?

Can a Statute of Repose be Repealed Retroactively?

EARNEST DEBATE



Attorney General Advice Letters

Rowe to Clippinger March 12, 2019

No case law in Maryland finding that revival of an extinguished claim is unconstitutional.

Rowe to Dumais March 16, 2019

Proposed 2-year lookback window would likely be found unconstitutional

Public Policy Supports Constitutionality

Repeat Question:

What could possibly be the purpose—the public benefit—of creating extraordinary protection through a statute of repose to **EVERY ORGANIZATION** that **NEGLIGENTLY** failed to protect children from sexual abuse?

Public Policy Supports Constitutionality

The public interest is best served by

- ✓ Allowing survivors the opportunity to prove the harm imposed on them and by whom and to seek compensation for the harm;

- ✓ Bringing public disclosure of the names of people who have sexually abused children, which will protect today's children from harm.

Repealing Gives Survivors the Opportunity to Seek Relief

Repealing with retroactive impact the so-called statute of repose added to §5-117 in 2017 will ***allow the survivors with revived claims to get to the courthouse***.

And this difficult question on the interpretation and application of the 2017 changes will be decided where it should be—the courts.

Questions?

Kathleen Hoke

Law School Professor

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Letter Hoke to Smith of 5-108 Retro with attachmen

Uploaded by: Kathleen Hoke

Position: FAV

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The Honorable William C. Smith, Jr.
Chair, Maryland Senate Judicial Proceedings Committee
Miller Senate Office Building
Annapolis, MD 21401

January 25, 2023

Re: Child Victims Act of 2023: House Bill 1/Senate Bill (to-be-determined)

Chairman Smith:

I am writing in follow up to the Briefing on Child Sexual Abuse Prevention and Civil Statute of Limitations held in the Judicial Proceedings Committee on January 19, 2023. At the briefing, you asked whether the asbestos-related exception added to §5-108 of the Courts and Judicial Proceedings Article in 1991 had retroactive impact when passed. In short, the answer is yes. I reviewed the language of §5-108, the legislative file from 1991 when the exception was added through Senate Bill 335, and a letter of advice from the Office of the Attorney General related to Senate Bill 500 from 1990 that sought to add a similar exception. That research makes abundantly clear that: 1) the exception in §5-108 applies retroactively; 2) the General Assembly intended that retroactive application; and 3) the Office of the Attorney General advised that the change was constitutional in 1990 and 1991.

The language of §5-108 makes clear that the asbestos-related exception added in 1991 was to be applied retroactively. Section 5-108 creates a statute of repose applicable to improvements to real property. First passed in 1970, the legislation has been amended several times, most recently in 1991 to add an asbestos-related exception. Section 5-108(d)(2) provides that the time limitations set out in §5-108(a)(20 years for property owners) and (b)(10 years for architects, engineers, and builders) do not apply:

> (ii) In a cause of action against a manufacturer or supplier for damages for personal injury or death caused by asbestos or a product that contains asbestos, the injury or death results from exposure to asbestos dust or fibers which are shed or emitted prior to or in the course of the affixation, application, or installation of the asbestos or the product that contains asbestos to an improvement to real property;
> (iii) In other causes of action for damages for personal injury or death caused by asbestos or a product that contains asbestos, the defendant is a manufacturer of a product that contains asbestos; or

(iv) In a cause of action for damages for injury to real property that results from a defective and unsafe condition of an improvement to real property:

1. The defendant is a manufacturer of a product that contains asbestos;
2. The damages to an improvement to real property are caused by asbestos or a product that contains asbestos;
3. The improvement first became available for its intended use after July 1, 1953;
4. The improvement:
    A. Is owned by a governmental entity and used for a public purpose; or
    B. Is a public or private institution of elementary, secondary, or higher education; and
5. The complaint is filed by July 1, 1993.

This language makes clear that when this exception became effective on July 1, 1991, claims for personal damages due to asbestos exposure are not subject to the limitations in subsections (a) and (b). §5-108(d)(2)(ii) and (iii).[1] Claims for property damages due to the presence of asbestos in a building[2] could be brought as to any structure made available for use after July 1, 1953. §5-108(d)(2)(iv)(3).[3] While the limitations set out in §5-108(a) and (b) would only allow claims for buildings made available 20 or 10 years prior, the new exception applied to buildings made available 38 years prior. There would be no reason to allow claims for 38-year-old buildings if the 20- or 10-year limitation applied. Moreover, in §5-108(d)(2)(iv)(5), the General Assembly set a 2-year deadline by which claims under this exception must be filed. This is a lookback window designed to allow expired claims to be brought within the two-year period after the effective date of the legislation. There would be no reason to establish a filing deadline if stale claims were not revived by the 1991 changes.

The uncodified language and legislative history of the 1991 changes likewise make evident that the changes were to apply retroactively, meaning reviving certain property damage claims that had been extinguished solely due to the passage of the 20- or 10-year limitation period. In fact, a close review of the uncodified language and the bill file reveals that there was little to no concern about allowing expired claims to be brought consistent with the 1991 changes. Rather, the aspect of retroactivity discussed was whether cases that had been finalized could be reopened as a result of the

[1] In late 1990, Maryland courts had determined that §5-108 did not apply to the vast majority of personal injury claims for asbestos exposure, those brought by workers who were exposure during building construction and renovation. Thus, the personal injury claim exclusion here became less important and was not the focus of the legislative discussion of Senate Bill 335 (1991) that created the exception. See Testimony of David Ianucci, Chief Legislative Officer to Governor William Donald Schaefer in bill file for Senate Bill 335 (1991).

[2] These damages are the cost of removal or remediation of asbestos.

[3] This exception was limited to buildings owned and used by the government and buildings used as public or private institutions for education, including higher education. The bill file reflects testimony related only to those types of property.

exception. The General Assembly rejected that aspect of retroactivity as is evident in uncodified section 2 of Senate Bill 335 (1991):

> [T]his Act does not apply to and may not be construed to revive property damage claims in any action for which a final judgment has been rendered and for which appeals, if any, have been exhausted before July 1, 1991, to any property damage claim precluded by a partial summary judgment or court imposed deadline before July 1, 1991, or to any settlement or agreement between parties to the litigation negotiated before July 1, 1991.

The Floor Report accompanying Senate Bill 335 (1991) explains that the bill "excludes certain manufacturers and suppliers of asbestos products from the protection of the statute of repose" in §5-108. That Report likewise explains the restrictions on the retroactivity, noting that finalized claims could not be reopened; inherent in this is that claims that had not been filed or that had not been finalized would benefit from the changes. A document titled Committee Amendments explains that trial court cases in 1988 and 1989 held that the limitations in §5-108 precluded recovery for personal injury from asbestos exposure or property damage due to the presence of asbestos and that the 1991 amendments were designed to change those holdings. The Fiscal Note for Senate Bill 335 (1991) likewise makes clear that the changes would apply retroactively to cases that then pending and those yet-to-be filed:

> This bill, in essence, eliminates the applicable statute of limitations (10-year and 20-year time period) and allows not only those current cases to continue their legal course of action absent a statutory time limit but subsequent cases filed as well.

Senate Bill 335 was an Administration Bill, requested by then-Governor Schaefer, and his Chief Legislative Officer, David Ianucci, submitted testimony that similarly explained the impact of the bill. Mr. Ianucci noted that during the two-year period of July 1, 1991 to July 1, 1993, the statute of repose was waived and recovery would be available for claims except those that had been finalized before July 1, 1993.

In addition to these formal documents revealing the intended retroactive impact of Senate Bill 335 (1991), the bill fill contains written testimony from many entities and organizations that would benefit from the retroactive application of the exception. For example, testimony from the Archdiocese of Baltimore and the Archdiocese of Washington (with Maryland-based parochial schools) described the significant expenses associated with asbestos remediation in their school buildings, identifying the dates of construction of those buildings going back to the 1950s. In fact, those organizations and the Maryland Catholic Conference requested that the changes be even further retroactive, asking that the changes apply to buildings made available from 1950 forward, not just those from 1953 forward, arguing that many of their school buildings were constructed between 1950 and 1952. Likewise, support for the legislation from the Maryland Association of Boards of Education and individual county

boards of education and school systems explains the profoundly negative fiscal impact if they are not permitted to bring claims that would be revived by the 1991 exception.

Many of the documents in the bill file provide context that makes clear that the 1991 amendments were to apply retroactively. Asbestos was used prolifically in construction throughout the United States for more than 70 years, with the devastating health impact of exposure unknown. By the time individuals became aware of the connection between asbestos exposure and long-term health consequences, their claims were likely barred by §5-108. This is also the case for entities that became aware of the harms and the need to remediate properties that contain asbestos. Because §5-108 is a statute of repose that begins to run upon availability of the property, personal injury and property damage claims were terminated before individuals and entities could have brought suit. The balance of equities at the time dictated a lifting of the statute of repose to revive those claims. Consistent with the context, unambiguous and thorough documents in the bill file for Senate Bill 335 (1991) lead to the conclusion that the 1991 amendments were to be applied in a manner that would revive stale claims.

The inescapable conclusion is that the 1991 changes to §5-108 were applied retroactively, reviving asbestos-related personal injury and property damage claims that had been extinguished by the statute of repose. And the Office of the Attorney General found the revival constitutional. In the letter of review for constitutional sufficiency on Senate Bill 335 (1991), then-Attorney General J. Joseph Curran, Jr., explained: "We have previously advised that the statute of repose may be altered retroactively without violating due process. See letter to Delegate David. B. Shapiro from Kathryn M. Rowe dated February 15, 1990." That letter is found in the bill file for Senate Bill 500 (1990), a predecessor to Senate Bill 335 (1991) that was passed and then vetoed by then-Governor Schaefer. I have attached it here as well. Although full analysis of the constitutionality of the revival of claims by lifting or expanding a statute of limitations or repose is beyond the scope of this letter, the 1990 Rowe letter is direct and clear: "In conclusion, it is my view that § 5-108, whether it is conceived as barring accrual of any common law or statutory action that may arise from a defect in an improvement to real property, or simply barring a remedy, does not become such an intrinsic part of those causes of action as to create a vested right in the defendant. In the absence of such a vested right, the proposed change may be made retroactive."

I hope this letter answers your question on the retroactivity of the 1991 changes to §5-108. Please let me know how I can further support your work on this issue.

Very truly yours,

cc: Chairman C. T. Wilson

Sen. Stone

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WASHINGTON METROPOLITAN AREA 858-3889
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February 15, 1990

The Honorable David B. Shapiro
320 House Office Building
Annapolis, Maryland 21401-1990

Dear Delegate Shapiro:

You have asked for advice as to whether a change in Courts and Judicial Proceedings Article, §5-108, "Injury to person or property occurring after completion of improvement to realty" may be given retroactive effect. 1/ It is my view that it may.

Section 5-108

Section 5-108 was originally passed in 1970 after similar bills failed in 1967, 1968 and 1969. 2/ The legislative history 3/ reveals that the bill was enacted in response to

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1 It is my understanding that the desire is to have the change apply in pending cases, and this advice is given with that understanding. It should be understood that the provision may not be applied to alter judgments that have become final. Maryland Port Admin. v. I.T.O. Corp., 40 Md.App. 697, 722, n. 22 (1978).

2 Senate Bill 240 of 1967 passed the Senate after the limit was amended from six to nine years, but was killed in committee in the House. The 1968 and 1969 bills (Senate Bills 68, 88 and 601 and House Bill 858 of 1968 and Senate Bill 162 of 1969) all died in committee in the originating houses. Senate Bill 241 of 1970 initially failed in the House, but was revived, amended to change the limit from nine to 20 years, and passed.

3 While legislative history from this era is not usually available, the file from the summer study of Senate Bill 162 of 1969 has survived and is available from Legislative Reference.

increasing suits against design professionals and contractors arising from judicial abolition of privity requirements and the adoption of the discovery rule for purposes of applying statutes of limitation. Whiting-Turner Contracting Co. v. Coupard, 304 Md. 340 (1985). Testimony by the Building Congress of Exchange, the Maryland Council of Architects, and the Consulting Engineers Council of Maryland expressed concern that, with the new changes in the law design professionals, builders and contractors were faced with the possibility that suit could be filed against them at any time in their life, and even against their estate after their death, even though they had no control over maintenance, repair, or remodeling of the building since it was completed. They noted that the passage of time raised problems of lost evidence and faded memories, and that even where defenses were successful, they were expensive. Thus, those testifying sought to be relieved of the necessity of defending suits after the passage of a set period of time.

The 1970 bill was codified at Article 57, §20, and provided:

> No action to recover damages for injury to property real or personal, or for bodily injury or wrongful death, arising out of the defective and unsafe condition of an improvement to real property, nor any action for contribution or indemnity for damages incurred as a result of said injury or death, shall be brought more than twenty years after the said improvement was substantially completed. This limitation shall not apply to any action brought against the person who, at the time the injury was sustained, was in actual possession and control as owner, tenant, or otherwise of the said improvement. For purposes of this section, "subtantially completed" shall mean when the entire improvement is first available for its intended use.

In 1973 the section was recodified as Courts and Judicial Proceedings Article, §5-108, which read:

> (a) Except as provided by this section, no cause of action for damages accrues and a person may not seek contribution or indemnity for damages incurred when wrongful death, personal injury, or injury to real or personal property resulting from the defective and unsafe condition of an improvement to real property occurs more than 20 years after the date the entire improvement first becomes available for its intended use.
>
> (b) This section does not apply if the defendant was in actual possession and control of the property as owner, tenant, or otherwise when the injury occurred.
>
> (c) A cause of action for an injury described in this section accrues when the injury or damage occurs.

Code Revision explained the change as follows:

> This section is new language derived from Article 57, §20. It is believed that this is an attempt to relieve builders, contractors, landlords, and realtors of the risk of latent defects in design, construction, or

> maintenance of an improvement to realty manifesting themselves more than 20 years after the improvement is put in use./ The section is drafted in the form of a statute of limitation, but, in reality, it grants immunity from suit in certain instances. Literally construed, it would compel a plaintiff injured on the 364th day of the 19th year after completion to file his suit within one day after the injury occurred, a perverse result to say the least, which possibly violates equal protection. Alternatively, the section might allow wrongful death suits to be commenced 18 years after they would be barred by the regular statute of limitations.
>
> The section if conceived of as a grant of immunity, avoids these anomalies. The normal statute of limitations will apply if an actionable injury occurs. [4/]
>
> Subsection (c) is drafted so as to avoid affecting the period within which a wrongful death action may be brought.

Subsequent changes shortened the limit to ten years for architects and engineers (Chapter 698 of 1979) and for contractors (Chapter 605 of 1980).

The proposed legislation would provide that the section would not apply to a defendant who is a manufacturer or supplier of materials that are part of the improvement to real property. The legislation is being proposed in response to a series of court cases that have held that the section applies to bar suits against manufacturers of construction materials containing asbestos where those materials were installed over 20 years ago. See, First United Methodist Church v. U.S. Gypsum Co., 882 F.2d 862 (4th Cir. 1989); In re Personal Injury Asbestos Cases, Circuit Court for Baltimore City (Levin, J. 11/1/89); State of Maryland v. Keene Corp., Circuit Court for Anne Arundel County, Civil Action No. 1108600 (Thieme, J. 6/9/89); Mayor and City Counci of Baltimore v. Keene Corp., Circuit Court for Baltimore City, Case No. 84268068/CL25639 (Davis, J. 6/2/89).

Federal Due Process

The federal cases on retroactivity leave no doubt that retroactivity of the proposed legislation would not violate the federal Due Process Clause. The case that established the modern federal approach to retroactivity is Usery v. Turner Elkhorn

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4 It is my view that this would be the law in any event. For example, in Comptroller of Virginia v. King, 232 S.E.2d 895 (Va. 1977), it was held that Virginia's statute of limitations involving injuries from improvements to real property simply set an arbitrary outside limit on the initiation of lawsuits, and did not extend existing limits, such as the two-year limit for personal injury action. In addition, Code Revision's attempt to cure this problem was unsuccessful, as the Legislature found it necessary to amend the section in 1979 to clarify that an action must be filed within three years of accrual.

Mining Co., 428 U.S. 1 (1976), which involved federal legislation establishing a system for compensation for coal miners disabled by black lung disease. Mine operators argued that the statute was unconstitutional because it imposed liability on them for disabilities suffered by miners who left their employ prior to the effective date of the Act, thus charging them "with an unexpected liability for past, completed acts that were legally proper and, at least in part, unknown to be dangerous at the time." Id. at 15. The Court concluded that "legislation readjusting rights and burdens is not unlawful solely because it upsets otherwise settled expectations.... This is true even though the effect of the legislation is to impose a new duty or liability based on past acts." Id. at 16. Thus, the Court held that, as with other laws not impinging on a fundamental right, the appropriate test was rational basis. Specifically, the Court stated that:

> "It is by now well-established that legislative Acts adjusting the burdens and benefits of economic life come to the Court with a presumption of constitutionality, and that the burden is on one complaining of a due process violation to establish that the legislature has acted in an arbitrary and irrational way." Id. at 15.

The Court went on to say that:

> "It does not follow, however, that what Congress can legislate prospectively it can legislate retrospectively. The retrospective aspects of legislation, as well as the prospective aspects, must meet the test of due process, and the justifications for the latter may not suffice for the former." Id. at 16-17.

While recognizing that the mine operators may not have known of the dangers, and had possibly acted in reliance upon their lack of liablity, the Court found that the Act was a rational measure to spread the costs of employee disability to those who have profited from the fruits of their labor. Id. at 18.

Like the statute in question in the Elkhorn Turner case, the proposed legislation seeks to allocate the benefits and burdens of economic life and, therefore, is subject to rational basis scrutiny. And, even if the proposed legislation is seen as creating new liability, it must also be seen as a rational measure to allocate the costs of personal injury from exposure to asbestos and for removal of asbestos to those who profited from its sale, and who were the most likely to have known of the dangers. 5/ Precisely that conclusion was reached in Wesley

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5 The dangers of asbestos exposure have been known since at least the turn of the century. See, District of Columbia v. Owens-Corning Fiberglass Corp., 1989 WL 99482 (D.C.App. 1989). Purchasers and employees, however, were unlikely to know asbestos was contained in the building materials.

Theological Seminary v. U.S. Gypsum Co., 876 F.2d 119 (D.C.Cir. 1989) (cert. pending #89-777), which upheld the retroactivity of a similar change to the D. C. statute governing claims arising from improvements to real property. 6/ In that case the Court specifically noted the absence of reliance, as the limitation did not exist at the time the materials were supplied, but was enacted afterwards. The Court also found that it made no difference for purposes of constitutional analysis that the asbestos liability was not created, as in Turner Elkhorn, but revived.

It is worthy of note that, as was the case in the Wesley Theological Seminary case, the statute in Maryland was not effective until July 1, 1970. Thus, no case that currently is held to be barred involves a manufacturer or supplier who could have relied on the bar at the time the materials were supplied.

There is an aditional factor minimizing the importance of reliance for purposes of due process analysis. That is that until the recent decisions of the lower courtrs in the asbestos cases, it was not generally understood that manufacturers and suppliers were covered by §5-108. 7/ It is undisputed that §5-108 was enacted in response to cases expanding the exposure of design professionals and contractors to liability. The legislative record reflects testimony concerning the problems faced by architects, professional engineers, contractors and builders and is free from any similar discussions with respect to manufacturers and suppliers. 8/ In fact, the Legislature has declined to give similar protecton to products liability defendants. 9/ The Revisor's Note from 1973 states that the section applies to builders, contractors, landlords and realtors. And no reported case has applied the section to a manufacturer or supplier. 10/ Thus, the action of the

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6 The D. C. statute is similar to Maryland's, a point frequently noted by the courts construing them. See, President and Directors, Etc. v. Madden, 505 F.Supp. 557 (D.Md. 1980) aff'd 660 F.2d 91 (4th Cir. 1981); In re Personal Injury Asbestos Cases, Circuit Court for Baltimore City (Levin, J. 11/1/89).

7 In fact, that issue is still not settled, as it has not yet been considered by a State appellate court, and lower courts' interpretations of law enjoy no presumption of correctness on review. Rohrbaugh v. Estate of Stern, 305 Md. 443 (1986).

8 The sole mention of manufacturers is a passing in the testimony of an opponent, Wallace Dann, see Judiciary Committee Minutes, June 24, 1969, p. 3.

9 See Senate Bill 988 of 1977.

10 Whiting-Turner Contracting Co. v. Coupard, 304 Md. 304 (1985), has been cited as evidence that the section appies to suppliers of building materials and equipment. That question was not an issue in the case, however, and the passing reference to suppliers no more settles the issue of their inclusion than the omission of any mention of suppliers in (continued)

Legislature in making the change retroactive could be seen as simply restoring the law to the state the parties most likely believed existed. 11/ Numerous cases have upheld retroactive changes in the law under similar circumstances.

In Seese v. Bethlehem Steel Co., 168 F.2d 58 (4th Cir. 1949), the Court upheld application of the Portal-to-Portal Act, which provides that an employer need not pay an employee for time spent dressing and walking to the worksite unless such pay was provided by contract or was paid as a matter of custom and practice, to pending cases filed after a recent Supreme Court case had held that the Fair Labor Standards Act required such pay in all instances. In the words of the Court:

> "[A]ll that congress has done by the legislation here under consideration is to validate the contracts and agreements between employers and employees which were invalid under the Fair Labor Standards Act by reason of the interpretation placed by the Supreme Court upon that Act." Id. at 64.

Similarly, in Rhinebarger v. Orr, 657 F.Supp. 1113 (S.D.Ind. 1987), aff'd 839 F.2d 387 (7th Cir.), cert. denied, 109 S.Ct. 71 (1988), the Court upheld a retroactive Act designed to delay the applicability of the Fair Labor Standards Act to the states following the Supreme Court decision in Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985), and held that the Act applied to cases filed after Garcia, but prior to the effective date of the Act.

And, in Sanelli v Glenview State Bank, 483 N.E.2d 226 (Ill. 1985), the Court upheld retroactive application of a statute that specifically permitted a long-accepted practice that a recent case had found to be a violation of fiduciary duty. The Court held that the:

Poffenberger v. Risser, 290 Md. 631, 634, n. 2 (1981) mandates the conclusion that they are excluded.

11 Even if the section were intended to include manufacturers and suppliers in general, it seems unlikely that the General Assembly intended "injury ... resulting from the defective and unsafe condition of an improvement to real property" to include injuries from such materials as asbestos, which is unsafe completely apart from its role as a part of an improvement to real property. This difference can be illustrated by comparing asbestos and a defective steel beam. The steel beam is not dangerous by itself, and can be brought to the work site and left there without noticeable risk to anyone. Only when the steel beam is included in a building does it become dangerous, because it is unable, due to its defect, to bear enough weight to perform its expected role in the improvement. Acoustical tile treated with asbestos, in contrast, is dangerous in its own right. Left at the worksite, it is potentially as dangerous as when installed as a ceiling. Unlike the steel beam, however, it performs its role as a part of the improvement to real property adequately -- the beams are covered and sound is absorbed.

> "General Assembly may enact retroactive legislation which changes the effect of a prior decision of a reviewing court with respect to cases which have not been finally decided."

Clearly then, retroactive application of the proposed change to §5-108 would not violate federal due process.

State Due Process

The State Due Process Clause, Declaration of Rights, Article 24, 12/ is generally interpreted as in pari materia with the federal provision. Northampton Corp. v. Washington Suburban Sanitary Com., 278 Md. 677 (1976). In the area of retroactive legislation, however, the Court of Appeals has not yet adopted the modern federal rule as reflected by Turner Elkhorn and Pension Benefit Guaranty Corp. v. R. A. Gray & Co., 467 U.S. 717 (1984) (unanimous), but has adhered to the older rule which looks to whether the proposed retroactivity would infringe upon "vested rights". Thus, the Court has said that "[a] statute, even if the Legislature so intended, will not be applied retrospectively to divest or adversely affect vested rights." Vytar Associates v. City of Annapolis, 301 Md. 558, 572, n. 6 (1989). Although it has been applied in other contexts, this concept has largely been used to invalidate the retroactive imposition of taxes and fees. See, Vytar, supra; Washington National Arena v. Prince George's County, 287 Md. 38, cert. denied 449 U.S. 834 (1980); National Can Corp. v. State Tax Com'n, 220 Md. 418 (1959); Comptroller v. Glenn L. Martin Co., 216 Md. 235, cert. denied 358 U.S. 820 (1958).

The term "vested right" has been recognized to be conclusory -- "a right is vested when it has been so far perfected that it cannot be taken away by statute." Hochman, The Supreme Court and the Constitutionality of Retroactive Legislation, 73 Harvard Law Review 692, 696 (1960); Sanelli v. Glenview State Bank, 483 N.E.2d 226 (Ill. 1985). Factors that have been suggested in determining whether a right has vested include:

> "the nature and strength of the public interest served by the statute, the extent to which the statute modifies or abrogates the asserted preenactment right, and the nature of the right which the statute alters." Hochman, 73 Harv.L.Rev. at 697.

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12 Article 24 provides:

> "That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land."

In this situation the public interest is strong. The public clearly has an interest in providing remedies for those injured by toxic and carcinogenic materials with long latency periods, and in imposing that liability on the parties best able to learn of the danger and prevent it. The State also has an interest in helping owners of buildings that contain asbestos obtain funds for its removal so that no further injury occurs. In addition, the State has an interest in obtaining funds to remove asbestos from its own buildings so as to remove a threat to the health of those citizens that use the buildings. District of Columbia v. Owens-Corning Fiberglass Corp., 1989 W.L. 99482 (D.C.App. 1989). It is also clear that the "right" asserted, freedom from suit, would be completely abrogated. It is my view, however, that the public interest outweighs any disadvantage to the defendant, especially when the nature of the right asserted is taken into account.

One factor that weighs against a finding that a right is vested is a finding that the right rests on "insubstantial equities". Hochman, 73 Harv.L.Rev. at 720. One class of such cases are those extending statutes of limitations, as "no man promises to pay money with any view to being released from that obligation by lapse of time." Campbell v. Holt, 115 U.S. 620, 628 (1885). Another is whether the Act is curative, Hochman, 73 Harv.L.Rev. at 721. Both factors weigh against finding a vested right in this situation. Thus, balancing these factors, it would appear that no vested right should be found. This is in accord with the general rule in Maryland that changes in statutes of limitation may be made retroactive, Allen v. Dovell, 193 Md. 359 (1949), as well as the rule that "there can be no vested right to violate a moral duty, or to resist the performance of a moral obligation," Grinder v. Nelson, 9 Gill 299 (1850). This has long been the federal rule. In Campbell v. Holt, 115 U.S. 620 (1885), the Supreme Court upheld a statute reviving causes of action on which statutes of limitation had run. After differentiating the limit involved from one, such as adverse possession, that would vest title to real property, the Court held as follows:

> "The implied obligation of defendant's intestate to pay his child for the use of her property remains. It was a valid contract, implied by the law before the statute began to run in 1866. Its nature and character were not changed by the lapse of two years, though the statute made that a valid defense to a suit on it. But this defense, a purely arbitrary creation of the law, fell with the repeal of the law on which it depended.
>
> "It is much insisted that this right to a defense is a vested right, and a right of property which is protected by the provisions of the fourteenth amendment. It is to be observed that the words 'vested right' are nowhere used in the constitution, neither in the original instrument nor in any of the amendments to it.... We certainly do not understand that a right to defeat a just debt by the statute of limitations is a vested right so as to be beyond legislative power in a proper case." Id. at 627-628.

It has been asserted, however, that the decision in Smith v. Westinghouse Electric, 266 Md. 52 (1972), compels the conclusion that §5-108 creates vested rights. That case involved a change in the statute of limitations applicable to actions for wrongful death. The Court noted that the wrongful death act created a new cause of action for something the deceased person never had -- the right to sue for injuries. It then held that where a cause of action and its limitation are created together, the timeliness of the action is a condition precedent to the right to maintain the action. See also, Chandlee v. Shockley, 219 Md. 493 (1959). In that situation, the Court held that the extension of the limit could not be made retroactive.

No Court of Appeals case has extended the rationale of Smith beyond the specific situation where the cause of action and its limitation are created by the same act, or by a later act specifically directed at the newly created cause of action. The case upon which Smith relied, William Danzer & Co. v. Gulf of S.I.R. Co., 268 U.S. 633 (1925), has been similarly limited. In Chase Securities Corporation v. Donaldson, 325 U.S. 304 (1945), the Court stated that Danzer "held that where a statute in creating a liability also put a period to its existence, a retroactive extension of the period after its expiration amounted to a taking without due process of law." And, in Radio Position Finding Corporation v. Bendix Corporation, 205 F.Supp. 850 (D.Minn. 1962), affirmed 371 U.S. 577 (1963) (per curiam), the Court differentiated Danzer as a case where "[r]ight and remedy were inextricably mixed, so that the removal of the bar of limitations constitute[d] the creation of an additional remedy." 13/ Since the limitation in §5-108 was created separately from, and applies generally to, a variety of causes of action, it is clear that the Smith case does not mandate the conclusion that it creates a vested right.

Nevertheless, it has been argued that §5-108 is a substantive, rather than a procdural limitation, and that Smith compels the conclusion that no substantive limitation can be extended retroactively to revive barred causes of action. It is clear, however, that under Maryland law an interference with substantive rights is not always of constitutional magnitude, WSSC v. Riverdale Fire Co., 308 Md. 556, 569 (1987); State commisson on Human Relations v. Amecom Div., 278 Md. 120, 123 (1976). In addition, while §5-108 has been held to be

13 Even as so limited, it is not clear that Danzer is good law. See, Wesley Theological Seminary v. U.S. Gypsum Co., 876 F.2d 119 (D.C.Cir. 1989); Nachtsheim v. Wartnick, 411 N.W.2d 882 (Minn.App. 1987). While the Supreme court has not directly overruled Danzer, it has upheld retroactive extension of a limitations period that was created simultaneously with the cause of action. International Union of Elec, Radio & Machine Wkrs v. Robbins & Meyers, 429 U.S. 229 (1976) (Title VII).

substantive for purposes of determining whether the limit runs against the State, State of Maryland v. Keene Corp., Circuit Court for Anne Arundel County, Civ. Action §1108600 (Thieme, J., 6/9/89); Mayor and City Council of Baltimore v. Keene Corp., Circuit Court for Baltimore City, Case No. 84268068/CL25639 (Davis, J. 6/2/89), 14/ determining whether it is tolled by fraud, First United Methodist Church of Hyattsville v. U.S. Gypsum, ___ F.Supp. ___ (D.Md. 1988), affirmed 882 F.2d 862 (4th Cir. 1989) (cert. pending 89-728) and for choice of law purposes, President & Directors v. Madden, 505 F.Supp. 557 (D.Md. 1980), affirmed 660 F.2d 91 (4th Cir. 1981), it seems clear that the statute does not give rise to the type of right deemed vested in Smith.

At least one court has held that statutes like §5-108 are not substantive. In Bellevue School District 405 v. Brazier Const., 691 P.2d 178 (Wash. 1984), it was held that:

> "The builder limitation statute ... creates no new right, but merely defines a limitation period within which a claim ordinarily must accrue. Even without this statute, a common law right would still exist."

The Court went on to note that, despite the fact that the limit ran from a different time than a typical statute of limitations, the policy is the same: to prevent stale claims and to place a reasonable time limit on exposure. This similarity of purpose militates against finding that §5-108 would create vested rights while a more typical statute of limitations would not. However, it has been argued that because §5-108 can bar a cause of action, while most statutes of limitation simply bar a remedy, §5-108 does create vested rights. That distinction, however, has been described as "somewhat metaphysical", Wesley Theological Seminary v. U.S. Gypsum Co., 876 F.2d 119 (D.C. Cir. 1989) (cert. pending §89-777); see also, School Board of the City of Norfolk v. U.S. Gypsum Co., 360 S.E.2d 325 (Va. 1987) (dissent), and clearly is not one that should determine the issue. 15/

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14 There are reasons to question the correctness of the assumption of these courts that the limit runs against the State if it is substantive. Adverse possession, §5-103, vests title in real property, and thus clearly creates vested rights, yet it does not run against the State. Central Collection Unit v. Atlantic Container Line, 277 Md. 626 (1976). And the District of Columbia statute has been held not to run against the government. District of Columbia v. Owens-Corning Fiberglass Corporation, 1989 WL 99482 (D.C.App. 1989).

15 This is especially true since prior to the 1983 Code Revision, the section clearly only barred the remedy, not the right. The change in language that occurred in the course of Code Revision was designed to address certain interpretive problems arguably raised by the interaction of the section and other statutes of limitation. See, infra. There is no indication that the purposes or policies behind the section had changed, or that the General Assembly felt that it was necessary to create new rights for defendants. In the absence of such evidence, it should not be assumed that such a change was intended. (continued)

In conclusion, it is my view that §5-108, whether it is conceived as barring accrual of any common law or statutory action that may arise from a defect in an improvement to real property, or simply barring a remedy, does not become such an intrinsic part of those causes of action as to create a vested right in the defendant. In the absence of such a vested right, the proposed change may be made retroactive.

I hope that this is responsive to your inquiry.

Sincerely,

Kathryn M. Rowe
Assistant Attorney General

KMR:maa

Geisz v. Greater Baltimore Medical, 313 Md. 301, 322 (1988); Rohrbaugh v. Estate of Stern, 305 Md. 443 (1986).

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February 15, 1990

The Honorable David B. Shapiro
320 House Office Building
Annapolis, Maryland 21401-1990

Dear Delegate Shapiro:

You have asked for advice as to whether a change in Courts and Judicial Proceedings Article, §5-108, "Injury to person or property occurring after completion of improvement to realty" may be given retroactive effect. 1/ It is my view that it may.

Section 5-108

Section 5-108 was originally passed in 1970 after similar bills failed in 1967, 1968 and 1969. 2/ The legislative history 3/ reveals that the bill was enacted in response to

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1 It is my understanding that the desire is to have the change apply in pending cases, and this advice is given with that understanding. It should be understood that the provision may not be applied to alter judgments that have become final. Maryland Port Admin. v. I.T.O. Corp., 40 Md.App. 697, 722, n. 22 (1978).

2 Senate Bill 240 of 1967 passed the Senate after the limit was amended from six to nine years, but was killed in committee in the House. The 1968 and 1969 bills (Senate Bills 68, 88 and 601 and House Bill 858 of 1968 and Senate Bill 162 of 1969) all died in committee in the originating houses. Senate Bill 241 of 1970 initially failed in the House, but was revived, amended to change the limit from nine to 20 years, and passed.

3 While legislative history from this era is not usually available, the file from the summer study of Senate Bill 162 of 1969 has survived and is available from Legislative Reference.

increasing suits against design professionals and contractors arising from judicial abolition of privity requirements and the adoption of the discovery rule for purposes of applying statutes of limitation. Whiting-Turner Contracting Co. v. Coupard, 304 Md. 340 (1985). Testimony by the Building Congress of Exchange, the Maryland Council of Architects, and the Consulting Engineers Council of Maryland expressed concern that, with the new changes in the law design professionals, builders and contractors were faced with the possibility that suit could be filed against them at any time in their life, and even against their estate after their death, even though they had no control over maintenance, repair, or remodeling of the building since it was completed. They noted that the passage of time raised problems of lost evidence and faded memories, and that even where defenses were successful, they were expensive. Thus, those testifying sought to be relieved of the necessity of defending suits after the passage of a set period of time.

The 1970 bill was codified at Article 57, §20, and provided:

> No action to recover damages for injury to property real or personal, or for bodily injury or wrongful death, arising out of the defective and unsafe condition of an improvement to real property, nor any action for contribution or indemnity for damages incurred as a result of said injury or death, shall be brought more than twenty years after the said improvement was substantially completed. This limitation shall not apply to any action brought against the person who, at the time the injury was sustained, was in actual possession and control as owner, tenant, or otherwise of the said improvement. For purposes of this section, "subtantially completed" shall mean when the entire improvement is first available for its intended use.

In 1973 the section was recodified as Courts and Judicial Proceedings Article, §5-108, which read:

> (a) Except as provided by this section, no cause of action for damages accrues and a person may not seek contribution or indemnity for damages incurred when wrongful death, personal injury, or injury to real or personal property resulting from the defective and unsafe condition of an improvement to real property occurs more than 20 years after the date the entire improvement first becomes available for its intended use.
>
> (b) This section does not apply if the defendant was in actual possession and control of the property as owner, tenant, or otherwise when the injury occurred.
>
> (c) A cause of action for an injury described in this section accrues when the injury or damage occurs.

Code Revision explained the change as follows:

> This section is new language derived from Article 57, §20. It is believed that this is an attempt to relieve builders, contractors, landlords, and realtors of the risk of latent defects in design, construction, or

> maintenance of an improvement to realty manifesting themselves more than 20 years after the improvement is put in use./ The section is drafted in the form of a statute of limitation, but, in reality, it grants immunity from suit in certain instances. Literally construed, it would compel a plaintiff injured on the 364th day of the 19th year after completion to file his suit within one day after the injury occurred, a perverse result to say the least, which possibly violates equal protection. Alternatively, the section might allow wrongful death suits to be commenced 18 years after they would be barred by the regular statute of limitations.
>
> The section if conceived of as a grant of immunity, avoids these anomalies. The normal statute of limitations will apply if an actionable injury occurs. [4/]
>
> Subsection (c) is drafted so as to avoid affecting the period within which a wrongful death action may be brought.

Subsequent changes shortened the limit to ten years for architects and engineers (Chapter 698 of 1979) and for contractors (Chapter 605 of 1980).

The proposed legislation would provide that the section would not apply to a defendant who is a manufacturer or supplier of materials that are part of the improvement to real property. The legislation is being proposed in response to a series of court cases that have held that the section applies to bar suits against manufacturers of construction materials containing asbestos where those materials were installed over 20 years ago. See, First United Methodist Church v. U.S. Gypsum Co., 882 F.2d 862 (4th Cir. 1989); In re Personal Injury Asbestos Cases, Circuit Court for Baltimore City (Levin, J. 11/1/89); State of Maryland v. Keene Corp., Circuit Court for Anne Arundel County, Civil Action No. 1108600 (Thieme, J. 6/9/89); Mayor and City Counci of Baltimore v. Keene Corp., Circuit Court for Baltimore City, Case No. 84268068/CL25639 (Davis, J. 6/2/89).

Federal Due Process

The federal cases on retroactivity leave no doubt that retroactivity of the proposed legislation would not violate the federal Due Process Clause. The case that established the modern federal approach to retroactivity is Usery v. Turner Elkhorn

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4 It is my view that this would be the law in any event. For example, in Comptroller of Virginia v. King, 232 S.E.2d 895 (Va. 1977), it was held that Virginia's statute of limitations involving injuries from improvements to real property simply set an arbitrary outside limit on the initiation of lawsuits, and did not extend existing limits, such as the two-year limit for personal injury action. In addition, Code Revision's attempt to cure this problem was unsuccessful, as the Legislature found it necessary to amend the section in 1979 to clarify that an action must be filed within three years of accrual.

Mining Co., 428 U.S. 1 (1976), which involved federal legislation establishing a system for compensation for coal miners disabled by black lung disease. Mine operators argued that the statute was unconstitutional because it imposed liability on them for disabilities suffered by miners who left their employ prior to the effective date of the Act, thus charging them "with an unexpected liability for past, completed acts that were legally proper and, at least in part, unknown to be dangerous at the time." Id. at 15. The Court concluded that "legislation readjusting rights and burdens is not unlawful solely because it upsets otherwise settled expectations.... This is true even though the effect of the legislation is to impose a new duty or liability based on past acts." Id. at 16. Thus, the Court held that, as with other laws not impinging on a fundamental right, the appropriate test was rational basis. Specifically, the Court stated that:

> "It is by now well-established that legislative Acts adjusting the burdens and benefits of economic life come to the Court with a presumption of constitutionality, and that the burden is on one complaining of a due process violation to establish that the legislature has acted in an arbitrary and irrational way." Id. at 15.

The Court went on to say that:

> "It does not follow, however, that what Congress can legislate prospectively it can legislate retrospectively. The retrospective aspects of legislation, as well as the prospective aspects, must meet the test of due process, and the justifications for the latter may not suffice for the former." Id. at 16-17.

While recognizing that the mine operators may not have known of the dangers, and had possibly acted in reliance upon their lack of liablity, the Court found that the Act was a rational measure to spread the costs of employee disability to those who have profited from the fruits of their labor. Id. at 18.

Like the statute in question in the Elkhorn Turner case, the proposed legislation seeks to allocate the benefits and burdens of economic life and, therefore, is subject to rational basis scrutiny. And, even if the proposed legislation is seen as creating new liability, it must also be seen as a rational measure to allocate the costs of personal injury from exposure to asbestos and for removal of asbestos to those who profited from its sale, and who were the most likely to have known of the dangers. 5/ Precisely that conclusion was reached in Wesley

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5 The dangers of asbestos exposure have been known since at least the turn of the century. See, District of Columbia v. Owens-Corning Fiberglass Corp., 1989 WL 99482 (D.C.App. 1989). Purchasers and employees, however, were unlikely to know asbestos was contained in the building materials.

Theological Seminary v. U.S. Gypsum Co., 876 F.2d 119 (D.C.Cir. 1989) (cert. pending #89-777), which upheld the retroactivity of a similar change to the D. C. statute governing claims arising from improvements to real property. 6/ In that case the Court specifically noted the absence of reliance, as the limitation did not exist at the time the materials were supplied, but was enacted afterwards. The Court also found that it made no difference for purposes of constitutional analysis that the asbestos liability was not created, as in Turner Elkhorn, but revived.

It is worthy of note that, as was the case in the Wesley Theological Seminary case, the statute in Maryland was not effective until July 1, 1970. Thus, no case that currently is held to be barred involves a manufacturer or supplier who could have relied on the bar at the time the materials were supplied.

