

**H.B. 974**  
**A BILL ELIMINATING A STATUTE OF LIMITATIONS**  
**AND REVIVING TIME-BARRED CLAIMS**

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**ON BEHALF OF THE**  
**AMERICAN TORT REFORM ASSOCIATION**

**BEFORE THE MARYLAND**  
**HOUSE JUDICIARY COMMITTEE**

**FEBRUARY 20, 2020**

On behalf of the American Tort Reform Association (ATRA), thank you for the opportunity to testify today regarding H.B. 974, which would eliminate the statute of limitations and revive time-barred claims in childhood sexual abuse cases.

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 have served as an adjunct law professor. I am a Maryland resident and a member of the Maryland Bar. I have testified across the country on bills similar to H.B. 974. 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.

Sexual abuse against a child is intolerable and should be punished through both criminal prosecution and civil claims. I commend the Committee for considering steps to protect victims of sexual abuse. My testimony today addresses general principles underlying statutes of limitations, as well as the reasons why retroactive changes to such 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 only. ATRA is concerned that H.B. 974, in its current form, strays from these principles and may set a troubling precedent for other types of civil cases.

**Statutes of Limitations: An Overview**

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:

- 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.<sup>1</sup>
- 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.<sup>2</sup>
- 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.<sup>3</sup>
- Lawsuits alleging harm due to a doctor's lack of due care must be filed within the earlier of five years of the injury or three years of discovery of the injury.<sup>4</sup>

As these examples show, the length of a statute of limitations is not typically based on the severity of the injury or the heinousness of the conduct at issue. Rather, the length is based on the nature of the evidence. By encouraging claims to be filed promptly, statutes of limitations help judges and juries decide cases based on the best evidence available. Statutes of limitations allow court to evaluate liability (in negligence cases, what a person or organization should have done) when witnesses can testify, when records and other evidence is available, and when recollections are fresh. They are a foundational element of a fair and well-ordered civil justice system.

Statutes of limitations also prevent stale claims and unnecessary delays in the presentation of issues. A plaintiff's timely filed action provides notice to the defendant and ensures that the defendant does not find itself in a situation where, because of the lapse of time, that person or organization is unable to gather facts, evidence, and witnesses necessary to afford a fair defense.

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.

Maryland's statutes of limitations reflect a legislative judgment that a one, three, five, or ten-year period provides claimants in these 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 typically does not begin until he or she becomes an adult (age 18).<sup>5</sup>

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<sup>1</sup> Md. Code, Ct. & Jud. Proc. § 5-101.

<sup>2</sup> See *id.* § 3-904(g).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* § 5-109(a).

<sup>5</sup> *Id.* § 5-201.

## **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. That law more than doubled the previous time limit, providing victims with seven years to file claims after becoming an adult.<sup>6</sup>

Just three years ago, the General Assembly revisited this law and again provided significantly more time for victims of sexual abuse to file lawsuits. The 2017 law, which is in effect today:

- Provides 20 years for victims to file lawsuits from when they become adults.
- When a lawsuit claiming that someone other than a perpetrator is liable is filed more than seven years after a victim becomes an adult, evidence must show that the organization was grossly negligent in how it acted or failed to act.
- A victim 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.<sup>7</sup>

### **The Proposed Legislation**

H.B. 974 would change Maryland law in ways that are extraordinary and unprecedented. The bill:

- **Eliminates a statute of limitations.** H.B. 974 effectively repeals the 2017 extension and, instead, simply provides that a civil action for damages arising out of childhood sexual abuse may be filed “at any time.” To my knowledge, no other tort claim can be filed indefinitely in Maryland.
- **Does not distinguish between lawsuits filed against perpetrators and organizations.** The bill allows lawsuits to be filed indefinitely and retroactively alleging that a public, nonprofit, or private entity failed to take adequate steps to protect the safety of the victim. It would allow claims against organizations based purely on negligence, meaning that a lawsuit only needs to assert that an organization should have taken additional steps to detect, avoid, or stop abuse many years ago, not that the organization knew of abuse and allowed, enabled, or concealed it.
- **Revives time-barred claims.** The bill provides a two-year window, running from October 1, 2020 to October 1, 2022, during which individuals whose claims would be

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<sup>6</sup> S.B. 68 (Md. 2003) (amending Md. Cts. & Jud. Proc. Code § 5-117).

