

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 USAAdvocacy
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 USAAdvocacy, 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 USAAdvocacy, 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.¹

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 repose 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**

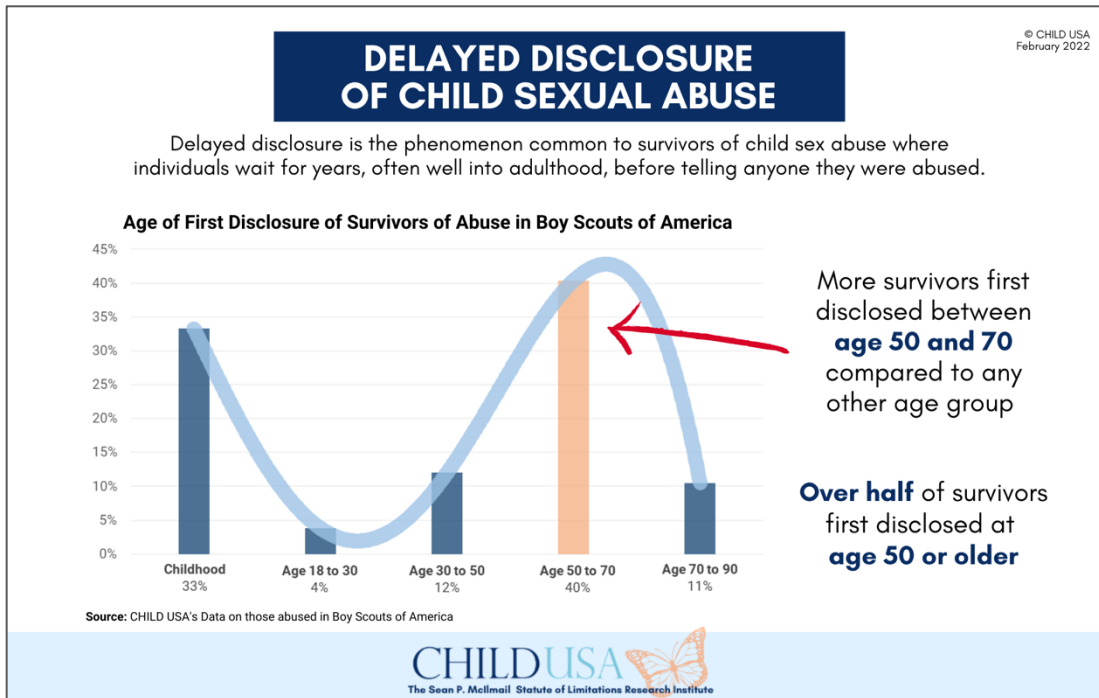
Currently, more than 10% of children are sexually abused, with at least one in five girls and one in thirteen boys sexually abused before they turn 18.^v CSA is a social problem that occurs in all social groups and institutions, including familial, religious, educational, medical, and athletic. Nearly 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. SOL Reform Serves the Public Good by Giving Survivors Access to Justice and Preventing Future Abuse

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 USAAdvocacy 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:

HOW STATUTE OF LIMITATIONS REFORM HELPS EVERYONE

-  **Identifies Hidden Child Predators and the Institutions that Endanger Children**
to the public, shielding other children from future abuse.
-  **Punishes Bad Actors & Shifts the Cost of Abuse**
from the victims and taxpayers to those who caused it.
-  **Prevents Further Abuse**
by educating the public about the prevalence, signs, and impact of child sex abuse so that it can be prevented in the future.

CHILDUSA 
The Sean P. McIlmail Statute of Limitations Research Institute

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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.

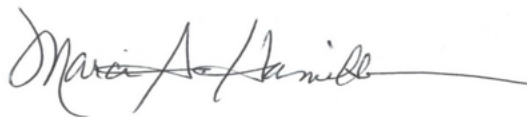
VII. CONCLUSION

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/crcr/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. ARCH. 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*.