There is an aditional factor minimizing the importance of reliance for purposes of due process analysis. That is that until the recent decisions of the lower courtrs in the asbestos cases, it was not generally understood that manufacturers and suppliers were covered by §5-108. 7/ It is undisputed that §5-108 was enacted in response to cases expanding the exposure of design professionals and contractors to liability. The legislative record reflects testimony concerning the problems faced by architects, professional engineers, contractors and builders and is free from any similar discussions with respect to manufacturers and suppliers. 8/ In fact, the Legislature has declined to give similar protecton to products liability defendants. 9/ The Revisor's Note from 1973 states that the section applies to builders, contractors, landlords and realtors. And no reported case has applied the section to a manufacturer or supplier. 10/ Thus, the action of the

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6 The D. C. statute is similar to Maryland's, a point frequently noted by the courts construing them. See, President and Directors, Etc. v. Madden, 505 F.Supp. 557 (D.Md. 1980) aff'd 660 F.2d 91 (4th Cir. 1981); In re Personal Injury Asbestos Cases, Circuit Court for Baltimore City (Levin, J. 11/1/89).

7 In fact, that issue is still not settled, as it has not yet been considered by a State appellate court, and lower courts' interpretations of law enjoy no presumption of correctness on review. Rohrbaugh v. Estate of Stern, 305 Md. 443 (1986).

8 The sole mention of manufacturers is a passing in the testimony of an opponent, Wallace Dann, see Judiciary Committee Minutes, June 24, 1969, p. 3.

9 See Senate Bill 988 of 1977.

10 Whiting-Turner Contracting Co. v. Coupard, 304 Md. 304 (1985), has been cited as evidence that the section appies to suppliers of building materials and equipment. That question was not an issue in the case, however, and the passing reference to suppliers no more settles the issue of their inclusion than the omission of any mention of suppliers in (continued)

Legislature in making the change retroactive could be seen as simply restoring the law to the state the parties most likely believed existed. 11/ Numerous cases have upheld retroactive changes in the law under similar circumstances.

In Seese v. Bethlehem Steel Co., 168 F.2d 58 (4th Cir. 1949), the Court upheld application of the Portal-to-Portal Act, which provides that an employer need not pay an employee for time spent dressing and walking to the worksite unless such pay was provided by contract or was paid as a matter of custom and practice, to pending cases filed after a recent Supreme Court case had held that the Fair Labor Standards Act required such pay in all instances. In the words of the Court:

> "[A]ll that congress has done by the legislation here under consideration is to validate the contracts and agreements between employers and employees which were invalid under the Fair Labor Standards Act by reason of the interpretation placed by the Supreme Court upon that Act." Id. at 64.

Similarly, in Rhinebarger v. Orr, 657 F.Supp. 1113 (S.D.Ind. 1987), aff'd 839 F.2d 387 (7th Cir.), cert. denied, 109 S.Ct. 71 (1988), the Court upheld a retroactive Act designed to delay the applicability of the Fair Labor Standards Act to the states following the Supreme Court decision in Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985), and held that the Act applied to cases filed after Garcia, but prior to the effective date of the Act.

And, in Sanelli v Glenview State Bank, 483 N.E.2d 226 (Ill. 1985), the Court upheld retroactive application of a statute that specifically permitted a long-accepted practice that a recent case had found to be a violation of fiduciary duty. The Court held that the:

Poffenberger v. Risser, 290 Md. 631, 634, n. 2 (1981) mandates the conclusion that they are excluded.

11 Even if the section were intended to include manufacturers and suppliers in general, it seems unlikely that the General Assembly intended "injury ... resulting from the defective and unsafe condition of an improvement to real property" to include injuries from such materials as asbestos, which is unsafe completely apart from its role as a part of an improvement to real property. This difference can be illustrated by comparing asbestos and a defective steel beam. The steel beam is not dangerous by itself, and can be brought to the work site and left there without noticeable risk to anyone. Only when the steel beam is included in a building does it become dangerous, because it is unable, due to its defect, to bear enough weight to perform its expected role in the improvement. Acoustical tile treated with asbestos, in contrast, is dangerous in its own right. Left at the worksite, it is potentially as dangerous as when installed as a ceiling. Unlike the steel beam, however, it performs its role as a part of the improvement to real property adequately -- the beams are covered and sound is absorbed.

> "General Assembly may enact retroactive legislation which changes the effect of a prior decision of a reviewing court with respect to cases which have not been finally decided."

Clearly then, retroactive application of the proposed change to §5-108 would not violate federal due process.

State Due Process

The State Due Process Clause, Declaration of Rights, Article 24, 12/ is generally interpreted as in pari materia with the federal provision. Northampton Corp. v. Washington Suburban Sanitary Com., 278 Md. 677 (1976). In the area of retroactive legislation, however, the Court of Appeals has not yet adopted the modern federal rule as reflected by Turner Elkhorn and Pension Benefit Guaranty Corp. v. R. A. Gray & Co., 467 U.S. 717 (1984) (unanimous), but has adhered to the older rule which looks to whether the proposed retroactivity would infringe upon "vested rights". Thus, the Court has said that "[a] statute, even if the Legislature so intended, will not be applied retrospectively to divest or adversely affect vested rights." Vytar Associates v. City of Annapolis, 301 Md. 558, 572, n. 6 (1989). Although it has been applied in other contexts, this concept has largely been used to invalidate the retroactive imposition of taxes and fees. See, Vytar, supra; Washington National Arena v. Prince George's County, 287 Md. 38, cert. denied 449 U.S. 834 (1980); National Can Corp. v. State Tax Com'n, 220 Md. 418 (1959); Comptroller v. Glenn L. Martin Co., 216 Md. 235, cert. denied 358 U.S. 820 (1958).

The term "vested right" has been recognized to be conclusory -- "a right is vested when it has been so far perfected that it cannot be taken away by statute." Hochman, The Supreme Court and the Constitutionality of Retroactive Legislation, 73 Harvard Law Review 692, 696 (1960); Sanelli v. Glenview State Bank, 483 N.E.2d 226 (Ill. 1985). Factors that have been suggested in determining whether a right has vested include:

> "the nature and strength of the public interest served by the statute, the extent to which the statute modifies or abrogates the asserted preenactment right, and the nature of the right which the statute alters." Hochman, 73 Harv.L.Rev. at 697.

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12 Article 24 provides:

> "That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land."

In this situation the public interest is strong. The public clearly has an interest in providing remedies for those injured by toxic and carcinogenic materials with long latency periods, and in imposing that liability on the parties best able to learn of the danger and prevent it. The State also has an interest in helping owners of buildings that contain asbestos obtain funds for its removal so that no further injury occurs. In addition, the State has an interest in obtaining funds to remove asbestos from its own buildings so as to remove a threat to the health of those citizens that use the buildings. District of Columbia v. Owens-Corning Fiberglass Corp., 1989 W.L. 99482 (D.C.App. 1989). It is also clear that the "right" asserted, freedom from suit, would be completely abrogated. It is my view, however, that the public interest outweighs any disadvantage to the defendant, especially when the nature of the right asserted is taken into account.

One factor that weighs against a finding that a right is vested is a finding that the right rests on "insubstantial equities". Hochman, 73 Harv.L.Rev. at 720. One class of such cases are those extending statutes of limitations, as "no man promises to pay money with any view to being released from that obligation by lapse of time." Campbell v. Holt, 115 U.S. 620, 628 (1885). Another is whether the Act is curative, Hochman, 73 Harv.L.Rev. at 721. Both factors weigh against finding a vested right in this situation. Thus, balancing these factors, it would appear that no vested right should be found. This is in accord with the general rule in Maryland that changes in statutes of limitation may be made retroactive, Allen v. Dovell, 193 Md. 359 (1949), as well as the rule that "there can be no vested right to violate a moral duty, or to resist the performance of a moral obligation," Grinder v. Nelson, 9 Gill 299 (1850). This has long been the federal rule. In Campbell v. Holt, 115 U.S. 620 (1885), the Supreme Court upheld a statute reviving causes of action on which statutes of limitation had run. After differentiating the limit involved from one, such as adverse possession, that would vest title to real property, the Court held as follows:

> "The implied obligation of defendant's intestate to pay his child for the use of her property remains. It was a valid contract, implied by the law before the statute began to run in 1866. Its nature and character were not changed by the lapse of two years, though the statute made that a valid defense to a suit on it. But this defense, a purely arbitrary creation of the law, fell with the repeal of the law on which it depended.
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> "It is much insisted that this right to a defense is a vested right, and a right of property which is protected by the provisions of the fourteenth amendment. It is to be observed that the words 'vested right' are nowhere used in the constitution, neither in the original instrument nor in any of the amendments to it.... We certainly do not understand that a right to defeat a just debt by the statute of limitations is a vested right so as to be beyond legislative power in a proper case." Id. at 627-628.

It has been asserted, however, that the decision in Smith v. Westinghouse Electric, 266 Md. 52 (1972), compels the conclusion that §5-108 creates vested rights. That case involved a change in the statute of limitations applicable to actions for wrongful death. The Court noted that the wrongful death act created a new cause of action for something the deceased person never had -- the right to sue for injuries. It then held that where a cause of action and its limitation are created together, the timeliness of the action is a condition precedent to the right to maintain the action. See also, Chandlee v. Shockley, 219 Md. 493 (1959). In that situation, the Court held that the extension of the limit could not be made retroactive.

No Court of Appeals case has extended the rationale of Smith beyond the specific situation where the cause of action and its limitation are created by the same act, or by a later act specifically directed at the newly created cause of action. The case upon which Smith relied, William Danzer & Co. v. Gulf of S.I.R. Co., 268 U.S. 633 (1925), has been similarly limited. In Chase Securities Corporation v. Donaldson, 325 U.S. 304 (1945), the Court stated that Danzer "held that where a statute in creating a liability also put a period to its existence, a retroactive extension of the period after its expiration amounted to a taking without due process of law." And, in Radio Position Finding Corporation v. Bendix Corporation, 205 F.Supp. 850 (D.Minn. 1962), affirmed 371 U.S. 577 (1963) (per curiam), the Court differentiated Danzer as a case where "[r]ight and remedy were inextricably mixed, so that the removal of the bar of limitations constitute[d] the creation of an additional remedy." 13/ Since the limitation in §5-108 was created separately from, and applies generally to, a variety of causes of action, it is clear that the Smith case does not mandate the conclusion that it creates a vested right.

Nevertheless, it has been argued that §5-108 is a substantive, rather than a procdural limitation, and that Smith compels the conclusion that no substantive limitation can be extended retroactively to revive barred causes of action. It is clear, however, that under Maryland law an interference with substantive rights is not always of constitutional magnitude, WSSC v. Riverdale Fire Co., 308 Md. 556, 569 (1987); State commisson on Human Relations v. Amecom Div., 278 Md. 120, 123 (1976). In addition, while §5-108 has been held to be

13 Even as so limited, it is not clear that Danzer is good law. See, Wesley Theological Seminary v. U.S. Gypsum Co., 876 F.2d 119 (D.C.Cir. 1989); Nachtsheim v. Wartnick, 411 N.W.2d 882 (Minn.App. 1987). While the Supreme court has not directly overruled Danzer, it has upheld retroactive extension of a limitations period that was created simultaneously with the cause of action. International Union of Elec, Radio & Machine Wkrs v. Robbins & Meyers, 429 U.S. 229 (1976) (Title VII).

substantive for purposes of determining whether the limit runs against the State, State of Maryland v. Keene Corp., Circuit Court for Anne Arundel County, Civ. Action §1108600 (Thieme, J., 6/9/89); Mayor and City Council of Baltimore v. Keene Corp., Circuit Court for Baltimore City, Case No. 84268068/CL25639 (Davis, J. 6/2/89), 14/ determining whether it is tolled by fraud, First United Methodist Church of Hyattsville v. U.S. Gypsum, ___ F.Supp. ___ (D.Md. 1988), affirmed 882 F.2d 862 (4th Cir. 1989) (cert. pending 89-728) and for choice of law purposes, President & Directors v. Madden, 505 F.Supp. 557 (D.Md. 1980), affirmed 660 F.2d 91 (4th Cir. 1981), it seems clear that the statute does not give rise to the type of right deemed vested in Smith.

At least one court has held that statutes like §5-108 are not substantive. In Bellevue School District 405 v. Brazier Const., 691 P.2d 178 (Wash. 1984), it was held that:

> "The builder limitation statute ... creates no new right, but merely defines a limitation period within which a claim ordinarily must accrue. Even without this statute, a common law right would still exist."

The Court went on to note that, despite the fact that the limit ran from a different time than a typical statute of limitations, the policy is the same: to prevent stale claims and to place a reasonable time limit on exposure. This similarity of purpose militates against finding that §5-108 would create vested rights while a more typical statute of limitations would not. However, it has been argued that because §5-108 can bar a cause of action, while most statutes of limitation simply bar a remedy, §5-108 does create vested rights. That distinction, however, has been described as "somewhat metaphysical", Wesley Theological Seminary v. U.S. Gypsum Co., 876 F.2d 119 (D.C. Cir. 1989) (cert. pending §89-777); see also, School Board of the City of Norfolk v. U.S. Gypsum Co., 360 S.E.2d 325 (Va. 1987) (dissent), and clearly is not one that should determine the issue. 15/

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14 There are reasons to question the correctness of the assumption of these courts that the limit runs against the State if it is substantive. Adverse possession, §5-103, vests title in real property, and thus clearly creates vested rights, yet it does not run against the State. Central Collection Unit v. Atlantic Container Line, 277 Md. 626 (1976). And the District of Columbia statute has been held not to run against the government. District of Columbia v. Owens-Corning Fiberglass Corporation, 1989 WL 99482 (D.C.App. 1989).

15 This is especially true since prior to the 1983 Code Revision, the section clearly only barred the remedy, not the right. The change in language that occurred in the course of Code Revision was designed to address certain interpretive problems arguably raised by the interaction of the section and other statutes of limitation. See, infra. There is no indication that the purposes or policies behind the section had changed, or that the General Assembly felt that it was necessary to create new rights for defendants. In the absence of such evidence, it should not be assumed that such a change was intended. (continued)

In conclusion, it is my view that §5-108, whether it is conceived as barring accrual of any common law or statutory action that may arise from a defect in an improvement to real property, or simply barring a remedy, does not become such an intrinsic part of those causes of action as to create a vested right in the defendant. In the absence of such a vested right, the proposed change may be made retroactive.

I hope that this is responsive to your inquiry.

Sincerely,

Kathryn M. Rowe
Assistant Attorney General

KMR:maa

Geisz v. Greater Baltimore Medical, 313 Md. 301, 322 (1988); Rohrbaugh v. Estate of Stern, 305 Md. 443 (1986).

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STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

FACSIMILE NO.

WRITER'S DIRECT DIAL NO.

February 22, 2023

The Honorable William C. Smith, Jr.
Chair, Judicial Proceedings Committee
2 East Miller Senate Office Bldg.
Annapolis, Maryland 21401

Re: Senate Bill 686 – Civil Actions – Child Sexual Abuse – Definition, Damages, and Statute of Limitations (The Child Victims Act of 2023)

Dear Chair Smith:

Considering the number of times the Office of the Attorney General has weighed in on the constitutionality of previous legislation intended to provide victims of child sexual abuse a meaningful opportunity to hold wrongdoers accountable, I send this letter to confirm our view that Senate Bill 686, The Child Victims Act of 2023, is not clearly unconstitutional. If the General Assembly chooses to pass this legislation and it is enacted, I am comfortable defending the legislation should it be challenged in court.

No Maryland case is directly on point about the constitutional issue Senate Bill 686 raises. A law review article could be written evaluating the facets of the issue. As intellectually interesting as the debate is, however, the victims of childhood sexual abuse are forefront in my mind, along with my constitutional obligations to provide sound legal advice to State officials and to defend State laws. I have reviewed the various past letters of advice from the Office of the Attorney General as well as legal evaluations from others. The materials contain well-researched analyses and reach a reasonable difference of prediction as to how the Maryland Supreme Court would decide the issue. Accordingly, I conclude that, as Attorney General, I can make a good faith defense of the constitutionality of Senate Bill 686.

Several aspects of the issue are worth summarizing here. The primary issue is whether allowing a victim of child sexual abuse to file a civil action for sexual abuse at any time without limitation and without regard to previous time limitations, including any previously barred action, impairs a vested right. The answer turns in large part on whether Chapter 12, 2017 Laws of Maryland extended the statute of limitations for such claims or, alternatively, enacted a statute of repose.

The State's highest court has explained that a statute of limitations is "'a statute establishing a time limit for suing in a civil case, based on the date when the claim accrued (as when the injury occurred or was discovered).'" *Anderson v. United States*, 427 Md. 99, 117 (2012) (quoting Black's Law Dictionary 1546 (9th ed. 2009)). Statutes of limitations are not substantive and can be tolled for reasons such as fraudulent concealment. *Id*. On the other hand, a statute of repose is a "'statute barring any suit that is brought after a specified time since the defendant acted (such as by designing or manufacturing a product), even if this period ends before the plaintiff has suffered a resulting injury.'" *Id*. "The purpose of a statute of repose is to provide an absolute bar to an action or to provide a grant of immunity to a class of potential defendants after a designated time period." *Id*. at 119. *See also Craven v. Hickman*, 135 Md. App. 645, 653 (2000) (noting that a statute of repose "is a substantive grant of immunity derived from a legislative balance of economic considerations affecting the general public and the respective rights of potential plaintiffs and defendants").

Before Courts and Judicial Proceedings Article ("CJP"), § 5-117 was amended by Chapter 12 (House Bill 642) in 2017, there was no question it was a statute of limitations. *See Doe v. Roe*, 419 Md. 687, 703 (2011) (confirming that the statute was procedural and remedial). Moreover, as introduced, there is little doubt that the legislative intent of House Bill 642 was to extend the limitations to allow victims more time to bring civil claims. Thus, if the bill was intentionally changed during the legislative process to become a statute of repose, we would have to conclude that the General Assembly intended to immunize from liability, solely by the passage of time, persons who owed a duty of care to the victims and were grossly negligent, even if those persons concealed their negligence.

On the contrary, a concealment would likely toll a statute of limitations. *See Poffenberger v. Risser*, 290 Md. 631, 637 (1981) (holding that to "activate the running of limitations [it must be proven that the plaintiff had] actual knowledge—that is express cognition, or awareness implied from 'knowledge of circumstances which ought to have put a person of ordinary prudence on inquiry'"). Moreover, the legislature can extend statutes of limitations without concern about impacting substantive rights, and usually apply it retroactively. *Doe*, 419 Md. at 703.

While there is reason to doubt that the legislature intended to give any class of persons immunity from liability for their culpability in child sexual abuse after a certain time, we cannot ignore the arguments there was such intent. First, CJP § 5-117(d) states that "in no event" may an action be filed more than twenty years after the victim reaches the age of majority, which is the wording that is often used to establish the type of absolute bar to an action provided by a statute of repose. In addition, Section 3 of Chapter 12 refers to the subsection as providing "repose to defendants regarding actions that were barred by the period of limitations applicable before October 1, 2017."

Even if the 2017 enactment was intended to create a statute of repose, an elimination of a statute of repose may not impair a vested right in all cases. In 1991, the General Assembly amended CJP § 5-108, which is clearly a statute of repose, to add exceptions for asbestos claims. Citing to a 1990 letter of advice, the Attorney General's bill review letter for the 1991 legislation (Senate Bill 335) stated that "[w]e have previously advised that the statute of repose may be altered retroactively without violating due process." The 1990 letter noted that Maryland's highest court

would analyze whether the retroactive application would "divest or adversely affect vested rights." *See* Letter to the Honorable David B. Shapiro from Asst. Att'y Gen. Kathryn M. Rowe, Feb. 15, 1990. Because the Maryland case law on vested rights was scant at the time, the letter cited cases from other jurisdictions that looked at, among other things, the public interest served by the statute. The letter concluded CJP § 5-108 created no vested rights. The asbestos carve outs are still good law today.

In the 23 years since that letter was written, however, Maryland case law on vested rights has developed. A retrospective application of a limitations period may impair a vested right in some circumstances. The Maryland Supreme Court has pointed out that it "consistently held that the Maryland Constitution ordinarily precludes the Legislature (1) from retroactively abolishing an accrued cause of action, thereby depriving the plaintiff of a vested right, and (2) from retroactively creating a cause of action, *or reviving a barred cause of action, thereby violating the vested right of the defendant*." *Dua v. Comcast Cable*, 370 Md. 604, 833 (2002) (emphasis added). *See also Muskin v. State Dept. of Assessments & Taxation*, 422 Md. 544, 556-57 (2011) (announcing that "[i]t has been firmly settled by this Court's opinions that the Constitution of Maryland prohibits legislation which retroactively abrogates vested rights. No matter how 'rational' under particular circumstances, the State is constitutionally precluded from abolishing a vested property right or taking of a person's property and giving it to someone else.").

The *Dua* and *Muskin* cases, however, did not involve the revival of a cause of action. And courts in other states have upheld retroactive extensions of the statute of limitations for child sexual abuse, largely relying on the compelling public interest. *See, e.g.*, *Sliney v. Previte*, 41 N.E.3d 732 (Mass. Sup. 2015) and *Doe v. Hartford Roman Catholic Diocesan Corp*., 119 A.3d 462 (Conn. 2015). Moreover, in *Doe v. Roe*, the Maryland Supreme Court recognized that "an extended period of time during which alleged victims of child sexual abuse may seek redress in the courts 'improves' the child's right to seek compensation for the alleged wrongs committed against him or her." 419 Md. at 703. Consequently, while it is possible that Senate Bill 686's retrospective reach to time barred actions would be found to be unconstitutional, it is not a given that would be the outcome. It is an open question. *Id*. at 707 (making clear that the case at hand addressing retroactivity did not involve time barred claims and thus, "[b]ecause we are not presented with that scenario, we express no holding regarding the applicability of § 5-117 to child sexual abuse claims barred under the three-year statute as of 1 October 2003, the effective date of the new statute").

In summary, it is our view that Senate Bill 686 is not clearly unconstitutional. If the General Assembly chooses to provide victims of child sexual abuse an expanded chance for justice, I can in good faith defend the legislation should it be challenged in court.

Sincerely,

Anthony G. Brown

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UNIVERSITY of MARYLAND
FRANCIS KING CAREY
SCHOOL OF LAW

TESTIMONY IN SUPPORT OF HOUSE BILL 1

Civil Actions - Child Sexual Abuse - Definition, Damages, and Statute of Limitations
The Child Victims Act of 2023

House Judiciary Committee
March 2, 2023
Submitted by Professor Kathleen Hoke

I am writing in support of House Bill 1 and to address concerns related to the retroactive application of the legislation. This bill will provide the possibility of relief for survivors of child sexual abuse whose claims expired due to the passage of the relevant limitations period. Although concerns about the constitutionality of the retroactive application of the bill are understandable, it is likely that the bill will survive constitutional scrutiny.

House Bill 1 would eliminate the limitations period for civil claims of child sexual abuse, allowing claims to be filed at any time. The change would apply retroactively, reviving claims that had been time barred under previous versions of the statute. The bill would also cap damages on revived claims against private plaintiffs and on revived and future claims against state and local governments and county boards of education. Advocates and the supporting medical and legal experts will no doubt thoroughly explain to the Committee the strong public policy reasons for the legislation. This testimony will address the question on the constitutionality of the retroactive application of the legislation.

Legislation that revives a time-barred claim is rightfully subject to constitutional scrutiny. That is particularly true in this instance because of language added to Courts and Judicial Proceedings §5-117 in 2017, extending the then-8-year statute of limitations to 20 years and purportedly creating a statute of repose in the process. House Bill 1 provokes the question of whether §5-117 is a statute of repose or of limitations, whether that distinction matters, and whether the limitations period can be repealed with retroactive effect in either case. These are relevant questions for a conscientious legislator to consider before voting on the bill. The best answer is that House Bill 1 would survive constitutional scrutiny.

In 2017, the General Assembly passed House Bill 642 (Chapter 12) and Senate Bill 505 (Chapter 56), amending §5-117 to extend the statute of limitations for civil claims of child sexual abuse to the later of: 1) twenty years after the victim reaches the age of majority, or 2) three years after the date on which a perpetrator is convicted of child sexual abuse against the victim. If a claim is brought more than seven years after the alleged sexual assault against a person or governmental entity who is not the perpetrator, the plaintiff must prove that the person or governmental entity "owed a duty of care to the victim," employed or otherwise exercised control over the perpetrator, and acted with gross negligence. §5-117(c). At the same time, the General Assembly added §5-117(d), which provides that *"[i]n no event may an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor be filed against a person or governmental entity that is not the alleged perpetrator more than 20 years after the date on which the victim reaches the age of majority*."

In uncodified language, the General Assembly added that "*the statute of repose under §5-117(d) . . . shall be construed to apply both prospectively and retroactively to provide repose to defendants regarding actions that were barred by the application of the period of limitations applicable before October 1, 2017*." The fundamental question that must be answered to determine the constitutionality of House Bill 1 is whether §5-117[1] creates a vested right deserving constitutional protection.

Maryland courts have struggled to cleanly define statute of repose and to distinguish between statutes of repose and statutes of limitations. Close reading of Maryland case law reveals judicial disfavor of statutes of repose. Examination of two Maryland statutes—one found to be a constitutional statute of repose and another found to be a statute of limitations—elucidates the distinction between the two and the narrowness of what constitutes a statute of repose. Moreover, even if §5-117 is a statute of repose, retroactive expansion of the limitations period may be constitutional. Indeed, the General Assembly has previously expanded a statute of repose, Courts and Judicial Proceedings §5-108 applicable to improvements to real property, with retroactive application.

STATUTES OF REPOSE AND STATUTES OF LIMITATION GENERALLY

The functional difference between a statute of repose and a statute of limitations is that the trigger that starts a repose period is unrelated to injury; it sets a fixed date by which all claims are extinguished. By contrast, the period set in a statute of limitations does not begin to run until the plaintiff is injured by the defendant, meaning that when a claim has accrued, the statute begins to run.

A statute of limitations sets a date by which an injured person must file a civil cause of action against the individual or entity that caused the harm. The trigger that starts the clock is the injury; once a person is aware or should be aware of an injury, they have a set time by which to file a claim. For example, if a person is injured in a vehicle crash due to the negligence of another driver, the statute of limitations for bringing a negligence claim, 3 years in Maryland, begins to run at the time of the crash. Statutes of limitations exist for all civil claims and are typically tolled, or paused, under certain circumstances, such as while the injured party is a minor or under some disability. For example, if a child was injured in the vehicle crash, the 3-year limitations period is tolled until the child reaches age 18. Claims filed by age 21 would be timely. The purpose of a statute of limitations is "to spare the courts from litigating stale claims" and to protect against cases involving lost evidence and faded memories. *Chase Sec. Corp. v. Donaldson*, 325 U.S. 304, 314 (1945). Because statutes of limitations exist only for the public policy purpose of encouraging plaintiffs to file timely claims, they do not create vested rights. *Id.* Generally, statutes of limitations are procedural and may be changed with retroactive effect without invoking constitutional inquiry.

A statute of repose establishes a time after which a defendant is free from liability for a civil claim regardless of whether a claim has accrued. The limitations period in a statute of repose is triggered not by an injury but by some other act. There are only a couple of types of

[1] Hereafter when referring to §5-117, I mean to include the uncodified language added in 2017 as Section 3 in House Bill 642 (Chapter 12, 2017); Senate Bill 505 (Chapter 56, 2017).

statutes of repose; they are unusual and most states have only one or two such provisions. The two most common statutes of repose nationally are those relating to real property improvements and those relating to product liability. For real property improvements, completion of the building triggers the running of the limitations clock, setting a date certain by which architects, engineers, and builders are free of liability. If an individual suffers injury caused by a building design defect after the limitations period expires, they may not bring a claim against the architect or engineer for negligent design. In product liability statutes of repose, the limitations clock is triggered when the product enters the stream of commerce, likewise setting a date certain by which a manufacturer may not be subject to certain claims. Statutes of repose typically do not contain tolling provisions; all claims are extinguished on the set date. The purpose of a statute of repose is to prevent unpredictability for industry and professionals engaged in certain trades and to protect insurers' ability to predict future claims in those industries. These protections allow for stability in the marketplace from which we all benefit. In Maryland, the General Assembly uses statutes of repose in "consideration[] of the economic best interests of the public." *SVF Riva Annapolis v. Gilroy*, 459 Md. 632 (2018). Changing a statute of repose retroactively and reviving extinguished claims raises the constitutional question of whether the statute created a vested right and whether revival of claims unreasonably interferes with that right.

MARYLAND COURTS ON STATUTES OF REPOSE

Maryland courts "look holistically at [a] statute and its history to determine whether it is akin to a statute of limitation or a statute of repose." *Anderson v. United States*, 427 Md. 99, 124 (2012). Relevant in this inquiry are: 1) what triggers the running of the statutory period; 2) whether the statute eliminates claims that have not yet accrued; 3) the purpose behind the statute; and 4) the legislative history surrounding passage of the statute. *Id.*

Prongs one and two of the analysis are related because the determination of what triggers the running of a time period determines whether claims that have not yet accrued are extinguished by the statute. "Statutes of repose differ from statutes of limitation in that the trigger for a statute of repose period is unrelated to when the injury . . . occurs. . . . Thus, a statute of repose may extinguish a potential plaintiff's right to bring a claim before the cause of action accrues." *Id*. at 118-19. Similarly, prongs two and three of the analysis are related because courts typically determine the purpose of the statute using the language of the statute and the legislative history behind its adoption.

Within this framework, Maryland courts have exhibited reluctance to interpret legislation as creating a statute of repose and have narrowly interpreted the one statute of repose in the Maryland Code. The Supreme Court of Maryland had variously referred to Courts and Judicial Proceedings §5-109 as a statute of repose and a statute of limitations. *See id.* at 127.[2] This section provides that a medical malpractice action must be filed the earlier of 1) within 5 years of the "time the injury was committed" or 2) within 3 years of when the injury was discovered. In either case, an injury has occurred prior to running of the period set.

[2] The court discusses a series of cases analyzing §5-109 in which the statute is referred to as a statute of limitations and a statute of repose; the court appears apologetic about its contribution to confusion about the substantive impact of §5-109 as a result of the changing terminology used to describe the statute. *Anderson v. United States*, 427 Md. 99, 113-17 (1985).

In 2012, the *Anderson* court held that §5-109 is a statute of limitations, creating no vested rights. In reaching this conclusion, the *Anderson* court relied on the fact that the trigger for the running of the time period in the statute is when the injury occurred, not an unrelated event, and that §5-109 did not extinguish claims that had not yet accrued because injury was necessary to start the running of the time period. 427 Md. at 125-26.

The court was also persuaded by the fact that §5-109 contains tolling provisions, meaning the statute provides for conditions under which the running of the period for filing a claim is paused, or tolled. *Id*. at 126 (noting tolling during the plaintiff's age of minority or if the defendant engaged in fraudulent concealment). Tolling is the hallmark of a statute of limitations and antithetical to a statute of repose.

And the *Anderson* court compared the language in §5-109 with the language in §5-108 relating to claims of faulty building design or construction, a provision previously held to be a statute of repose. *See, e.g., Whiting-Turner Contracting Company v. Coupard*, 304 Md. 340 (1985)(applying §5-108 to bar a claim that had not accrued prior to the expiration of the time period set in the statute, identified as a statute of repose). The *Anderson* court explained that the General Assembly was aware of how to create a statute of repose—as it did so in §5-108 with language clearly indicating a cause of action "does not accrue" if the injury that would give rise to a cause of action occurs after the time period set in §5-108 runs. Moreover, the court reached its conclusion despite finding that §5-109 was adopted for the purpose of balancing economic interests and providing market stability for medical malpractice insurers and their insureds. *Anderson*, 327 Md. at 124-25. That fact alone was unpersuasive. Section 5-109, with injury as the triggering event to begin the running of the established time period, not extinguishing claims that have not accrued, and with certain conditions tolling the running of the period, was found to be a statute of limitations. Note that while the *Anderson* court set out prongs 3 and 4—statutory language and legislative intent—as relevant, the inquiry turned almost exclusively on prong 1 and 2—the trigger and extinguishing claims before injury occurred.

MARYLAND'S STATUTE OF REPOSE, COURTS AND JUDICIAL PROCEEDINGS §5-108

The statute of repose used as a comparator in *Anderson* is §5-108, limiting claims against property owners, construction companies, engineers, and architects for injuries sustained as a result of negligence in building design and construction. Section 5-108 operates to extinguish claims at year 20 (building owners) or year 10 (architects, engineers, and builders), even if no injury has occurred. The triggering event for the start of the running of the clock is the date the building "became available for its intended use," an event wholly unrelated to any injury. For example, in *Whiting-Turner*, the court found that the builder-defendant could not be held liable for the plaintiff's injury even if the builder had been negligent because the plaintiff was injured more than 10 years after the building was available for its intended use.

Maryland courts are loathe to construe that statute broadly, revealing the disfavor for statutes of repose hinted at in *Anderson*. Statutes of repose are extraordinary and unusual provisions. Because they may be construed as creating vested rights, such provisions should

be narrowly construed. In *SVF Riva Annapolis*, 495 Md. 632 (2018), the Supreme Court of Maryland broadly construed an exception in §5-108 so that the statute of repose does not prevent a cause of action against an owner who remains in possession of the property for the full period in the statute. And in *Carven v. Hickman*, 135 Md. App. 645 (2000), the Appellate Court of Maryland found §5-108 inapplicable to a case concerning the use of real property. Maryland's only statute of repose is narrowly construed, limiting the negative impact of this extraordinary provision.

In addition to the judiciary's disposition against broad application of statutes of repose, the General Assembly has been conservative in creating statutes of repose and has determined that statutes of repose may be changed with retroactive impact reviving claims. As noted, Maryland has only one statute of repose, §5-108. That statute contains an exception that allows certain claims related to asbestos to be made after expiration of the repose period. Claims of personal injury related to asbestos exposure are excepted from the statute of repose. Certain claims of property damage due to the presence of asbestos are also excepted. When the asbestos exception was added to §5-108 in 1991, the exceptions applied retroactively to revive claims that had been extinguished. For the claims of property damage, claims related to buildings constructed as far back as 1953 were revived; those revived claims had to be filed within a two-year period of the effective date of the bill containing the asbestos exceptions. The Attorney General advised that retroactive application of the asbestos exception was constitutional. For a thorough explanation of the 1991 amendments, the General Assembly's revival of expired claims, and the Attorney General's 1990 advice confirming the constitutionality of the amendments, *see* Letter to Chairman Will Smith from Kathleen Hoke, dated January 25, 2023 (attached; the 1990 letter from the Attorney General's Office is attached to the Smith letter).

Not only are statutes of repose rare and disfavored in Maryland, they can be repealed with retroactive application.

IS §5-117 A STATUTE OF REPOSE OR OF LIMITATIONS? MAY THE TIME BAR SET IN THAT SECTION, WHETHER REPOSE OR LIMITATIONS, BE REPEALED WITH RETROACTIVE APPLICATION?

Applying the *Anderson* test, §5-117 should not be considered a statute of repose. First, one must look to determine the triggering event for the running of the 20-year time period and whether the statute extinguishes claims that have not yet accrued. Like in §5-109, the medical malpractice statute found not to be a statute of repose, claims subject to §5-117 arise as a result of a perpetrator's actions that cause injury; the period of time does not begin to run until there has been an injury. Moreover, §5-117 does not extinguish claims that have not yet accrued. The *Anderson* court found this persuasive in finding §5-109 to be a statute of limitations; a court would likely find this point similarly persuasive for §5-117. Additionally, §5-117 contains a tolling provision like §5-109, suspending the running of the period during the victim's period of minority. As a result, there is no date certain on which an act of sexual assault automatically expires like the actions that expire as a result of the application of the statute of repose in §5-108. As noted in *Anderson*, tolling the period during an injured person's period of minority is a trait found in statutes of limitations, not statutes of repose.

The language of the statute is likewise helpful in determining whether §5-117 is a statute of repose or limitations. The *Anderson* court notes that the Maryland General Assembly is aware of the language and conditions necessary to create a statute of repose as the legislature did so in §5-108 by using particular language that clearly extinguishes claims before they have accrued. 304 Md. at 126; §5-108 (relevant causes of action "do not accrue" if the period of time has passed). No such language or substantive provision exists in §5-117; again, pushing to the conclusion that §5-117 is not a statute of repose. The mere fact that the term "repose" is used in §5-117(d) and in the uncodified language passed in 2017 does not alter this analysis. *See Kaczorowski v. City of Baltimore*, 309 Md. 505, 514-15 (1987)(courts are not limited to the words of the statute when discerning meaning).

The *Anderson* court considered the intent of the legislature with respect to §5-108 and found validity to the assertion that the statute was adopted in response to a perceived crisis related to medical malpractice litigation that caused skyrocketing malpractice insurance rates and increasing numbers of malpractice actions against Maryland physicians. The legislature had considered the economic best interests of the public when passing §5-108. *Anderson,* 304 Md. at 124-25; *see also SVF Riva Annapolis*, 459 Md. at 636 n.1 (legislature creates a statute of repose in "consideration[] of the economic best interests of the public"); *Carven*, 135 Md. App. at 652 (statute of repose reflects a "legislative balanc[ing]of economic considerations affecting the general public and the respective rights of the plaintiffs and defendants"). But this was not enough to support a finding that the statute was one of repose rather than of limitations. No such legislative history related to a consideration of the economic interests of the public exists for the 2017 changes. In fact, there appears to be no legislative history regarding the so-called repose provisions that were added via amendment. Sufficient, clear evidence of legislative intent is expected for an extraordinary provision like a statute of repose.

Applying the appropriate analysis to §5-117 results in finding the provision to be a statute of limitations, not a statute of repose. The period of limitations runs as a result of an injury, is tolled during the victim's period of minority, and does not extinguish claims before they have accrued.

Moreover, public policy weighs heavily against finding §5-117 to be a statute of repose. The State has just one statute of repose; §5-108 protects property owners, contractors, and design professionals from negligence claims for 10 or 20 years after a building is completed and available for its intended use. Protecting those engaged in designing and constructing buildings does support economic stability for these professionals and their insurers, perhaps an appropriate use of the extraordinary statute of repose given that real property improvements are a significant driver of the Maryland economy. But allowing a statute of repose for those who sheltered child predators is quite a different matter. To be sure, private and public entities that may be liable for child sexual assault committed by people employed or supervised by the entities could benefit from the stability of knowing that at some point a child's claim is extinguished. That would be true for any tortfeasor. Public policy cuts against such protection for those who harbor offenders who commit atrocious acts of violence against children.

Even if §5-117 is a statute of repose, repeal of the statute with retroactive application should survive constitutional scrutiny. The best support for this conclusion is that the General Assembly has repealed a portion of the one statute of repose in Maryland and explicitly revived previously extinguished claims in doing so. As explained briefly above and more fully in the attached letter to Chairman Smith, in 1991, the General Assembly created an exception in §5-108 that applied retroactively to revive personal injury and property damage claims related to asbestos. Attached to the letter to Chairman Smith is the 1990 advice from the Attorney General that repeal with retroactive application was constitutional. The Attorney General confirmed this conclusion when he submitted the letter of constitutional sufficiency on the 1991 bill that created the asbestos exception with retroactive application.

Opponents argue that Maryland courts do not permit retroactive provisions like those in House Bill 1, regardless of whether §5-117 is a statute of repose or limitations. They rely on two primary cases in making that argument. First, opponents suggest that *Dua v. Comcast Cable*, 370 Md. 604 (2002) found that the Maryland Constitution prohibits legislation reviving an expired cause of action. While *Dua* did hold that "retroactively abolishing an accrued cause of action, depriving the plaintiff of a vested right," violates the Maryland Constitution, the issue of reviving an extinguished claim was not presented to the court. *Dua* involved two statutes: 1) a statute that allowed cable companies to impose late fees that would apply retroactively to terminate cases filed by customers who had paid late fees paid before such fees were lawful; and 2) a statute that allowed HMOs to seek subrogation against funds paid to insureds by others who caused the injury for which the HMO covered medical expenses, terminating cases that insureds had or could file seeking return of monies they had paid in subrogation before HMOs were permitted to seek subrogation. The *Dua* court found that both statutes abolished claims in violation of the Maryland Constitution. Although the court noted that revival of extinguished claims may be unconstitutional, that language is dicta as the case involved terminating claims rather than reviving them.

Second, opponents rely on *Smith v. Westinghouse*, 266 Md. 52 (1972), which involved expansion of the statute of limitations for wrongful death cases to be applied retroactively. Although the *Smith* court found the retroactive application unconstitutional, it did so principally on the basis that the statute at issue was not an ordinary statute of limitations but one that established filing a claim as a condition precedent to the cause of action. This was because the statute of limitations was created at the same time as the cause of action for wrongful death. Frankly, the case is muddled and difficult to comprehend and hardly a clear statement by the court that any revival of an expired civil claim in unconstitutional. Note also that in determining that the 1991 retroactive changes to §5-108 were constitutional, the Attorney General considered the *Smith* case and dismissed its applicability. In the letter of advice, the Attorney General's Office concluded that the Maryland courts had not extended the rationale of *Smith* beyond the narrow circumstance of the creation of a cause of action for wrongful death. *See* Letter to Chairman Smith from Kathleen Hoke, dated January 25, 2023 (attaching Attorney General letter from 1990).

CONCLUSION

Section 5-117 of the Courts and Judicial Proceedings Article does not meet the criteria necessary to be considered a statute of repose; rather, it should be considered a statute of limitations. Regardless, statutes of repose in Maryland may be subject to change with retroactive impact reviving expired claims. The General Assembly took such action with the statute of repose in §5-108 in 1991, with the Attorney General advising that the legislative change was constitutional. Moreover, there is no case law in Maryland establishing that a statute of repose or a statute of limitations may not be changed to revive extinguished claims. As a result, legislators should feel confident that voting favorably on House Bill 1 does not equate to voting for an unconstitutional bill and does equate to voting for effective, fair, and compassionate public policy.