<sup>7</sup> H.B. 642 (Md. 2017) (amending Md. Cts. & Jud. Proc. Code § 5-117).

otherwise untimely and barred by the previous statute of limitations can file lawsuits against organizations no matter how long ago the conduct at issue occurred. This will result in a surge of old claims.

### **Eliminating a Statute of Limitations and Reviving Time-Barred Claims Sets a Troubling Precedent and is Likely Unconstitutional**

The approach taken by H.B. 974 concerns ATRA because eliminating a statute of limitations and reviving-time barred claims sets a troubling precedent.

As discussed earlier, tort claims often address horrible, tragic situations. Whether the claim involves an illness from exposure to a toxic substance, a birth defect associated with a drug, or a death resulting from wrongful conduct, Maryland law sets a finite period to bring a claim to protect the ability of the judicial system to reach accurate decisions on liability based on reliable evidence.

Reviving time-barred claims is particularly concerning. The General Assembly avoided this approach in 2003 and 2017, recognizing that reviving time-barred claims is unsound policy and is likely unconstitutional. 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 Maryland Court of Appeals 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.”<sup>8</sup>

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.<sup>9</sup> “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.<sup>10</sup> 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

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<sup>8</sup> *Dua v. Comcast Cable*, 805 A.2d 1061, 1078 (Md. 2002); see also *Muskin v. State Dep’t of Assessments & Taxation*, 30 A.2d 962, 986 (Md. 2011) (“Maryland’s Declaration of Rights and Constitution prohibit the retrospective reach of statutes that would have the effect of abrogating vested rights.”); *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.”).

<sup>9</sup> *Doe v. Roe*, 20 A.3d 787, 800 (Md. 2011).

<sup>10</sup> *Id.*; 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); *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).

claim remains viable, but it cannot constitutionally authorize a person to sue once the applicable time period to bring the claim has expired.

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.<sup>11</sup> 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. 974’s reviver unconstitutional.

As you may know, the Maryland Attorney General’s Office of Counsel to the General Assembly has evaluated the constitutionality of reviving time-barred sexual abuse claims. Last year, in reviewing an identical bill, Assistant Attorney General Kathryn Rowe concluded that a two-year window reviving time-barred claims would “most likely be found unconstitutional as interfering with vested rights.”<sup>12</sup>

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.<sup>13</sup> States reach this result through applying due process safeguards, a remedies clause, a specific state constitutional provision prohibiting retroactive legislation, or another state constitutional provision.<sup>14</sup> These cases generally recognize that a legislature cannot take away vested rights. It is a

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<sup>11</sup> 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).

<sup>12</sup> Letter from Kathryn M. Rowe, Assistant Attorney General to The Hon. Kathleen M. Dumais regarding H.B. 687, Mar. 16, 2019. That interpretation was based on statute of repose language included in the 2017 legislation. Even without considering that language, however, the Attorney General’s office, both in 2003 and 2019, found that, given prior decisions, it is possible that the Court of Appeals would find legislation reviving time-barred claims unconstitutional as a violation of due process. See Kathryn M. Rowe, Assistant Attorney General to The Hon. Luke Clippinger, regarding H.B. 687, Mar. 12, 2019 (citing 2003 letter).

<sup>13</sup> *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.”); *Roark v. Crabtree*, 893 P.2d 1058, 1062-63 (Utah 1995) (“In refusing to allow the revival of time-barred claims through retroactive application of extended statutes of limitations, this court has chosen to follow the majority rule.”).

<sup>14</sup> See, e.g., *Garlock*, 682 So.2d at 27-28; *Lilly*, 823 S.W.2d at 885; *Jefferson County Dept. of Social Services v. D.A.G.*, 607 P.2d 1004 (Colo. 1980); *Wiley v. Roof*, 641 So.2d 66, 68-69 (Fla. 1994); *Doe A. v. Diocese of Dallas*, 917 N.E.2d 475, 484-85 (Ill. 2009); *Skolak v. Skolak*,

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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,<sup>15</sup> including retroactive revival of time-barred criminal prosecutions,<sup>16</sup> but does not provide a similar prohibition against retroactive laws affecting *civil* claims.<sup>17</sup> 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.<sup>18</sup> Delaware, for example, follows the federal approach.<sup>19</sup> The U.S. Supreme Court has recognized, however, that state constitutions can provide greater safeguards than the U.S. Constitution.<sup>20</sup> Many states, including Maryland, do so.

