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April 21, 2025

The Honorable Wes Moore  
Governor of Maryland  
State House  
100 State Circle  
Annapolis, Maryland 21401  
*Delivered via email*

***RE: House Bill 1378 – “Civil Actions - Child Sexual Abuse”***

Dear Governor Moore:

We hereby approve House Bill 1378 (“Civil Actions - Child Sexual Abuse”) for constitutionality and legal sufficiency. House Bill 1378 amends the Child Victims Act, 2023 Md. Laws, ch. 6, to make changes to the provisions governing child sexual abuse claims. The amended bill lowers the noneconomic damages cap on claims that would have been barred by a time limitation before October 1, 2023, and applies to claims filed on or after June 1, 2025. The bill also clarifies that the cap applies to a single claimant for injuries arising from the claim or claims. In our view these changes are legally defensible and not clearly unconstitutional.<sup>1</sup>

The Child Victims Act provided that “notwithstanding any time limitation under a statute of limitations, a statute of repose, the Maryland Tort Claims Act . . . or any other law, an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor may be filed at any time.” Courts & Judicial

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<sup>1</sup> We apply a “not clearly unconstitutional” standard of review in the bill review process. 71 *Opinions of the Attorney General* 266, 272 n.11 (1986).

Proceedings Article (“CJP”) § 5-117(b)).<sup>2</sup> Any such claim, if made against the State, would need to be brought under the Maryland Tort Claims Act (“MTCA”). State Gov’t Article (“SG”), §§ 12-101 to 12-110. The Child Victims Act amended the MTCA to provide that “[i]f liability of the State or its units arises under a claim of sexual abuse . . . the liability may not exceed \$890,000 to a single claimant for injuries arising from an incident or occurrence.” SG § 12-104(a)(2)(iii)). The cap in the Local Government Tort Claims Act (“LGTCA”) was similarly increased. CJP § 5-303(a)(4). Liability for private parties was capped at \$1.5 million. CJP § 5-117(c).

It is well-established that a law that operates to retroactively deprive a person of a vested right violates Article 24 of the Maryland Declaration of Rights and Article III, § 40 of the Maryland Constitution. *Prince George’s County v. Longtin*, 419 Md. 450, 484-85 (2011). While there is no precise definition of what constitutes a “vested right,” it is “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.” *Allstate Ins. Co. v. Kim*, 376 Md. 276, 298 (2003) (citing *Godfrey v. State*, 530 P.2d 630, 632 (Wash. 1975)).

In *Longtin*, the Maryland Supreme Court found that the retroactive application of a statutory damages cap violated Article 24 of the Maryland Declaration of Rights and Article III, § 40. The Court noted:

To be sure, applying a damage cap does not vitiate a person’s remedy altogether. Moreover, there was no “particular” sum that [the plaintiff] had a right to when the statute was changed; it had not yet been determined by the jury. We are not persuaded, though, that these distinctions disqualify [the plaintiff’s] accrued right to recover damages from the constitutional protections against retroactive application of laws... Our constitutional precedent recognizes that a person’s rights shall not be “impaired” by later-enacted legislation.

419 Md. at 489. The Court went on to hold that the plaintiff “had a vested right in bringing his cause of action—with no statutory cap on damages—prior to the enactment of the LGTCA revisions.” *Id.* at 489-90.

Nevertheless, an important distinction between this situation and *Longtin* is that Child Victims Act claims against the State are only possible in the first place because of the State’s waiver of sovereign immunity. The claim in *Longtin*, by contrast, did not depend

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<sup>2</sup> Such an action, however, may not be brought if the alleged victim of abuse is deceased at the commencement of the action. CJP § 5-117(d).

on any such waiver. *See* 419 Md. at 484. Waivers of sovereign immunity are disfavored and strictly construed in favor of the State, because courts defer to the General Assembly’s authority to decide how far to waive immunity. *See, e.g., Williams v. Morgan State Univ.*, 484 Md. 534, 547 (2023); *see also Rodriguez v. Cooper*, 458 Md. 425, 451 (2018) (noting that whether to change the State’s waiver of sovereign immunity “is entirely within the prerogative of the General Assembly”). And courts are less likely to find a right to be vested when that right is generally disfavored in the law. *See Roman Catholic Archbishop of Wash. v. Doe*, Nos. 9 & 10; Misc No. 2, Sept. Term, 2024 (Md. Feb. 3, 2025) (slip op. at 27 n.14).

Moreover, a vested right must be “something more than a mere expectation based on the anticipated continuance of the existing law.” *Muskin v. State Dep’t of Assessments & Taxation*, 422 Md. 544, 560 (2011) (citation and emphasis omitted). That sort of “mere expectation” is all a plaintiff can have in the context of waivers of sovereign immunity, which the General Assembly retains full discretion to alter. *See Rodriguez*, 458 Md. at 451. There is accordingly an argument that a plaintiff cannot acquire a vested right in a waiver of sovereign immunity, meaning the General Assembly can narrow the scope of the waiver, even retroactively.

The Supreme Court of Maryland further indicated in its decision upholding the Child Victims Act that “the constitutional protection even for an accrued cause of action . . . extends only to ensuring a reasonable opportunity to file suit, after which all remedies may be precluded.” *Doe* (slip op. at 24-25). The Court, then, seems to be calling into question its earlier suggestion in *Longtin* that a plaintiff can acquire a vested right not only in a cause of action but in a particular amount of damages. In addition, other cases have indicated that a statutory cause of action vests only when an award or determination is made. *See Landsman v. Maryland Home Improvement Comm’n*, 154 Md. App. 241, 255 (2003); *McComas v. Criminal Injuries Compensation Bd.*, 88 Md. App. 143, 149-50 (1991).

Even assuming a plaintiff has a vested right in a particular amount of damages (for accrued claims that do not depend on a waiver of sovereign immunity), an alteration of the cap that leaves plaintiffs a reasonable time to bring claims—like House Bill 1378 and unlike the situation in *Longtin*—is not clearly unconstitutional. *See Longtin*, 419 Md. at 484 (noting that the 2001 damages-cap legislation at issue in *Longtin* was made retroactive to all claims accrued since 1987). The General Assembly can abolish a cause of action altogether, even for previously accrued claims, as long as it leaves a “reasonable” window of time for any accrued claims to be filed. *See Dua v. Comcast Cable of Md., Inc.*, 370 Md. 604, 634-35 (2002). What counts as a “reasonable” window of time in this context depends on the circumstances. *Allen v. Dovell*, 193 Md. 359, 364 (1949). Courts will extend significant deference to the General Assembly’s judgment of what is “reasonable.” *See id.* Here, the General Assembly has not gone so far as to abolish a cause of action altogether; it has merely lowered the cap on damages for certain claims. Plaintiffs will have had more

than a year and a half, from the effective date of the Child Victims Act to the effective date of the lowered cap, to file a claim subject to the Child Victims Act's original cap.

For all these reasons, it is our view that House Bill 1378 is not clearly unconstitutional.

Sincerely,

A handwritten signature in black ink, appearing to read "A.G. Brown". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Anthony G. Brown

AGB/SBB/kd

cc: The Honorable Susan C. Lee  
Jeremy Baker  
Victoria L. Gruber