This testimony is submitted by Professor Kathleen Hoke and may not represent the position of the University of Maryland Carey School of Law; the University of Maryland, Baltimore; or the University of Maryland System.

UNIVERSITY of MARYLAND
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The Honorable William C. Smith, Jr.
Chair, Maryland Senate Judicial Proceedings Committee
Miller Senate Office Building
Annapolis, MD 21401

January 25, 2023

Re: Child Victims Act of 2023: House Bill 1/Senate Bill (to-be-determined)

Chairman Smith:

I am writing in follow up to the Briefing on Child Sexual Abuse Prevention and Civil Statute of Limitations held in the Judicial Proceedings Committee on January 19, 2023. At the briefing, you asked whether the asbestos-related exception added to §5-108 of the Courts and Judicial Proceedings Article in 1991 had retroactive impact when passed. In short, the answer is yes. I reviewed the language of §5-108, the legislative file from 1991 when the exception was added through Senate Bill 335, and a letter of advice from the Office of the Attorney General related to Senate Bill 500 from 1990 that sought to add a similar exception. That research makes abundantly clear that: 1) the exception in §5-108 applies retroactively; 2) the General Assembly intended that retroactive application; and 3) the Office of the Attorney General advised that the change was constitutional in 1990 and 1991.

The language of §5-108 makes clear that the asbestos-related exception added in 1991 was to be applied retroactively. Section 5-108 creates a statute of repose applicable to improvements to real property. First passed in 1970, the legislation has been amended several times, most recently in 1991 to add an asbestos-related exception. Section 5-108(d)(2) provides that the time limitations set out in §5-108(a)(20 years for property owners) and (b)(10 years for architects, engineers, and builders) do not apply:

> (ii) In a cause of action against a manufacturer or supplier for damages for personal injury or death caused by asbestos or a product that contains asbestos, the injury or death results from exposure to asbestos dust or fibers which are shed or emitted prior to or in the course of the affixation, application, or installation of the asbestos or the product that contains asbestos to an improvement to real property;
> (iii) In other causes of action for damages for personal injury or death caused by asbestos or a product that contains asbestos, the defendant is a manufacturer of a product that contains asbestos; or

(iv) In a cause of action for damages for injury to real property that results from a defective and unsafe condition of an improvement to real property:

1. The defendant is a manufacturer of a product that contains asbestos;
2. The damages to an improvement to real property are caused by asbestos or a product that contains asbestos;
3. The improvement first became available for its intended use after July 1, 1953;
4. The improvement:
    A. Is owned by a governmental entity and used for a public purpose; or
    B. Is a public or private institution of elementary, secondary, or higher education; and
5. The complaint is filed by July 1, 1993.

This language makes clear that when this exception became effective on July 1, 1991, claims for personal damages due to asbestos exposure are not subject to the limitations in subsections (a) and (b). §5-108(d)(2)(ii) and (iii).[1] Claims for property damages due to the presence of asbestos in a building[2] could be brought as to any structure made available for use after July 1, 1953. §5-108(d)(2)(iv)(3).[3] While the limitations set out in §5-108(a) and (b) would only allow claims for buildings made available 20 or 10 years prior, the new exception applied to buildings made available 38 years prior. There would be no reason to allow claims for 38-year-old buildings if the 20- or 10-year limitation applied. Moreover, in §5-108(d)(2)(iv)(5), the General Assembly set a 2-year deadline by which claims under this exception must be filed. This is a lookback window designed to allow expired claims to be brought within the two-year period after the effective date of the legislation. There would be no reason to establish a filing deadline if stale claims were not revived by the 1991 changes.

The uncodified language and legislative history of the 1991 changes likewise make evident that the changes were to apply retroactively, meaning reviving certain property damage claims that had been extinguished solely due to the passage of the 20- or 10-year limitation period. In fact, a close review of the uncodified language and the bill file reveals that there was little to no concern about allowing expired claims to be brought consistent with the 1991 changes. Rather, the aspect of retroactivity discussed was whether cases that had been finalized could be reopened as a result of the

[1] In late 1990, Maryland courts had determined that §5-108 did not apply to the vast majority of personal injury claims for asbestos exposure, those brought by workers who were exposure during building construction and renovation. Thus, the personal injury claim exclusion here became less important and was not the focus of the legislative discussion of Senate Bill 335 (1991) that created the exception. See Testimony of David Ianucci, Chief Legislative Officer to Governor William Donald Schaefer in bill file for Senate Bill 335 (1991).

[2] These damages are the cost of removal or remediation of asbestos.

[3] This exception was limited to buildings owned and used by the government and buildings used as public or private institutions for education, including higher education. The bill file reflects testimony related only to those types of property.

exception. The General Assembly rejected that aspect of retroactivity as is evident in uncodified section 2 of Senate Bill 335 (1991):

> [T]his Act does not apply to and may not be construed to revive property damage claims in any action for which a final judgment has been rendered and for which appeals, if any, have been exhausted before July 1, 1991, to any property damage claim precluded by a partial summary judgment or court imposed deadline before July 1, 1991, or to any settlement or agreement between parties to the litigation negotiated before July 1, 1991.

The Floor Report accompanying Senate Bill 335 (1991) explains that the bill "excludes certain manufacturers and suppliers of asbestos products from the protection of the statute of repose" in §5-108. That Report likewise explains the restrictions on the retroactivity, noting that finalized claims could not be reopened; inherent in this is that claims that had not been filed or that had not been finalized would benefit from the changes. A document titled Committee Amendments explains that trial court cases in 1988 and 1989 held that the limitations in §5-108 precluded recovery for personal injury from asbestos exposure or property damage due to the presence of asbestos and that the 1991 amendments were designed to change those holdings. The Fiscal Note for Senate Bill 335 (1991) likewise makes clear that the changes would apply retroactively to cases that then pending and those yet-to-be filed:

> This bill, in essence, eliminates the applicable statute of limitations (10-year and 20-year time period) and allows not only those current cases to continue their legal course of action absent a statutory time limit but subsequent cases filed as well.

Senate Bill 335 was an Administration Bill, requested by then-Governor Schaefer, and his Chief Legislative Officer, David Ianucci, submitted testimony that similarly explained the impact of the bill. Mr. Ianucci noted that during the two-year period of July 1, 1991 to July 1, 1993, the statute of repose was waived and recovery would be available for claims except those that had been finalized before July 1, 1993.

In addition to these formal documents revealing the intended retroactive impact of Senate Bill 335 (1991), the bill fill contains written testimony from many entities and organizations that would benefit from the retroactive application of the exception. For example, testimony from the Archdiocese of Baltimore and the Archdiocese of Washington (with Maryland-based parochial schools) described the significant expenses associated with asbestos remediation in their school buildings, identifying the dates of construction of those buildings going back to the 1950s. In fact, those organizations and the Maryland Catholic Conference requested that the changes be even further retroactive, asking that the changes apply to buildings made available from 1950 forward, not just those from 1953 forward, arguing that many of their school buildings were constructed between 1950 and 1952. Likewise, support for the legislation from the Maryland Association of Boards of Education and individual county

boards of education and school systems explains the profoundly negative fiscal impact if they are not permitted to bring claims that would be revived by the 1991 exception.

Many of the documents in the bill file provide context that makes clear that the 1991 amendments were to apply retroactively. Asbestos was used prolifically in construction throughout the United States for more than 70 years, with the devastating health impact of exposure unknown. By the time individuals became aware of the connection between asbestos exposure and long-term health consequences, their claims were likely barred by §5-108. This is also the case for entities that became aware of the harms and the need to remediate properties that contain asbestos. Because §5-108 is a statute of repose that begins to run upon availability of the property, personal injury and property damage claims were terminated before individuals and entities could have brought suit. The balance of equities at the time dictated a lifting of the statute of repose to revive those claims. Consistent with the context, unambiguous and thorough documents in the bill file for Senate Bill 335 (1991) lead to the conclusion that the 1991 amendments were to be applied in a manner that would revive stale claims.

The inescapable conclusion is that the 1991 changes to §5-108 were applied retroactively, reviving asbestos-related personal injury and property damage claims that had been extinguished by the statute of repose. And the Office of the Attorney General found the revival constitutional. In the letter of review for constitutional sufficiency on Senate Bill 335 (1991), then-Attorney General J. Joseph Curran, Jr., explained: "We have previously advised that the statute of repose may be altered retroactively without violating due process. See letter to Delegate David. B. Shapiro from Kathryn M. Rowe dated February 15, 1990." That letter is found in the bill file for Senate Bill 500 (1990), a predecessor to Senate Bill 335 (1991) that was passed and then vetoed by then-Governor Schaefer. I have attached it here as well. Although full analysis of the constitutionality of the revival of claims by lifting or expanding a statute of limitations or repose is beyond the scope of this letter, the 1990 Rowe letter is direct and clear: "In conclusion, it is my view that § 5-108, whether it is conceived as barring accrual of any common law or statutory action that may arise from a defect in an improvement to real property, or simply barring a remedy, does not become such an intrinsic part of those causes of action as to create a vested right in the defendant. In the absence of such a vested right, the proposed change may be made retroactive."

I hope this letter answers your question on the retroactivity of the 1991 changes to §5-108. Please let me know how I can further support your work on this issue.

Very truly yours,

cc: Chairman C. T. Wilson

Sen. Stone

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February 15, 1990

The Honorable David B. Shapiro
320 House Office Building
Annapolis, Maryland 21401-1990

Dear Delegate Shapiro:

You have asked for advice as to whether a change in Courts and Judicial Proceedings Article, §5-108, "Injury to person or property occurring after completion of improvement to realty" may be given retroactive effect. 1/ It is my view that it may.

Section 5-108

Section 5-108 was originally passed in 1970 after similar bills failed in 1967, 1968 and 1969. 2/ The legislative history 3/ reveals that the bill was enacted in response to

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1 It is my understanding that the desire is to have the change apply in pending cases, and this advice is given with that understanding. It should be understood that the provision may not be applied to alter judgments that have become final. Maryland Port Admin. v. I.T.O. Corp., 40 Md.App. 697, 722, n. 22 (1978).

2 Senate Bill 240 of 1967 passed the Senate after the limit was amended from six to nine years, but was killed in committee in the House. The 1968 and 1969 bills (Senate Bills 68, 88 and 601 and House Bill 858 of 1968 and Senate Bill 162 of 1969) all died in committee in the originating houses. Senate Bill 241 of 1970 initially failed in the House, but was revived, amended to change the limit from nine to 20 years, and passed.

3 While legislative history from this era is not usually available, the file from the summer study of Senate Bill 162 of 1969 has survived and is available from Legislative Reference.

increasing suits against design professionals and contractors arising from judicial abolition of privity requirements and the adoption of the discovery rule for purposes of applying statutes of limitation. Whiting-Turner Contracting Co. v. Coupard, 304 Md. 340 (1985). Testimony by the Building Congress of Exchange, the Maryland Council of Architects, and the Consulting Engineers Council of Maryland expressed concern that, with the new changes in the law design professionals, builders and contractors were faced with the possibility that suit could be filed against them at any time in their life, and even against their estate after their death, even though they had no control over maintenance, repair, or remodeling of the building since it was completed. They noted that the passage of time raised problems of lost evidence and faded memories, and that even where defenses were successful, they were expensive. Thus, those testifying sought to be relieved of the necessity of defending suits after the passage of a set period of time.

The 1970 bill was codified at Article 57, §20, and provided:

> No action to recover damages for injury to property real or personal, or for bodily injury or wrongful death, arising out of the defective and unsafe condition of an improvement to real property, nor any action for contribution or indemnity for damages incurred as a result of said injury or death, shall be brought more than twenty years after the said improvement was substantially completed. This limitation shall not apply to any action brought against the person who, at the time the injury was sustained, was in actual possession and control as owner, tenant, or otherwise of the said improvement. For purposes of this section, "subtantially completed" shall mean when the entire improvement is first available for its intended use.

In 1973 the section was recodified as Courts and Judicial Proceedings Article, §5-108, which read:

> (a) Except as provided by this section, no cause of action for damages accrues and a person may not seek contribution or indemnity for damages incurred when wrongful death, personal injury, or injury to real or personal property resulting from the defective and unsafe condition of an improvement to real property occurs more than 20 years after the date the entire improvement first becomes available for its intended use.
>
> (b) This section does not apply if the defendant was in actual possession and control of the property as owner, tenant, or otherwise when the injury occurred.
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> (c) A cause of action for an injury described in this section accrues when the injury or damage occurs.

Code Revision explained the change as follows:

> This section is new language derived from Article 57, §20. It is believed that this is an attempt to relieve builders, contractors, landlords, and realtors of the risk of latent defects in design, construction, or

> maintenance of an improvement to realty manifesting themselves more than 20 years after the improvement is put in use./ The section is drafted in the form of a statute of limitation, but, in reality, it grants immunity from suit in certain instances. Literally construed, it would compel a plaintiff injured on the 364th day of the 19th year after completion to file his suit within one day after the injury occurred, a perverse result to say the least, which possibly violates equal protection. Alternatively, the section might allow wrongful death suits to be commenced 18 years after they would be barred by the regular statute of limitations.
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> The section if conceived of as a grant of immunity, avoids these anomalies. The normal statute of limitations will apply if an actionable injury occurs. [4/]
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> Subsection (c) is drafted so as to avoid affecting the period within which a wrongful death action may be brought.

Subsequent changes shortened the limit to ten years for architects and engineers (Chapter 698 of 1979) and for contractors (Chapter 605 of 1980).

The proposed legislation would provide that the section would not apply to a defendant who is a manufacturer or supplier of materials that are part of the improvement to real property. The legislation is being proposed in response to a series of court cases that have held that the section applies to bar suits against manufacturers of construction materials containing asbestos where those materials were installed over 20 years ago. See, First United Methodist Church v. U.S. Gypsum Co., 882 F.2d 862 (4th Cir. 1989); In re Personal Injury Asbestos Cases, Circuit Court for Baltimore City (Levin, J. 11/1/89); State of Maryland v. Keene Corp., Circuit Court for Anne Arundel County, Civil Action No. 1108600 (Thieme, J. 6/9/89); Mayor and City Counci of Baltimore v. Keene Corp., Circuit Court for Baltimore City, Case No. 84268068/CL25639 (Davis, J. 6/2/89).

Federal Due Process

The federal cases on retroactivity leave no doubt that retroactivity of the proposed legislation would not violate the federal Due Process Clause. The case that established the modern federal approach to retroactivity is Usery v. Turner Elkhorn

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4 It is my view that this would be the law in any event. For example, in Comptroller of Virginia v. King, 232 S.E.2d 895 (Va. 1977), it was held that Virginia's statute of limitations involving injuries from improvements to real property simply set an arbitrary outside limit on the initiation of lawsuits, and did not extend existing limits, such as the two-year limit for personal injury action. In addition, Code Revision's attempt to cure this problem was unsuccessful, as the Legislature found it necessary to amend the section in 1979 to clarify that an action must be filed within three years of accrual.

Mining Co., 428 U.S. 1 (1976), which involved federal legislation establishing a system for compensation for coal miners disabled by black lung disease. Mine operators argued that the statute was unconstitutional because it imposed liability on them for disabilities suffered by miners who left their employ prior to the effective date of the Act, thus charging them "with an unexpected liability for past, completed acts that were legally proper and, at least in part, unknown to be dangerous at the time." Id. at 15. The Court concluded that "legislation readjusting rights and burdens is not unlawful solely because it upsets otherwise settled expectations.... This is true even though the effect of the legislation is to impose a new duty or liability based on past acts." Id. at 16. Thus, the Court held that, as with other laws not impinging on a fundamental right, the appropriate test was rational basis. Specifically, the Court stated that:

> "It is by now well-established that legislative Acts adjusting the burdens and benefits of economic life come to the Court with a presumption of constitutionality, and that the burden is on one complaining of a due process violation to establish that the legislature has acted in an arbitrary and irrational way." Id. at 15.

The Court went on to say that:

> "It does not follow, however, that what Congress can legislate prospectively it can legislate retrospectively. The retrospective aspects of legislation, as well as the prospective aspects, must meet the test of due process, and the justifications for the latter may not suffice for the former." Id. at 16-17.

While recognizing that the mine operators may not have known of the dangers, and had possibly acted in reliance upon their lack of liablity, the Court found that the Act was a rational measure to spread the costs of employee disability to those who have profited from the fruits of their labor. Id. at 18.

Like the statute in question in the Elkhorn Turner case, the proposed legislation seeks to allocate the benefits and burdens of economic life and, therefore, is subject to rational basis scrutiny. And, even if the proposed legislation is seen as creating new liability, it must also be seen as a rational measure to allocate the costs of personal injury from exposure to asbestos and for removal of asbestos to those who profited from its sale, and who were the most likely to have known of the dangers. 5/ Precisely that conclusion was reached in Wesley

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5 The dangers of asbestos exposure have been known since at least the turn of the century. See, District of Columbia v. Owens-Corning Fiberglass Corp., 1989 WL 99482 (D.C.App. 1989). Purchasers and employees, however, were unlikely to know asbestos was contained in the building materials.

Theological Seminary v. U.S. Gypsum Co., 876 F.2d 119 (D.C.Cir. 1989) (cert. pending #89-777), which upheld the retroactivity of a similar change to the D. C. statute governing claims arising from improvements to real property. 6/ In that case the Court specifically noted the absence of reliance, as the limitation did not exist at the time the materials were supplied, but was enacted afterwards. The Court also found that it made no difference for purposes of constitutional analysis that the asbestos liability was not created, as in Turner Elkhorn, but revived.

It is worthy of note that, as was the case in the Wesley Theological Seminary case, the statute in Maryland was not effective until July 1, 1970. Thus, no case that currently is held to be barred involves a manufacturer or supplier who could have relied on the bar at the time the materials were supplied.

There is an aditional factor minimizing the importance of reliance for purposes of due process analysis. That is that until the recent decisions of the lower courtrs in the asbestos cases, it was not generally understood that manufacturers and suppliers were covered by §5-108. 7/ It is undisputed that §5-108 was enacted in response to cases expanding the exposure of design professionals and contractors to liability. The legislative record reflects testimony concerning the problems faced by architects, professional engineers, contractors and builders and is free from any similar discussions with respect to manufacturers and suppliers. 8/ In fact, the Legislature has declined to give similar protecton to products liability defendants. 9/ The Revisor's Note from 1973 states that the section applies to builders, contractors, landlords and realtors. And no reported case has applied the section to a manufacturer or supplier. 10/ Thus, the action of the

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6 The D. C. statute is similar to Maryland's, a point frequently noted by the courts construing them. See, President and Directors, Etc. v. Madden, 505 F.Supp. 557 (D.Md. 1980) aff'd 660 F.2d 91 (4th Cir. 1981); In re Personal Injury Asbestos Cases, Circuit Court for Baltimore City (Levin, J. 11/1/89).

7 In fact, that issue is still not settled, as it has not yet been considered by a State appellate court, and lower courts' interpretations of law enjoy no presumption of correctness on review. Rohrbaugh v. Estate of Stern, 305 Md. 443 (1986).

8 The sole mention of manufacturers is a passing in the testimony of an opponent, Wallace Dann, see Judiciary Committee Minutes, June 24, 1969, p. 3.

9 See Senate Bill 988 of 1977.

10 Whiting-Turner Contracting Co. v. Coupard, 304 Md. 304 (1985), has been cited as evidence that the section appies to suppliers of building materials and equipment. That question was not an issue in the case, however, and the passing reference to suppliers no more settles the issue of their inclusion than the omission of any mention of suppliers in (continued)

Legislature in making the change retroactive could be seen as simply restoring the law to the state the parties most likely believed existed. 11/ Numerous cases have upheld retroactive changes in the law under similar circumstances.

In Seese v. Bethlehem Steel Co., 168 F.2d 58 (4th Cir. 1949), the Court upheld application of the Portal-to-Portal Act, which provides that an employer need not pay an employee for time spent dressing and walking to the worksite unless such pay was provided by contract or was paid as a matter of custom and practice, to pending cases filed after a recent Supreme Court case had held that the Fair Labor Standards Act required such pay in all instances. In the words of the Court:

> "[A]ll that congress has done by the legislation here under consideration is to validate the contracts and agreements between employers and employees which were invalid under the Fair Labor Standards Act by reason of the interpretation placed by the Supreme Court upon that Act." Id. at 64.

Similarly, in Rhinebarger v. Orr, 657 F.Supp. 1113 (S.D.Ind. 1987), aff'd 839 F.2d 387 (7th Cir.), cert. denied, 109 S.Ct. 71 (1988), the Court upheld a retroactive Act designed to delay the applicability of the Fair Labor Standards Act to the states following the Supreme Court decision in Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985), and held that the Act applied to cases filed after Garcia, but prior to the effective date of the Act.

And, in Sanelli v Glenview State Bank, 483 N.E.2d 226 (Ill. 1985), the Court upheld retroactive application of a statute that specifically permitted a long-accepted practice that a recent case had found to be a violation of fiduciary duty. The Court held that the:

Poffenberger v. Risser, 290 Md. 631, 634, n. 2 (1981) mandates the conclusion that they are excluded.

11 Even if the section were intended to include manufacturers and suppliers in general, it seems unlikely that the General Assembly intended "injury ... resulting from the defective and unsafe condition of an improvement to real property" to include injuries from such materials as asbestos, which is unsafe completely apart from its role as a part of an improvement to real property. This difference can be illustrated by comparing asbestos and a defective steel beam. The steel beam is not dangerous by itself, and can be brought to the work site and left there without noticeable risk to anyone. Only when the steel beam is included in a building does it become dangerous, because it is unable, due to its defect, to bear enough weight to perform its expected role in the improvement. Acoustical tile treated with asbestos, in contrast, is dangerous in its own right. Left at the worksite, it is potentially as dangerous as when installed as a ceiling. Unlike the steel beam, however, it performs its role as a part of the improvement to real property adequately -- the beams are covered and sound is absorbed.

> "General Assembly may enact retroactive legislation which changes the effect of a prior decision of a reviewing court with respect to cases which have not been finally decided."

Clearly then, retroactive application of the proposed change to §5-108 would not violate federal due process.

State Due Process

The State Due Process Clause, Declaration of Rights, Article 24, 12/ is generally interpreted as in pari materia with the federal provision. Northampton Corp. v. Washington Suburban Sanitary Com., 278 Md. 677 (1976). In the area of retroactive legislation, however, the Court of Appeals has not yet adopted the modern federal rule as reflected by Turner Elkhorn and Pension Benefit Guaranty Corp. v. R. A. Gray & Co., 467 U.S. 717 (1984) (unanimous), but has adhered to the older rule which looks to whether the proposed retroactivity would infringe upon "vested rights". Thus, the Court has said that "[a] statute, even if the Legislature so intended, will not be applied retrospectively to divest or adversely affect vested rights." Vytar Associates v. City of Annapolis, 301 Md. 558, 572, n. 6 (1989). Although it has been applied in other contexts, this concept has largely been used to invalidate the retroactive imposition of taxes and fees. See, Vytar, supra; Washington National Arena v. Prince George's County, 287 Md. 38, cert. denied 449 U.S. 834 (1980); National Can Corp. v. State Tax Com'n, 220 Md. 418 (1959); Comptroller v. Glenn L. Martin Co., 216 Md. 235, cert. denied 358 U.S. 820 (1958).

The term "vested right" has been recognized to be conclusory -- "a right is vested when it has been so far perfected that it cannot be taken away by statute." Hochman, The Supreme Court and the Constitutionality of Retroactive Legislation, 73 Harvard Law Review 692, 696 (1960); Sanelli v. Glenview State Bank, 483 N.E.2d 226 (Ill. 1985). Factors that have been suggested in determining whether a right has vested include:

> "the nature and strength of the public interest served by the statute, the extent to which the statute modifies or abrogates the asserted preenactment right, and the nature of the right which the statute alters." Hochman, 73 Harv.L.Rev. at 697.

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12 Article 24 provides:

> "That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land."

In this situation the public interest is strong. The public clearly has an interest in providing remedies for those injured by toxic and carcinogenic materials with long latency periods, and in imposing that liability on the parties best able to learn of the danger and prevent it. The State also has an interest in helping owners of buildings that contain asbestos obtain funds for its removal so that no further injury occurs. In addition, the State has an interest in obtaining funds to remove asbestos from its own buildings so as to remove a threat to the health of those citizens that use the buildings. District of Columbia v. Owens-Corning Fiberglass Corp., 1989 W.L. 99482 (D.C.App. 1989). It is also clear that the "right" asserted, freedom from suit, would be completely abrogated. It is my view, however, that the public interest outweighs any disadvantage to the defendant, especially when the nature of the right asserted is taken into account.

One factor that weighs against a finding that a right is vested is a finding that the right rests on "insubstantial equities". Hochman, 73 Harv.L.Rev. at 720. One class of such cases are those extending statutes of limitations, as "no man promises to pay money with any view to being released from that obligation by lapse of time." Campbell v. Holt, 115 U.S. 620, 628 (1885). Another is whether the Act is curative, Hochman, 73 Harv.L.Rev. at 721. Both factors weigh against finding a vested right in this situation. Thus, balancing these factors, it would appear that no vested right should be found. This is in accord with the general rule in Maryland that changes in statutes of limitation may be made retroactive, Allen v. Dovell, 193 Md. 359 (1949), as well as the rule that "there can be no vested right to violate a moral duty, or to resist the performance of a moral obligation," Grinder v. Nelson, 9 Gill 299 (1850). This has long been the federal rule. In Campbell v. Holt, 115 U.S. 620 (1885), the Supreme Court upheld a statute reviving causes of action on which statutes of limitation had run. After differentiating the limit involved from one, such as adverse possession, that would vest title to real property, the Court held as follows:

> "The implied obligation of defendant's intestate to pay his child for the use of her property remains. It was a valid contract, implied by the law before the statute began to run in 1866. Its nature and character were not changed by the lapse of two years, though the statute made that a valid defense to a suit on it. But this defense, a purely arbitrary creation of the law, fell with the repeal of the law on which it depended.
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> "It is much insisted that this right to a defense is a vested right, and a right of property which is protected by the provisions of the fourteenth amendment. It is to be observed that the words 'vested right' are nowhere used in the constitution, neither in the original instrument nor in any of the amendments to it.... We certainly do not understand that a right to defeat a just debt by the statute of limitations is a vested right so as to be beyond legislative power in a proper case." Id. at 627-628.

It has been asserted, however, that the decision in Smith v. Westinghouse Electric, 266 Md. 52 (1972), compels the conclusion that §5-108 creates vested rights. That case involved a change in the statute of limitations applicable to actions for wrongful death. The Court noted that the wrongful death act created a new cause of action for something the deceased person never had -- the right to sue for injuries. It then held that where a cause of action and its limitation are created together, the timeliness of the action is a condition precedent to the right to maintain the action. See also, Chandlee v. Shockley, 219 Md. 493 (1959). In that situation, the Court held that the extension of the limit could not be made retroactive.

No Court of Appeals case has extended the rationale of Smith beyond the specific situation where the cause of action and its limitation are created by the same act, or by a later act specifically directed at the newly created cause of action. The case upon which Smith relied, William Danzer & Co. v. Gulf of S.I.R. Co., 268 U.S. 633 (1925), has been similarly limited. In Chase Securities Corporation v. Donaldson, 325 U.S. 304 (1945), the Court stated that Danzer "held that where a statute in creating a liability also put a period to its existence, a retroactive extension of the period after its expiration amounted to a taking without due process of law." And, in Radio Position Finding Corporation v. Bendix Corporation, 205 F.Supp. 850 (D.Minn. 1962), affirmed 371 U.S. 577 (1963) (per curiam), the Court differentiated Danzer as a case where "[r]ight and remedy were inextricably mixed, so that the removal of the bar of limitations constitute[d] the creation of an additional remedy." 13/ Since the limitation in §5-108 was created separately from, and applies generally to, a variety of causes of action, it is clear that the Smith case does not mandate the conclusion that it creates a vested right.

Nevertheless, it has been argued that §5-108 is a substantive, rather than a procdural limitation, and that Smith compels the conclusion that no substantive limitation can be extended retroactively to revive barred causes of action. It is clear, however, that under Maryland law an interference with substantive rights is not always of constitutional magnitude, WSSC v. Riverdale Fire Co., 308 Md. 556, 569 (1987); State commisson on Human Relations v. Amecom Div., 278 Md. 120, 123 (1976). In addition, while §5-108 has been held to be

13 Even as so limited, it is not clear that Danzer is good law. See, Wesley Theological Seminary v. U.S. Gypsum Co., 876 F.2d 119 (D.C.Cir. 1989); Nachtsheim v. Wartnick, 411 N.W.2d 882 (Minn.App. 1987). While the Supreme court has not directly overruled Danzer, it has upheld retroactive extension of a limitations period that was created simultaneously with the cause of action. International Union of Elec, Radio & Machine Wkrs v. Robbins & Meyers, 429 U.S. 229 (1976) (Title VII).

substantive for purposes of determining whether the limit runs against the State, State of Maryland v. Keene Corp., Circuit Court for Anne Arundel County, Civ. Action §1108600 (Thieme, J., 6/9/89); Mayor and City Council of Baltimore v. Keene Corp., Circuit Court for Baltimore City, Case No. 84268068/CL25639 (Davis, J. 6/2/89), 14/ determining whether it is tolled by fraud, First United Methodist Church of Hyattsville v. U.S. Gypsum, ___ F.Supp. ___ (D.Md. 1988), affirmed 882 F.2d 862 (4th Cir. 1989) (cert. pending 89-728) and for choice of law purposes, President & Directors v. Madden, 505 F.Supp. 557 (D.Md. 1980), affirmed 660 F.2d 91 (4th Cir. 1981), it seems clear that the statute does not give rise to the type of right deemed vested in Smith.

At least one court has held that statutes like §5-108 are not substantive. In Bellevue School District 405 v. Brazier Const., 691 P.2d 178 (Wash. 1984), it was held that:

> "The builder limitation statute ... creates no new right, but merely defines a limitation period within which a claim ordinarily must accrue. Even without this statute, a common law right would still exist."

The Court went on to note that, despite the fact that the limit ran from a different time than a typical statute of limitations, the policy is the same: to prevent stale claims and to place a reasonable time limit on exposure. This similarity of purpose militates against finding that §5-108 would create vested rights while a more typical statute of limitations would not. However, it has been argued that because §5-108 can bar a cause of action, while most statutes of limitation simply bar a remedy, §5-108 does create vested rights. That distinction, however, has been described as "somewhat metaphysical", Wesley Theological Seminary v. U.S. Gypsum Co., 876 F.2d 119 (D.C. Cir. 1989) (cert. pending §89-777); see also, School Board of the City of Norfolk v. U.S. Gypsum Co., 360 S.E.2d 325 (Va. 1987) (dissent), and clearly is not one that should determine the issue. 15/

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14 There are reasons to question the correctness of the assumption of these courts that the limit runs against the State if it is substantive. Adverse possession, §5-103, vests title in real property, and thus clearly creates vested rights, yet it does not run against the State. Central Collection Unit v. Atlantic Container Line, 277 Md. 626 (1976). And the District of Columbia statute has been held not to run against the government. District of Columbia v. Owens-Corning Fiberglass Corporation, 1989 WL 99482 (D.C.App. 1989).

15 This is especially true since prior to the 1983 Code Revision, the section clearly only barred the remedy, not the right. The change in language that occurred in the course of Code Revision was designed to address certain interpretive problems arguably raised by the interaction of the section and other statutes of limitation. See, infra. There is no indication that the purposes or policies behind the section had changed, or that the General Assembly felt that it was necessary to create new rights for defendants. In the absence of such evidence, it should not be assumed that such a change was intended. (continued)

In conclusion, it is my view that §5-108, whether it is conceived as barring accrual of any common law or statutory action that may arise from a defect in an improvement to real property, or simply barring a remedy, does not become such an intrinsic part of those causes of action as to create a vested right in the defendant. In the absence of such a vested right, the proposed change may be made retroactive.

I hope that this is responsive to your inquiry.

Sincerely,

Kathryn M. Rowe
Assistant Attorney General

KMR:maa

Geisz v. Greater Baltimore Medical, 313 Md. 301, 322 (1988); Rohrbaugh v. Estate of Stern, 305 Md. 443 (1986).

Maryland Testimony Final Draft 2.27.23.pdf
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TO: The Honorable Members of the House Judiciary Committee

FROM: Marci Hamilton, Founder & CEO, CHILD USA; Professor, University of Pennsylvania, and Kathryn Robb, Executive Director, CHILD USAdvocacy

RE: Testimony in Support of HB1: The Child Victims Act of 2023

DATE: March 2, 2023

Dear Honorable Members of the House Judiciary Committee,

Thank you for allowing us, Professor Marci Hamilton of CHILD USA and Kathryn Robb of CHILD USAdvocacy, to submit testimony in support of HB1 a.k.a. The Child Victims Act of 2023, which will allow certain child sexual abuse claims to be filed at any time including those which were previously barred by any statute of limitation (SOL) or repose, claim presentation deadline, or any other limitation under the law, thereby significantly increasing access to justice for victims of these heinous crimes.

By way of introduction, Professor Marci Hamilton is a First Amendment constitutional scholar at the University of Pennsylvania who has led the national movement to reform statutes of limitations to reflect the science of delayed disclosure of childhood sexual abuse and who founded CHILD USA, a national nonprofit think tank devoted to ending child abuse and neglect. Kathryn Robb is the Executive Director of CHILD USAdvocacy, an advocacy organization dedicated to protecting children's civil liberties and keeping children safe from abuse and neglect. Kathryn is also an outspoken survivor of child sex abuse.

First, we want to thank the Committee Members, for taking up HB1. This legislation is vital to the safety of the children of Maryland and to upholding basic principles of fairness and justice. It is a constitutionally sound policy shift that is consistent with national trend in reviving civil claims for child sexual abuse.

I. REVIVAL OF TIME-BARRED CIVIL CLAIMS TO PROVIDE JUSTICE FOR VICTIMS OF CHILD SEXUAL ABUSE IS CONSTITUTIONAL IN MARYLAND

There is no provision in the Maryland State Constitution that prohibits the retroactive application of a revival window for perpetrators and enablers of child sexual abuse who have no vested interest in a limitations defense. Even if we assume, *arguendo*, that there is a substantive right that attaches to an SOL, the state's compelling interests in public safety and children protection outweigh any due process concerns of defendants.

A. Revival of a Civil SOL Is Constitutional Because Its Effect Does Not Impair Vested

Rights

The revival of a statute of limitation is constitutional in Maryland. When judging the validity of a retroactive statute, Maryland courts ask "whether retroactive effect would impair vested rights." Allstate Ins. Co. v. Kim, 376 Md. 276, 293 (2003). Retroactive effect of a civil revival statute, providing justice for victims of child sex abuse would not impair any vested rights.[i]

To determine whether a right vests, courts will assess whether "it is actually assertible as a legal cause of action or defense or is so substantially relied upon that retroactive divestiture would be manifestly unjust." Allstate, 376 Md. at 297. A vested right "**must be something more than a mere expectation based upon an anticipated continuance of the existing law**; it must have become a title, legal or equitable, to the present or future enjoyment of property, a demand, or a legal exemption from a demand by another." Id. at 298 (emphasis added).

In Doe v. Roe, the court considered an extension of the civil SOL for a claim of child sexual abuse, ultimately determining that the extension was a procedural and remedial statute, and thus could be given retrospective application. 419 Md. 687 (2011). The Doe court explained that the extension of the child sex abuse SOL "did not infringe any vested or substantial right of [the] Defendant." 419 Md. at 687 (2011). The court further added that there appears to be "no reported case in Maryland that would mandate the unconstitutionality of [a fully] retroactive application of [the civil SOL]" Id. at 687, 698.

Reviving the civil SOL for Maryland's victims does not violate any provision of the Maryland state constitution. There is no right to a limitations defense. It is unreasonable for those responsible for the sexual abuse of children to claim wholesale immunity from their actions by relying on the existence of a short SOL. The abuse of children has always been illegal and any policy shift increasing liability for those responsible for child sex abuse would not be considered stripping defendants of any kind of right. The retroactive application of an SOL merely serves, in these cases, as a practical and pragmatic device to aid the courts in the search for justice. Not only does the revival of the expired procedural SOLs not interfere with any vested rights, it will also provide much- needed closure to these victims who have been shut out of court due to an arbitrary procedural deadline.

B. Even If a Court Were to Find That There Is a Substantive Right Attached to an SOL, that Right Is Outweighed By the State's Compelling Interest in Identifying Hidden Child Predators and Protecting Maryland's Children

The state's compelling interest in protecting Maryland's children outweighs any potential due process claim in an SOL defense. It is long-established that states have a compelling interest in the protection of children. See, e.g., Globe Newspaper Co. v. Superior Court, 457 U.S. 596, 607 (1982) (It is clear that a state's interest "safeguarding the physical and psychological well-being of a minor" is "compelling."); New York v. Ferber, 458 U.S. 747, 756–57 (1982) ("*First.* It is evident beyond the need for elaboration that a State's interest in 'safeguarding the physical and psychological well-being of a minor' is compelling."); Ashcroft v. Free Speech Coal., 535 U.S.

234, 263 (2002) (O'Connor, J., concurring) ("The Court has long recognized that the Government has a compelling interest in protecting our Nation's children.").

Maryland follows the Supreme Court in finding a compelling or significant interest in protecting children. See, e.g., In re S.K., 237 Md. App. 458, 469–70, cert. granted, 461 Md. 483 (2018) (explaining that the Supreme Court, Court of Appeals of Maryland, and the Court of Special Appeals of Maryland have all recognized the state interest in child protection);Outmezguine v. State, 335 Md. 20, 37 (1994) ("The State unquestionably has a significant interest in protecting children."). "There is also no doubt that[] '[t]he sexual abuse of a child is a most serious crime and an act repugnant to the moral instincts of a decent people.'" Packingham v. North Carolina, 137 S. Ct. 1730, 1736 (2017) (citing Ashcroft, 535 U.S. at 244). It is also established that "a legislature may pass valid laws to protect children and other victims of sexual assault from abuse. See id., at 245; accord, New York v. Ferber, 458 U.S. 747, 757 (1982)." Packingham, 137 S. Ct. at 1736 (internal citations omitted). The compelling interest in protecting Maryland's children from sexual abuse justifies the legislative enactment of a narrowly tailored time-limited civil revival window.

II. LANGUAGE, LEGISLATIVE INTENT, AND HISTORY SUPPORT THAT § 5-117(D) IS A STATUTE OF LIMITATIONS, NOT A STATUTE OF REPOSE, THAT MAY BE RETROACTIVELY REPEALED WITHOUT CONSTITUTIONAL CONCERN

Statutes of limitation and statutes of repose (SORs) are different in both their purpose and legal effect. A "statute of limitation" is a procedural device which sets a date by which a claim must be filed based on when the injured party knew or should have known of the harm and who caused it. See, Anderson v. U.S., 427 Md. 99, 117 (Md.,2012) (quoting Black's Law Dictionary). A "statute of repose," which can be substantive or procedural, sets a date by which a claim must be filed regardless of whether the injured party is aware of the injury and who caused it or whether the injury has even occurred. Id. Thus, "a critical distinction" between a statute of limitation and a statute of repose is that "a repose period is fixed" such that its expiration "will not be delayed by estoppel or tolling." See 4 C. Wright & A. Miller, Federal Practice and Procedure § 1056, p. 240 (3d ed. 2002) Restatement (Second) of Torts § 899, Comment *g* (1977).

Maryland courts look holistically to determine if a statute is one of limitation or one of repose and will consider: (1) what triggers the running of the period; (2) whether the statute eliminates claims that have not yet accrued; (3) the purpose behind the statute; and (4) the legislative history surrounding the statutes' passage. Anderson v. United States, 427 Md. 99 (2012); See also, Wood v. Valliant, 231 Md.App. 686, 701 (Md.App., 2017). The relevant inquiry proves that § 5-117(d) is a statute of limitation and not a statute of repose and thus it may be retroactively repealed by the legislature without effect to any substantive right of defendants.

A. The Plain Language of § 5-117(d) Is Consistent with A Statute of Limitations and Not a Statute of Repose

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the [L]egislature." SVF Riva Annapolis LLC v. Gilroy, 459 Md. 632, 639–40 (Md., 2018) (quoting

Blake v. State, 395 Md. 213, 224 (2006) (quotations omitted)). "When the language of a statute is plain and clear and expresses a meaning consistent with the statute's apparent purpose, no further analysis of legislative intent is ordinarily required." Rose v. Fox Pool Corp., 335 Md. 351, 359 (Md. 1994).

The statute at issue, Md. C.J.P. § 5-117 titled "Sexual abuse of minor", provides:

> (d) In no event may an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor be filed against a person or governmental entity that is not the alleged perpetrator more than 20 years after the date on which the victim reaches the age of majority.

The plain language of Section 5-117(d) indicates that an action cannot be filed for damages against a non-perpetrator person or governmental more than 20 years after the victim reaches majority, which is age 38. Under Maryland law, Section 5-117(d) cannot be construed to be a statute of because it does not limit the "time in which an action may accrue should an injury occur in the future." Anderson, 427 Md. at 119. The statute acknowledges that the injury has already occurred. Id. Because a cause of action for sexual abuse of a minor accrues on the date of the wrong, the triggering event for the start of § 5-117(d)'s limitation period is the date of injury and not an unrelated event. Further, the limitations period under section 5-117(d) may be delayed until a victim reaches the age of majority and tolling theories do not apply to true statutes of repose. Section 5-117(d) imposes a *limitation* on the period of time that a cause of action for damages may be asserted. It is clear that this statute is a statute of limitation.