Even if the Maryland Court of Appeals was to uphold a reviver (and its precedent strongly indicates that it would not), there are sound public policy reasons for not taking such a step. Courts have recognized that “retroactively applying a new statute of limitations robs both plaintiffs and

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895 N.E.2d 1241, 1243 (Ind. Ct. App. 2008); *Frideres*, 540 N.W.2d at 266-67; *Johnson v. Gans Furniture Indus., Inc.*, 114 S.W.3d 850, 854-55 (Ky. 2003); *Henry v. SBA Shipyard, Inc.*, 24 So.3d 956, 960-61 (La. Ct. App. 2009), *writ denied*, 27 So.3d 853 (La. 2010); *Dobson*, 415 A.2d at 816-17; *Doe*, 862 S.W.2d at 341-42; *Givens v. Anchor Packing, Inc.*, 466 N.W.2d 771, 773-75 (Neb. 1991); *Gould v. Concord Hosp.*, 493 A.2d 1193, 1195-96 (N.H. 1985); *Colony Hill Condominium Assn. v. Colony Co.*, 320 S.E.2d 273 (N.C. 1984); *Wright v. Keiser*, 568 P.2d 1262, 1267 (Okla. 1977); *Kelly v. Marcantonio*, 678 A.2d 873, 883 (R.I. 1996); *Doe v. Crooks*, 613 S.E.2d 536, 538 (S.C. 2005); *Doese*, 501 N.W.2d at 369-71; *Ford Motor Co. v. Moulton*, 511 S.W.2d 690, 696-97 (Tenn. 1974); *Baker Hughes, Inc. v. Keco R. & D., Inc.*, 12 S.W.3d 1, 4 (Tex. 1999); *Roark*, 893 P.2d at 1062-63; *Murray v. Luzenac Corp.*, 830 A.2d 1, 2-3 (Vt. 2003); *Starnes v. Cayouette*, 419 S.E.2d 669, 674-75 (Va. 1992).

<sup>15</sup> U.S. Const. art. I, § 9, cl. 3 (“No bill of attainder or ex post facto Law shall be passed.”).

<sup>16</sup> 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”).

<sup>17</sup> 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.”).

<sup>18</sup> See *Chase Securities Corp. v. Donaldson*, 325 U.S. 304, 314 (1945); *Campbell v. Holt*, 115 U.S. 620, 628 (1885).

<sup>19</sup> 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*).

<sup>20</sup> See *Pruneyard Shopping Center v. Robins*, 447 U.S. 74, 81 (1980).

defendants of the reliability and predictability of the law.”<sup>21</sup>The Maryland Court of Appeals is highly critical of retroactive lawmaking.<sup>22</sup>

In most instances, retroactively eliminating the statute of limitations will have little effect on those who perpetrated the abuse, the child abusers, who are unlikely to have any substantial means to be able to answer judgments. Many may be dead. The more likely groups affected are private and nonprofit organizations that provide services to children, who are faced, decades later, with allegations that those in charge at the time should have taken some action that may have prevented the harm that occurred.

H.B. 974 may open the door to eliminating other statutes of limitations or reviving other types of claims – whether the claim stems from exposure to a substance later learned to have harmful health effects, a medical device or drug that is found to pose a risk of harm, or any other claim in which the statute of limitations, when applied in an individual case or particular situation, is viewed as unfair. Maryland’s businesses, volunteer organizations, and residents will no longer be able to rely on statutes of limitations. They would be exposed to a threat of never-ending liability. This is not a sound path for the state’s civil justice system.