B. **The Legislature Never Intended § 5-117(d) to be a Statute of Repose**

"When the language of the statute is subject to more than one interpretation, it is ambiguous and we usually look beyond the statutory language to the statute's legislative history, prior case law, the statutory purpose, and the statutory structure as aids in ascertaining the Legislature's intent." Rosemann v. Salsbury, Clements, Bekman, Marder & Adkins, LLC, 412 Md. 308, 315 (Md.,2010). Where the legislative intent is not clear from the plain meaning of the statute, the Court of Appeals instructed,

> O]ur endeavor is always to seek out the legislative purpose, the general aim or policy, the ends to be accomplished, the evils to be redressed by a particular enactment. In the conduct of that enterprise, we are not limited to study of the statutory language. The plain meaning rule "'is not a complete, all-sufficient rule for ascertaining a legislative intention . . . .'" The "meaning of the plainest language" is controlled by the context in which it appears. Thus, we are always free to look at the context within which the statutory language appears. Even when the words of a statute carry a definite meaning, we are not "precluded from consulting legislative history as part of the process of determining the legislative purpose or goal" of the law.

Rose v. Fox Pool Corp., 335 Md. 351, 359 (Md.,1994) (quoting Morris v. Prince George's County, 319 Md. 597, 573, 603-4 (1990).

The legislative history of the 2017 bill amending § 5-117(d) shows that the General Assembly never intended to create a vested right in institutions and other entities that sheltered perpetrators of child sexual abuse. The legislative records for the original bills, HB 642/SB 505, reveal that the language of § 5-117(d) was not even included, indeed there was no mention of an SOR whatsoever. See Maryland Senate Bill No. 505, Maryland 437th Session of the General Assembly, 2017; Maryland Senate Bill No. 505, Maryland 437th Session of the General Assembly, 2017 ("SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any cause of action arising before the effective date of this Act."). The SOR language was added later, behind closed doors without the opportunity for feedback in committee, sub-committee, or floor and without the knowledge of the original sponsors of the bill. Indeed, upon introduction of the amendment with the repose statute, members of the Judiciary Committee decried any suggestion that the legislature intended to grant permanent immunity to individuals and institutions responsible for child sexual abuse. See *When Maryland Gave Abuse Victims More Time to Sue, it May Have Also Protected Institutions, Including the Catholic Church*, WASH POST (Mar. 31, 2019). To the contrary, the General Assembly intended to provide access to justice for victims of child sexual abuse by enabling them to bring claims against any culpable party.

C. Construing § 5-117(d) as a Statute of Repose Is Inconsistent with the History of SORs in Maryland

In Maryland, as in many other jurisdictions, statutes of repose were enacted primarily to protect builders, contractors, architects, engineers, and developers from indefinite liability for "property damage and personal injury caused by their work," which lawmakers feared would deter such professionals from experimenting with, and thus improving upon, their designs and procedures. Carven v. Hickman, 135 Md.App. 645, 652-653 (Md.App. 2000), certiorari granted 363 Md. 661, affirmed 366 Md. 362; See also SVF Riva Annapolis LLC v. Gilroy, 459 Md. 632, 648–49 (Md. 2018) (explaining that statutes of repose "are a response to the problems arising from the expansion of liability based on the defective and unsafe condition of an improvement to real property.") (citing Whiting–Turner Contracting Co. v. Coupard, 304 Md. 340, 349, 499 A.2d 178 (1985)). Thus, the General Assembly uses SORs to help ensure stability in the marketplace which is in the "economic best interests of the public." SVF Riva Annapolis v. Gilroy, 459 Md. 632 (2018).

Maryland has only one statute of repose, Md. Code CJP § 5-108, which deals with professional liability for defective improvements to real property. Improvements to real property are economic drivers and the protection of the SOR reflects the public interest in a strong economy. Indeed, courts have not readily construed other statutes to be statutes of repose. For example, Maryland Courts previously considered whether the statute governing limitations for medical malpractice claims, § 5–109, is a statute of repose, but ultimately concluded that it is a statute of limitations. Anderson v. U.S., 46 A.3d 426, 442, 427 Md. 99, 125 (Md.,2012). The Court explained that had the General Assembly wanted it to be a statute of repose, it "was free to choose a different statutory scheme, one that did not run the limitations period from an injury or toll the period for minority or otherwise, but it chose not to do so. It chose, instead, to adopt a statute of limitations." Id. at 126.

It hardly makes sense then that such a protection would exist in the context of child sexual abuse claims even when no such protection exists for medical malpractice claims or lesser tort. While there are no cases citing Section 5-117(d) after it had been amended in 2017, in general, previous court decisions have referred to § 5-117 as a statute of limitation, and not a statute of repose. See e.g., Scarborough v. Altstatt, 228 Md. App. 560, 576 (2016) (generally referring to Section 5-117 as a statute of limitation). Indeed, the General Assembly never intended to create a vested right in perpetrators and entities that sheltered child sexual abusers. Such protections would serve no public benefit. Conversely, repealing the so-called statute of repose added to §5-117 in 2017 will give victims with revived claims access to justice long overdue in Maryland.

D. Even if § 5-117(d) Is Determined to be an SOR, the State's Compelling Interest in Child Protection Outweighs Any Substantive Right to Repose

If Maryland determines that § 5-117(d) is a statute of repose, victims of child sex abuse will potentially be kept out of court by defendants who argue that they have a substantive, vested right in the expired claims. The state's compelling interest in protecting Maryland's children outweighs any potential due process claim in the so-called statute of repose. As explained in Section I (c), the compelling interest in protecting Maryland's children from sexual abuse justifies the enactment of a time-limited civil revival window which retroactively repeals the so-called repose language in § 5-117(d). By deleting the statute of repose for child sex abuse and clarifying that a time-barred revival window for child sex abuse is allowed under the Maryland Constitution, the Maryland legislature will finally empower victims of child sex abuse to hold their perpetrators and any culpable actors in their abuse accountable.

III. AMENDING MARYLAND'S STATUTES OF LIMITATIONS FOR CHILD SEXUAL ABUSE TO INCLUDE A REVIVAL WINDOW IS BOTH CONSTITUTIONAL CONSISTENT WITH THE NATIONAL TREND TO GIVE SURVIVORS ACCESS TO JUSTICE

There is a nationwide movement to provide access to justice for victims who were unfairly blocked from bringing their claims due to too short SOLs. Since 2002, 27 jurisdictions have enacted laws that revive civil suits for victims of child sexual abuse whose SOL has already expired.[ii] Of those 27 jurisdictions, 24 of them have held that a retroactive procedural change in law, like revival of a civil SOL, is constitutional: Arizona, California*, Connecticut*, Delaware*, Georgia*, Hawaii*, Idaho, Iowa, Kansas, Massachusetts*, Michigan, Minnesota*, Montana*, New Jersey, New Mexico, New York*, North Dakota, Oregon, Pennsylvania, South Dakota, Washington, Washington D.C.*[iii], West Virginia, Wyoming. An asterisk indicates that the state has revived expired civil SOLs for child sex abuse. The trend in recent cases is to find window legislation constitutional.[iv]

By far the most popular means of revival in the states has been a "window." California became the first state to enact revival legislation to help past victims of abuse with its 1-year revival window in 2003. Since then, 18 more states—Delaware, Hawaii, Minnesota, Georgia, Utah, Michigan, New York, Montana, New Jersey, Arizona, Vermont, North Carolina, Kentucky, Arkansas, Nevada, Louisiana, Maine, Colorado*—Washington D.C., Northern Mariana Islands, and Guam have opened windows.

Similarly, there is a nationwide movement away from statutes of repose and toward expanding victim rights. Although West Virginia also has a statute of repose, South Dakota and Maryland are the only two states that have further limited rights of victims to file child sex abuse claims since 2002. Every other state has either expanded civil statutes of limitations for child sex abuse, or exempted child sex abuse from statutes of repose. Almost every state recognizes the important distinctions between child sex abuse and construction and design industries, by either exempting child sex abuse from statutes of repose, or abolishing statutes of repose altogether. For example, in 1976, Kansas enacted an 8 year statute of repose on claims other than for those related to real property. K.S.A. 60-515(a). However, in 1992, the Kansas legislature enacted an exception to that statute of repose, by passing a statute specifically addressing child sex abuse claims. K.S.A. 60-523. Now, child abuse victims in Kansas have three years after discovering the connection between the abuse and their injuries to bring a claim, regardless of a statute of repose which acts as a complete shield to liability for other claims. Likewise, in 1991, Illinois enacted a statute of repose for child sex abuse claims, limiting them to before a victim's 30th birthday. 735 ILL. COMP. STAT. 5/13-202.2 (1991). Only three years later, the Illinois legislature removed the statute of repose, and in 2014, it eliminated the statute of limitations entirely. 735 ILL. COMP. STAT. 5/13-202.2. Similarly, in 1991, Virginia enacted a child sex abuse statute including a ten year statute of repose. Less than four years later, the legislature removed the statute of repose, leaving a discovery rule intact. VA. CODE ANN. § 8.01-249 (1995). Prior to 2019, North Carolina had a three year discovery rule that was limited by a statute of repose barring all claims brought ten years after the last act of sexual abuse endured by the victim. N.C. GEN. STAT. ANN. § 1-52(16) (1991). In 2019, the North Carolina legislature unanimously passed exemptions from the statute of repose for child sex abuse crimes, allowing victims to file child abuse claims until they are 28 years old, and allowing a plaintiff to file a claim against a defendant within two years of the defendant's criminal conviction for child sex abuse. N.C. GEN. STAT. ANN. § 1-52(16) (2019).

These revival windows together with repealing or exempting child sex abuse claims from statutes of repose have been instrumental in giving thousands of victims across America a long overdue opportunity for justice. They also shift the cost of the abuse from the victims to the ones who caused it. They also make states a safer place for children by educating the public about hidden predators and institutions that endanger children in their communities.

IV. RESEARCH ON TRAUMA AND ITS IMPACT ON DISCLOSURE SUPPORTS SOL REFORM FOR CHILD SEXUAL ABUSE

A. Child Sexual Abuse is a Public Policy Crisis That Causes Lifelong Damage to Victims

Currently, more than 10% of children are sexually abused, with at least one in five girls and one in thirteen boys sexually abused before they turn 18.[v] CSA is a social problem that occurs in all social groups and institutions, including familial, religious, educational, medical, and athletic. Nearly 90% of CSA perpetrators are someone the child knows; in fact, roughly one third of CSA offenses are committed by family members.[vi]

The trauma stemming from CSA is complex and individualized, and it impacts victims throughout their lifetimes:[vii]

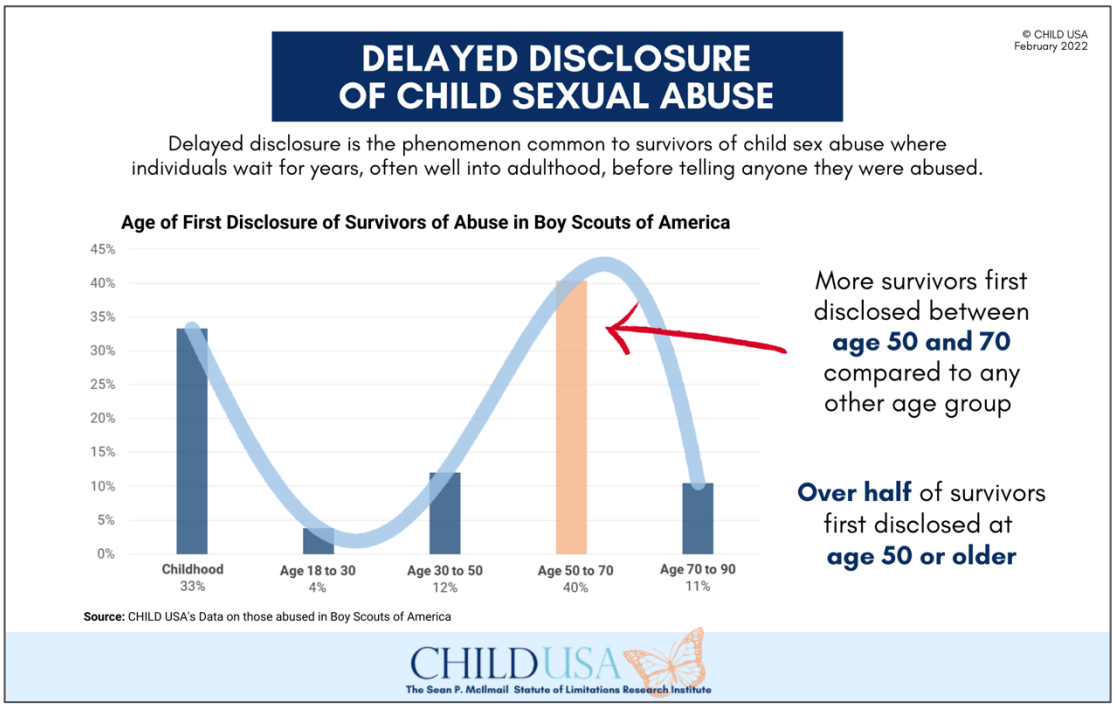
- Childhood trauma, including CSA, can have **devastating impacts on a child's brain**,[viii] including disrupted neurodevelopment; impaired social, emotional, and cognitive development; psychiatric and physical disease, such as post-traumatic stress disorder (PTSD)[ix]; and disability.[x]

- CSA victims suffer an **increased risk of suicide—**in one study, female CSA survivors were two to four times more likely to attempt suicide, and male CSA survivors were four to 11 times more likely to attempt suicide.[xi]

- CSA leads to an increased risk of **negative outcomes across the lifespan**, such as alcohol problems, illicit drug use, depression, marriage issues, and family problems.[xii]

B. CSA Victims Commonly Delay Disclosure of Their Abuse for Decades

Many victims of CSA suffer in silence for decades before they talk to anyone about their traumatic experiences. As children, CSA victims often fear the negative repercussions of disclosure, such as disruptions in family stability, loss of relationships, or involvement with the authorities.[xiii] Additionally, CSA survivors may struggle to disclose because of trauma and psychological barriers such as shame and self-blame, as well as social factors like gender-based stereotypes or the stigma surrounding victimization.[xiv] Further, many injuries resulting from CSA do not manifest until survivors are well into adulthood. These manifestations may coincide with difficulties in functioning and a further delay in disclosure of abuse.



Moreover, disclosure of CSA to the authorities for criminal prosecution or an attorney in pursuit of civil justice is a difficult and emotionally complex process, which involves the survivor knowing that he or she was abused, being willing to identify publicly as an abuse survivor, and deciding to act against their abuser. In light of these barriers to disclosure, it is not surprising that:

- In a study of survivors of abuse in Boy Scouts of America, **51%** of survivors disclosed their abuse for the first time at **age 50 or older**.

- **One-third** of CSA survivors **never report** their abuse to anyone.

For both children and adults, disclosure of CSA trauma is a process and not a discrete event in which a victim comes to terms with their abuse.[xv] To effectively protect children from abuse, SOL laws must reflect this reality.

V. <u>SOL Reform Serves the Public Good by Giving Survivors Access to Justice and Preventing Future Abuse</u>

Historically, a wall of ignorance and secrecy has been constructed around CSA, which has been reinforced by short SOLs that kept victims out of the legal system. Short SOLs for CSA play into the hands of the perpetrators and the institutions that cover up for them; they disable victims' voices and empowerment and leave future children vulnerable to preventable sexual assault.

CHILD USA and CHILD USAdvocacy are leading the vibrant national and global movement to eliminate civil and criminal SOLs and revive expired civil claims as a systemic solution to the preventable CSA epidemic.[xvi] **There are three compelling public purposes served by the child sexual abuse SOL reform movement**, which are explained in the graphic below:

A. SOL Reform Identifies Hidden Child Predators and Institutions that Endanger Children

It is in society's best interest to have sex abuse survivors identify hidden child predators to the public—whenever the survivor is ready. The decades before public disclosure give perpetrators and institutions wide latitude to suppress the truth to the detriment of children, parents, and the public. Some predators abuse a high number of victims and continue abusing children well into their elderly years. For example, one study found that 7% of offenders sampled committed offenses against 41 to 450 children, and the highest time between offense to conviction was 36 years.[xvii] SOL reform helps protect Maryland's children by identifying sexual predators in our midst. By eliminating short restrictive SOLs and reviving claims for past abuse, hidden predators are brought into the light and are prevented from further abusing more children in Maryland.

B. SOL Reform Shifts the Cost of Abuse

CSA generates staggering costs that impact the nation's health care, education, criminal justice, and welfare systems. The estimated lifetime cost to society of child sexual abuse cases occurring in the US in 2015 is $9.3 billion, and the average cost of non-fatal per female victim was estimated at $282,734. Average cost estimates per victim include, in part, $14,357 in child medical costs, $9,882 in adult medical costs, $223,581 in lost productivity, $8,333 in child welfare costs, $2,434 in costs associated with crime, and $3,760 in special education costs. Costs associated with suicide deaths are estimated at $20,387 for female victims.[xviii]

It is unfair for the victims, their families, and Maryland taxpayers to be the only ones who bear this burden; this bill levels the playing field by imposing liability on the ones who caused the abuse and alleviating the burdens on the victims and taxpayers.

C. SOL Reform Prevents Further Abuse

SOL reform also educates the public about the prevalence and dangers of CSA and how to prevent it. When predators and institutions are exposed, particularly high-profile ones like Larry Nassar, Jeffrey Epstein, the Boy Scouts of America, and the Catholic Church, the media publish investigations and documentaries that enlighten the public about the insidious ways child molesters operate to sexually assault children and the institutional failures that enabled their abuse.[xix] By shedding light on the problem, parents and other guardians are better able to identify abusers and responsible institutions, while the public is empowered to recognize grooming and abusive behavior and pressure youth serving organizations to implement prevention policies to report abuse in real time. Indeed, CSA publicity creates more social awareness to help keep kids safe, while also encouraging institutions to implement accountability and safe practices.

VI. ZERO STATES HAVE PASSED SOL REFORM WITH CAPS ON DAMAGES

27 jurisdictions have past revival legislation, which allows victims who were silenced by the weight of the trauma abuse an opportunity to have their time-barred claims heard. 17 jurisdictions and Congress have eliminated the statutes of limitations prospectively for child sexual abuse claims. This year 30 states have introduced SOL reform legislation for child sexual abuse claims. Of those 18 have revival language, 22 have elimination language, and 10 have a permanent window. No state has passed SOL reform legislation with damages caps for child sexual abuse claims – zero!

Damage caps give a huge advantage to bad acting Defendants and victims, who have waited decades for justice and accountability are left seriously disadvantaged. Caps make sense for public entities under sovereign immunity principles. The state of Maryland and taxpayers already bear the enormous financial burden of child sexual abuse. Child sexual abuse taxes the services offered by the state – education, law enforcement, criminal justice, social services, medical services, unemployment, public housing and both our penal system and juvenile justice system.

Subjecting private institutions to civil liability is the only sure fired way to guarantee that they will practice high standards of child safety by implementing better policies, practices, procedures

and responses. Institutions simply will not adhere to sound child protection practices without the risk of civil liability forcing them to do so. As it does for every other type of civil wrong, risk of significant financial liability will force institutions to do the right thing, thereby making our children safer.

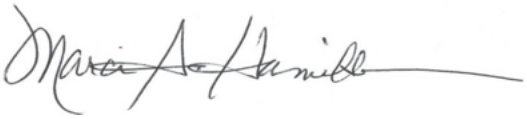
VII. CONCLUSION

A Time-limited Civil SOL Revival Window for Victims of Child Sex Abuse is the only way to provide justice for the victims of abuse in Maryland and to prevent future child sex abuse. With clear legislative intent, it is constitutional to amend Maryland's statutes of limitations for child sex abuse to include a temporary civil revival window under both Maryland and Federal Law. Such legislation is consistent with the national trend to give survivors access to justice.

We commend you and this committee for taking up this legislation as it will clearly protect the children of Maryland and allow justice for so many who have suffered for far too long.

Please feel free to contact us should you have any questions.

Sincerely,



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[i] Many states hold that the revival of an SOL for otherwise time-barred claims is in no way a violation of a defendant's due process rights, because there is no vested right in an SOL defense as a matter of law. See, e.g., Chevron Chemical Co. v. Superior Court, 131 Ariz. 431, 440 (1982) (explaining that the right to raise a one year SOL defense instead of a two year defense is not a vested property right garnering Fourteenth Amendment protections, "even if the result may be increased liability on the part of the defendant."); Peterson v. Peterson, 320 P.3d 1244, 1250 (Idaho 2014) (Determining that the shelter of an SOL is a matter of remedy and not a fundamental right; the lapse of an SOL does not endow citizens with vested property rights in immunity from suit . . . "Where a lapse of time has not invested a party with title to real or personal property, a state legislature may extend a lapsed statute of limitations without violating the fourteenth amendment, regardless of whether the effect is seen as creating or reviving a barred claim.") (internal citations omitted); Harding v. K.C. Wall Products, Inc., 250 Kan. 655, 668-69 (1992); Pryber v. Marriott Corp., 98 Mich. App. 50, 56-57, 296 N.W.2d 597 (1980), aff'd, 411 Mich. 887, 307 N.W.2d 333 (1981) (per curiam);

Cosgriffe v. Cosgriffe, 864 P.2d 776, 779 (Mont. 1993) (explaining that due process is not violated by the retroactive application of a revival window for a perpetrator of child sexual abuse who has no vested interest in an SOL defense); Panzino v. Continental Can Co., 71 N.J. 298, 304-305, (1976); Lane v. Dept. of Labor & Indus., 21 Wn. 2d 420, 426, 151 P.2d 440 (1944); Vigil v. Tafoya, 600 P.2d 721, 724-25 (Wyo. 1979).

[ii] See CHILD USA, *2023 SOL Tracker,* available at https://childusa.org/2023sol/

[iii] Neighboring Washington D.C. has already passed SOL reform legislation with a revival window in 2019; D.C. ACT 22-593 eliminates the criminal SOL, extends the civil SOL to age 40 with a 5-year discovery rule, and opens a 2-year revival window. This legislation has been approved by the mayor but must be passed by Congress.

[iv] In five states, including Maryland, the matter is still an open question. Allstate Ins. Co. v. Kim, 829 A.2d 611, 622-23 (Md. 2003); Doe v. Roe, 20 A.3d 787, 797-799 (Md. 2011) (open question). Catholic Bishop of N. Alaska v. Does, 141 P.3d 719, 722-25 (Alaska 2006) (open question); Chevron Chemical Co. v. Superior Court, 641 P.2d 1275, 1284 (Ariz. 1982); City of Tucson v. Clear Channel Outdoor, Inc., 105 P.3d 1163, 1167, 1170 (Ariz. 2005) (barred by statute, Ariz. Rev. Stat. Ann. § 12-505 (Ariz. 2010)); Mudd v. McColgan, 183 P.2d 10, 13 (Cal. 1947); 20th Century Ins. Co. v. Superior Court, 109 Cal. Rptr. 2d 611, 632 (Cal. Ct. App. 2001), cert. denied, 535 U.S. 1033;(2002); Shell W. E&P, Inc. v. Dolores Cnty. Bd. of Comm'rs, 948 P.2d 1002, 1011-13 (Colo. 1997); Rossi v. Osage Highland Dev., LLC, 219 P.3d 319, 322 (Col. App. 2009) (citing In re Estate of Randall, 441 P.2d 153, 155 (Col. 1968)); Doe v. Hartford Roman Catholic Diocesan Corp., 317 Conn. at 439-40; Sheehan v. Oblates of St. Francis de Sales, 15 A.3d 1247, 1258-60 (Del. 2011); Riggs Nat'l Bank v. District of Columbia, 581 A.2d 1229, 1241 (D.C. 1990); Canton Textile Mills, Inc. v. Lathem, 317 S.E.2d 189, 193 (Ga. 1984); Vaughn v. Vulcan Materials Co., 465 S.E.2d 661, 662 (Ga. 1996); Roe v. Doe, 581 P.2d 310, 316 (Haw. 1978); Gov't Employees Ins. Co. v. Hyman, 975 P.2d 211 (Haw. 1999); Hecla Mining Co. v. Idaho State Tax Comm'n, 697 P.2d 1161, 1164 (Idaho 1985); Peterson v. Peterson, 320 P.3d 1244, 1250 (Idaho 2014); Metro Holding Co. v. Mitchell, 589 N.E.2d 217, 219 (Ind. 1992); Harding v. K.C. Wall Products, Inc., 831 P.2d 958, 967-968 (Kan. 1992); Ripley v. Tolbert, 921 P.2d 1210, 1219 (Kan. 1996); Sliney v. Previte, 473 Mass 283, 41 N.E.3d 732 (Mass. 2015); Rookledge v. Garwood, 65 N.W.2d 785, 790-92 (Mich. 1954); Pryber v. Marriott Corp., 296 N.W.2d 597, 600- 01 (Mich. Ct. App. 1980), aff'd, 307 N.W.2d 333 (Mich. 1981) (per curiam); Gomon v. Northland Family Physicians, Ltd., 645 N.W.2d 413, 416 (Minn. 2002); In re Individual 35W Bridge Litigation, 806 N.W.2d 820, 830-31 (Minn. 2011); Cosgriffe v. Cosgriffe, 864 P.2d at 778; Alsenz v. Twin Lakes Village, 843 P.2d 834, 837-838 (Nev. 1992), aff'd, 864 P.2d 285 (Nev. 1993) (open question); Panzino v. Continental Can Co., 364 A.2d 1043, 1046 (N.J. 1976); Bunton v. Abernathy, 73 P.2d 810, 811-12 (N.M. 1937); Orman v. Van Arsdell, 78 P. 48, 48(N.M. 1904); Gallewski v. Hentz & Co., 93 N.E.2d 620, 624-25 (N.Y. 1950); Hymowitz v. Eli Lilly & Co., 539 N.E.2d 1069, 1079-80 (N.Y. 1989); In Interest of W.M.V., 268 N.W.2d 781, 786 (N.D. 1978); Pratte v. Stewart, 929 N.E.2d 415, 423 (Ohio 2010) (open question); McFadden v. Dryvit Systems, Inc., 112 P.3d 1191, 1195 (Or. 2005); Owens v. Maass, 918 P.2d 808, 813 (Or. 1996); Bible v. Dep't of Labor & Indus., 696 A.2d 1149, 1156 (Pa. 1997); McDonald v. Redevelopment Auth. of Allegheny Cnty., 952 A.2d 713, 718 (Pa. Commw. Ct. 2008), appeal denied, 968 A.2d 234 (Pa. 2009); Stratmeyer v. Stratmeyer, 567 N.W.2d at 223; Lane v. Dep't of Labor & Indus., 151 P.2d 440, 443 (Wash. 1944); Ballard Square Condo. Owners Ass'n v. Dynasty Constr. Co., 146 P.3d 914, 922 (Wash. 2006), superseded in part by statute Wash. Rev. Code 25.15.303, as recognized in Chadwick Farms Owners Ass'n v. FHC, LLC, 160 P.3d 1061, 1064 (Wash. 2007), overruled in part by 207 P.3d 1251 (Wash. 2009); Pankovich v. SWCC, 163 W. Va., 259 S.E.2d 127, 131-32 (W. Va. 1979); Shelby J.S. v. George L.H., 381 S.E.2d 269, 273 (W. Va. 1989); Neiman v. Am. Nat'l Prop. & Cas. Co., 613 N.W.2d 160, 164 (Wis. 2000); Society Ins. v. Labor & Industrial Review Commission, 786 N.W.2d 385, 399-401 (Wis. 2010) (open question); Vigil v. Tafoya, 600 P.2d 721, 725 (Wyo. 1979); RM v. State, 891 P.2d 791, 792 (Wyo. 1995).

[v] G. Moody, et. al., *Establishing the international prevalence of self-reported child maltreatment: a systematic review by maltreatment type and gender*, 18(1164) BMC PUBLIC HEALTH (2018) (finding a 20.4% prevalence rate of CSA among North American girls); M. Stoltenborgh, et. al., *A Global Perspective on Child Sexual Abuse: Meta-Analysis of Prevalence Around the World*, 16(2) CHILD MALTREATMENT 79 (2011) (finding a 20.1% prevalence rate of CSA among North American girls); N. Pereda, et. al., *The prevalence of child sexual abuse in community and student samples: A meta-analysis*, 29 CLINICAL PSYCH. REV. 328, 334 (2009) (finding a 7.5% and 25.3% prevalence rate of CSA among North American boys and girls respectively).

[vi] Perpetrators often being parents, stepparents, siblings, and grandparents. Sarah E. Ullman, *Relationship to Perpetrator, Disclosure, Social Reactions, and PTSD Symptoms in Child Sexual Abuse Survivors*, 16 J. CHILD SEX. ABUSE 19 (2007); David Finkelhor & Anne Shattuck, *Characteristics of Crimes Against Juveniles*, University of New Hampshire, Crimes Against Children Research Center (2012), available at http://www.unh.edu/ccrc/pdf/CV26_Revised%20Characteristics%20of%20Crimes%20against%20Juveniles_5-2-12.pdf.

[vii] B. A. van der Kolk, *The Body Keeps the Score: Memory & the Evolving Psychobiology of Posttraumatic Stress,* 1(5) HARVARD REV. OF PSYCHIATRY 253-65 (1994); *see also* Hoskell, L. & Randall, M., *The Impact of Trauma on Adult Sexual Assault Victims*, JUSTICE CANADA (2019), https://www.justice.gc.ca/eng/rp-pr/jr/trauma/trauma_eng.pdf.

[viii] As explained by the Center for Disease Control, "Adverse Childhood Experiences" ("ACEs"), like CSA, "have a tremendous impact on future violence victimization and perpetration, and lifelong health and opportunity." Vincent J. Felitti et al., *Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults: The Adverse Childhood Experiences (ACE) Study*, 14(4) AM. J. PREV. MED. 245 (1998); S.R. Dube et al., *Childhood Abuse, Household Dysfunction, and the Risk of Attempted Suicide Throughout the Life Span: Findings from the Adverse Childhood Experiences Study*, 286 JAMA 24, 3089 (Dec. 2001).

[ix] Josie Spataro et al., *Impact of Child Sexual Abuse on Mental Health: Prospective Study in Males and Females*, 184 Br. J. Psychiatry 416 (2004).

[x] *See* Felitti, at 245–58; *see also* R. Anda, et al., *The Enduring Effects of Abuse and Related Adverse Experiences in Childhood*, 256 EUR. ARACH PSYCHIATRY CLIN. NEUROSCIENCE 174, 175 (Nov. 2005) ("Numerous studies have established that childhood stressors such as abuse or witnessing domestic violence can lead to a variety of negative health outcomes and behaviors, such as substance abuse, suicide attempts, and depressive disorders"); M. Merricka., et al., *Unpacking the impact of adverse childhood experiences on adult mental health*, 69 CHILD ABUSE & NEGLECT 10 (July 2017); *see also* Sachs-Ericsson, et al., *A Review of Childhood Abuse, Health, and Pain-Related Problems: The Role of Psychiatric Disorders and Current Life Stress*, 10(2) J. TRAUMA & DISSOCIATION 170, 171 (2009) (adult survivors are thirty percent more likely to develop serious medical conditions such as cancer, diabetes, high blood pressure, stroke, and heart disease); T.L. Simpson, et al., *Concomitance between childhood sexual and physical abuse and substance use problems: A review*, 22 CLINICAL PSYCHOL. REV. 27 (2002) (adult survivors of CSA are nearly three times as likely to report substance abuse problems than their non-survivor peers).

[xi] Beth E. Molnar et al., *Psychopathology, Childhood Sexual Abuse and other Childhood Adversities: Relative Links to Subsequent Suicidal Behaviour in the US*, 31 PSYCHOL. MED. 965 (2001).

[xii] Shanta R. Dube et al., *Long-Term Consequences of Childhood Sexual Abuse by Gender of Victim*, 28 AM. J. PREV. MED. 430, 434 (2005).

[xiii] Delphine Collin-Vézina et al., *A Preliminary Mapping of Individual, Relational, and Social Factors that Impede Disclosure of Childhood Sexual Abuse*, 43 CHILD ABUSE NEGL. 123 (2015).

[xiv] Ramona Alaggia et al., *Facilitators and Barriers to Child Sexual Abuse (CSA) Disclosures: A Research Update (2000-2016)*, 20 TRAUMA VIOLENCE ABUSE 260, 279 (2019).

[xv] Often, this happens in the context of therapy; sometimes it is triggered many years after the abuse by an event the victim associates with the abuse; other times it happens gradually or over time as a victim recovers their memory. Hoskell, at 24.

[xvi] For an analysis of the SOL reform movement since 2002, *see* CHILD USA, *History of US SOL Reform: 2002-2020*, CHILDUSA.ORG (last visited Aug. 30, 2021), available at www.childusa.org/sol-report-2020.

[xvii] Michelle Elliott et al., *Child Sexual Abuse Prevention: What Offenders Tell Us*, 19 CHILD ABUSE NEGL. 579 (1995).

[xviii] Elizabeth J. Letourneau et al., *The Economic Burden of Child Sexual Abuse in the United States*, 79 CHILD ABUSE NEGL. 413 (2018).

[xix] *E.g.,* Netflix's *Jeffrey Epstein: Filthy Rich*; HBO's *At the Heart of Gold: Inside the USA Gymnastics Scandal.*

Episcopal Diocese of MD HB 0001 Testimony 2023.pdf
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Position: FAV

THE EPISCOPAL DIOCESE OF MARYLAND

FAVORABLE

HB 0001 Civil Actions - Child Sexual Abuse – Definition, Damages and Statute of Limitations (The Child Victims Act of 2023)

Senate Judicial Proceedings Committee

Episcopal Diocese of Maryland

3/02/2023

To: Delegate Luke Clippinger, Chair, Delegate, Vice-Chair, and members of the Senate Judicial Proceedings Committee

FROM: Rev. Linda Boyd, Co-Chair, and Lynn Mortoro, Maryland Episcopal Public Policy Network, Maryland, Diocese of Maryland

The Episcopal Diocese of Maryland strongly supports SB 686. Someone who victimizes a child should not be able to hide behind time. SB 686 is about doing the right thing for those individuals traumatized through sexual abuse in the state of Maryland. If a person who was sexually assaulted as a child takes too long to report his or her abuse, the abuser escapes civil prosecution. The perpetrator is free to keep stalking, grooming and abusing children. We are committed to recognizing and reporting abuse and neglect as part of the Safeguarding God's Children program. This program is designed to help people recognize, report, and, perhaps most importantly, prevent abuse and neglect of our children and youth. The Diocese supports behaviors and practices that allow participants in the Diocese to fully demonstrate love and compassion for children and youth in sincere and genuine relationships. We recognize that relationships are the foundation of Christian ministry, and that community is central to the life of the church. The Diocese is committed to providing safe places for children, and youth, to grow in their life in Christ.

CHILDUSA reports that "most child victims disclose (if at all) at an average age of 52 years of age, and 1 in 4 girls and 1 in 6 boys in the U.S. are sexually abused." SB686 takes an important step to protect victims' rights. The current law, as written, defends and protects predators. Abolishing the statute of limitations for sex crimes against children will not solve the problem of child sexual abuse overnight in our country, but it will arm society with the vehicle to protect our children. Society's need to identify and apprehend child sex offenders does not expire with time, and neither should a victim's access to justice. We urge a favorable report on SB 686.

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HB1 testimony Kurt Rupprecht.pdf
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Position: FAV

TESTIMONY IN SUPPORT OF HB1

Civil Actions – Child Sexual Abuse – Definition, Damages, and Statute of Limitations

(The Child Victims Act of 2023)

SUPPORT

TO: Hon. Luke Clippinger, Chair, and members of the House Judiciary Committee

FROM: Kurt William Rupprecht

DATE: March 2, 2023

Chairman Smith and Committee, thank you for this opportunity to speak our pain and our truth.

My name is Kurt Rupprecht of Forest Hill, MD. I am a Survivor of childhood sexual abuse in support of HB1 and SB686, the Child Victims Act.

I was born in 1970 and raised in Salisbury, MD. My Dad was a Maryland State Trooper, Mom a Registered Nurse. When Dad was assigned to the Salisbury Barracks, they were people suddenly far away from their homes in east Baltimore County. The foundation of their new lives was the Catholic Church. I grew up attending Mass weekly, volunteering with the Little Sisters of the Poor, and receiving my childhood sacraments at St. Francis de Sales parish in Salisbury. I dearly wanted to make my parents proud while embracing my Catholic faith.

In 1978 a charismatic young Seminarian named Joseph McGovern came to St. Francis. He endeared himself to my family. In January 1979 he was Ordained, and as the Church teaches, he became the human form of Jesus and God on Earth with their transformational powers of the Sacraments. Father Joe soon made me his special helper to assist him after the Folk Mass. He would take me into the Sacristy for the honor to stand arms out holding his holy vestments. He would then open his pants exposing himself to me. After convincing me to keep our special secret, I was later promoted to also being hugged and pressed against his genitals, while still holding his vestments. Right now, I can still see, smell, and feel the heavy polyester on my arms; as I tried not to look at him and focus on my important Catholic duties.

The abuse continued, finally culminating in December 1979, when one Sunday afternoon Father Joe took me to McDonalds for a Star Trek the movie Happy Meal.

I was thrilled! Afterward he drove me to a secluded location, slide his left hand down my pants and began to molest me. I finally said No, begging him to stop. That feeble resistance of a skinny 9 year old boy ignited a manic violent response. He began to squeeze my genitals until it felt they would smash and burst. He clamped his right hand over my throat and choked me. Screaming into my face that I had betrayed him and God, screaming 'God wants you Dead'! Frozen, terrified, fighting for breath, I felt I was about to die. That's when my brain shut down to protect me the only way it could, and repressed those details for decades. However, that raging Monster imbedded itself into my psychosis permanently. The destructive impact of the PTSD I suffered manifested into my thoughts, emotions, and behaviors.

I have suffered devastating mental and physical damages from my abuse for 44 years. I will suffer from them the rest of my life, as will my wife and children. There is no true healing from this type of childhood trauma, only survival. Every day is a choice: to take the combination of medications I require to remain stable, to see my counselor and doctor, to go to work to provide for my family, to not make my parents bury their only child. Or the choice to give up and make it the day I end my own life, because that is the only way to finally kill the Monster that lives inside me.

Please also understand the larger picture of how I came to be abused as a child of the Diocese of Wilmington who lived in Maryland. In the Diocese of Wilmington 85% of their Parishes had Predator Priests assigned during the 1960s through 1990s. We know this because of the 2007 Delaware Statute of Limitations Reform Law and look back window for Survivors. The legal Discovery empowered by the look back window released the documentation proving the Diocese of Wilmington protected their predator priests, and their explicit strategy to avoid exposure in Delaware by concentrating their predators within the Maryland parishes. The Parishes in Delaware contained 79% of the Diocese members and averaged 2.4 predator priest assignments per Parish. Maryland contained only **21**% of the Diocese members while the Parish average was **7** predator priest assignments. Therefore, within the Wilmington Diocese, catholic children on the Eastern Shore of Maryland were 11 times more likely to be exposed to a predator priest than catholic children in Delaware.

There are 59 parishes in the Wilmington Diocese. The one by far with the highest number of predator priests' assignments was St. Francis de Sales in Salisbury. Two

of its' Pastors, Fathers Lind and Irwin, were themselves abusers and considered 'predator mentors' to younger abusive priests. Father Irwin was my abuser's mentor when Joe McGovern arrived as a seminarian. Father Joe would be transferred among five different parishes over the next six years. Sexually abusing young boys in every location. He even fought back against his own Bishops and Vicar General when they attempted to remove him from ministry. Screaming and raging at them how they did not understand the sanctity of his Man-Boy relationships.

Today Father Joe is alive and living on his Diocesan paid benefits. My parents are alive and able to corroborate the times and places of my sexual abuse. Sexual abuse which for me occurred 6 miles on the wrong side of the Mason Dixon line. It occurred in Maryland, where today even the Attorney General's Catholic Church Investigation, which I participated, is not allowed to bring to light the abuses suffered across this state. It occurred in Maryland, where my Justice delayed is truly Justice denied.

Finally, please remember The Child Victims Act is for all our citizens; Survivors of the past, as well as our Children Today and Tomorrow. I realize my experiences are with the one entity that consistently fights this legislation. However, **no** single institution of any kind deserves the power to deny Justice to those of us who are broken and Protection to our children when they are vulnerable.

Please hear us. I implore you to support HB1.

hb1- statue of limitations- JUD 3-2-'23.pdf
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Position: FAV

Delaware-Maryland Synod
Evangelical Lutheran Church in America
God's work. Our hands.

Testimony Prepared for the
Judiciary Committee
on
House Bill 1
March 2, 2023
Position: **Favorable**

Mr. Chairman and members of the Committee, thank you for the opportunity to testify about keeping children and others safe from predation and criminal behaviors. I am Lee Hudson, assistant to the bishop for public policy in the Delaware-Maryland Synod, Evangelical Lutheran Church in America. We are a faith community with congregations in three synods in every part of the State.

We are supporting **House Bill 1** because we made an institutional commitment in 2009: *This church will work with all people to craft fair and comprehensive laws particularly aimed at protecting the weakest and most vulnerable among us, especially children, from sexual harm.*

We believe that institutions functioning in public have a responsibility to keep their own constituencies, and those with whom they engage, safe. Abuse, especially sexual predation, can be liabilities for organizations that gather and work with vulnerable people, particularly the young, who are entitled to safe spaces and practices.

Institutions of public-facing enterprise should be incentivized for due diligence in keeping people safe by policy, training, and practice. We know that sufferings and difficulties brought on by abuse and exploitation endures. Accountability should, also. Clinical consultation experience corroborates that recognition of the origin of sufferings in abuse may not emerge for some length of time, and only after many symptomatic episodes.

We, therefore, support extending the statute of limitations for civil actions arising from abuse in institutional settings, as **House Bill 1**. It would challenge organizations to make safety a priority of purpose. It may also extend something more than sympathies to victims. We ask your favorable report.

Lee Hudson

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Working to end sexual violence in Maryland

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Testimony Supporting House Bill 1
Lisae C. Jordan, Executive Director & Counsel
March 2, 2023

The Maryland Coalition Against Sexual Assault (MCASA) is a non-profit membership organization that includes the State's seventeen rape crisis centers, law enforcement, mental health and health care providers, attorneys, educators, survivors of sexual violence and other concerned individuals. MCASA includes the Sexual Assault Legal Institute (SALI), a statewide legal services provider for survivors of sexual assault. MCASA represents the unified voice and combined energy of all of its members working to eliminate sexual violence. We urge the Judiciary Committee to report favorably on House Bill 1.

House Bill 1 – Expanding the Statute of Limitations in Civil Child Sexual Abuse Cases
This bill would help provide victims of child sexual abuse with meaningful access to Maryland's civil justice system by eliminating the statute of limitations and providing a 2 year window to file currently barred cases.

House Bill 1 is a survivor-oriented approach to child sexual abuse for some, but not all survivors. It would allow a civil action for damages caused by child sexual abuse to be filed at any time. Maryland most recently expanded the time period for filing suit in 2017. With those revisions, perpetrators can be ordered to pay damages at any time until the victim was 38 years old or 3 years after being convicted for the sexual abuse. Institutions, governments, and person other than the direct perpetrator (such as schools or religious entities) do not face liability beyond the victim's 25th birthday UNLESS there are findings that they had a duty of care towards the victim, some degree of responsibility or control over the perpetrator, and were grossly negligent. The 2017 changes in the law were seen at the time as not perfect, but making progress. HB1 would continue this progress and help more survivors.

The Committee should consider enacting alternative means of recovery for survivors who will not be able to file a private lawsuit, and to respond to the very real risk that reviving claims may be found to be unconstitutional. Efforts to help provide meaningful access to civil remedies for survivors of sexual abuse have dragged on for decades. Over time, perpetrators have died, witnesses' memories have faded, and the likelihood of winning lawsuit has lessened. The pain and need of survivors has remained. Maryland has failed these survivors.

The State should consider the needs of all survivors of child sexual abuse and create options for survivors who will not be helped by private trial attorneys. Options to support survivors could include establishing a fund to provide reimbursement for healing therapies, and permitting the State to bring lawsuits when potential recovery is too low to interest private trial attorneys or when a survivor would prefer government representation. MCASA fully supports the choices that adult survivors will make to pursue private lawsuits if this bill is enacted. However we also are concerned for the many survivors who will not benefit private lawsuits and we ask that this Committee take steps to support them as well.

MCASA notes that there are still significant concerns regarding the constitutionality of reviving causes of action. Alternative means of recovery could help respond to the very real risk that this bill will be found unconstitutional (see, Briefing, Child Sexual Abuse and Civil Statute of Limitations). Certainly, any ethical attorney would advise a survivor of this significant risk and some survivors will decide not to file suit. It is only humane to provide support to a survivor of child sexual abuse who chooses not to go through the rigors of litigation, or whose case has been weakened by the passage of time.

Child sexual abuse causes devastating problems for many of its victims. Child sexual abuse victims can suffer depression, aggression, somatic complaints, problems sleeping, eating disorders, regression, sexual acting out or promiscuity, seductive behaviors, self-mutilation, substance abuse, and suicide gestures and attempts. Long-term effects of child sexual abuse include post-traumatic stress disorder, difficulties forming relationships, early teenage sex with older men, prostitution, and poor self-esteem.

Victims of child sexual abuse need access to the civil justice system. The difficulties caused by child sexual abuse have real costs: emotional and financial. Victims often require and benefit from counseling. Others incur medical costs or have difficulty maintaining employment or schooling as a direct result of the abuse. It is unfair to force the victim to bear the costs of the harm caused by a perpetrator of child sexual abuse. Criminal restitution and family court provide only limited relief in a small number of cases. For most victims, access to the civil tort system or some other alternative is needed.

Child sexual abuse cases brought by adult survivors present unique circumstances and injuries that do not conform to the usual policy concerns supporting statutes of limitations. The Supreme Court of Nevada eliminated the statute of limitations in child sexual abuse (CSA) cases where a victim can make a preliminary showing by clear and convincing evidence that abuse occurred. That Court observed:

> In a sense, such survivors are analogous to victims of false imprisonment, where each new day of confinement creates a new cause of action. Unfortunately, however, CSA survivors are hostage to their own thought processes, implanted by their abusers, and from which they may never be totally released. Indeed the mental and emotional dysfunction suffered by such victims may virtually prevent them from seeking relief against their tormentor until the period of limitations has long since expired. To place the passage of time in a position of priority and importance over the plight of CSA victims

> would seem to be the ultimate exaltation of form over substance, convenience over principle. Peterson v. Bruney, 792 P.2d 18, 24-25 (1990).

Other states have extended statutes of limitations in child sexual abuse cases via statute. See, for example, Maine (no statute of limitations for sexual acts towards minors; Me.Rev.Stat.Ann. 14 §752-C), Alaska (no statute of limitations for civil cases involving felony sexual abuse of minor or felony sexual assault; AS 09.10.065), and Connecticut (no statute of limitations if perpetrator convicted of certain sexual crimes, 30 year statute of limitations in other child sexual abuse cases, Public Act 02-138).

Maryland's case law clearly prevents child sexual abuse victims from bringing suit after the strict limits of the statute of limitations. Unlike the Nevada court quoted above, Maryland courts have refused to expand the statute of limitations in child sexual abuse cases. In *Doe v. Archdiocese of Wash.*, 114 Md.App. 169 (1997), a victim attempted to extend the statute of limitations by arguing that, for a long period of time, he was unable to understand that sexual acts forced on him by priests when he was child were wrong. The court rejected the victim's argument that the cause of action was not discovered until the victim realized the wrongness of the sexual abuse, and the case was dismissed. In another case, *Doe v. Maskell*, 342 Md. 2384 (1996), cert. denied, 519 U.S. 1093 (1997), the Court of Appeals refused to toll the statute of limitations based on a two girls' claims that they had repressed memories of child sexual abuse by a school chaplain. The victims in both these cases were denied the opportunity to even present their cases to a jury. They had no meaningful access to civil justice.

Children molested and sexually exploited are especially unlikely to be able to promptly file suit. Perpetrators use many tactics to prevent their victims from disclosing abuse. These range from threats against the victim or loved ones, manipulating the victim, convincing the victim nothing is wrong, and exploiting the victim's desire to keep a family together. Some victims remain financially and emotionally dependant on the perpetrator well into their early adulthood. Others face pressure from other family members to remain silent, or have a deep sense of shame. HB1 responds to this reality and would put Maryland's public policy clearly on the side of justice for victims of child sexual abuse.

The Maryland Coalition Against Sexual Assault urges the Judiciary Committee to report favorably on House Bill 1

House testimony in support of Child Victims Act -

Uploaded by: Matthew Wolf

Position: FAV

TESTIMONY IN SUPPORT OF HB 1
Civil Actions – Child Sexual Abuse – Definition, Damages, and Statute of Limitations
(The Child Victims Act of 2023)
****SUPPORT****

TO: Hon. Luke Clippinger, Chair, and members of the House Judiciary Committee

FROM: Matthew S. Wolf

DATE: March 2, 2023

My name is Matthew Wolf and I am a survivor of child sexual abuse. Such a simple sentence to share, only 14 words. You'd think it would be easy to say, but it has taken me nearly 30 years to find the courage to share my experience.

Sadly, the sexual abuse I endured is not unique. Although estimates vary across studies, we now know that one in four girls and at least one in 13 boys experience sexual abuse at some point in childhood.

I can't speak for all survivors, but I know that for many adults like myself, my abuse is a secret that weighs heavily. For many survivors, our abusers walk free or the institutions that enabled the abuse are not held accountable. Ultimately, I waited till my 40s to speak publicly about my abuse, because it is re-traumatizing to talk about what happened, and the idea of being vulnerable and opening up about the abuse is terrifying. But, the simplest explanation is that I was just not ready.

My abuse happened at the hands of a Gilman School coach/teacher, Dr. Martin Meloy. I was tricked into believing I was his only victim. I had to watch friends and my school community memorialize his memory at his passing. Even after 30 years, I'm still a kaleidoscope of emotions on the topic: anger, disappointment, embarrassment, and fear.

Now imagine holding all those emotions in for 30 years, finally finding the strength to come forward to try and hold accountable those responsible, only to be told: "You waited too long," "We're sorry, but too much time has passed," and "Why didn't you bring this up sooner".

Reforming the civil statute of limitations is critically important for survivors of abuse (like myself) because we all heal at different speeds. This isn't like a broken leg where there is an understood timeline to repair. Sexual abuse impacts us all in different ways, so allowing men and women to make the transition from victim to survivor at their own speed (when they are ready) is the compassionate and morally just course of action.

For these reasons, I respectfully urge a favorable report on HB 1 with the Sponsor's amendments.

Megan Venton House testimony in support of Child V

Uploaded by: Megan Venton

Position: FAV

TESTIMONY IN SUPPORT OF HB 1
Civil Actions – Child Sexual Abuse – Definition, Damages, and Statute of Limitations
(The Child Victims Act of 2023)
****SUPPORT****

TO: Hon. Luke Clippinger, Chair, and members of the House Judiciary Committee

FROM: Megan Stone Venton

DATE: March 2, 2023

I strongly support HB 1 with the Sponsor's amendments. I'm not going to talk about what happened to me. It's degrading to talk about it again. It's a matter of record: Washington Post August 19, 2018.

I will say that when I told my guidance counselor about this perpetrator, when he was trying to determine why I seemed to be psychologically and academically crashing,
his reply was "I know, baby; I've got eyes." Dozens of perpetrators, dozens of victims were involved at this school. Only one person was fired to my knowledge, and it was done quietly.

I will say that what happened to me has had a profound influence on my life; on my relationships, decision-making, emotional and physical health, and my ability to trust anyone to not be a predator. I have to work every day to minimize its' impact, with many hours of cognitive therapy; and I am coming up on being a senior citizen.

It's tremendously difficult and frightening to report sexual abuse, at any age; but when one is somewhat older, one has a better chance of withstanding the tremendous emotional fallout; the horror, pity, disgust, isolation; the excruciating feeling of exposure.

Please help us shift the burden of this sort of damage off of the taxpayer and rightfully onto the shoulders of the institutions that used us with such impunity.

Let's also expand the threat against future pedophiles and the institutions that shelter them.

Let's save some lives.

For these reasons, I respectfully urge a favorable report on HB 1 with the Sponsor's amendments.

Paul Jan Zdunek HB1 MD House testimony March 2023.
Uploaded by: Paul Zdunek
Position: FAV

March 2, 2023

Dear Members of the House,

Thank you for allowing me to testify today and tell my story. I am in favor of HB1.

My name is Paul Jan Zdunek, and I was abused by a troop leader in the Boy Scouts of America. I was only eight years old. And this abuse lasted for three long years, through fifth grade. Every week, I was abused and raped several times.

This abuse included forced masturbation, oral copulation, penetration, and other unimaginable acts.

To make me feel special, I was plied with alcohol - rum and coke to be exact - and shown porn magazines and porn videos.

This abuse – one of the worst cases in the Boys Scouts of America class-action lawsuit - had a devastating and long lasting effect on my life, emotionally, physically, and destroyed many personal relationships.

While the Boy Scouts of America has been found guilty and is paying a $2 billion fine, many of us are now finding ourselves re-victimized because of the statute of limitations in the state that our abuse happened. One of those states is Maryland – where I was raped.

These children of sexual abuse shouldn't be punished again, just because of the state they grew up in. The state they were abused in was beyond their control.

In addition to my abuse by the Boy Scouts, I was sexually abused by an adult male in the Catholic church choir between the ages of twelve and sixteen; and psychologically and sexually abused by a Catholic school teacher from 6th through 9th grade.

All in Maryland – where I cannot do anything about it, even though my literal nightmares continue still to this day.

On behalf of these victims, I am here to shed light on this statute of limitations technicality that might be re-abusing your own son or daughter, mother or father, or even your own spouse.

There is no cap on my suffering – there should be no cap on the damages.

All of us grown up children are depending on you to help us.

Thank you,

Paul Jan Zdunek
pauljanzdunek@gmail.com
626.623.9471

TESTIMONY IN SUPPORT OF HB 1 - MARCH 2023.pdf
Uploaded by: sarah conway
Position: FAV

TESTIMONY IN SUPPORT OF HB 1
Civil Actions – Child Sexual Abuse – Definition, Damages, and Statute of Limitations
(The Child Victims Act of 2023)

****SUPPORT****

TO: Hon. Luke Clippinger, Chair, and members of the House Judiciary Committee
FROM: Sarah Conway
DATE: March 2, 2023

Thank you for the opportunity to testify before the committee in support of The Child Victims Act (HB 001). I'm a survivor of sexual abuse by two teachers at The Key School here in Annapolis. The abuse began when I was 14 and continued for one year.

An independent investigation concluded that at Key 10 people in positions of authority sexually exploited 16 students and that in all but one of these cases, faculty, staff, administrators, or board members were aware of the abuse and chose to remain silent rather than intervene or report it.

It may be hard to conceive of how hostile the environment was for victims in the past. Even now when we report we may face tremendous blowback from our school or church community and law enforcement prosecutes only a tiny percentage of our cases.

When my parents confronted Key about the abuse, the school only shrugged. When they consulted the AACo. State's Attorney at the time, he strongly dissuaded them from contacting law enforcement because of how harshly victims were treated in those days. The quote I remember was "she will be destroyed on the stand."

The civil statute of limitations expired for me at 21 when I still had few words for the pain and confusion I felt. In 1993, I did speak out publicly and was met with a wall of victim blaming and the school denied institutional responsibility. In 1997, I detailed my abuse to A. A. County Police and specifically pointed out that it was common practice at Key, Yet no investigation was ever done. Police interviewed me again in 2018. 2019 the State's Attorney's office interviewed me. Still no action. They said, despite the teachers penetrating me every which way, they were unsure Maryland law considered them felony crimes at the time.

Being turned away, silenced, and shamed by one's school and law enforcement over decades is devastating—it is the very definition of institutional betrayal which research now shows magnifies the harm caused by sexual abuse. Institutions are causing real, measurable harm not only by allowing the abuse to occur but by silencing the victims.
HB 1 would allow us to have our voices heard at last.

For these reasons, I respectfully urge a favorable committee report and passage of Senate Bill 686 without amendments.

Maryland Catholics for Action in support of HB001
Uploaded by: Susan Kerin
Position: FAV

TESTIMONY IN SUPPORT OF HB001
Civil Actions – Child Sexual Abuse – Definition, Damages, and Statute of Limitations
(The Child Victims Act of 2023)
****SUPPORT****

TO: Hon. Luke Clippinger and members of the House Judiciary Committee

FROM: Maryland Catholics for Action

DATE: March 2, 2023

My name is Susan Kerin and I represent Maryland Catholics for Action. We are a coalition of lay and religious Catholics who support victims' rights related to the clergy sex abuse scandal. We feel that our institutional leadership has abandoned our injured brothers and sisters. Our leaders have not provided the transparency and accountability necessary to ensure that these criminal activities will end.

Recent pollings reveal that many US Catholics share our concerns. In a 2019 poll by the Economist, one in three US Catholics reported having an unfavorable view of our leadership.(https://bit.ly/2HEjKpe). A Gallup poll also in 2019 noted that 37% of US Catholics are personally questioning whether to remain Catholic because of the scandal. https://bit.ly/2P9msqR

It is important to keep in mind that these polls may actually be minimizing laity concerns. That is because most Catholics have no idea how much money and lobbying resources that our leaders have been spending to undermine bills that provide survivors rights and protection of our children.

Victims have shared with us the stigmatizing responses they have received of not being believed, judged or dismissed. Or hearing magnificent statements from the church hierarchy which never materialize into substantive support. The cost burden of this crime lies predominantly on the victims.

Anyone who is Catholic should regard this scandal as an existential issue: We are facing moral bankruptcy. The laity are the treasures of the church. We are the ones that provide the financial

offertories and the hundreds of thousands of hours in charitable work. Many of us have an alternative narrative compared to the Bishops and I ask that you consider our voices when you think of the Catholic church.

We would also like to share that it is incredibly difficult for victims to come forward. False clais of sexual abuse are extremely rare. (Link to second resource) Rather researchers estimate that only 38% of victims ever come forward and usually it is to a close friend rather an authority.

HB001: The Child Victims Act of 2023 is, first and foremost what all victims of child sexual abuse deserve. Resources and choices to help them heal. But it is also important to us Catholics who feel We are the "treasures" of the Catholic Church accountable and heartbroken by this scandal. Our futures are interwined. This committee has an opportunity to solidify Maryland as a leader in children rights and protections rather than a protector of institutions. We urge this committee to issue a favorable report.

Executive Committee

Susan Kerin St. Camillus Catholic Church Silver Spring, MD

Robert Cooke St. Rose of Lima Catholic Church Gaithersburg, MD

Mary Kate Ryner St. Francis of Assisi Catholic Church Rockville, MD

Suzanne Emerson Blessed Sacrament Catholic Church Bethesda, MD

catholics4actiondc@gmail.com

HB 001 Testimony 2023.pdf
Uploaded by: Teresa Lancaster
Position: FAV

TESTIMONY IN SUPPORT OF HB 0001
Civil Actions – Child Sexual Abuse – Definition, Damages, and Statute of Limitations
(The Child Victims Act of 2023)
****SUPPORT****

To: Honorable Luke Clippinger, Chair, and Members of the House Judicial Proceedings Committee

From: Teresa F. Lancaster

Date: March 2, 2023

GOOD AFTERNOON MEMBERS OF COMMITTEE, my name is Teresa Lancaster. I am an Attorney, survivor, activist, and advocate for victims of childhood sexual abuse. I come here every year to speak for 100s of survivors who have not yet found their voice.

I was abused in 1970-72 at Archbishop Keough High School by the counselor there, Father A. Joseph Maskell. You may know me from The Keepers documentary which exposed a powerful sex abuse ring at Keough.

I was unable to come forward about my abuse in the 1970's because Maskell convinced me I would not be believed, and he threatened me with his gun. **I FEARED FOR MY LIFE.**

This is common among survivors. Why? The severe nature of the trauma endured coupled with the often-high social position of the abusers are factors that prevent survivors from coming forward earlier. Other factors are depression & substance abuse.

I struggled with the fact that my abuser was someone I trusted. A Catholic priest.

Father Maskell was assigned powerful positions by the AOB. He was a police chaplain as well as a military chaplain for young recruits. He always had access to young victims. Through my work helping other survivors, I learned that Maskell abused kids as young as 3 years of age.

Cardinal Keeler knew my 1994 Doe/Roe case was credible but used the Statute of Limitations (SOL) to make it go away. As a direct result Maskell was given free rein to continue abusing children. The Catholic Church has a long history of hiding their pedophile priests and shipping them from parish to parish

This Bill will:

1. Provide a path to justice for victims ready to come forward.
2. Help Identify Hidden Predators, and
3. Disclose facts of the sex abuse epidemic to the public.

For these reasons, I urge a favorable committee report and passage of House Bill 0001, The Child Victims Act of 2023

HB001_AGR_FAV.pdf
Uploaded by: Therese Hessler
Position: FAV

AG
ASHLAR GOVERNMENT RELATIONS

March 2, 2023

HB001 -Civil Actions – Child Sexual Abuse – Definition, Damages, and Statute of Limitations (The Child Victims Act of 2023)
House Judiciary Committee
POSITION: SUPPORT

Dear Chairman Clippinger, and members of the House Judiciary Committee,

My name is Therese Hessler and I am writing today to ask for your ***support*** in the passage of House Bill 001 – Child Sexual Abuse – Definition, Damages, and Statute of Limitations. If passed, this legislation will give survivors of childhood sexual abuse justice and will help to protect today's children from predators.

It has been my honor to work alongside the numerous advocates (many of whom are survivors) on this legislation for the past several years. During this time, other individuals in my life have chosen to share their personal stories of childhood sexual abuse with me, many of whom had never shared their personal story with another individual prior; and whom under our current law would not be able to file a civil claim based on their age. These survivors are some of my best friends, family members, neighbors and colleagues, and other times just an individual who I had recently met somewhere whom asked what I was working on.

Childhood sexual abuse is sadly more prevalent than most people care to imagine, and I am still shocked at how many people I know personally that have been through something this horrific and carried the weight of this alone their entire lives. Unfortunately, chances are that by some degree or another childhood sexual abuse has affected everyone in this committee room today. Although estimates vary across studies, the research shows about 1 in 4 girls and 1 in 13 boys in the United States experience child sexual abuse.[1]

There are many reasons that individuals who have been sexually abused do not come forward or have an average age of disclosure of 52 years old.[2] Victims will frequently cite shame, fear of social stigmatization or ridicule, and fear of not being believed. Perpetrators of sexual abuse may threaten the child or family with physical harm or may threaten the child that she will be taken away from her family. Perpetrators often blame the child for the abuse, and the child internalizes this self-blame. Abused infants, toddlers, and other very young children may not understand that what is going on is abuse. And finally, a child may attempt disclosure to an adult who is distracted, disbelieving, or in denial, and no further action is taken. For all these reasons, children may tell no one for decades.

[1] https://www.cdc.gov/violenceprevention/childsexualabuse/fastfact.html
[2] Munzer A, Fegert JM, Ganser HG, Loos S, Witt A, Goldbeck L. Please Tell! Barriers to disclosing sexual victimization and subsequent social support perceived by children and adolescents. J Interpersonal Violence 2016;3:355-377.

It is up to all of us – members of this committee, the Senate and the House as well as the citizens of Maryland to do what is right and to not only give a voice to survivors that may have never been heard by passing this lifesaving legislation but also to protect today's children from sexual predators that have never been exposed due to current law.

It is for these reasons, I politely urge a favorable report on House Bill 001.

Thank you,

Therese M. Hessler
CEO, Ashlar Government Relations
47 State Circle STE 202
Annapolis, MD 21401

For more information call or email:
Therese M. Hessler | 301-503-2576 | therese@ashlargr.com

HB0001_Tom and Tina Wilson_Favorable.pdf
Uploaded by: Thomas Wilson
Position: FAV

Written Testimony of Thomas P. and Tina M. Wilson

RE: In Support of House Bill HB0001 - Civil Actions - Child Sexual Abuse - Definition and Statute of Limitations (The Child Victims Act of 2023)

February 28, 2023

As citizens of the state of Maryland, we enthusiastically support Maryland **House Bill HB0001.** This testimony seeks to express our rationale for support of **HB0001.** For victims of sexual abuse, justice has been difficult to find. We hope our legislators understand the urgent need to remove age and time constraints on civil claims in Maryland for victims of childhood abuse and support this bill.

As reported by several media outlets, a long running investigation by Maryland's Attorney General Brian Frosh found more than 150 Roman Catholic priests in the Archdiocese of Baltimore have been accused of sexually and physically abusing more than 600 victims over the past 80 years. Frosh identified 115 priests who were prosecuted for sex abuse or that had been identified publicly by the archdiocese as having been "credibly accused" of abuse. Another 43 priests had been accused of sexual abuse but were not identified publicly by the archdiocese.

The information from the investigation that started in 2019 resulted in a 463-page report that is not yet public. The Maryland Attorney General filed a motion in Baltimore Circuit Court to release the report, which includes information retrieved via grand jury subpoenas, but the report has not been released.

As evidenced by the progress of the Attorney General's push for the public release of information from the investigation, justice can be difficult to find for victims of molestation, assault, and childhood sexual abuse. Many survivors don't begin to accept the abuse until they are far into adulthood. Due to this delay, it is normal for adults in their 30s, 40s, or 50s to acknowledge and admit to having been the victim of child sexual abuse. Despite this fact, civil statute of limitations laws around the country have been slow to change to reflect this reality,

Through HB0001, restoring adult victims of child sex abuse's civil claims is a means to ensure that justice is served in cases when the civil statute of limitations has passed, allowing individuals the chance to initiate civil actions if they so choose to correct the wrongs done to them. Older accusations of abuse should be admissible for a variety of reasons, including the importance of maintaining the public's safety. Most directly, abusers and those complicit in enabling them are exposed, helping protect other children from the same fate.

We strongly support HB0001 and believe it absolutely necessary to protect those who have experienced sexual abuse from predator priests.

Respectfully,

Thomas P. and Tina M. Wilson
Long-time residents of MD District 17

SCCAN written testimony HB1 2023.pdf
Uploaded by: Wendy Lane
Position: FAV

State Council on Child Abuse and Neglect (SCCAN)

Wendy Gwirtzman Lane, MD, MPH, Chair
Mobile: (443) 904-2533
wlane@som.umaryland.edu
wlane@lifebridgehealth.org

SCCAN is an advisory body required by Maryland Family Law Article (Section 5-7A) "to make recommendations annually to the Governor and General Assembly on matters relating to the prevention, detection, prosecution, and treatment of child abuse and neglect, including policy and training needs."

TESTIMONY IN SUPPORT OF HB 1:

CIVIL ACTIONS – CHILD SEXUAL ABUSE – DEFINITION AND STATUTE OF LIMITATIONS (The Child Victims Act of 2023)
****SUPPORT****

TO: Hon. Luke Clippinger Chair, and members of the House Judiciary Committee

FROM: Wendy Lane, MD, MPH, Chair, State Council on Child Abuse & Neglect (SCCAN)

DATE: February 28, 2023

SCCAN strongly supports HB1, Civil Actions – Child Sexual Abuse – Definition and Statute of Limitations. This bill has five key components: (1) Eliminating the statute of limitations for child sexual abuse; (2) Repealing the so-called "statute of repose"; (3) Establishing a permanent lookback window to allow victims previously barred by the statute of limitations to file suit; (4) Allowing both public and private entities to be sued; and (5) Eliminate the notice of claims deadlines for public entities in child sexual abuse cases.

Extensive research has established that child sexual abuse can have profound, long-lasting, and sometimes lifetime-long negative effects on children. During childhood and adolescence, victims may exhibit anxiety, social withdrawal, school failure, depression, self-injury, suicide attempts, eating disorders, risky sexual behavior, and teen pregnancy.[1,2] Adults who experience child sexual abuse and

[1] Trickett PK, Noll JG, Putnam FW. The impact of sexual abuse on female development: Lessons from a multigenerational, longitudinal research study. Development & Psychopathology. 2011;23:453-476.
[2] Homma Y, Wang N Saewyc E, Kishor N. The relationship between sexual abuse & risky sexual behavior among adolescent boys: A meta-analysis. Journal of Adolescent Health. 2012;51:18-24.
Sanci L, Coffey C, Olsson C, Reid S, Carlin JB, Patton G. Child sexual abuse & eating disorders in females. Arch Pediatr Adolesc Med. 2008;162:261-267.
Pallitto CC, Murillo V. Abuse as a risk factor for adolescent pregnancy in El Salvador. J Adolescent Health. 2008;42:580-586.
Mills R, Alati R, O'Callaghan M. Child maltreatment and adolescent mental health problems in a large birth cohort. Child Abuse & Neglect. 2013;37:292-302.

exploitation are more likely to have alcohol and/or drug dependence, chronic abdominal and pelvic pain, and poor overall health.[3] Women who have been sexually abused spend more on health care costs, and are more likely to rely on welfare for income.[3]

Delayed disclosure in child sexual abuse is extremely common.[4] Children commonly wait months, years and even decades before disclosing. Victims will frequently cite shame, fear of social stigmatization or ridicule, and fear of not being believed as reasons not to tell anyone. Perpetrators of sexual abuse threaten the children and families with physical harm or threaten the child that she will be taken away from her family. Perpetrators often blame their child victims for the abuse, and children subsequently internalize this self-blame. Abused infants, toddlers, and other very young children may not understand that what is going on is abuse. Finally, a child may attempt disclosure to an adult who is distracted, disbelieving, or in denial, and no further action is taken. For all these reasons, children may tell no one for decades.

As noted above, adults who were sexually abused as children are often left with long-term physical and mental health problems that can be extremely costly. Under current law, adults who were abused as children are often left with no legal remedy, and no way to make them whole. Elimination of the statute of limitations would allow adults who were sexually abused as children to seek justice for the harm that they have suffered. Civil suits empower victims to initiate a court case to shift the costs of abuse from victim to those who caused the harm, including both predators and the institutions who hid and protected those predators.

Adding a lookback window would enable victims previously barred by the statute of limitations to also seek justice for the harm that they have suffered. In addition, it would help protect current children from being abused because 'hidden predators' are frequently discovered through the civil discovery process. Lookback windows in California and Minnesota identified more than 300 and 125 predators, respectively.[5] Sixteen states and the District of Columbia have already passed lookback windows or revival laws, and 9 states, including Maryland have introduced windows or revival laws so far this year.[6] Importantly, in states that have passed lookback windows, there have been no false claims reported in the courts.[7i]

Some opponents of HB1 have raised concerns about bankrupting institutions and leaving them unable to provide needed educational and social services to low-income individuals and others. These concerns are unfounded. Institutions that have filed for bankruptcy have done so under Chapter 11, which allows the debtor to create a reorganization plan which maintains business operations and pays creditors over time.[8] Additionally, 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 victim settlements or judgements.

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[3] Fergusson DM, McLeod GFH, Horwood LJ. Childhood sexual abuse and adult developmental outcomes: Findings from a 30-year longitudinal study in New Zealand. Child Abuse & Neglect. 2013;37:664-764.

[4] Munzer A, Fegert JM, Ganser HG, Loos S, Witt A, Goldbeck L. Please Tell! Barriers to disclosing sexual victimization and subsequent social support perceived by children and adolescents. J Interpersonal Violence 2016;3:355-377.

[5] 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

[6] https://www.childusa.org/sol

[7] The Relative Success of Civil SOL Window and Revival Statutes_Jan 2019.pdf,

[8] https://www.npr.org/2020/02/18/806721827/boy-scouts-of-america-files-for-bankruptcy-as-it-faces-hundreds-of-sex-abuse-cla

This bill would have no effect on that funding or the ability of the organization to provide those social services.[9]

Concerns have also been raised that the bill is intended to specifically target the Catholic Church. In fact, all individuals and organizations are included in the scope of the bill. The lookback window in Delaware led to suits against the Catholic church, but also the Protestant church, public and private schools, Boy Scouts of America, neighbors, family members, a judge, and a physician.[10]

Removal of the 'Statute of Repose' is an important part of HB1, as its' use in child sexual abuse cases is questionable. A "statute of repose" protects a defendant's property interests in contracts, construction, product liability, and medical malpractice. Most state statutes of repose afford protection to architects, engineers, builders, contractors, and subcontractors, who were being subjected to increasing litigation for construction defects in projects that had been completed long before the suit was filed. Inclusion of the statute of repose language inappropriately vests constitutionally protected property rights in child sexual predators and those individuals and organizations that hid predators from identification and prosecution. There is absolutely no reason to give special protection to sexual predators.

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. 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 HB 687 (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 significance of the wording "statute of repose" (found in the uncodified section of the 2017 bill). In passing HB 687 in 2019 by a vote of 135-3 and HB 974 in 2020 unanimously , 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. In addition, 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.

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.[ii] Furthermore, the U.S. Supreme Court ruled that revival of a time-barred action is

[9] http://www.catholiccharities-md.org/wp-content/uploads/2018/10/ACC-FS-Final.pdf
[10] https://bartdaltonlaw.com/news/in-its-two-years-child-victims-act-brings-170-lawsuits-alleging-abuse/

constitutional as long as it does not infringe on a defendant's vested right,[iii] 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. Elimination of the statute of limitations and implementation of a lookback window would protect children and enable adults who were sexually abused as children to seek justice for the harm that they have suffered. It would shift the costs of abuse from victim to those who caused the harm, including both predators and the institutions who hid and protected those predators.

For these reasons, we urge a favorable committee report and passage of Senate Bill 686 without amendment.

[ii] *Doe v. Roe*, 20 A.3d 787, 799 (Md. 2011)

[iii] *Chase Sec. Corp v. Donaldson*, 325 U.S. 304, 316 (1945)

THE CHILD VICTIMS ACT OF 2023 (HB1/SB686)

Will Maryland protect its children or protect its predators?

GOALS OF THE CHILD VICTIMS ACT (HB1/SB686)

- Identify Hidden Predators
- Disclose Facts of Sex Abuse Epidemic to Public
- Arm Trusted Adults to Protect Children
- Shift Cost of Abuse from Victim to Those Who Caused It
- Justice for Victims Ready to Come Forward

WHAT WILL THE CHILD VICTIMS ACT (HB1/SB686) DO?

- Eliminate the civil statute of limitations for child sex abuse.
- Repeal the so-called "statute-of-repose."
- Create a permanent window for older claims.
- Allow both public and private entities to be sued.
- Eliminate the notice of claims deadlines for public entities in child sexual abuse cases.
- The legislation will have some limitations on liability to a single claimant for injuries arising from a single incident or occurrence:
  - For retroactive claims (the statute of limitations has already run):
    - For private entities:
      - $1.5 million cap on non-economic damages
      - No cap on economic damages
    - For public entities:
      - $850,000 cap for damages
  - For prospective claims (the statute of limitations has not run):
    - For private entities:
      - No caps on either economic or non-economic claims
    - For public entities
      - $850,000 cap for damages

In 2017, did the Maryland General Assembly intend to include a "statute of repose" in the legislation?

A: A "statute of repose" gives constitutionality protected property rights to a defendant. It is intended to be used in product liability cases to limit the length of time that the builder or inventor may be held responsible for problems or defects. It was never intended to protect wrongdoing by sexual predators and those that protect them from prosecution or discovery. In 2017 There was no discussion or debate of the constitutional implications of the "statute of repose" in committee or on the floor of either chamber. Neither the Fiscal and Policy Note, nor the Revised Fiscal and Policy Note, make any notice of the pivotal constitutional implications to this law. Neither the constitutionality of a lookback window nor a "statute of repose" in child sexual abuse cases has been decided by the Maryland courts. Constitutionality should be determined by the courts.

The Child Victims Act (HB1/SB686) removes the "statute of repose" language making it clear to the courts, the public, and survivors that the Maryland General Assembly did not intend to vest constitutionally protected property rights in child sexual predators nor the individuals and organizations that hid predators from discovery and prosecution.

How will the permanent window impact institutions that provide education and social services to low-income individuals and communities?

A: Many institutions receive a large percentage of their funding from government agencies as payment for services provided. This bill would have no effect on that funding or the ability to provide those social services. For example, nearly 77% of Catholic Charities revenue comes from governmental agencies. In rare circumstances, an organization may choose to seek legal relief under the bankruptcy code to reorganize their debt. This legal relief does not cause operations to close.

THE CHILD VICTIMS ACT OF 2023 (HB1/SB686)

FACT: There is a national shift towards exposing hidden predators through civil SOL lookback windows.

In 2019, Washington D.C.:

- Extended the civil SOL where victim was under 35-40 with a 5 year discovery rule
- Opened 2 year revival window for victims abused as minors and adults
- **16** states + D.C. have passed "lookback windows" or revival laws and **9** states, including MD, have introduced these laws in 2020

In 2019, New Jersey:

- Extended the civil SOL for child sex abuse to age 55 or 7 years from discovery for claims against individuals, public and private institutions
- Removed claim presentment requirement for claims against public entities
- Opened 2 year revival window for victims abused as minors or adults against perpetrators and institutions

FACT: In other states lookback windows have exposed hidden predators.

In Delaware:

- During 2 year lookback window ('07-'09), **175** survivors filed claims
- Under follow-up window for healthcare providers, **1,000** claims made solely against Pediatrician Dr. Earl V. Bradley, the most active previously undisclosed predator to date

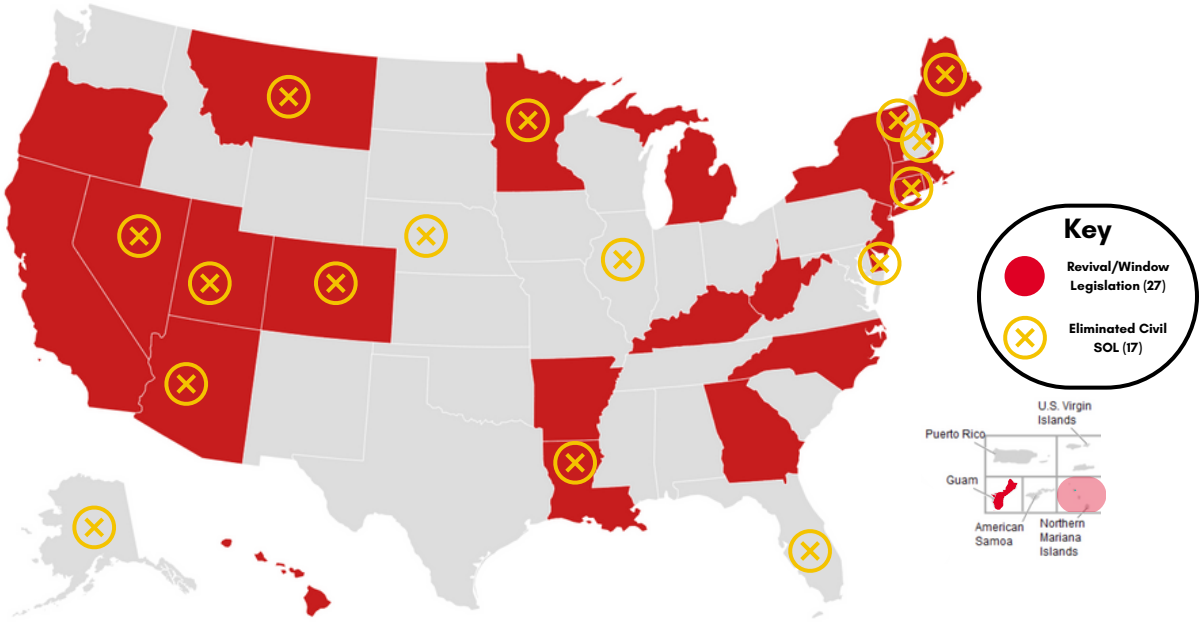
In Minnesota:

- **125+** predators identified, including the predator in the high-profile cold case of Jacob Wetterling
- During the 3 year lookback window ('13-'16), **1,006** claims were filed

In California:

- **300+** predators were identified
- During the 1 year look back window in '03, **1,150** survivors filed claims

SOL Legislation for CSA in the United States - 2022



Is there a need for further civil SOL reform?

A: Criminal and civil proceedings provide different solutions and both are needed for justice to be served. Criminal prosecutions are at the discretion of prosecutors and law enforcement with limited resources and are often not pursued. If pursued, the remedy is a criminal sentence for perpetrators. Civil suits empower victims to initiate a court case to shift the cost from the victim to those who caused the harm.

How will this bill help Maryland prosper?

A: The average age for adults to disclose childhood sexual abuse is 52. Research shows that children who experience an Adverse Childhood Experience (ACEs) can have poor long-term mental and physical health, educational, and employment outcomes at enormous cost to individuals and the state. The trauma from childhood sexual abuse may lead to PTSD, alcohol and opioid abuse, depression, suicide, and poor educational and employment outcomes. The lookback window provides survivors a window of time to access justice and shifts the costs of healing to those who caused the harm. It also provides protection for our children who may still be at risk from formerly unknown abusers and leads to improved institutional practices that keep children safe from sexual predators.

Senate Bill 686 / House Bill 1
Senate Judicial Proceedings Committee/House Judiciary Committee
Civil Actions – Child Sexual Abuse – Definition and Statute of Limitations
(The Child Victims Act of 2023)
**** SUPPORT ****

February 21, 2023

Dear Committee Members:

We know the statistics that 1 in 5 girls and 1 in 13 boys will experience child sexual abuse before reaching adulthood. We have learned through research that the adverse experiences we face in childhood (ACEs) change the structure and function of our brains and have lasting individual and societal impacts into adulthood. The trauma associated with childhood sexual abuse too often leads to PTSD, alcohol and opioid abuse, depression, suicide, and poor educational and employment outcomes. The impact is felt by all of us. According to the CDC, the economic burden of child sexual abuse is over $9 billion annually. Endorsed by a broad coalition of support and buoyed by the strong national trend on this issue, we are writing to ask for your support for HB01 The Child Victims Act of 2023.

Across the country, state legislators are recognizing that change needs to happen. Since 2002, 50% (27 jurisdictions) of U.S. jurisdictions have passed revival legislation. Seventeen states, D.C., and Congress have eliminated civil statutes of limitation for child sexual abuse. In September 2022, Congress passed the bipartisan "Eliminating Limits to Justice for Child Sex Abuse Victims Act of 2022." Changes in these laws have given adult survivors of child sexual abuse another pathway to healing and justice. Most importantly, SOL reform, especially revival legislation, protects children now by exposing hidden predators and those that conceal them.

The Child Victims Act of 2023 would:

1. Eliminate the statute of limitations for child sexual abuse.
2. Repeal the so-called "statute of repose".
3. Create a permanent window for older claims.
4. Allow both public and private entities to be sued.
5. Eliminate the notice of claims deadlines for public entities in child sexual abuse cases. 6. The legislation will have some limitations on liability to a single claimant for injuries arising from a single incident or occurrence:
    a. for retroactive claims (the statute of limitations has already run):
        i. for private entities:
            1. $1.5 million cap on non-economic damages
            2. no cap on economic damages
        ii. for public entities:

1. $850,000 cap for damages

b. for prospective claims (the statute of limitations has not run):

i. for private entities

1. no caps on either economic or non-economic claims

ii. for public entities

1. $850,000 cap for damages

Maryland has no criminal statute of limitations for felonies, including those involving child sexual abuse. However, criminal and civil proceedings provide different remedies, and both are necessary for justice to be served. Certainly, we can all agree that survivors should have every option available to heal.

Not only does this bill provide support and access for adult survivors, it provides preventative protection to children. In states where windows are opened, hidden predators are exposed. In Minnesota, under their 3-year lookback window, 125 predators were identified, In California, under their 1-year lookback window, 300 predators were identified. For our neighbors in Delaware, the lookback window uncovered Dr. Earl Bradley, the most active, previously undisclosed predator to date, who as a pediatrician had 1,000 victims.