### **Two Thirds of States Have Not Taken the Extreme Approach of Reviving Time-Barred Claims**

Despite significant and understandable political pressure, state legislatures have repeatedly rejected proposals to revive time-barred claims given the importance of statutes of limitations to assessing liability, protecting due process, and maintaining a stable and predictable civil justice system. Instead, most states have adopted a finite, but longer, statute of limitations for child sexual abuse claims than other claims and applied the longer period to future claims.

Just one-third of states (17) have revived time-barred civil claims alleging injuries from childhood sexual abuse and last year was the most active year for these proposals. It is important to recognize, however, that most of these laws place significant constraints on the types of claims that are revived in terms of the timing, application to perpetrators versus entities, and standard of proof.

Several states enacted legislation in 2019 that extended the statute of limitations prospectively only.

- **Alabama**, one of the few states that had no special statute of limitations for childhood sexual abuse claims, prospectively established a statute of limitation for childhood sexual abuse requiring claims to be filed by **age 25**.<sup>23</sup>

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<sup>21</sup> *Wiley v. Roof*, 641 So. 2d 66, 68 (Fla. 1994).

<sup>22</sup> *See Doe*, 20 A.3d at 788.

<sup>23</sup> S.B. 11 (Ala. 2019) (to be codified at Ala. Code Ann. § 6-2-8(b)).

- **Pennsylvania** extended its statute of limitations for childhood sexual abuse claims from 12 years to 37 years of reaching majority (**age 55**).<sup>24</sup> The legislature did not revive time-barred claims because it is constitutionally prohibited from doing so, but began a process for amending its constitution to permit such an approach.<sup>25</sup>
- **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.<sup>26</sup>
- **Texas** prospectively extended the statute of limitations from 15 years to 30 years of majority (**age 48**).<sup>27</sup>

Eight states and the District of Columbia revived time-barred claims in 2019. These revivers vary significantly in their scope. Some states enacted very narrow revivers. For example:

- **Arizona** extended its statute of limitations to 12 years of age 18 (**age 30**). 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.<sup>28</sup>
- **Montana** law requires filing a claim within 3 years of abuse or discovery of the abuse. It enacted a 1-year window for claims against perpetrators who are alive and admitted or were convicted of abuse, and claims against entities before the plaintiff is **age 27** or not later than 3 years of when a person discovers or should have discovered the injury caused by the abuse.<sup>29</sup>
- **Rhode Island** passed a bill extending the statute of limitations for childhood sexual abuse cases from just 7 years to 35 years of turning 18 (**age 53**), and providing 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.<sup>30</sup>

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<sup>24</sup> H.B. 962 (Pa. 2019).

<sup>25</sup> H.B. 963 (Pa. 2019).

<sup>26</sup> H.B. 565 (Tenn. 2019).

<sup>27</sup> H.B. 3809 (Tex. 2019).

<sup>28</sup> H.B. 2466 (Ariz. 2019).

<sup>29</sup> H.B. 640 (Mont. 2019).

<sup>30</sup> S.B. 315 Sub. A (R.I. 2019).



Other states adopted somewhat broader revivers with constraints.

- The **District of Columbia** law generally requires a lawsuit to be filed before **age 40** and included a 2-year window reviving claims within that period.<sup>31</sup>
- **North Carolina** extended its statute of limitations from 3 years of age 18 (the period for personal injury lawsuits) to **age 28**. The legislation included a 1-year window for time-barred claims that begins in January.<sup>32</sup>

The broadest revivers were adopted by California, New York, New Jersey, and Vermont:

- **California** extended its statute of limitations to require filing a claim from 8 years of majority (age 26) to 22 years of majority (**age 40**). The California law includes a second window (3 years) that will not only apply to private entities (as the state's first reviver did in 2003) but also apply to local public schools and government entities.
  - California's one-year window in 2003 led to over 1,000 lawsuits and over \$1.2 billion in liability.<sup>33</sup> California Governor Jerry Brown subsequently vetoed two additional revivers that followed, based on this experience.<sup>34</sup>
  - Within days of enactment of the 2019 law, the *Press Democrat* reported, "the floodgates already are opening."<sup>35</sup> The window began in January 2020.
- **New York** extended its time to file civil claims from 5 years of age 18 (age 23) against a perpetrator and 3 years of age 18 (age 21) for negligence claims against organizations to **age 55**. The New York law includes a one-year reviver window that opened on August 14, 2019.<sup>36</sup>
  - Immediately upon enactment of the New York law, plaintiffs' law firms flooded televisions and the internet with advertisements to file a lawsuit. Before the window even opened, a few firms signaled they had 300 to 400 cases ready to be filed.<sup>37</sup>

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<sup>31</sup> D.C. Act 22-593.