Collectively, we are saying enough is enough. Those who sexually abuse children, and the institutions that protect abusers, must be held accountable. Survivors deserve access to justice. Maryland can and must do better. We urge you to support the passage of The Child Victims Act of 2023 in the Maryland General Assembly this year.

JUSTICE 4 MD SURVIVORS
PROTECT KIDS, NOT PREDATORS

MARYLAND essentials for childhood

NAACP Maryland STATE CONFERENCE

CASA Court Appointed Special Advocates FOR CHILDREN
MARYLAND CASA ASSOCIATION

Maryland Chapter
INCORPORATED IN MARYLAND
American Academy of Pediatrics
DEDICATED TO THE HEALTH OF ALL CHILDREN
Speaking for Maryland Kids!

DELAWARE-MARYLAND SYNOD

baltimore county progressive bcpdc democrats club

CHILDUSA
THE NATIONAL THINK TANK FOR CHILD PROTECTION


GBMC


A LIFEBRIDGE HEALTH GROUP
CENTER FOR HOPE


MARYLAND
FAMILY
NETWORK


MCF
maryland coalition of families


Maryland Children's Alliance, Inc.


Child justice
PROTECTING CHILDREN, PROVIDING SUPPORT, PROMOTING CHANGE


CENTER for CHILDREN


BOYS & GIRLS CLUBS
OF HARFORD & CECIL COUNTIES


CITI Ministries
Celibacy Is The Issue


HARRITY4CHARITY


The Family Tree


AG
ASHLAR GOVERNMENT RELATIONS

JOHNS HOPKINS BLOOMBERG SCHOOL OF PUBLIC HEALTH
The Moore Center for the Prevention of Child Sexual Abuse

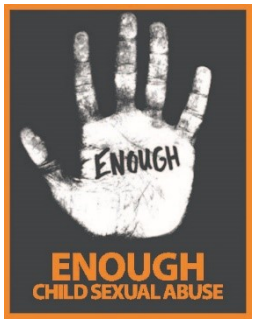
SNAP

THE EPISCOPAL DIOCESE OF MARYLAND

MCASA
Maryland Coalition Against Sexual Assault

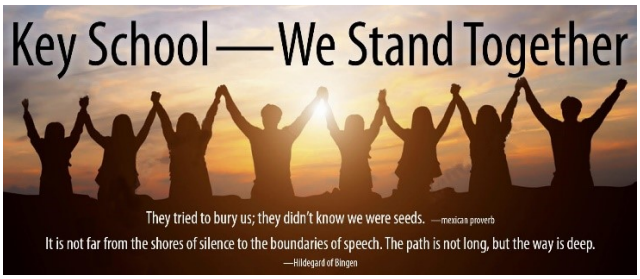
Celebrating 50 yrs 1968 2018
Celebrating New Ministries
For A New Millennium
Federation of Christian Ministries

MEPPN
Maryland Episcopal Public Policy Network



Housing Authority of the City of Frederick

Heartly House, Inc.
Serving survivors of domestic violence, sexual assault, human trafficking, and child abuse



CHILD USAdvocacy


first
star
INSTITUTE


MOST
NETWORK
Leaders in Youth Development


Mid-Atlantic
P.A.N.D.A.
midatlanticpanda.org


KROS
LEARNING GROUP


HARRITY
THE GO-TO FIRM FOR THE PATENT 300™


BEAU BIDEN FOUNDATION®
FOR THE PROTECTION OF CHILDREN


CRBC
Citizens Review
Board for Children


Prevent Child Abuse
Maryland™


Needworking


circle of parents®
Sharing Ideas. Sharing Support.

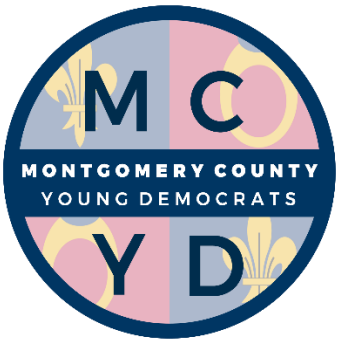

Maryland Catholics for Action

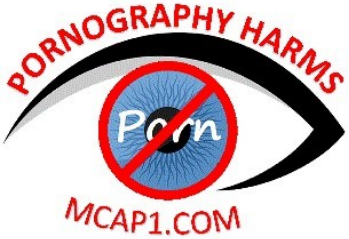

ProMD Health


RENEW YOUR CORE
WITH TRAUMA HEALING


PARENTS' COALITION
of Montgomery County


No
More
Stolen
Childhoods


M C
MONTGOMERY COUNTY
YOUNG DEMOCRATS
Y D


PORNOGRAPHY HARMS
Porn
MCAP1.COM


MAROON PR
Creative Communications


ProMD
helps


Enradius


Progressive Neighbors

Impact of Child Sexual Abuse

American Academy of Pediatrics

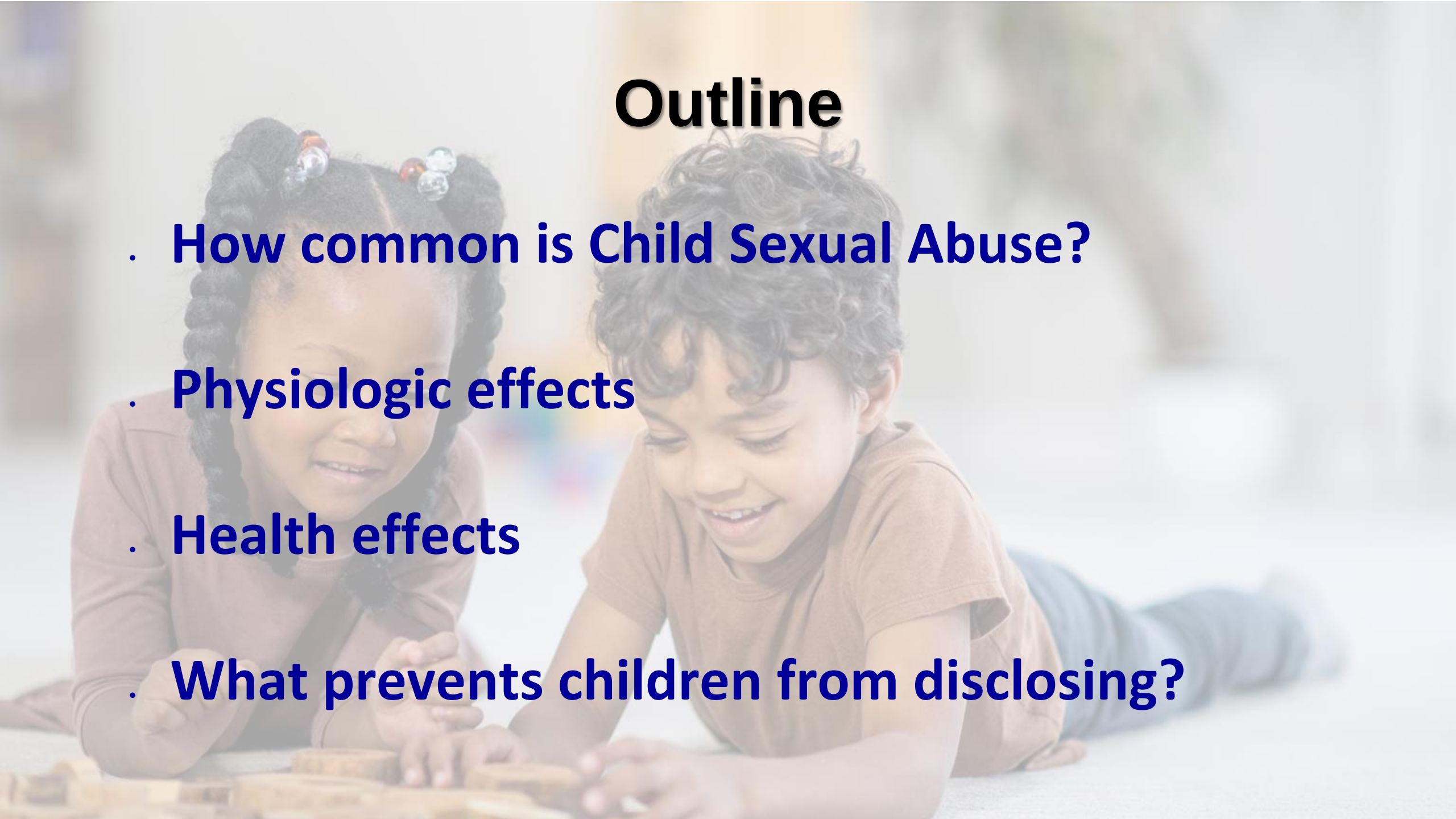
DEDICATED TO THE HEALTH OF ALL CHILDREN™

Maryland Chapter

Wendy G. Lane, MD, MPH

Chair, SCCAN
Co-Chair, Child Maltreatment &
Foster Care Committee - MDAAP

SCCAN
Maryland's
State Council on Child Abuse and Neglect



Outline

- How common is Child Sexual Abuse?
- Physiologic effects
- Health effects
- What prevents children from disclosing?

How Common is Child Sexual Abuse?

New Victims - 2020

United States

- 57,963 children
- 1.1 case / 1000 US children
- 8% of all US maltreatment

Maryland

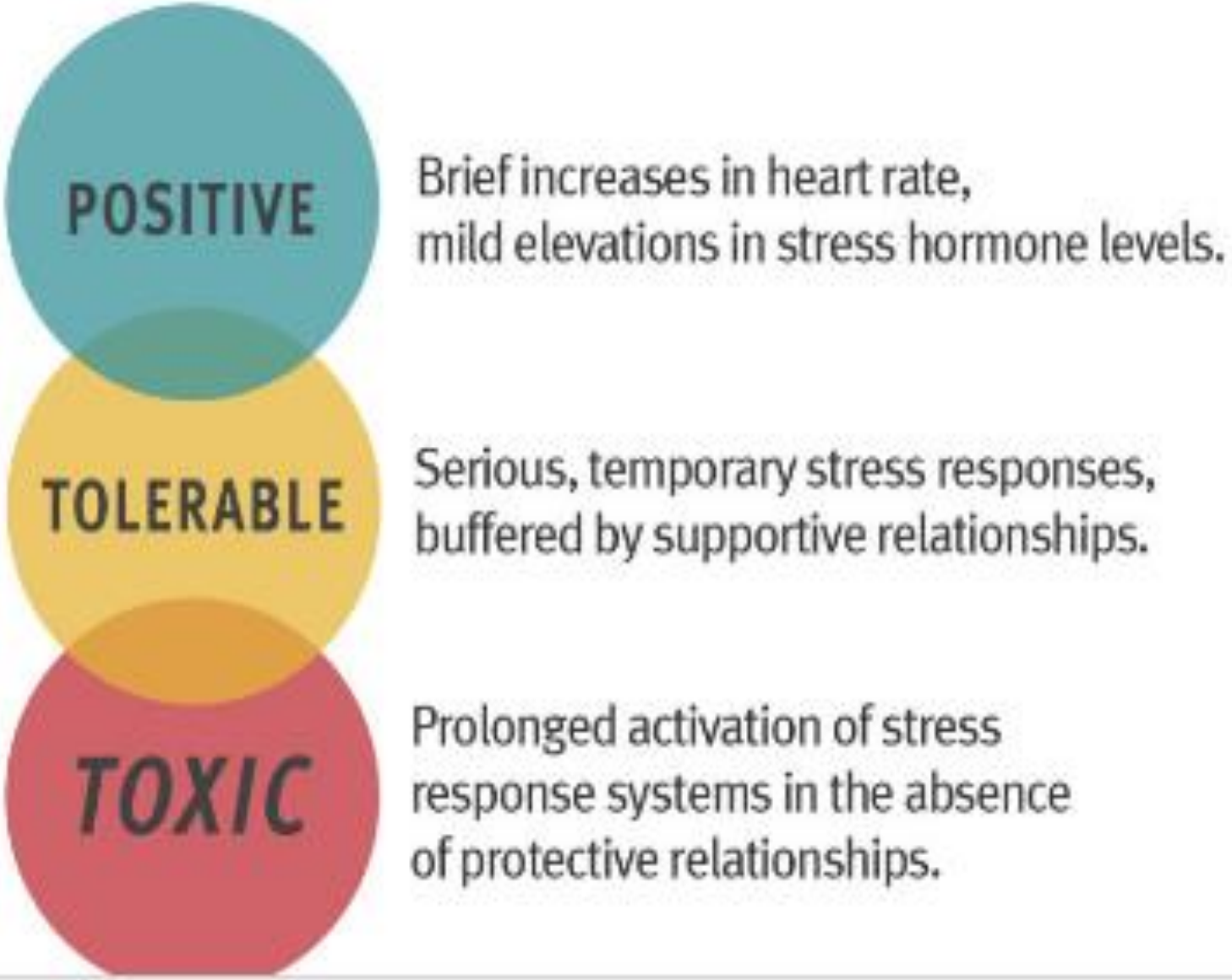
- 2,059 children
- 1.5 cases / 1000 MD children
- 26.5% of all MD maltreatment

Lifetime Risk

19% of women; 9% of men abused as children

https://www.acf.hhs.gov/cb/report/child-maltreatment-2020

Toxic Stress



- http://developingchild.harvard.edu/science/key-concepts/toxic-stress/

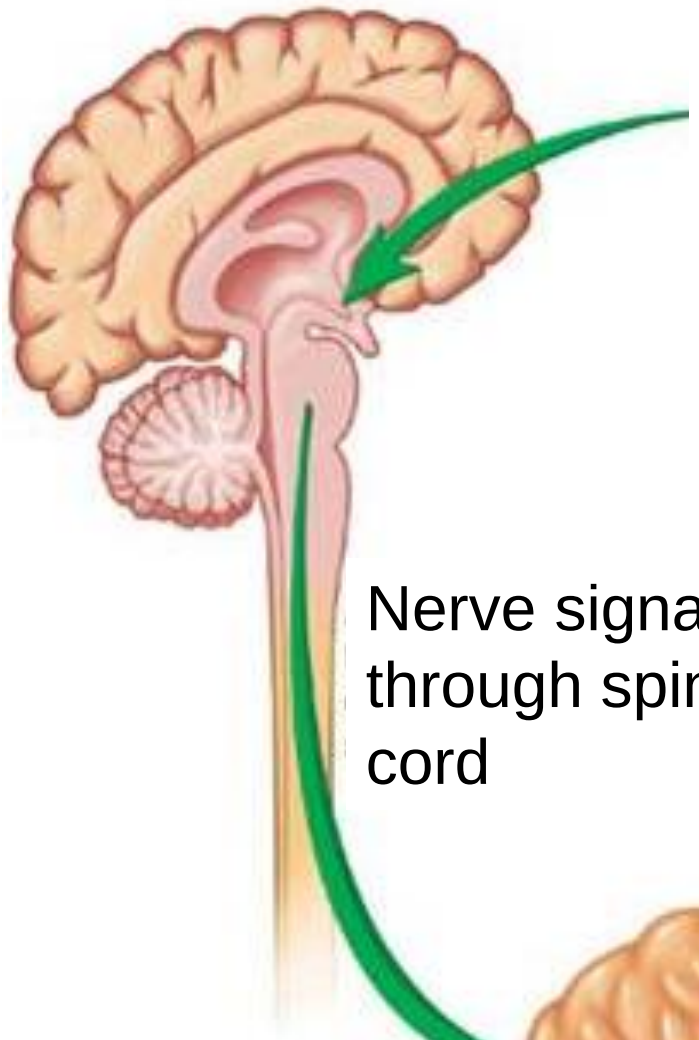
Biologic Response to Stress

- **Activation of physiologic stress-response systems**

- **Hypothalmic-Pituitary-Adrenocortical (HPA)**
- **Sympathetic-Adrenal-Medullary (SAM)**

- **Prolonged or repeated activation →**
  - **Physical disorders**
  - **Psychiatric/psychological disorders**

Sympathetic – Adrenal – Medullary System

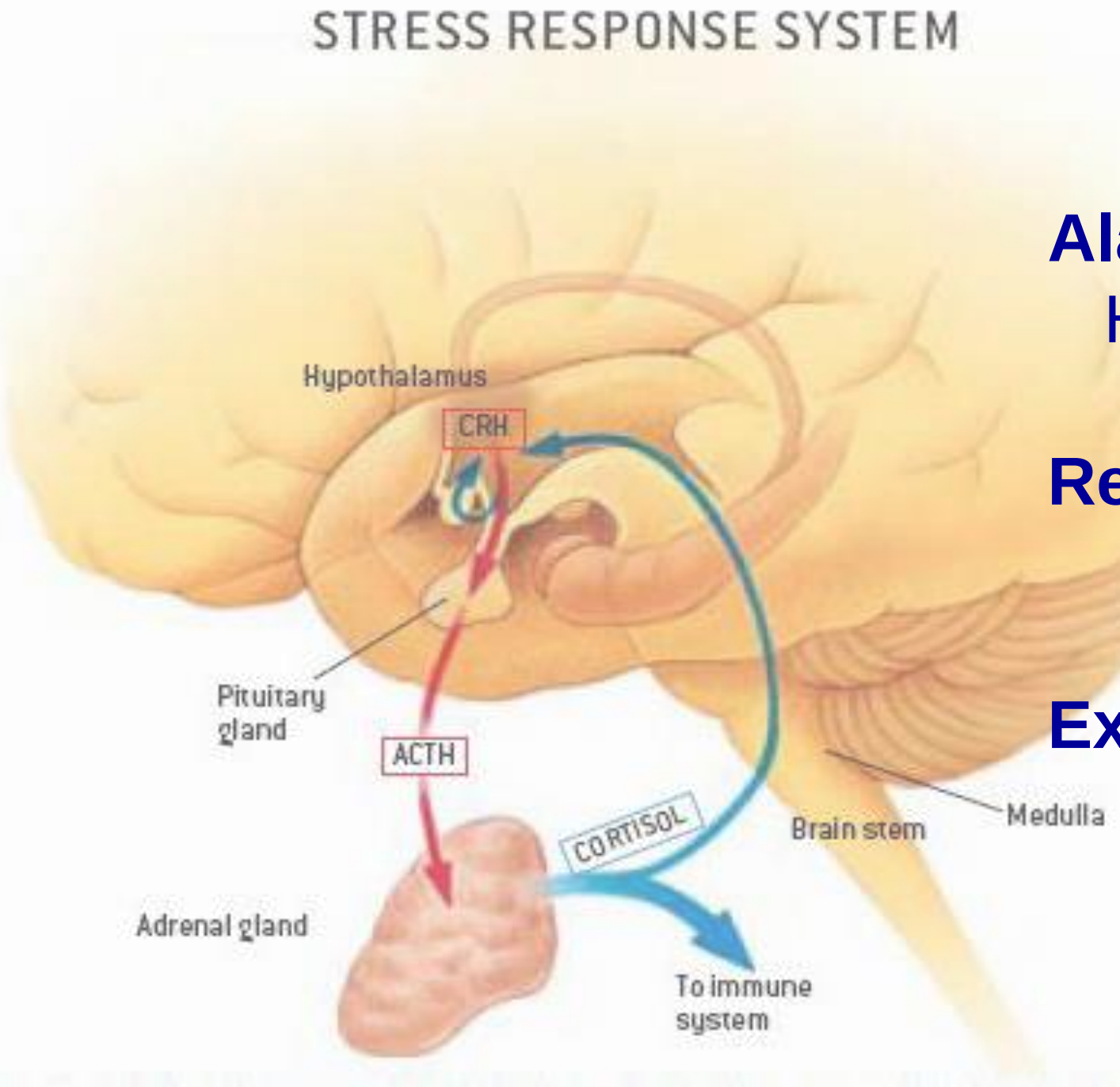


Stress

Nerve signals through spinal cord

Adrenal medulla

Epinppherine
Norepinepherine



HPA Axis

Alarm Stage – Increased Hormone secretion

Resistance – adaptation High, stable output

Exhaustion - overwhelmed

Sexual Abuse and Overall Health

- Association between sexual abuse and:

- Poorer overall health
- Increased chronic disease
- Greater functional limitation

- Association persists even after controlling for depression (Golding, et al, 1997)

Sexual Abuse and Mental Health

3.5X ↑ risk for mental health disorder

Increased risk for:

- Depression
- Bipolar
- OCD
- Anxiety
- Psychosis
- Suicidal ideation

Hogg, European Archives of Psychiatry & Clinical Neuroscience, 2022;
Ferguson, Child Abuse & Neglect 2013

Sexual Abuse & Substance Use Disorder

- 1.73x increased risk of substance abuse

- Increased risk for:
  - Poly-substance abuse in teen girls
  - Opioid misuse during pregnancy
  - Alcohol misuse among MSM

Halpern, Child Abuse Review, 2018; Fletcher, J. Child Sexual Abuse, 2021; Kors, J Child Sexual Abuse, 2022

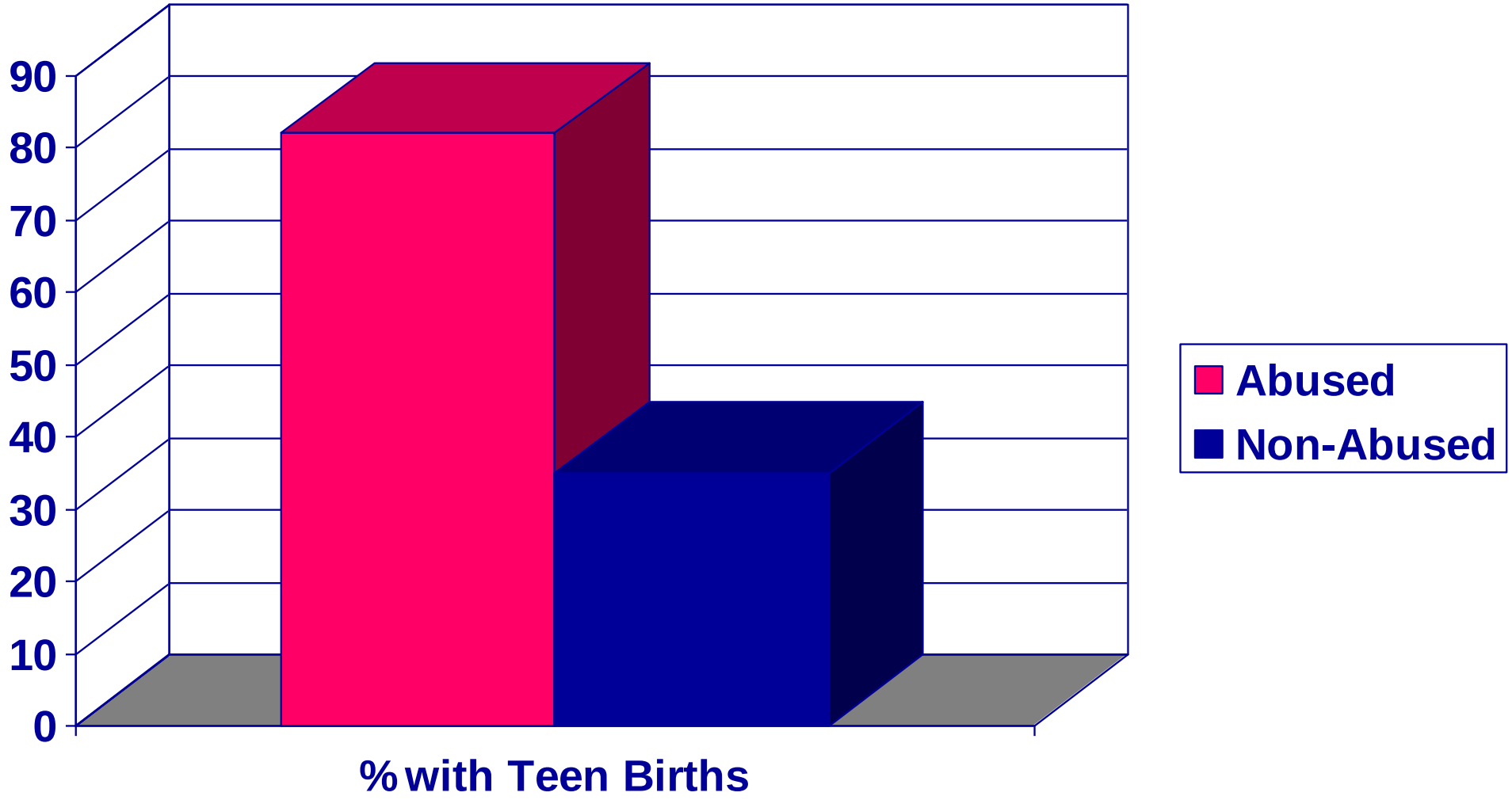
Sexual Abuse and Eating Disorders –

Odds of Disorder compared to those with no CSA

# of CSA Reports	Binge Eating	Purging	Overconcern re: weight
1	1.9	1.7	1.2
≥2	3.0	4.4	1.7

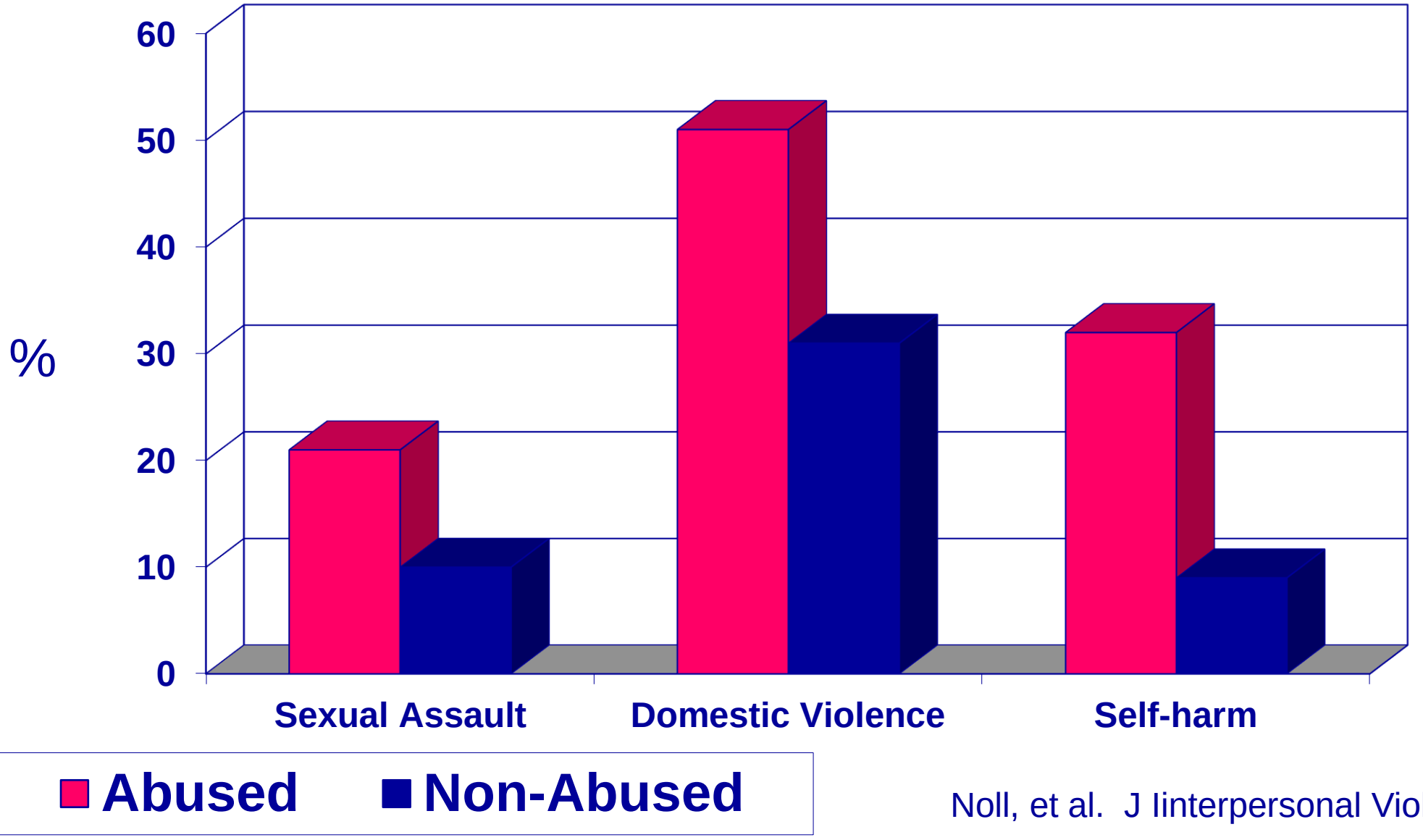
Sanci, et al. Arch Pediatr Adoles Med, 2008

Sexual Abuse and Teen Pregnancy



Noll, et al J Consulting Clin Psychol 2003.

Revictimization



Noll, et al. J Iinterpersonal Violence, 2003

Sexual Abuse and Healthcare Costs

Higher healthcare costs

More doctor visits

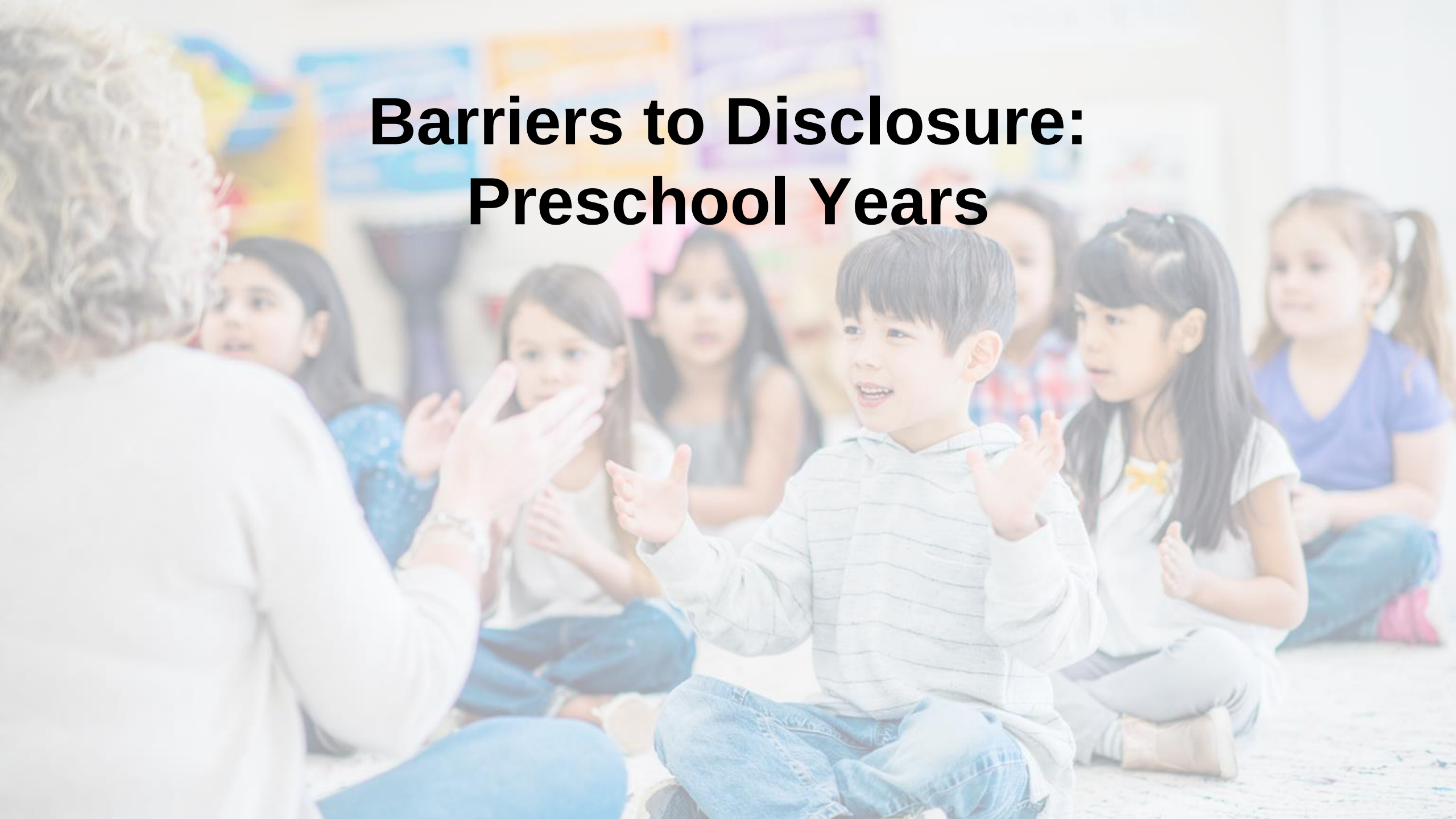
More surgery

More hospitalizations

Felitti, 1991; Golding, et al, 1988; Walker, et al, 1999; Fergusson, 2013

Barriers to Disclosure: Toddlers

Barriers to Disclosure: Preschool Years



Barriers to Disclosure: School Age Children

Barriers to Disclosure: Teens

Thank you!

Wlane@som.umaryland.edu

Wlane@lifebridgehealth.org

HB 1 - FWA - MML.pdf
Uploaded by: Angelica Bailey
Position: FWA

Maryland Municipal League

The Association of Maryland's Cities and Towns

TESTIMONY

March 2, 2023

Committee: House Judiciary

Bill: HB 1 – Civil Actions - Child Sexual Abuse - Definition, Damages, and Statute of Limitations (The Child Victims Act of 2023)

Position: **Support with Amendment**

Reason for Position:

The Maryland Municipal League supports House Bill 1 with amendments. As introduced, the bill would expand the definition of child sexual abuse, increase damages for victims of child sexual abuse, and extend the statute of limitations for civil actions related to child sexual abuse. While we appreciate the intent of this very important bill, local governments have several concerns about its financial ramifications.

First, this legislation removes a statute of limitations, which would expose municipalities to additional lawsuits related to allegations of child sexual abuse that occurred in the past. The extended statute of limitations allows victims to file civil actions any time, regardless of when the abuse occurred. The bill also applies retroactively. As a result, municipalities could face an increased financial burden in the form of legal fees, settlements, and damages.

This proposal also increases the cap for damages. Under the Local Government Tort Claims Act (LGTCA), the cap for damages for an individual claim is currently $400,000. This bill would raise it to $850,000. This is a very significant increase, especially for smaller municipalities.

MML respectfully requests removing these provisions by linking the cap to the LGTCA, restoring current reasonable limitations on local government liability for claims of sexual abuse, and applying the bill prospectively. With these changes, the League would respectfully request the Committee provide HB 1 with a favorable report.

FOR MORE INFORMATION CONTACT:

Theresa Kuhns	Chief Executive Officer
Angelica Bailey Thupari, Esq.	Director of Advocacy & Public Affairs
Bill Jorch	Director of Public Policy
Justin Fiore	Deputy Director of Advocacy & Public Affairs

1212 West Street, Annapolis, Maryland 21401

410-268-5514 | 800-492-7121 | FAX: 410-268-7004 | www.mdmunicipal.org

Template for House testimony in support of Child V

Uploaded by: David Schappelle

Position: FWA

TESTIMONY IN SUPPORT OF HB 1

Civil Actions – Child Sexual Abuse – Definition, Damages, and Statute of Limitations
(The Child Victims Act of 2023)
****SUPPORT****

TO: Hon. Luke Clippinger, Chair, and members of the House Judiciary Committee

FROM: David S. Schappelle

DATE: March 2, 2023

My name is David Schappelle, and I support the Child Victims Act.

I currently live in Ellicott City (Howard County), with my wife of 20 years, and our 5 kids, sons ages 16 and 14, and daughters are 12, 10, and 5. I have a Bachelor of Arts degree in History, and a Master of Science degree in HR Management, and I'm the Director of HR at a government contracting firm headquartered in Columbia, MD. I am currently 45 years old, and 4 years ago I learned (that's the best way I can describe it) that I'm a survivor of child sex abuse and rape.

In spring of 2019, I began to recall horrific, repressed memories of being sexually abused repeatedly and raped by a Catholic priest during the fall of 1986, when my family had just moved to Gaithersburg. I was 9 years old, starting 4th grade at Diamond Elementary, and religious ed at St. Rose of Lima Parish, which is where my abuse occurred.

My abuser was, then Father, Wayland Brown, from the Archdiocese of Savannah Georgia. He was in Maryland at St. Luke's Institute in Silver Spring, which is a treatment facility for pedophile Catholic priests, yet he continued to have unchecked access to children like me. He died in 2019, while serving time for raping children back in Georgia after he left Maryland! He was never cured, but rather, he was protected and enabled.

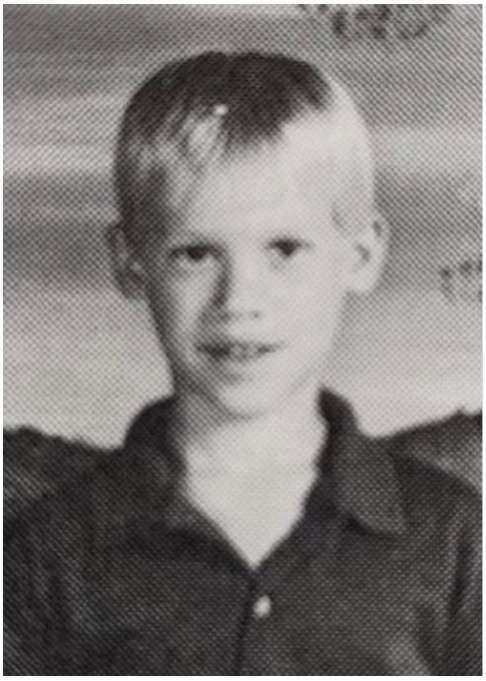
A few months ago, I recalled a stark memory of bedtime the night after I was raped at gun point, during a church picnic for kids. I laid in my bed looking up at the ceiling, my 9-year-old inner self was trying to deal with what happened. My rear was still sore, and I was too embarrassed, confused, and scared to tell anyone what happened. I told myself just "forget everything and try to live a normal life like everyone else. I didn't want to be different or let this hold me back."

These past four years I've been reliving this trauma as I remember new things. People around me have seen the intense effects on me, and some in my family are dealing with collateral damage. I lost 30 pounds in about a month, and I'm managing my PTSD, anxiety, and depression through ongoing therapy and medications, totaling over $60k so far.

I wish that these memories are not real, but they are, and they cut so deeply when I was 9. I could not deal with it as a child, but now as a 45-year-old dealing with this known past, I can tell you that this is devastating to say the least. It is important to no longer sweep away the past, or keep it locked up in a container. Closure to me means getting answers and acknowledgement from parties involved, financial help to pay for my family's ongoing therapy, and importantly, to have assurance that this is not still happening today. For these reasons, I respectfully urge a favorable report on SB 686.

AS A RECAP, AND FOR FURTHER ELABORATION:

- My Name: David Schappelle
- Hometown (or where abuse occurred): Gaithersburg, MD (St. Rose of Lima Catholic Parish)
- Current place of residence = Ellicott City, MD
- Current age = 45
- Age when abuse occurred = 9
- Age when abuse was remembered = 42
- Occupation = Director of Human Resources for a government contractor in the healthcare IT field, headquarters in Columbia, MD
- Education = gradated with diploma from Quince Orchard High School in Gaithersburg; Graduated with BA degree in History from University of Maryland College Park; Graduated with MS degree in Management of HR from University of Maryland University College
- Visuals = here are my school photos: 1985-86 (Left; taken one year prior to my sexual abuse and rape), and 1986-87 (Right; taken around the time of my abuse)



1. WHAT I REMEMBER ABOUT THE FIRST TIME I WAS ABUSED, AND HOW LONG THE ABUSE LASTED, AND HOW AND WHY IT ENDED

The first memory that I recalled was about the first time I was abused. It occurred during our weekly CCD class, and when we did "practice" reconciliation, so I was 1-on-1 with the priest, (then Father) Wayland Brown. My family had just moved to Gaithersburg during the summer of 1986, about a month prior to the abuse, so I still didn't know any of the other kids in my class. I remember being in the class with all the other kids, and he introduced himself to the class because he was from out of town. Nobody in the class of kids knew him. I recall him saying his name was Father Brown, and then one of the kids asked, "you mean like the color brown?" He chuckled and said "yes." A little later in the class he asked us where we think God lives inside us. I remember raising my hand and indicating that God lives inside

our hearts. He said I was right, and he asked me to show the class here my heart was, and he asked me to lift my shirt up, and so I did to show the class where my heart was above my belly. Then the class transitioned to us having practice Reconciliation with him. He went into another small classroom, and we went in one at a time.

I recalled the next memory is of when it was my turn to go in to the 1-on-1 confessional practice. When I went in, he greeted me with a friendly smile. He remembered that I was the boy who said where God lives in our heart. He asked me again and I showed him. He tickled my belly — that's how close he was to me. He told me a secret that God lives in us a little lower in our body and throughout he is in us. He said that he had a special sacrament or something like that, and if I wanted it. Of course, I said, sure, I'll have something special. He said it would just take him a couple minutes to prepare it. He walked away to the other side of the small room, no more than 10 feet away. He had his back to me. He was wearing a green priest gown (whatever you call those Alb robes). He said he was almost done. I could tell he was doing something because his arms were moving, and he was shaking a little. Then he said he was done. He turned around and walked towards me, and he held out his left-hand palm up and there was a gooey clear and white substance in his palm. He said I should consume this special substance because he comes straight from God. I said I didn't want to, and I became very uncomfortable, and I wanted to run away and out of there. His face became angry, and he told me to drink it. I remember putting my mouth reluctantly up to his hand and my tongue touching the substance and then I got grossed out and I said I couldn't. That's when I saw for a moment and then felt his right arm swing and he slapped me with such force that it knocked me backwards. He said that God will be very angry if I didn't accept his holy offering. So, I took it and hated it.

I went back to the room full of classmates and had to pretend that nothing happened. I had already started to black out these experiences.

My head was still ringing a bit throughout the rest of that class. When my mom picked me up, she met me, and Father Brown and he said how wonderful I was and that my mom should be very proud of me. My mom noticed that the side of my face was red, and Father Brown quickly claimed that I was running around with other kids during break, and I tripped and fell. I went along with the story because I didn't know what else to do.

My abuse lasted for a couple months during the fall of 1986. There were a handful of instances of when I was pulled out of class, or away from the other students so I was 1-on-1 with the priest, and one time there was two priests who abused me at the same time. It was a night when the church was having movie night for kids, and I was pulled out by another priest, who I allege to be John (Jack) Myslinski, who drove me to pick up Father Brown. When we picked up Brown, he parked the car and they both got in the back seat on either side of me, and I had to give them oral pleasure. When done, they drove me back to the church and I rejoined the kids in the movie watching and other activities.

My abuse ended around November of 1986 because Father Brown had to go back home to Savannah Georgia. At a fall picnic at the church (St. Rose of Lima in Gaithersburg) it was the last time I was abused. He took me into a small old house that used to be on the property. He took me back through the house to a bedroom on the main level. He showed me a gun. I asked why he had one, and he said even Gods people need to protect themselves. Then he told me he also can't have me telling anyone about what happened or is happening. He then told me about condoms and asked if my dad had showed me about them. I said no and he instructed me to put one on his penis. Then he told me to pull my shorts down. I was wearing my white MSI soccer shorts and jersey because I had a soccer game that same day as the

picnic. He had me turn around and bend over a bed. He said it would hurt just a little and don't be afraid. It hurt so much that I passed out. When I awoke, he was done and was packing away from me I turned around in a daze. He told me that I needed to drink Gods special consecration by taking off the condom and drinking it from it. I couldn't do it. He poured it into his hand, and I couldn't do it. He then had a bit of sympathy and said it was Ok, and that I had done enough today. Then he told me to say the Hail Mary prayer with him, which we did even though I didn't know or could barely speak. Then he told me to leave and go play with all the kids. Later when the picnic was ending and my mom picked me up, he again spoke with me and my mom, and again told me how special I was and that she should be so proud. He was Al smiles and friendliness when he told my mom that I could come with him or visit him. He asked my mom if I could go to Savannah Georgia with him, right in front of me! I couldn't say a word.

On the ride home from the picnic, my mom asked why my white shorts were a little brown in a spot, and I made up a story about playing soccer with the other kids and I did a slide tackle. She asked why then it smelled like poop, so I said that there must have been dog poop or something on the ground. We made it home and I washed those shorts and washed all the memories away.

2. TO THIS DAY, THE PERSONS WHO ABUSED ME NEVER EXPRESSED REMORSE, ACKNOWLEDGED THEIR ROLE, NOR APOLOGIZED FOR THEIR ACTIONS

No. By the time I had recalled my abuse, Wayland Brown was already serving his second sentence for child sexual abuse. Then he died in prison before I could even know the trauma that I survived.

When I began remembering in 2019 the abuse that occurred in 1986 (33 years later), I began to do some research to help remember things. I discovered that in 1985/86 Wayland Brown was in Silver Spring, MD being treated at St. Luke's Institute, which is a Catholic funded medical rehabilitation center that the church sends alleged pedophile priests in hopes that they will be saved. He was sent there by the Archdiocese of Savannah Georgia because he was already a known pedophile. Unfortunately, their treatment of him at St. Luke's Institute was under gross negligence and they allowed him to still be active in church CCD classes with children.

3. THAT CHAPTER IN MY CHILDHOOD HAS IMPACTED MY LIFE, INCLUDING RELATIONS WITH MY FAMILY AND VIEWS ABOUT MY FAITH

I repressed (almost immediately) all memories of the abuse. I believe my mind did that so that I could live a "normal" life. In fact, one of my recalled memories is of me in bed (it was the night of the day I was raped in the house during the picnic). I laid there in bed with my knees up in the air. My rear end still in discomfort. I looked up at the ceiling and I told myself to never think or talk about this or else I would be in a lot of trouble. I told myself to forget about it, and so I could live a normal life like all the other kids. So that's what I did. I couldn't handle it then, and I can barely handle it now.

As a kid, I went on receive confirmation in the Catholic Church at St. Rose of Lima, then graduated high school at Quince Orchard, and then college at University of Maryland, and then to try to develop a marriage relationship and grow a strong professional career. I have always done my best to be my best. I was captain of my high school volleyball team, runner up county champions on my senior year. I went on to play volleyball at UMCP for the boy's club team. I met my wife as students at Maryland and we married in 2002. It was very important to her and her family that I was also Roman Catholic, which I was. We have 5 children together, which we are raising in the Catholic Church at St. Louis in Clarksville, MD.

When my memories resurfaced in 2019 our youngest was 2 and our oldest was 13. The trauma of reliving the abuse has been too much to handle and I became disengaged with everyone and everything around me as they saw me go through a severe mental breakdown. I began to seek therapy and psychiatric care to deal with the extreme mental and physiological stress. I lost over 30 pounds in about a month, and I could barely eat for several days at end. My wife and I began a couple counselor too to help with our commutation and to strengthen our relationship, which had taken a huge hit when my memories came back. Since 2019, we have incurred around $15k a year in medical therapy, and prescription bills.

I suffer from a history of vices however, which I now attribute to my abuse. My mental symptoms are very difficult to describe, but essentially the abuse left me feeling inferior to others, depressed with ideation and thoughts of suicide, anxiety about my self-image and self-worth, and extreme bouts of anger and rage that are unwarranted. My tendency is to suppress things that I don't like or disagree with, and then becoming enraged about them later.

My wife is devout Catholic, and she is still raising our kids in the Catholic Church, where they attend CCD and attend mass weekly. I used to be part of that experience; however, I am no longer capable of attending masses or church activities due to the anxiety and stress it puts my mind into. I am very conflicted with everything in the past 4 years since reliving this trauma, and even now as an educated and experienced adult this is incredibly taxing on me and my relationship with my wife and children, and other family members. My relationship with the Catholic Church institution was crushed because of the lack of available support they gave me. When my memories returned in 2019, I reached out to the Archdiocese of Washington, DC, and they had a person in charge of child victims and sexual abuse prevention, Courtney Chase, and she told me that I would need to come in to speak to a panel of clergy and lawyers. I have not had the energy, or courage, or tolerance to go into Washington, DC to meet with people from the organization that enabled som. The abuse continues to be a strain on my relationship with my wife and family, who live with me and see me daily be visibly agitated, frustrated, and anxious in social situations. My depression is greater because I feel my children see me now as a weak or unhealthy person, which I am not (or at least I try not to be). The collateral damage this has imposed on my family is immeasurable, and especially the effects it had on my children is yet fully known.

I remain outside of the Catholic Church, but I will go to mass with my family for Christmas, Easter, and my children's first communions and confirmations, etc. Rather than religious, I am a spiritual person of faith who believes there is a bigger master plan for all of us. I believe in signs and mini miracles (like getting the chance to tell my story in hopes that another person also feels strong enough to tell theirs).

4. DO I THINK IT IS POSSIBLE FOR ME TO FIND CLOSURE, OR OBTAIN JUSTICE?

For me it will be difficult because my primary abuser died, however, there was a second priest involved in at least one incident. That priest left/resigned from the church around 2010 or so, and still lives In Massachusetts doing ministry (though not directly for the Catholic Church). It is my allegation that this priest is Father Jack Myslinski, however there were no formal legal charges made because there is no tangible evidence, other than circumstantial, to support my allegation.

Besides the perpetrators themselves, Brown and Myslinski, I would like to hold accountable for my abuse the Archdiocese of Savannah Georgia, the St. Luke's Institute, and the Archdiocese of Washington, DC for allowing and enabling the sexual abuse and rape of children.

5. I AM SUPPORTING THE PROPOSED CHANGE IN MARYLAND LAW GIVING SURVIVORS SUCH AS MYSELF A NEW CHANCE TO FINALLY HOLD ABUSERS ACCOUNTABLE THOUGH THE COURTS.

Because there is so much interconnected between the survivors' stories. There is a common denominator in so much of our abuse. If the law is changed and survivors are given the opportunity to present a case, then others may recall that priest or similar instances. The healing from abuse is directly correlated with the acknowledgment from the abuser (or the institution of the abuser) and publicly condemn the acts of the past, make them right financially to cover all medical bills and costs that result from decades of quietly suffering. We must hold these institutions accountable for more than just a "Sorry" and "We've changed- we are not the same now as we were then."

I would like to make inquiry into the practices of the St. Luke's Institute, especially during the time of my abuse. I cannot imagine that I am the only child ever to be abused by a priest who was there to receive treatment for their pedophilia.

6. CLOSING REMARKS

The cartoon parody of Catholic Priests who sexually abuse children really isn't funny because it is undeniably and unmistakably true. The humor pokes fun at our entire society because it shows the threat is real and right in front of us, and yet we are not doing enough yet to change it and hold the church accountable. This bill will serve to help cancel that cartoon and make that chapter truly a thing of the past.

I now understand that child sexual abuse (and the tsunami wave effects of it) can be anywhere, even in your own home, or family, or someone you know. Imagine a friend of yours, a neighbor, a brother or sister, brother-in-law or sister-in-law, your cousin, or work colleague, who suddenly start to withdraw and reveals they were sexually abused as a child.

There is no doubt that too many people in Maryland were sexually abused as children in our living past. Some don't even know (literally haven't recalled yet) that they were sexually abused as a child. Or maybe they do know and have been living with the trauma their entire lives, where some have not dealt with it or had closure. Some have even ended their life. Moreover, please think of me as an example of someone who had repressed their traumatic experience, in my case I endured sexual abuse and rape as a nine-year-old, and as someone who had no cognitive awareness to come forward with any allegations until I was 42 and somehow the memories started to surface.

For all these reasons, I respectfully urge a favorable report on HB 1 with the Sponsor's amendments.

HB 1 Testimony-Bill Sponsor.pdf
Uploaded by: Delegate C.T. Wilson
Position: FWA

C. T. Wilson
Legislative District 28
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Chair
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THE MARYLAND HOUSE OF DELEGATES
Annapolis, Maryland 21401

Testimony for HB 1
Judiciary Committee

Good afternoon, Chairman Clippinger, Vice Chair, Moon, and distinguished members of the committee. I am Delegate C.T. Wilson and it's a privilege to be here to present **HB 1- Civil Actions-Child Sexual Abuse-Definition and Statute of Limitations (The Child Victims Act of 2023)**

Bill Overview:

This bill alters the definition of "sexual abuse" for purposes relating to civil actions for child sexual abuse to include any act that involves an adult allowing or encouraging a child to engage in certain activities; repealing the statute of limitations in certain civil actions relating to child sexual abuse; repealing a statute of repose for certain civil actions relating to child sexual abuse; providing for the retroactive application of the Act under certain circumstances; etc.

Bill Outline:
Five Goals of HB01 (The Child Victims Act):To identify hidden predators in our communities.

1. To disclose the facts of the child sexual abuse epidemic to the public.
2. To arm trusted adults with the information they need to protect children.
3. To shift the cost of abuse from victims to those who caused them harm.
4. Justice for victims who are ready to come forward.

The Child Victims Act of 2023 will:

- **Eliminate the statute of limitations**
- Repeal the "statute of repose".
- Create a permanent window for older claims.
- Eliminate the notice of claims requirement for public entities in child sexual abuse cases.
- Create some limitations on liability to a single claimant for injuries arising from a single incident or occurrence.

Conclusion:
This bill will provide access to justice for survivors of child sexual abuse and expose hidden predators.

Thank you for your time and I request a favorable report for **HB 1.**

SOL Testify at Hearing 2023 1.pdf
Uploaded by: Jean Wehner
Position: FWA

TESTIMONY IN SUPPORT OF HB 1
Civil Actions – Child Sexual Abuse – Definition, Damages, and Statute of Limitations
(The Child Victims Act of 2023)
****SUPPORT****

TO: Hon. Luke Clippinger, Chair, and members of the House Judiciary Committee

FROM: Jean Hargadon Wehner

DATE: March 2, 2023

My name is Jean Hargadon Wehner and I strongly support HB1 with the sponsor's amendments as it would abolish the SOL for Child Sexual Abuse. I was sexually abused and raped at Archbishop Keough High school by Joseph Maskell and others, between the years of 1967 & 1971. Accomplices to these crimes are the institutions that betrayed their trusting communities by allowing their children to be left in harm's way. The trauma I endured during those years was so great, that in order to survive, I had to sever from that young victim and bury her deep within my subconscious. This is called dissociative amnesia, otherwise known as repressed memories. I began remembering the abuse in 1992, at the age of 38.

I met with Archdiocesan representatives and gave 2 formal statements. Following the first one, Joseph Maskell, who was in his fifties, was removed from his parish and sent for evaluation.

In 1994 Teresa Lancaster and I agreed to file a civil suit against Joseph Maskell and others. I said yes, not to bankrupt the Church, but because the Archdiocese returned Maskell to work as a pastor at a neighboring parish. The thought that he was in the area and knew that I had told the "secret" terrified me. I had visions of him shooting me and my family with the gun he threatened me with at Keough. We lost the case due to the court's decision that repressed memories were not scientifically proven.

The science behind the effects trauma has on the brain has grown, allowing dissociative amnesia to be understood and accepted. Like any physical wound, our mind and spirit cannot be forced to heal, in order to comply with the courts. Because of this I believe having a statute of limitations imposed on victims of childhood sexual abuse only benefits the perpetrators.

I respectfully urge a favorable report for HB1 with the Sponsor's amendments.

Thank you!

Sex-Related Catholic Medical Torture-.pdf
Uploaded by: Mary Mueller
Position: FWA

Sex-Related Catholic Medical Torture

Two Baltimore-area priests not likely named as abusers should be added to your list: popular Monsignor Martin A. Schwalenberg Jr., late Orioles chaplain and former pastor of Immaculate Conception in Towson, and Father Thakalahara (spelling?) from India, his order and assignments unknown. Both ruined my life by causing my parents, siblings, relatives, and a thousand others to insult, cheat, and shun me for decades over being disfigured by Munchausen by Proxy Catholic dogma, my mom, and colluding Johns Hopkins dermatologists at age six in 1960 as “contraception sin prevention.” Schwalenberg assured Mom that her disfiguring me was a minor sin compared to her using contraception to avoid pregnancy death or divorce. Her burning me red head to toe to fabricate “a genetic skin disease from my dad” as her long term abstinence extortion excuse certainly took fed-up racist Dad’s attention off their last child Larry looking like Father Thakalahara. Mom ignored Schwalenberg carrying on affairs with Orioles’ wives because she was carrying on with Thakalahara. Since fraudulent Natural Family Planning kept failing her, Schwalenberg directed her to disfigure me instead.
https://www.baltimoresun.com/news/bs-xpm-2004-03-21-0403210039-story.html
https://www.legacy.com/us/obituaries/baltimoresun/name/martin-schwalenberg-obituary?id=27557597

My systemic abuse is typical of what many Catholic officials promote and cover up in addition to their clergy sexual abuse: body shaming, school beatings, castration, obstetric torture (symphysiotomies and denied painkillers), forced pregnancies, forced adoptions, forced abortions, infanticide, unwed mother false imprisonment (Magdalene and Good Shepherd slave labor laundries), government coups (Hitler’s rise and Jan. 6), and genocide to impose sexual abstinence on us “sexually unworthy” millions, while excusing sex crimes and abortions by their own esteemed clergy. If authorities only investigate clergy sex crimes, they are setting us constituents up for more generations of abuse. The Vatican war on safe sex fuels its pedophile priest scourge by guaranteeing these priests unlimited unwanted fresh kids from dysfunctional homes. These underlying reproductive abuses are excellently summarized by Dr. Doris Reisinger:
https://www.mdpi.com/2077-1444/13/3/198/htm
https://en.doris-reisinger.de/theologie
https://en.wikipedia.org/wiki/Doris_Reisinger

The Catholic Church should be investigated not only for sexual dogma-based Munchausen by Proxy (MBP) medical torture of gays, intersex infants, rape victims, and maternity patients, but also for Nazi-like Cold War experiments in Catholic hospitals, schools, and orphanages that partnered with Johns Hopkins, other hospitals, the Pentagon, other government agencies, and pharmaceutical companies to exploit patients and children for involuntary radiation, biochemical, and drug experiments -- often for the vicious religious purpose of imposing abstinence on "sexually unworthy sinners" like unwed mothers, their fatherless kids, gays, the disabled, non-Catholics, and indigenous and other ethnic minorities. Abstinence-motivated medical assault like disfigurement, castration, female genital mutilation, and symphysiotomies are as heinous as sexual assault. Medically imposed abstinence is Vatican-approved eugenics.

https://blogs.lse.ac.uk/lsereviewofbooks/2015/01/19/against-their-will-the-secret-history-of-medical-experimentation-on-children-in-cold-war-america-by-judith-l-newman-gregory-j-dober-and-allen-m-hornblum/
https://www.amazon.com/Undue-Risk-Secret-Experiments-Humans-ebook/dp/B00CUFD690

Authorities should also investigate the ignored three dozen nun-run slave-labor and baby-trafficking Magdalene Laundry/Good Shepherd prisons in several states, including one in Baltimore. They might have mass graves like the ones discovered at indigenous residential schools, orphanages, and baby mills in Canada and Ireland.
https://www.prnewswire.com/news-releases/survivors-describe-rape-assaults-in-rare-look-at-us-magdalene-laundriesvideo-live-discussion-sponsored-by-janet-janet--suggs-llc-300972545.html
https://www.washingtonpost.com/world/2022/03/27/canada-residential-school-pope-francis-apology/
https://www.the-sun.com/news/388229/irelands-evil-mother-baby-homes-raped-abused/

Officials should realize that Trump fan rejection of covid vaccines is fueled by the unholy trinity of the pedophile priest war on safe sex science, legitimate fear of government experiments and defective drugs, and GOP MBP glee over covid killing mostly minorities. Yet after the vaccines proved safe, I got vaccinated even though I'm still disfigured by Johns Hopkins radiation "treatments" for Mom's priest-ordered abuse.

I was very offended when childless Pope Francis chewed out "selfish" couples for having pets instead of kids. His disfiguring abstinence cult made sure that I'd never attract anyone, therefore have kids. And why should impoverished, unhealthy or abuse-surviving couples breed for a wealthy pedophile priest-serving cult anyway?
https://www.cosmopolitan.com/lifestyle/a38686898/pope-francis-pets-kids-selfish/
https://www.inquirer.com/opinion/pope-francis-pets-catholic-selfish-20220106.html
https://www.washingtonpost.com/opinions/2022/01/07/pope-francis-pets-make-us-better-people-even-if-we-dont-have-children/?itid=lk_interstitial_manual_12

While deliberate medical harm flourished under the Nazis, Christian "sin-preventing" mutilation like castration and facial disfigurement actually date back to early saints inspired by St. Peter who kept his own daughter lame to keep her a virgin. Saints Ebba and Rose of Lima disfigured their own faces to remain virgins. So in addition to my MD and PA school nuns savagely beating learning-disabled kids, they also preached penitential self-mayhem, as depicted in movies like "The Da Vinci Code."
https://webcache.googleusercontent.com/search?q=cache:c-CposR-wJEJ:https://www.thedailybeast.com/why-did-saint-peter-paralyze-his-own-daughter+&cd=8&hl=en&ct=clnk&gl=us

MBP "Saint" Mother Teresa was outed by disgusted volunteers like Hemley Gonzalez as a sadistic money-laundering fraud who denied her captive patients all basic medical care just so they would suffer for the sins of the rich, while she flew their private jets to access the best care for herself. Similarly, abstinence bullies like playboy and pedophile priests and Natural Family Planning (NFP) teachers order childbirth-ruined mothers like my mom to sicken their unwanted

kids like me to extort years of abstinence from husbands threatening divorce over the contraception ban that these church reps themselves disobey. Irish hospitals justified forcing gruesome symphysiotomies on petite mothers to save them from “sinful contraceptive” c-sections that limited them to just four pregnancies instead of the expected ten to twenty. Symphysiotomies were likely performed in America too.
https://bigthink.com/articles/hemley-gonzalez-the-truth-about-mother-teresa/
https://www.businessinsider.com/afp-mother-teresas-legacy-under-cloud-as-sainthood-nears-2016-9
https://www.irishexaminer.com/news/spotlight/arid-40324274.html

Whistleblowers like the late former priest therapist Richard Sipe have complained about antiabortion priests who secretly force abortions on their mistresses and rape victims. Sipe knew of 50 such priest-forced abortions. In one of his books, he revealed that a priest castigated Sipe’s own mother for using “sinful” ineffective NFP even though she nearly died several times from her resulting ten pregnancies. Years ago, I called Sipe to relate my theory that the contraception ban forces unhealthy mothers to commit MBP abuse against unwanted kids, and he agreed in horror. https://www.latimes.com/archives/la-xpm-2002-jul-07-tm-46979-story.html

The media and Obama Administration inexcusably ignored the hypocrite Little Sisters of the Poor egregiously continuing their MBP war on insurance-covered contraception despite their very own knocked-up Sister Sosefina Amoa smothering her secret newborn at their DC mother house in 2013!
https://www.washingtonpost.com/local/crime/mother-convicted-of-killing-newborn-said-she-didnt-know-she-was-pregnant/2014/05/21/814636d6-dc82-11e3-8009-71de85b9c527_story.html

Centuries of brutal church hypocrisy mandated that Schwalenberg order my mom Ellen Mueller to disfigure me as her abstinence forever excuse to save herself from death by another pregnancy, divorce over no more sex, or damnation for contraception use. She exploited my mild hand rash from radioactive glow-in-the-dark rosaries by burning my entire body with caustic tub concoctions, then trafficking me for permanent x-ray and uv radiation burns by Pentagon-funded dermatologists at Johns Hopkins and Philly’s University of Pennsylvania Hospital. Such "treatments" turned me into a revolting molting red lobster that got me banned from schools, stores, restaurants, buses, family gatherings, ever marrying, and many jobs.

Mom bullied me into obeying by screaming that this torture would prevent my dad Phil Mueller from abandoning us. At the time, I thought her burning remedies simply meant that she was “stupid like Lucy Ricardo.” Only recently did I realize that my red skin also conveniently took Dad’s attention off his last inexplicably brown-skinned Asian-looking child resembling Mom’s other favorite priest, Father Thakalahara. God would forgive her because she martyred my skin and dignity in atonement. And I wouldn’t be surprised if Schwalenberg was also tied into the deadly Father Maskell teen sex ring revealed in *The Keepers* series.
https://en.wikipedia.org/wiki/The_Keepers

Dad also got in on the abuse by shunning me in public, helping his dad take insulting side show pics of my most burned parts, including my naked rear end, and ignoring Mom humiliating me with backyard naked winter sun baths, overdosing me on barbiturates, trying to amputate my arms, and making me bald. This abuse was witnessed by Towson neighbors like the Fields family. Years later, I and Doylestown, PA neighbor Bunny Tose (niece of Eagles owner Leonard Tose) separately caught him in adultery when we spotted him sneaking out of a notorious prostitution motel where our Catholic hot teen hooker neighbor Mary Lafferty later got arrested for servicing the sex-starved Our Lady of Mt. Carmel husbands of NFP fool wives.

When I discovered healing radiation detox steam showers, Mom threw apoplectic fits over “selfish” water wasting. She made every visitor and delivery man visit our laundry room so she could demand their pity over the relatively measly two hours she spent each week washing my greasy medicine-soaked clothes. She kept up this humiliating harassment even though my disobedient showers slowly cleared my skin and need for greasy medicine. She also relentlessly hounded everyone about my “clown” makeup, “quack” plastic surgeon consultations, and “mentally ill” all-nighter school assignments that boosted my grades. She even belittled my dignity when I refused to enter my burned skin in a local disability pageant.

When I declared feminist support of contraception, Mt. Carmel priests and nuns ordered her to keep me disfigured and doped on psychotropics -- not unlike Rosemary Kennedy's lobotomy punishment for "proof of fornication" leaves in her hair from clumsy convent prison escapes.

Last year, I complained to DC AG Carl Racine about dogma-based psychiatric drug and radiation experiments at Georgetown University. In early 1992, Mom arranged my consultation with Father Jon O’Brien, late GU Dean of Psychiatry, to drug me out of more plastic surgery for ongoing looksist job discrimination. Although I unwittingly described to O’Brien Mom’s classic MBP assaults that switched from physical to psychotropic abuse, he angrily bragged about developing those bad side-effect drugs and threw me out of his office. I later learned that those prescriptions intentionally muzzle us angry abuse survivors. During the Cold War, the CIA funded GU’s Dr. Charles Geschickter who farmed out radioactive isotopes and MK-Ultra mind control funds for sinister involuntary experiments around the country.
https://ahrp.org/dr-charles-geschickter-served-the-cia-both-as-researcher-and-funding-conduit/
https://www.washingtonpost.com/archive/politics/1977/08/06/mind-control-quartet-subpoenaed-by-senate-after-no-show/3029acae-91dd-4002-9115-d251cf74f294/
https://pelgranepress.com/2017/03/01/call-of-chicago-often-is-a-word-they-seldom-use/
https://www.washingtonpost.com/archive/politics/1977/08/04/turner-cites-149-drug-test-projects/ceb6e94f-25fd-451d-83a3-6533a7a3a7c3/
https://en.wikipedia.org/wiki/Operation_Midnight_Climax

Two psychiatrists twenty years apart (Dr. Rodriguez at JH and Dr. Lawrence Decker in Doylestown, PA) believed Mom caused my disfigurement, but since JH was also conducting horrific involuntary Tuskegee and Guatemala SDT and radiation experiments on unwitting adults and kids, my lab rat stage mother conveniently passed its child abuse investigation. Years later, my frantic anti-healing parents hired Decker to shame me out of using my job savings for fixing

my dad-broken nose and radiation-stunted chin. When I reluctantly met Decker, he almost immediately blurted: “Go get your surgery! Your mother is the awfulest, awfulest woman I ever met!” Later, we joked about how horrified my stupid toxic parents would be if they knew his specialty was encouraging sex lives for the disabled. They picked him on the recommendation of a lawyer they consulted to prevent my planned surgery. When I arrived at Haverford Hospital, my surgeon Dr. Julius Newman angrily told the staff that he was ready to sue my mother because she bullied every politician and medical license authority in PA to revoke his license. When Decker told me he believed Mom caused my scarring, I assumed he meant psychosomatically.

For years, I believed her rotten religiosity psychosomatically worsened my "genetic" hand rash until I learned about MBP abuse from the *Dr. Dean Edell Show* in October 1992. Months after my disastrous appointment with O’Brien, a damn TV talk show finally gave me a psychiatric name for Mom’s obsession with disfiguring me. After the show, I contacted guest Dr. Herbert Schreier, who urged me to read his book and contact his co-author Dr. Judith Libow for her study on adult survivors of MPB parents.
https://www.amazon.com/Hurting-Love-Munchausen-Proxy-Syndrome/dp/0898621216

By divine coincidence, a few days later, a DC suicide prevention counselor connected me to anti-nuclear activist Ann Hopkins, who was also facially disfigured by her MBP scientist dad's radiation experiments at Hanford. Together, we attended DC-area hearings of the Advisory Committee on Human Radiation Experiments (ACHRE), where we met dozens of child survivors like ourselves. Many were exploited by Catholic birth and adoptive military parents and orphanage nuns, and developed peeling burns like mine, and later died prematurely like Ann of resulting cancers. Some were certain that their military doctors included Paperclip Nazis. One shocking government handout revealed that radium-painted rosaries caused my initial mystery hand rash. Mom always knew the cause, but smugly hid the truth from me!
https://en.wikipedia.org/wiki/Advisory_Committee_on_Human_Radiation_Experiments

Controversial Canadian whistleblower Rev. Kevin Annett has complained about mass graves and Nazi-like government-funded experiments on indigenous kids at Catholic and other religious residential schools across Canada, along with experiments on Quebec orphans in nun-run asylums. I wouldn’t be surprised if US residential schools and orphanages also have secret mass graves like those in Canada and Ireland.
https://www.buzzsprout.com/1364944/10035642
https://en.wikipedia.org/wiki/Duplessis_Orphans
https://www.freedommag.org/english/canada/reports/page01.htm
https://thelinknewspaper.ca/article/the-order-of-grey-nuns-facilitated-child-kidnappings
https://knowledgenuts.com/2013/09/26/the-duplessis-orphans-20000-intentional-misdiagnoses/

I contacted JH and UP for my pediatric records, but JH archivist lawyer Keenan Crawford refused to send a copy of 1960-62 meeting minutes mentioning JH experiments unless I first signed a waiver promising not to sue. The Baltimore Sun had just revealed that JH stuffed radium up the noses of 67,000 students and fed radioactive iodine to Down Syndrome kids. He

NEVER sent me the waiver. The records I did receive didn't list government experiments. Other JH survivors got the same runaround. One of my UP dermatologists, the disgraced Dr. Albert Kligman, was outed in *Acres of Skin* for testing LSD, Agent Orange, toxic concentrations of retin-A, and hundreds of other chemicals on Holmesburg prisoners. He used undiluted retin-A to horrifically scab skin in an effort to create "radiation burn-proof hardened skin" for soldiers. He may have done that to me too.
https://www.baltimoresun.com/news/bs-xpm-1997-10-12-1997285020-story.html
https://www.amazon.com/Acres-Skin-Experiments-Holmesburg-Prison/dp/0415923360
https://www.thedp.com/article/2021/06/kligman-prison-experiments-petition-police-free-penn
https://www.prisonlegalnews.org/news/2013/nov/15/book-review-against-their-will-the-secret-history-of-medical-experimentation-on-children-in-cold-war-america
https://en.wikipedia.org/wiki/Albert_Kligman

I've never had access to Mom's JH abuse evaluation or the list of JH experiments, but suspect priests submitted letters defending her faith-based abuse, and that the Pentagon was war gaming radiation disfigurement of females to study their long term demoralizing effect on males in friendly and enemy nations, who would then shun them for reproduction, thus further reducing populations. When ACHRE held its first public hearing at the Mayflower Hotel, TV and press crews swarmed the ballroom as indignant Medical College of Virginia officials defended running a disturbing Pentagon experiment in which 68 paid subjects suffered a dime-sized heat lamp skin burn for testing treatments. The public outrage stunned me since those adult volunteers endured one tiny arm scar, whereas my head and entire body were involuntarily burned at age six for the egos of my mom, priests, and military contractors.
https://www.washingtonpost.com/archive/opinions/1994/07/03/no-burning-secrets/7cd82d0f-0512-4652-ac95-f4923f4353b5/
https://www.washingtonpost.com/archive/opinions/1994/06/19/burning-secrets/03042318-08f8-4ae2-b12a-8f3d70855860/

Former Peace Corp volunteer and Berkeley medical anthropologist Nancy Scheper-Hughes connected lack of contraception to high child "poverty deaths" by desperate MBP mothers in a Brazilian shanty town that she studied since 1964. After a liberal village priest allowed her to teach modern contraception, she happily discovered in later visits that the selective neglect passive infanticide rates of 36 -41% were stopped by smaller planned families. These mothers had been previously praising Jesus for "triaging their unwanted kids to make room for the wanted ones."
https://www.naturalhistorymag.com/features/282558/no-more-angel-babieshey-on-the-alto-do-cruzeiro

Compare that outcome to a Philly priest who wouldn't allow Marie Noe sterilization even though her infants kept "dying from SIDS." He should have been arrested along with her for abetting her ongoing "less sinful" MBP smothering "birth control" of at least eight, possibly nine of her ten dead kids (one stillborn).
https://www.goodreads.com/review/show/3641466378

Scheper-Hughes also recounted how she and her brother naively induced crucifixion stigmata-like irritations on their skin on holy days to impress their pious Catholic mother. But their antics were benign cosplay compared to my mom's abuse and the NFP birth control scam that pretends women's ovaries obey Vatican calendars, charts, and thermometers, thereby forcing millions to suffer grisly obstetric injuries and death, decades of abstinence, and the humiliation of brothel-outsourced angry husbands like my dad.
http://members.tranquility.net/~rwinkel/psych/MBPandNarcissism.pdf

The insulting pedophile priest junk science of NFP nearly killed the infamous anonymous excommunicated Phoenix mother who was saved by an emergency abortion at St. Joseph's Hospital in 2009. That fiasco could have been avoided if the hospital allowed her sterilization or real contraception after previous pregnancies nearly killed her. Instead, she was only allowed NFP that AGAIN immediately failed her. Studies show that many women ovulate more than once per month, thus leaving no safe sex days: https://www.nbcnews.com/id/wbna3076995
https://flo.health/getting-pregnant/trying-to-conceive/fertility/hyperovulation
https://www.newscientist.com/article/dn3927-women-can-ovulate-more-than-once-a-month/
https://www.npr.org/2010/05/21/127033375/sister-margaret-mcbride-dont-confess

No government would criminalize contraception, sterilization, and abortion on behalf of the Vatican if the media paid attention to the WW2 years of future "Saint" Paul VI, author of the deadly "pro-life" Humanae Vitae Encyclical that spread HIV with its condom ban. This "saint" funded the Nazi Ustasha monk-run death camps in Croatia that raped and slaughtered nearly a million non-Catholic Christian Serbs for their suspected contraception use.
https://www.artsjournal.com/herman/2006/01/following_the_rat_lines.html
https://swcjerusalem.org/oldsite/CROATIA_122-13.htm
https://www.dailykos.com/stories/2016/7/30/1554483/-Pope-Francis-at-Auschwitz-But-Not-Where-Catholics-Slaughtered-700-000-Serbs-Jews-and-Roma-in-WWII#comments

If authorities only investigate clergy sexual abuse, and ignore the bigger picture of these same perps also committing dogma-based MBP medical torture to impose the miserable abstinence they themselves won't practice, nations will continue suffering dysfunctional families, substance abuse, overpopulation unemployment poverty, human trafficking, pandemics, pollution, and democidal dictatorships that the Catholic Church sponsors to keep its crime racket going. The public health-menacing GOP attacks on masks and vaccines are no different than the pedophile priest war on life-saving safe sex.

Recently, I was shocked to learn that Baltimore's late Cardinal Gibbons and Saint Pope Pius X badgered our government to defend genocidal atrocities in Africa by Belgium Catholic pedophile King Leopold II from 1885 to 1908. Gibbons and Pius X tripped over each other to heap praise on Leopold's "humanitarian" pillaging of the Congo that resulted in five to fifteen million murders:

"Nor has the Vatican ever come to terms with its errors in bolstering Leopold's bloody regime. Church officials seemed more uncomfortable with his irregular sex life than his homicidal stewardship in Africa. Pius X found the tango craze and other expressions of modern

decadence more appalling than the victimization of the Congolese to which he refused to give any credence."
https://academichustler1975.wordpress.com/2016/03/24/the-defenders-of-king-leopold-ii-genocide-in-the-congo/

Because governments haven't held the Vatican accountable for its collusion with genociders, antiabortion fans of Donald Trump felt entitled to mob our Capitol to keep him in power "to restore morals." Too many Trump fans, with their eagerness to murder VP Pence and Speaker Pelosi, aren't that different from Leopold's hand- and foot-chopping ivory and rubber mercenaries, Hitler's brown shirts, or my mutilating mom. We came very close to a religious coup suffered by other nations, so ignoring seditious religious thugs is perilous. My sadistic family got holy orgasms by torturing me for decades, yet bystanders mostly excused them.

We Vatican and government medical torture victims deserve justice and compensation for these indefensible atrocities. While Guatemalan STD victims have filed a class action against JH, JH still hasn't been punished for its radiation experiments. I'm also wondering if Catholic clergy selected some Guatemalan child victims in pedphile rejection retaliation. Holmesburg prisoners also didn't have much luck against Dr. Kligman and UP. My corrective surgeries exceeded $100,000 and, to my family's sanctimonious delight, I'm still too ugly to get or keep jobs. It would help if federal and state statutes of limitation were lifted so we aging church and government torture victims could be compensated and become a category protected from job and public accommodation discrimination.

Clarence Thomas illegally denied me equal pay when he headed the EEOC because my scarred face offended his Catholic centerfold standards. Many operations later, looksist bullies at The Washington Times illegally fired me for the same reason after forcing me to work 80 hour weeks for 40 hours pay for several years. In both cases, I couldn't find any affordable lawyers to help me. What good are anti-discrimination laws if victims can't afford lawyers? Maryland state and local government agencies and courts could at least stop paying the seditious Moonie cult Washington Times for running their classified legal court notices, given its Jan. 6 sedition, wage theft, Social Security theft, rampant sexual harassment, and discrimination law violations. Why should Maryland taxpayers fund anti-American and anti-human rights disinformation by The Washington Times through its only money-making department?

Clergy abuse survivors should be asked how the contraception ban may have ruined their parents' marriages, thereby setting them up as vulnerable kids for predatory priests. Also, survivors should be asked if MBP abuse was encouraged to promote their own abstinence with dates and spouses. There won't be any children safe from sexual and medical trafficking until their mothers are safe from deadly clergy womb trafficking.

Mary Mueller
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TESTIMONY IN SUPPORT WITH AMENDMENTS OF HB 1 (1).p
Uploaded by: Mary Mueller
Position: FWA

TESTIMONY IN SUPPORT OF HB 1 WITH AMENDMENTS

Civil Actions – Child Sexual Abuse – Definition, Damages, and Statute of Limitations

(The Child Victims Act of 2023)

****SUPPORT WITH AMENDMENTS****

TO: Hon. Luke Clippinger, Chair, and members of the House Judiciary Committee

FROM: Mary Mueller

DATE: March 2, 2023

I am Mary Mueller of Greenbelt, MD, and I strongly support HB 1 with amendments since it would restore decades of denied justice and restitution to us survivors of religious, public institution and family abuse.

Last fall, I sent to former Attorney General Brian Frosh my summary of Catholic sexual dogma-based Munchausen by Proxy medical torture inflicted on me as a child, starting in 1960 in Towson. A copy is included here so you can see the importance of adding physical torture and related abuses in amendments. Such amendments would help victims of childhood beatings, harmful home, school and orphanage medical experiments, the forced gynecological exams and abortions by Father Maskell's collaborator Dr. Richter, and the forced pregnancies, adoptions and unpaid labor in Baltimore's Good Shepherd Home.

Late Orioles chaplain and Immaculate Conception Monsignor Martin Schwalenberg directed my childbirth-ruined mother to disfigure me as her abstinence-only birth control excuse and to distract my father from noticing that their last child was obviously fathered by a priest from India. That triggered decades of withheld records, lies, threats, mob bullying and collusion by my extended family, clergy in three states, and Pentagon-contract doctors at Johns Hopkins and University of PA hospitals that severely delayed my understanding of how and why I grew up hideously burned head to toe. My mom claimed I had a genetic skin disease from my dad, but her toxic home concoctions combined with hospital experiments, including x-ray lamp burns, made my mild radium-painted rosary hand rash spread all over and persist for decades, not only so she could avoid death by more pregnancies, divorce over her now sexless marriage, or damnation for contraception, but also to keep me too ugly to ever need contraception myself.

The public deserves to know that the so-called pro-life Church that criminally protects hypocrite playboy and pedophile priests also secretly excuses priest-forced abortions while forcing imprisonment, disfigurement, disabilities and even death on us lay women as prevention or punishment for our own sex lives. Communities cannot afford to keep excusing such public health menaces.
https://podcasts.apple.com/us/podcast/sister-cathy-part-53-richters-medical-assistant-comes/id1118716786?i=1000524802029

My mom insisted that disfigurement was a blessing, and I knew from my five abusive Catholic schools in two states that her cruelty was dogma-driven, but I didn't learn until September 2019 from a Daily Beast article that the very first pope, St. Peter, was also the first recorded Munchausen by Proxy perp when he proudly demonstrated to followers his forcing lameness on his own daughter to keep her an unmarriageable lifelong virgin. This inspired centuries of "sin-preventing" mutilations like castration and facial disfigurement. Saints Ebba and Rose of Lima disfigured their own faces to remain virgins, and involuntary anti-sex martyrdom persists today in Catholic hospitals that endanger rape, maternity, LGBT and pediatric patients with deliberate dogma-based malpractice.
https://www.thedailybeast.com/why-did-saint-peter-paralyze-his-own-daughter

Catholic sexual medical abuses include female genital mutilation and male castration, Munchausen by Proxy sickening of kids to extort Natural Family Planning abstinence from husbands, ruinous obstetric symphysiotomies on petite Irish mothers to avoid safer but "sinfully contraceptive" c-sections, forced pregnancies, forced adoptions, forced abortions on priests' victims, denied cancer treatments for pregnant women, denied HIV drugs for gays, and forced skin-burning HIV drug experiments on uninfected kids of single mothers at Incarnation Children's Center in Harlem. Former nun Dr. Doris Reisinger has been exposing reproductive abuses resulting from clergy assaults. https://www.mdpi.com/2077-1444/13/3/198
https://www.theguardian.com/commentisfree/belief/2012/mar/20/forcible-castrations-dutch-catholic-church
https://www.altheal.org/toxicity/house.htm

While most Catholic school students have witnessed brutal school beatings, I had to research for decades to learn about nuns trafficking orphans for Nazi-like medical experiments, committing infanticide and abortions to hide their own pregnancies, and falsely imprisoning unwed mothers at three dozen Good Shepherd Homes for unpaid forced labor. Such crimes also deserve inclusion in this bill as amendments.

Former Peace Corp volunteer and Berkeley medical anthropologist Nancy Scheper-Hughes connected the lack of contraception to high child poverty murders by desperate Munchausen by Proxy mothers in a Brazilian shanty town that she studied since 1964. After a liberal village priest allowed her to teach modern contraception, she happily discovered in later visits that the suspected infanticide rates of 36-41% were completely stopped by smaller planned families. These mothers previously praised Jesus for "triaging their unwanted kids to make room for the wanted ones."
https://www.naturalhistorymag.com/features/282558/no-more-angel-babieshey-on-the-alto-do-cruzeiro

Compare that outcome to a Philly priest who wouldn't allow Marie Noe sterilization even though her infants kept "dying from SIDS." He should have been arrested along with her for abetting her ongoing "less sinful" Munchausen by Proxy smothering "birth control" of at least eight, possibly nine of her ten dead kids. https://www.goodreads.com/review/show/3641466378

We survivors of childhood sexual, physical and medical abuse deserve restitution for our injuries, so I respectfully urge a favorable with amendments report on HB 1, and hope that you add my suggested categories by amendment. Thank you.