<sup>32</sup> S.B. 199 (N.C. 2019).

<sup>33</sup> See Bart Jones, *Church Pushed to Financial Brink*, *Newsday*, Mar. 22, 2009, at A15; see also David Bailey, *Minnesota Catholic Archdiocese Files for Bankruptcy Protection*, *Reuters*, Jan. 16, 2015.

<sup>34</sup> Cal. Office of the Governor, Veto Message, AB 3120 (Sept. 30, 2018), [https://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml?bill\\_id=201720180AB3120](https://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml?bill_id=201720180AB3120); Cal. Office of the Governor, Veto Message, S.B. 131 (Oct. 12, 2013), at [http://gov.ca.gov/docs/SB\\_131\\_2013\\_Veto\\_Message.pdf](http://gov.ca.gov/docs/SB_131_2013_Veto_Message.pdf).

<sup>35</sup> Mary Callahan, *New Law Opens Window for Child Sex Abuse Lawsuits in California*, *The Press Democrat*, Oct. 15, 2019.

<sup>36</sup> S. 2440 / A. 2683 (N.Y. 2019).

<sup>37</sup> Jon Campbell, *Child Victims Act: Why Thousands of New York Sex Abuse Victims Will be Seeking Justice*, *Democrat & Chron.*, Aug. 8, 2019.

- The *New York Times* reported that, as the window approached, “major institutions across New York State . . . are preparing for a deluge of lawsuits.”<sup>38</sup> *USA Today* described the day the window opened as “a legal free-for-all.”<sup>39</sup> By the end of the day, 427 revived claims had been filed.<sup>40</sup>
- Within about five weeks of the window opening, the number of lawsuits had grown to over 700. While about 550 of these lawsuits targeted Catholic churches, the others name public schools, hospitals, summer camps, youth groups, baseball leagues, music schools, after-school clubs, and a martial arts association as defendants.<sup>41</sup>
- By the end of 2019, the number of revived claims filed in New York reportedly exceeded 1,300.
- Each of the five judicial districts in New York City has designated a special section to hear revived childhood sexual abuse cases. Statewide, 45 judges have been designated to hear these cases, including 12 in New York City alone. Judges, hearing officers, and mediators will undergo special training and the court system has developed new procedures to handle these cases.<sup>42</sup>
- Based on statements by plaintiffs’ law firms, observers expect 2,000 to 3,000 revived claims to be filed in New York during the window.<sup>43</sup>
- Already, one diocese (Rochester) has filed for bankruptcy. More are expected to follow (such as Buffalo).
- **New Jersey** extended its period to file claims to **age 55** or 7 years of discovery and adopted broad 2-year reviver window, which opened on December 1, 2019.
- **Vermont** eliminated its statute of limitations and indefinitely revived time-barred claims, though it requires a showing of gross negligence for revived claims against organizations.
  - I was in Vermont this April when an organization called Sunrise Family Resource Center testified on that bill.<sup>44</sup> Sunrise testified that for 50 years it has provided youth

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<sup>38</sup> Rick Rojas, *He Says a Priest Abused Him. 60 Years Later, He Can Now Sue*, N.Y. Times, Aug. 13, 2019.

<sup>39</sup> Steve Orr, *Hundreds of Child Sex Abuse Claims Filed on First Day of New York’s Child Victims Act*, USA Today, Aug. 14, 2019.

<sup>40</sup> Matthew Lavietes & Jonathan Allen, *As New York Legal Window Opens, Child Sex Abuse Victims Sue Catholic Church, Others*, Reuters, Aug. 14, 2019.

<sup>41</sup> Corinne Ramey & Tom McGinty, *New York Sex-Abuse Law Brings Forth Hundreds of New Cases*, Wall St. J., Sept. 29, 2019.

<sup>42</sup> Dan M. Clark, *NY State Courts Prepared for Flood of Lawsuits Under New Child Victims Act, Officials Say*, Law.com, Aug. 13, 2019.

<sup>43</sup> Orr, *supra*.

<sup>44</sup> See Sunrise Family Resource Center, [Testimony](#) regarding H330, Before the Vermont Senate Jud. Comm., Apr. 18, 2019.

development, housing, and educational services to Vermont families, serving 1,500 families annually. The nonprofit organization, it said, receives 95% of its funding through state grants. After a former employee was accused of sexual abuse in 1988, the state's Department of Social and Rehabilitative Services conducted a thorough investigation and found the accusations unfounded. Sunrise testified, however, that the evidence supporting that decision was destroyed in a fire in the late 1990s. Nearly 30 years later, those individuals filed lawsuits against Sunrise. Sunrise testified that reviving time-barred claims is a "zero-sum issue for Sunrise, and for many other organizations like it." According to the organization, allowing these claims to proceed despite the statute of limitations may lead it to close its doors and hurt the "vulnerable populations who benefit from those programs."<sup>45</sup>

Most of the states that adopted revivers in earlier years did so in very limited ways.

- **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 (**age 53**) or 7 years of discovery of the injury in 2014. The new period applied prospectively to negligence claims against organizations and retroactively to revive time-barred claims against perpetrators only.<sup>46</sup> Massachusetts also has a low cap on damages in civil claims against charitable organizations.
- **Georgia** extended its statute of limitation to **age 23** or 2 years of discovery and enacted a 2-year window reviving time-barred claims against perpetrators only in 2015.<sup>47</sup>
- **Utah** adopted a statute of limitation that allows claims to be filed within 35 years of turning 18 (**age 53**) and enacted a 3-year window for claims against perpetrators and those who would be criminally responsible in 2016.<sup>48</sup>
- **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.<sup>49</sup>

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<sup>45</sup> Colin Meyn, *Family Center 'Muddied The Waters' on Eliminating Child Abuse Statute of Limitations*, VT Digger, Apr. 19, 2019.

<sup>46</sup> 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.

<sup>47</sup> Ga. Code Ann. § 9-3-33.1(d)(1) ("The revival of claim...shall not apply to [a]ny claim against an entity.").

<sup>48</sup> 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").

<sup>49</sup> 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 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

(continued...)

- In 2009, **Oregon** extended its statute of limitation 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.

Aside from Vermont, two other states have required a showing of gross negligence in revived claims against entities.

- **Delaware** eliminated its statute of limitations and revived time-barred claims during a 2-year window in 2007. It required a showing of gross negligence for revived claims.<sup>50</sup> Nevertheless, the Roman Catholic Diocese of Wilmington filed for bankruptcy to manage the potential liability resulting from a flood of lawsuits triggered by the window.<sup>51</sup>
- Similarly, **Hawaii** has passed a series of 2-year reviver windows since 2012, which also require a showing of gross negligence.<sup>52</sup>

Finally, **Minnesota** is another state that adopted a broad reviver. Minnesota prospectively eliminated its statute of limitations and adopted a 3-year window reviving time-barred claims in 2013. About 850 lawsuits were filed during this period. Five hundred of these lawsuits were against the Catholic Church, leading five of the six dioceses in the state to declare bankruptcy.<sup>53</sup>

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In sum, 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 eliminates a statute of limitations or revives time-barred claims 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. Maryland's current 20-year statute of limitations (allowing claims until age 38) is in the mainstream, but if the Committee feels that more time is needed, there are alternatives that would provide survivors of childhood sexual abuse 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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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.

<sup>50</sup> Del. Code tit. 10, § 8145(b).

<sup>51</sup> Ian Urbina, *Delaware Diocese Files for Bankruptcy in Wake of Abuse Suits*, N.Y. Times, Oct. 19, 2009.

<sup>52</sup> Haw. Rev. Stat. § 657-1.8(b).

<sup>53</sup> Aaron Aupperlee, *Dioceses Have Gone Bankrupt After Opening Window to Sex Abuse Lawsuits*, Tribune-Review, Dec. 29, 2018.