ATRA Maryland HB1 2023 House Judiciary Statute of

Uploaded by: Cary Silverman

Position: UNF

H.B. 1
A BILL THAT WOULD RETROACTIVELY ELIMINATE A STATUTE OF LIMITATIONS AND REVIVE TIME-BARRED CLAIMS

TESTIMONY OF CARY SILVERMAN
ON BEHALF OF THE AMERICAN TORT REFORM ASSOCIATION

BEFORE THE MARYLAND HOUSE JUDICIARY COMMITTEE

MARCH 2, 2023

On behalf of the American Tort Reform Association (ATRA), thank you for the opportunity to express our concerns regarding H.B. 1, which proposes to retroactively remove any time limit to commence a civil action seeking damages for injuries stemming from alleged childhood sexual abuse.

I am a partner in the Public Policy Group of Shook, Hardy & Bacon L.L.P.'s Washington, D.C. office. I have written extensively on liability law and civil justice issues. I received my law degree and a Master of Public Administration from George Washington University, where I serve as an adjunct law professor. I serve as co-counsel to ATRA, a broad-based coalition of businesses, municipalities, associations, and professional firms that have pooled their resources to promote fairness, balance, and predictability in civil litigation. I have testified across the country on bills similar to H.B. 1, including on earlier Maryland legislation.

Sexual abuse against a child is intolerable and should be punished through both criminal prosecution and civil claims. ATRA commends the Committee for considering steps to protect children and help survivors of abuse. My testimony today focuses on general principles underlying statutes of limitations, as well as the reasons why retroactive changes to these laws, and particularly reviving time-barred claims, are often viewed as unsound policy by legislatures and unconstitutional by courts.

Changes to any statute of limitations should be examined objectively based on core principles. ATRA believes that for statutes of limitations to serve their purpose of encouraging prompt and accurate resolution of lawsuits and to provide the predictability and certainty for which they are intended, they must be, at minimum: (1) finite; and (2) any changes must be prospective. ATRA is concerned because H.B. 1 strays from these principles by proposing to retroactively eliminate a statute of limitations. It would set a troubling precedent for other types of civil cases.

Statutes of Limitations: An Overview

Why do we have statutes of limitations? By encouraging claims to be filed promptly, statutes of limitations help judges and juries decide cases based on the best evidence available. They allow courts to evaluate liability (in negligence cases, what a person or organization should have done to fulfill its duty of care) when witnesses can testify, when records and other evidence is available, and when memories are fresh. As the U.S. Supreme Court has recognized, "the search for truth may be seriously impaired

by the loss of evidence, whether by death or disappearance of witnesses, fading memories, disappearance of documents, or otherwise."[1]

Tort law, by its very nature, often deals with horrible situations that have a dramatic impact on a person's life and the lives of others. No matter how tragic or appalling the conduct, or serious injury, Maryland law requires a plaintiff to file a lawsuit within a certain time. For example, in Maryland:

- When a person is seriously injured due to a drunk driver or an assault, he or she must file a civil lawsuit within three years, which is the general period that applies to personal injury claims.[2]

- A lawsuit alleging that a parent or child died because of someone's wrongful conduct must be filed within three years of the person's death.[3]

- Lawsuits alleging harm due to a doctor's carelessness must be filed within the earlier of five years of the injury or three years of discovery of the injury.[4]

- When a person is exposed to a toxic chemical in the workplace, develops cancer, and dies, his or her family must file a lawsuit within ten years of the death or three years after learning the cause of death, whichever is shorter.[5]

Yet, in Maryland, lawsuits over promissory notes and contracts under seal can be brought for twelve years,[6] and lawsuits seeking recovery of land can be filed for twenty years.[7]

What these examples show is that the length of a statute of limitations is <u>not</u> typically based on the severity of the injury or the heinousness of the conduct at issue. The length of time to file a claim typically reflects the nature of the evidence that is necessary to decide a claim. Claims involving hard evidence such as recorded documents or land tend to have longer statutes of limitations. Cases involving standards of care that heavily rely on witness testimony to determine what occurred or should have been done tend to have shorter periods to file a claim.

In addition to helping courts and juries reach accurate decisions and safeguarding due process, statutes of limitations also allow businesses and nonprofit organizations to accurately gauge their potential liability and make financial, insurance coverage, and document retention decisions accordingly.

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[1] *United States v. Kubrick*, 444 U.S. 111, 117 (1979).

[2] Md. Code, Ct. & Jud. Proc. § 5-101.

[3] *See id.* § 3-904(g).

[4] *Id.* § 5-109(a).

[5] *Id.*

[6] *Id.* § 5-102(a).

[7] *Id.* § 5-103(a).

Maryland's statutes of limitations reflect a legislative judgment that ordinarily a three or five-year period provides claimants in civil actions with an adequate time to pursue a claim while giving defendants a fair opportunity to contest complaints made against them. In addition, Maryland law recognizes that when the injury is to a child, he or she must have additional time to bring a claim. When a child is harmed, the clock generally does not begin until he or she becomes an adult (age 18).[8]

Maryland's Current Statute of Limitations for Lawsuits Alleging Injuries Resulting from Childhood Sexual Abuse

Until 2003, survivors of childhood sexual abuse were subject to the general statute of limitations for civil claims—three years from becoming an adult. That year, the General Assembly established a specific statute of limitations for childhood sexual abuse. The 2003 law more than doubled the previous time limit, providing survivors with seven years to file claims after becoming an adult.[9]

Just six years ago, the General Assembly revisited this law and again provided significantly more time for survivors of sexual abuse to file lawsuits. The 2017 law, which is in effect today:

- Provides 20 years for survivors to file lawsuits from when they become adults (until age 38).
- When a lawsuit claiming that someone other than a perpetrator is liable is filed more than seven years after a survivor of abuse becomes an adult, evidence must show that the organization was grossly negligent in how it acted or failed to act.
- A survivor can file a lawsuit within three years of a perpetrator's conviction of a crime, even if his happens long after the 20-year period ends.[10]

The General Assembly did not revive time-barred claims in 2003 or 2017. A reviver provision was initially included, but removed, from both bills. Instead, each of those bills, as enacted, stated: "this Act may not be construed to apply retroactively to revive any action that was barred by the application of the period of limitations applicable before" the effective date of the new law.

The Proposed Legislation

H.B. 1 would eliminate Maryland's special statute of limitations for childhood sexual abuse claims entirely. It provides that a lawsuit could be filed "at any time," which will apply "retroactively to revive any action that was barred by the application of the period of limitations applicable before October 1, 2023." This bill will allow claims based on allegations of negligent conduct that occurred 2017 or 1947. Maryland has never taken such an extraordinary approach for any type of civil claim.

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[8] *Id.* § 5-201.

[9] S.B. 68 (Md. 2003) (amending Md. Cts. & Jud. Proc. Code § 5-117).

[10] H.B. 642 (Md. 2017) (amending Md. Cts. & Jud. Proc. Code § 5-117).

It is critical to recognize that H.B. 1 does not distinguish between lawsuits filed against perpetrators that committed the abuse and organizations that are alleged to have failed to prevent it. In addition to nonprofit organizations and businesses, the bill would revive claims against public schools and other public entities such as those that offer recreational, social services, or juvenile justice programs.

H.B. 1 would allow claims based purely on negligence, meaning a lawsuit only needs to assert that an organization should have taken additional steps to detect, avoid, or stop abuse many years ago, or should have had better practices for hiring or supervising employees or volunteers. These lawsuits do *not* need to show that an organization knew of the abuse and allowed, enabled, or concealed it. In many cases, the perpetrator will be dead. In some cases, lawsuits will claim that an organization failed to take adequate steps in the 1950s or 1960s to protect the safety of the victim.

The bill also eliminates a current requirement that in older claims – those filed seven or more years after a survivor turns 18 – when an organization's records may have already been legitimately discarded, that a plaintiff show that the organization was grossly negligent in failing to protect a person from abuse.

The Senate version of the legislation includes a provision subjecting actions that are currently not viable, but that the bill revives, to damage limits. Assuming the same limits are added to H.B. 1, they would, for public entities, such as county boards of education, limit damages to $850,000 to a single claimant for injuries arising from a single incident or occurrence, which about double the existing $400,000 cap that applies to public entities facing tort claims. For private entities, including nonprofit organizations, the bill would provide that damages may not exceed $1.5 million for injuries arising from a single incident or occurrence. This limit may provide some predictability and reduce the potential for "nuclear" verdicts in decades-old cases, but would set the limit at a level that exceeds the average settlement or judgment.[11] As such, the cap will likely function as a level personal injury attorneys demand to settle each revived case. In addition, this language will result in substantial litigation over interpretation of a "single incident or occurrence" and the applicable statutory limit.

Retroactively Discarding a Statute of Limitations is Particularly Problematic for Businesses and Nonprofit Organizations

As discussed earlier, under Maryland law, every type of civil claim, no matter serious or tragic the injury, no matter how horrific the conduct, is subject to a finite statute of limitations. No plaintiffs' lawyer wants to have to tell an injured person, who is seeking help, that it is too late to sue. But finite statutes of limitations are a core part of the civil justice system. They promote accuracy in determining liability. And they provide predictability to businesses and other organizations that, at some known point, their liability exposure ends.

[11] For example, when considering the fiscal implications of similar legislation in Washington, that state's Office of the Attorney General indicated that the average state payout on a childhood sexual abuse case against public entities (where there is no cap on public entity liability) is about $1.2 million. *See* Multiple Agency Fiscal Note, Bill No. 1618 S. H.B. (Feb. 15, 2023).

While eliminating a statute of limitations is problematic, the retroactivity of the legislation significantly exacerbates this concern. At least when a statute of limitations is extended or eliminated prospectively, organizations can make rational and appropriate decisions to reduce their liability exposure and to be prepared if some day they are sued. If a business or nonprofit organization knows that Maryland has eliminated its statute of limitations for a particular claim *going forward* it can:

- Adopt a record retention policy that keeps employment or other relevant records forever rather than discard them after a certain number of years.

- Meticulously document steps it takes in the area in which it is subject to liability exposure, such as how it made hiring, disciplinary, and termination decisions, received and responded to reports of misconduct, any training it required employees or volunteers to undertake, and how it met the best practices at the time.

- Understanding the extraordinary liability exposure in a particular area, a person or organization can decide simply to not go into that line of business – not to offer a service or a product – because the risks are just too high. Or they may enter that line of business, but do so only if they are able to purchase substantial additional insurance to provide some security from that risk.

- In a similar vein, when a statute of limitations is extended prospectively, a business that is considering acquiring another business can do due diligence to investigate whether the company it is considering acquiring ever operated in an area subject to such extraordinary liability exposure and go back as far as the statute of limitations allows.

When a legislature eliminates a statute of limitations retroactively, however, a person or organization does not have these choices. Consider, for example, these possible situations:

- An organization, such as a YMCA, is sued for abuse that an employee allegedly committed fifty years earlier when the perpetrator died one year before the lawsuit was filed, any employment records were discarded after seven years, and the few staff members of that time who are still alive have little memory of either of them.

- A dentist or doctor who took over the family medical practice is served with a revived lawsuit alleging that her father or grandfather abused a patient. This may have occurred even before the current owner of the practice was born or went to medical school.

- A small business that provided exercise or sports programs to elementary schools is sued because an employee, who worked at the organization for just a few months, is accused of abuse thirty years earlier. The person who founded, owned, and managed the business at that time has long retired and moved away and the current owners have no knowledge of what occurred.

Reviving time-barred claims is also likely to result in a sudden surge of unexpected litigation. Even if an organization has the records, witnesses, institutional

knowledge available to defend itself, it will be challenging to respond to the litigation when facing multiple, decades-old cases at the same time.

This Approach Sets a Troubling Precedent

Discarding a statute of limitations and reviving-time barred claims sets a troubling precedent. Over time, there will be many sympathetic plaintiffs and important causes. There are also other past injustices that have not been remedied. Allowing revival of time-barred claims here will inevitably lead to future calls to permit claims asserting injuries based on conduct that occurred decades ago.

ATRA has already observed several such attempts in other states. For example, efforts are underway in states that have revived time-barred childhood sexual abuse claims to expand these provisions. Legislation recently took effect in New York that revives claims brought by those who allege injuries from sexual abuse as adults.[12] California enacted similar legislation reviving claims against entities alleging damages from sexual assault experienced as adults, adding related employment claims.[13] Vermont almost immediately expanded its 2019 childhood sexual abuse claims-revival law to apply to *physical* abuse claims.[14] Now, Vermont is considering legislation that would further extend this reviver to "emotional abuse" claims.[15]

Plaintiffs' lawyers and advocacy groups will also seek to revive other types of tort claims. For example, legislation proposed in Maine would have retroactively expanded the statute of limitations for product liability claims from six to fifteen years.[16] Oregon considered a bill that would have revived time-barred asbestos claims during a two-year window.[17] Last October, New York revived claims by water suppliers alleging injuries related to an "emerging contaminant."[18] States have also considered proposals to retroactively allow lawsuits alleging novel theories of liability. Bills have attempted to allow claims addressing social and political causes by applying today's moral values to conduct that occurred long ago.[19]

ATRA's concern is that opening the door here sets a precedent that will be used in other areas. If the legislature is willing to discard statutes of limitations, individuals and businesses in Maryland will face a risk of indefinite liability for any type of claim. As discussed earlier, taking this approach makes the civil justice system unpredictable, unreliable, and unfair.

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[12] S. 66 (N.Y. 2022).

[13] A.B. 2777 (Cal. 2022). As introduced, the California legislation would have broadly revived claims seeking to recover damages for "inappropriate conduct, communication, or activity of a sexual nature." A.B. 2777 (Cal., introduced Feb. 18, 2022).

[14] S. 99 (Vt. 2021).

[15] H. 8 (Vt., introduced Jan. 5, 2023).

[16] LD 250 (Maine 2019) (reported "ought not to pass").

[17] S.B. 623 (Or. 2011) (died in committee).

[18] S. 8763A (N.Y. 2022).

[19] A.B. 15 (Cal., as amended Mar. 26, 2015) (proposing a ten-year statute of limitations for torts involving certain human rights abuses that would have applied retroactively to revive time-barred claims for events that occurred up to 115 years earlier) (claims-revival provision removed and legislation made prospective before enactment).

Most States Have Not Taken the Extreme Approach Proposed in H.B. 1618

Over the past two decades or so, state legislatures have considered hundreds of bills to lengthen the statute of limitations for civil claims alleging injuries from childhood sexual abuse. Most legislatures have responded by prospectively increasing the statute of limitations, even if a bill started out with a more extreme approach. They have retained finite limits and decided not to revive time-barred claims. Here are some recent examples:

- Alabama, one of the few states that had no special statute of limitations for childhood sexual abuse claims, prospectively established a statute of limitations for childhood sexual abuse requiring claims to be filed by age 25.[20]

- Tennessee prospectively changed its law from requiring an action to be filed within 3 years of discovery to 15 years of turning 18 (age 33) or 3 years of discovery of the abuse.[21]

- Texas prospectively extended the statute of limitations from 15 years to 30 years of majority (age 48).[22]

In fact, two weeks ago, North Dakota's Senate Judiciary Committee, which was considering legislation similar to H.B. 1, amended the bill to eliminate an open-ended reviver and, instead, prospectively apply an extended, finite statute of limitations.[23]

By our count, 24 states and the District of Columbia have revived childhood sexual abuse claims in some form since California did so in 2002. It is important for the Committee to recognize, however, that few of these states adopted the broad, unbounded type of reviver contained in H.B. 1. Most other states placed significant constraints on the claims that they revived.

Three states limited revivers to the perpetrator of the abuse, recognizing the problems with evaluating negligence after decades have passed. By contrast, intentional tort claims involve crimes with the simple question of whether the defendant committed the abuse or not.

- Massachusetts extended its statute of limitations from 3 years of becoming an adult (the general period for personal injury claims) to 35 years of age 18 or 7 years of discovery of the injury in 2014. The new period applied retroactively

[20] S.B. 11 (Ala. 2019) (to be codified at Ala. Code Ann. § 6-2-8(b)).

[21] H.B. 565 (Tenn. 2019).

[22] H.B. 3809 (Tex. 2019).

[23] S.B. 2282 (N.D. 2023) (as amended by the Senate Judiciary Committee on Feb. 15, 2023 to require claims to be filed within 21 years the abuse or 21 years of age 15, which unanimously passed the Senate on Feb. 16, 2023).

to revive time-barred claims against perpetrators only.[24] Massachusetts also has a low cap on damages in civil claims against charitable organizations.

- Georgia extended its statute of limitations to age 23 or 2 years of discovery and enacted a 2-year window reviving time-barred claims against perpetrators only in 2015.[25]

- Rhode Island extended its statute of limitations for childhood sexual abuse cases from 7 years to 35 years of turning 18, and provided a 7-year period to bring a claim from when a victim discovers or reasonably should have discovered the injury caused by the abuse. Before enacting this law, the General Assembly removed a 3-year window that would have permitted time-barred claims. Instead, the enacted legislation applies the extended period retroactively for claims brought against perpetrators only and explicitly does not revive time-barred claims against entities.[26]

Several other states required revived claims against an entity to show the entity had actual knowledge or committed criminal misconduct.

- In 2009, Oregon extended its statute of limitations to permit claims until age 40 against perpetrators or claims alleging that an entity knowingly allowed, permitted, or encouraged child abuse, and applied that new period retroactively.

- Utah adopted a statute of limitations that allows claims to be filed within 35 years of turning 18 and enacted a 3-year window for claims against perpetrators and those who would be criminally responsible in 2016.[27] The Utah Supreme Court found that reviver unconstitutional in 2020.

- Michigan prospectively extended its statute of limitations to age 28 or 3 years of discovery, and adopted a 90-day reviver window tailored for victims of a convicted criminal, Dr. Larry Nasser in 2018.[28]

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[24] Mass. Act ch. 145, § 8 (2014) (codified at Mass. Gen. Laws ch. 260, § 4C, 4C 1/2). The Massachusetts law's 35-year period for filing a claim is "limited to all claims arising out of or based upon acts alleged to have caused an injury or condition to a minor which first occurred after the effective date of this act" and did not revive time-barred claims. The Massachusetts law's seven-year discovery period, however, applied retroactively.

[25] Ga. Code Ann. § 9-3-33.1(d)(1) ("The revival of claim…shall not apply to [a]ny claim against an entity.").

[26] S.B. 315 Sub. A (R.I. 2019) (amending R.I. Gen. Laws § 9-1-51).

[27] Utah Code Ann. § 78B-2-308(7) (reviving a civil action against an individual who "(a) intentionally perpetrated the sexual abuse;" or "(b) would be criminally responsible for the sexual abuse").

[28] Mich. Public Act 183 (S.B. 872) (signed June 12, 2018) (amending Mich. Comp. Laws § 600.5805 and adding § 600.5851b). The Michigan law revived claims revived claims filed by an individual who, while a minor, was a victim of criminal sexual conduct after December 31, 1996 when the person alleged to have committed the criminal sexual conduct was convicted of criminal sexual conduct and that defendant was (a) in a position of authority over the victim as the victim's physician and used that authority to coerce the victim to submit, or (b) engaged in purported medical treatment or examination of the victim in a manner that is, or for purposes that are, medically recognized as unethical or unacceptable.

- Arizona extended its statute of limitations to 12 years of age 18 in 2019. It adopted a window that is about 1 1/2 years long that revives claims only where there is clear and convincing evidence that an entity knew an employee or volunteer engaged in sexual abuse.[29]

- West Virginia adopted a statute of limitations of 18 years of becoming an adult or four years of discovery of the abuse, for claims against perpetrators, in 2020. For claims against entities, it adopted an 18-year period (age 36) without the potential to expand that period for later discovery of the injury. It revived claims against perpetrators or a person or entity that aided, abetted, or concealed the abuse.[30]

Three states did not revive claims alleging bare negligence, but required evidence of gross negligence to support a time-barred claim. These states include Delaware (2007), Hawaii (2012-2020), and Vermont (2019).[31]

In addition, several states revived only those claims falling within a new or extended, but finite, statute of limitations by applying the extended period retroactively. These states include Connecticut (2002), Kentucky (2021), Montana (2019), Nevada (2021), Oregon (2009), and West Virginia (2020), as well as the District of Columbia (2019). They did not revive claims going back indefinitely.

Finally, Colorado's 2021 law retroactively authorized a cause of action involving conduct that occurred after 1960 and capped damages in otherwise time-barred negligence claims against organizations and public entities at levels significantly lower than those proposed in H.B. 1.[32]

In sum, while you may hear that many states have revived time-barred childhood sexual abuse claims, relatively few states, such as California, New York, New Jersey and Minnesota, have broadly done so. When you look more closely at what other states actually did, the vast majority included significant constraints on what claims are revived that are not found in H.B. 1.

Reviving Time-Barred Claims is Unconstitutional

The Maryland Court of Appeals (now the Maryland Supreme Court) has "consistently held that the Maryland Constitution ordinarily precludes the Legislature (1) from retroactively abolishing an accrued cause of action, thereby depriving the plaintiff of a vested right, and (2) from retroactively creating a cause of action, or reviving a barred cause of action, thereby violating the vested right of the defendant."[33]

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[29] H.B. 2466 (Ariz. 2019) (codified at Ariz. Rev. Stat. § 12-514).

[30] H.B. 4559 (2020) (amending W. Va. Code Ann. § 55-2-15).

[31] Del. Code tit. 10, § 8145(b); Haw. Rev. Stat. § 657-1.8(b); Vt. Stat. Ann. tit. 12, § 522.

[32] S.B. 88 (Colo. 2021) (codified at Colo. Rev. Stat. § 13-20-1201 et seq.) (generally limiting damages to $350,000 against public entities and $500,000 against private entities).

[33] *Dua v. Comcast Cable*, 805 A.2d 1061, 1078 (Md. 2002) (emphasis added); *Langston v. Riffe*, 754 A.2d 389, 401 (Md. 2000) ("Generally, a remedial or procedural statute may not be applied retroactively if it will interfere with vested or substantive rights.").

In 2011, the Court of Appeals ruled that the 2003 law's seven-year statute of limitations may apply retroactively, but it carefully distinguished between adding time to bring claims where the statute of limitations has not expired and reviving time-barred claims.[34] "We would be faced with a different situation entirely had [the plaintiff's] claim been barred under the three-year limitations period," the court observed.[35] So, for example, the General Assembly can increase the period to file a claim for a person who is two years into the current twenty-year statute of limitations because the claim remains viable, but it cannot constitutionally authorize a person to sue once the applicable time period to bring the claim has expired.

The Court has consistently ruled that retroactive legislation cannot impede vested rights, regardless of the legislature's "rational basis" for enacting it.[36] It has invalidated legislation extending a statute of limitations that revived time-barred claims in other contexts.[37]

In addition, the legislation extending the statute of limitations enacted in 2017 provided that "in no event" may an action be filed against someone other than a perpetrator more than 20 years after a victim becomes an adult. This type of language reflects a "statute of repose." Maryland courts have repeatedly recognized that a statute of repose creates a "vested" substantive right to be free from liability after a legislatively determined period, rather than altering the procedure to bring a claim.[38] Unlike a statute of limitations, the period set by a statute of repose does not depend on when an injury occurred and cannot be tolled or extended. This further increases the already high likelihood that the Court of Appeals will find H.B. 1's reviver unconstitutional.

As you may know, the Maryland Attorney General's Office of Counsel to the General Assembly evaluated the constitutionality of reviving time-barred sexual abuse claims in 2003, 2019, and 2021. In 2003 and initially in 2019, Assistant Attorney General Kathryn Rowe concluded that it is "possible" that the Court of would find legislation reviving time-barred claims violates the due process requirements of the Maryland Constitution.[39] The earlier opinions hedged for two reasons – (1) it took a cautious approach in not stating with certainty that the reviver would be

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[34] *Doe v. Roe*, 20 A.3d 787, 800 (Md. 2011).

[35] *Id.*

[36] *See, e.g., id.; see also Muskin v. State Dep't of Assessments & Taxation*, 30 A.3d 962, 986 (Md. 2011) (""It has been firmly settled by this Court's opinions that the Constitution of Maryland prohibits legislation which retroactively abrogates vested rights. No matter how 'rational' under particular circumstances, the State is constitutionally precluded from abolishing a vested property right or taking of a person's property and giving it to someone else.").

[37] *Smith v. Westinghouse Electric Corp.*, 291 A.2d 452, 455 (Md. 1972) (ruling that retroactively extending statute of limitations for work-related deaths from two to three years was unconstitutional when applied to revive expired cause of action); *see also Johnson v. Mayor & City Council of Baltimore*, 61 A.3d 33, 44 (Md. 2013) (in finding amendment to Workers' Compensation Act applied prospectively only, observing that "we concluded that *Roe* and others *whose claims were not already barred* by the statute of limitations could file their claims pursuant to the lengthier limitations period") (emphasis added).

[38] *See, e.g., Duffy v. CBS Corp.*, 182 A.3d 166, 177 (Md. 2018); *SVF Riva Annapolis v. Gilroy*, 187 A.3d 686, 689 (Md. 2018); *Anderson v. United States*, 46 A.3d 426, 437-38 (Md. 2012); *Carven v. Hickman*, 763 A.2d 1207, 1211 (Md. 2000).

[39] *See* Kathryn M. Rowe, Assistant Attorney General to The Hon. Luke Clippinger, regarding H.B. 687, Mar. 12, 2019 (citing 2003 letter).

unconstitutional because, while recognizing the clear language in past rulings indicated the high court would not allow a reviver, the court had not squarely ruled on the issue; and (2) it recognized that courts in some states (a minority) had permitted revivers.

After the statute of repose language was added to the statute in 2017, the opinion letters became more definitive. The March 16, 2019 opinion letter concludes that reviving time-barred claims would "most likely be found unconstitutional as interfering with vested rights."[40] The June 23, 2021 opinion letter to Senate Judicial Proceedings Chair William Smith similarly concluded: "I find it unlikely that a court would find a change in the law creating a new two year during which a person would be once again liable to be sued did not violate the vested right created by the passage of the statute of repose."[41]

You may have seen Attorney General Anthony Brown's latest letter on the issue to Chairman Smith. That letter used a double negative to describe the legality of the legislation, finding it "not clearly unconstitutional." The new attorney general opined that "it is not a given" that the Maryland Supreme Court will invalidate the reviver and vowed to defend the constitutionally questionable provision.[42] That opinion wrote off the Court's unambiguous language as dicta and instead relied on case law from other states taking the minority approach, which the Maryland Supreme Court has already specifically and repeatedly indicated (in both *Dua v. Comcast* and *Muskin v. SDAT*) that it will not follow.

Regardless of whether the period for filing a claim is considered a statute of limitations or a statute of repose, Maryland's constitutional law is consistent with most other states. As several state supreme courts have observed, "The weight of American authority holds that the [statute of limitations] bar does create a vested right in the defense" that does not allow the legislature to revive a time-barred claim.[43] States reach this result through applying due process safeguards, a remedies clause, a specific state constitutional provision prohibiting retroactive legislation, or another state

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[40] Letter from Kathryn M. Rowe, Assistant Attorney General to The Hon. Kathleen M. Dumais regarding H.B. 687, Mar. 16, 2019.

[41] Letter from Kathryn M. Rowe, Assistant Attorney General to The Hon. William C. Smith, Jr. regarding S.B. 134 and H.B. 263 of 2021, June 23, 2021.

[42] Letter from Attorney General Anthony G. Brown to The Hon. William C. Smith, Jr. regarding S.B. 686, Feb. 22, 2023.

[43] *Johnson v. Garlock, Inc.*, 682 So.2d 25, 27-28 (Ala. 1996); *see also Johnson v. Lilly*, 823 S.W.2d 883, 885 (Ark. 1992) ("[W]e have long taken the view, along with a majority of the other states, that the legislature cannot expand a statute of limitation so as to revive a cause of action already barred."); *Frideres v. Schiltz*, 540 N.W.2d 261, 266-67 (Iowa 1995) ("[I]n the majority of jurisdictions, the right to set up the bar of the statute of limitations, after the statute of limitations had run, as a defense to a cause of action, has been held to be a vested right which cannot be taken away by statute, regardless of the nature of the cause of action."); *Dobson v. Quinn Freight Lines, Inc.*, 415 A.2d 814, 816-17 (Me. 1980) ("The authorities from other jurisdictions are generally in accord with our conclusion" that running of the statute of limitations creates a vested right); *Doe v. Roman Catholic Diocese*, 862 S.W.2d 338, 341-42 (Mo. 1993) (recognizing constitutional prohibition of legislative revival of a time-barred claim "appears to be the majority view among jurisdictions with constitutional provisions" similar to Missouri); *State of Minnesota ex rel. Hove v. Doese*, 501 N.W.2d 366, 369-71 (S.D. 1993) ("Most state courts addressing the issue of the retroactivity of statutes have held that legislation which attempts to revive claims which have been previously time-barred impermissibly interferes with vested rights of the defendant, and this violates due process.").

constitutional provision. These cases generally recognize that a legislature cannot take away vested rights. It is a principle that is equally important to plaintiffs and defendants. The legislature cannot retroactively shorten a statute of limitations and take away an accrued claim (such as by reducing a three-year period to one year, when a plaintiff is two years from accrual of the claim). Nor can it extend a statute of limitations after the claim has expired. Courts have applied these constitutional principles to not allow revival of time-barred claims in a wide range of cases—negligence claims, product liability actions, asbestos claims, and workers' compensation claims, among others.

A minority of states find that legislation reviving time-barred claims is permissible or appear likely to reach that result. These states generally follow the approach taken under the U.S. Constitution, which contains an "Ex Post Facto" clause that prohibits retroactive *criminal* laws,[44] including retroactive revival of time-barred criminal prosecutions,[45] but does not provide a similar prohibition against retroactive laws affecting *civil* claims.[46] For that reason, under *federal* constitutional law, there is no vested right in a statute of limitations defense that prohibits reviving an otherwise time-barred claim.[47] Delaware, for example, follows the federal approach.[48] The U.S. Supreme Court has recognized, however, that state constitutions can provide greater safeguards than the U.S. Constitution.[49] Many states, including Maryland, do so.

In 2020, the Utah Supreme Court became the latest state high court to find reviver legislation (a three-year window that revived claims only against perpetrators) unconstitutional. While the court "appreciated the moral impulse and substantial public policy justifications" for the reviver, the court unanimously held that the principle that the legislature violates due process by retroactively reviving a time-barred claim is "well-rooted in our precedent," "confirmed by the extensive historical material," and has been repeatedly reaffirmed for "over a century." It continued to follow the "majority approach."[50]

By our count, 15 of the 24 states that have revived time-barred childhood sexual abuse claims did so between 2019 and 2021. Litigation stemming from these recent enactments is now reaching state appellate courts. ATRA is aware of constitutional challenges to revivers in five states: Colorado, Louisiana, North Carolina, New York, and

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[44] U.S. Const. art. I, § 9, cl. 3 ("No bill of attainder or ex post facto Law shall be passed.").

[45] *See Stogner v. California*, 539 U.S. 607 (2003) (holding that "a law enacted after expiration of a previously applicable limitations period violates the Ex Post Facto Clause when it is applied to revive a previously time-barred prosecution").

[46] While the U.S. Supreme Court has provided Congress with more of a free hand to enact retroactive legislation, it has also expressed strong concern with this long "disfavored" approach. *See Landgraf v. USI Film Prods.*, 511 U.S. 244, 266 (1994) ("[R]etroactive statutes raise particular concerns. The Legislature's unmatched powers allow it to sweep away settled expectations suddenly and without individualized consideration. Its responsivity to political pressures poses a risk that it may be tempted to use retroactive legislation as a means of retribution against unpopular groups or individuals.").

[47] *See Chase Securities Corp. v. Donaldson*, 325 U.S. 304, 314 (1945); *Campbell v. Holt*, 115 U.S. 620, 628 (1885).

[48] *See Sheehan v. Oblates of St. Francis de Sales*, 15 A.3d 1247, 1258-59 (Del. 2011) (recognizing that Delaware, in interpreting "due process of law" under its own Constitution, accords that phrase the same meaning as under the U.S. Constitution, and following *Chase* and *Campbell*).

[49] *See Pruneyard Shopping Center v. Robins*, 447 U.S. 74, 81 (1980).

[50] *Mitchell v. Roberts*, 469 P.3d 901, 903, 913 (Utah 2020).

Rhode Island. In the Colorado case, for example, organizations representing school districts asked how they could defend against a claim dating back to the 1980s when the then 30-year-old employee accused of abuse would now be 80, and the school district had difficulty even locating records to confirm he was an employee 40 years ago, let alone figure out what interaction he may have had with the plaintiff. The school districts also indicated that they are unlikely to have records from that period. Their retention period reflected the statute of limitations in place at the time and limited storage space.[51] Maryland schools and other organizations will have similar due process issues when responding to decades-old claims. ATRA anticipates that courts will ultimately invalidate some, if not all, of the reviver provisions in states that have disregarded their constitutional principles.[52]

* * *

In conclusion, it is important that Maryland's civil justice system maintain the predictability and certainty of having a finite statute of limitations for any type of civil claim. Legislation that retroactively removes any limitations period sets a troubling precedent, allowing decades-old claims where witnesses, records, and other evidence upon which judges and juries can evaluate liability are no longer available. The General Assembly significantly extended the civil statute of limitations for childhood sexual abuse in 2017. If, however, the Committee feels that more time is needed, there are alternatives that would provide survivors with more time to sue without violating core principles of the civil justice system.

Thank you again for the opportunity to testify today and considering ATRA's concerns as you address this difficult and important issue.

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[51] Brief of Amici Curiae Colorado School Districts Self Insurance Pool, Colorado Association of School Boards, Special District Association of Colorado, Colorado Rural Schools Alliance, and Colorado Association of School Executives in Support of Petitioner Aurora Public Schools, *Aurora Public Schools v. Saupe*, No. 2022 SC 824 (Colo. filed Jan. 17, 2023). The Colorado school districts predicted that the legislation would lead to 1,000 revived claims with an average payment of $600,000—a total cost of $600 million. *See id.*

[52] *Lousteau v. Congregation of Holy Cross Southern Province, Inc.*, No. 22-30407 (5th Cir.) (considering appeal of ruling finding Louisiana's reviver unconstitutional); *Doe v. Society of the Roman Catholic Church of the Diocese of Lafayette*, No. 2022-CC-00829, 347 So.3d 148 (Mem) (La. Oct. 4, 2022) (remanding to Court of Appeals with instruction to consider whether reviving a time-barred claim would "unconstitutionally impair relator's vested right in the defense of liberative prescription"); *PB-36 Doe v. Niagara Falls City Sch. Dist.*, CA 21-01223 (N.Y. App. Div., 4th Dep't) (briefing complete); *McKinney v. Goins*, No. 109PA22 (N.C.) (considering appeal of ruling finding reviver unconstitutional); *Houllahan v. Gelineau*, SU-2021-0032-A, SU-2021-0033-A, SU-2021-0041-A (R.I.) (oral argument heard Feb. 1, 2023, in case in which trial court did not reach constitutional issue).

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MARYLAND CATHOLIC CONFERENCE

March 02, 2023

House Bill 001 - Civil Actions – Child Sexual Abuse –
Definition, Damages, and Statute of Limitations (The Childs Victim Act 2023)

House Judiciary Committee

UNFAVORABLE

The Maryland Catholic Conference is the public policy representative of the three (arch)dioceses serving Maryland, which together encompass over one million Marylanders. Statewide, their parishes, schools, hospitals, and numerous charities combine to form our state's second largest social service provider network, behind only our state government.

At the outset, we wish to acknowledge the tremendously painful and emotional nature of the issue of child sexual abuse, the courage of the survivors of sexual abuse who advocate for changes in the law regarding the civil statute of limitations for cases involving child sexual abuse, and our sorrow for all those who have suffered through contact with anyone involved with the Catholic Church.

It is with great reluctance that we submit this testimony in opposition to the legislation before you. We feel compelled to oppose the current version of this legislation, specifically the unconstitutional provision to open an unlimited retroactive window allowing civil cases of child sexual abuse to be brought forward regardless of how long ago they are alleged to have occurred.

We have noted in connection with past legislation that eliminating the civil statute of limitations retroactively raises serious equity concerns and is particularly unnecessary in Maryland which does not have a criminal statute of limitations on child sex abuse. Maryland is one of few states that have no statute of limitations for felonies, and thus perpetrators of sexual abuse can be rooted out and victims can have their day in court at any time until the death of the perpetrator, regardless of how long ago the sexual abuse occurred.

While there is clearly no financial compensation that can ever rectify the harm done to a survivor of sexual abuse, the devastating impact that the retroactive window provision will potentially have by exposing public and private institutions - and the communities they serve - to unsubstantiated claims of abuse, cannot be ignored. For example, in the hearing for the

Senate cross-file of this bill the attorney testifying for the Maryland Association of Boards of Education estimated that *"…multiple incidents could be $850,000 for a school board when we look at our experience over just over the last few years. It's not inconceivable to have 3000 incidents. That might come to fruition if we have an indefinite look back. 3000 incidents would pencil out to $2.5 billion in the maximum judgments."*

In the past, the church has supported efforts to extend the age by which victim-survivors may file civil suits. Currently, the law in Maryland allows victims until the age of 38 to file such claims; an extension supported by the church. The MCC has been vocal in its support of prospective legislation concerning this issue given the fact that that legislation seeking to retroactively revive claims currently time-barred in Maryland is unconstitutional.

We urge you to consider this legislation in light of the issues we have outlined here, and to give Senate Bill 686 an unfavorable report, in its current form.

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House Bill 1

Civil Actions - Child Sexual Abuse - Definition, Damages, and Statute of Limitations (The Child Victims Act of 2023)

MACo Position: **LETTER OF INFORMATION**

To: Judiciary Committee

Date: March 2, 2023

From: Sarah Sample

The Maryland Association of Counties (MACo) takes no position on HB 1 but raises the following thoughts for the Committee's consideration on the potential county impacts of this bill. In brief, HB 1 attempts to address some of the grievous harms visited upon the victims of child sexual abuse. It expands the definition of "sexual abuse" and extends the statutes of limitations and repose for certain civil actions relating to child sexual abuse. If the bill becomes law, it will eliminate the statute of limitations on matters involving allegations of child sexual abuse.

Generally, if a local government is found to have been negligent in their supervisory capacity of an employee who perpetrated an offense outlined in the bill while operating outside the scope of their duties, there is potential for claims and coverage costs to increase. If the number of claims alleging sexual abuse by employees of local governments increases, the impact will be felt by all local governments − even those without a negative claim history − as the insurance premiums will likely increase. Given the uncertainty on the number of potential claims, the premium increases and risk to member equity cannot be reliably predicted at this time. Additionally, as premiums are assessed based upon actuarial studies, the increase in the statutory cap and the expansion of the limitations period could erode the accumulated surpluses maintained to satisfy existing claims and those future claims that can be reasonably anticipated.

Another element to consider is that HB 1 appears to eliminate the notice provisions of the Local Government Tort Claims Act for cases of child sexual abuse. Not requiring notice deprives a local government of the opportunity to conduct a timely investigation into any cases affected by this revision. Not having that opportunity complicates the defense of these matters, including the possibility of settlement. As an example, parks and recreation departments are frequently staffed with seasonal employees, high school and college aged individuals, and/or employees that don't remain employees for long periods of time. The ability to locate and interview potential witnesses further complicates the ability of local governments to investigate.

Counties believe measures should be taken to ensure that victims of child sexual abuse can seek the justice their circumstances deserve. The bill expands the opportunity for victims to do so and also increases the potential for counties to incur increased cost and liability. Counties are appreciative of the goal of this legislation and are more than willing to work with stakeholders to further the intent while maintaining effective governmental operations and budgetary obligations.

HB0001 - MSBA Informational Letter (2023.03.02).do
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MEMORANDUM

To: Members of the House Judiciary Committee

From: Maryland State Bar Association (MSBA)
Shaoli Katana, Esq., Advocacy Director

Subject: House Bill 1 - Civil Actions - Child Sexual Abuse - Definition, Damages, and Statute of Limitations (The Child Victims Act of 2023)

Date: March 2, 2023

Position: Informational Letter

The Maryland State Bar Association (MSBA) provides this informational letter for **House Bill 1 - Civil Actions - Child Sexual Abuse - Definition, Damages, and Statute of Limitations (The Child Victims Act of 2023).** HB 1 alters the definition of "sexual abuse" for purposes relating to civil actions for child sexual abuse to include any act that involves an adult allowing or encouraging a child to engage in certain activities; repeals the statute of limitations in certain civil actions relating to child sexual abuse; repeals a statute of repose for certain civil actions relating to child sexual abuse; provides for the retroactive application of the Act under certain circumstances; etc.

The MSBA represents more attorneys than any other organization across the State in all practice areas. MSBA serves as the voice of Maryland's legal profession. Through its Laws Committee and various practice-specific sections, MSBA monitors and takes positions on legislation of importance to the legal profession.

The MSBA strongly support the goals of the bill and is extremely sympathetic to child sexual abuse survivors seeking relief, to find justice and achieve some closure on their

abuse through open access to the civil justice system and appropriate remedies. The MSBA thanks the Legislature for its continued diligence and dialogue on this issue.

The proposed bill raises constitutional issues, particularly regarding the ability to revive civil claims after the statute of limitations has already ended. The State Bar has concerns about retroactive legislation that may diminish due process and encourages the Committee to consider additional solutions. The MSBA hopes that survivors can achieve meaningful reform without facing further legal challenges in court regarding the validity of this approach.

For additional information, please feel free to contact Shaoli Katana at MSBA at shaoli@msba.org.