



State Council on Child Abuse and Neglect (SCCAN)

311 W. Saratoga Street, Room 405

Baltimore, Maryland 21201

Phone: (410) 767-7868

Mobile: (240) 506-3050

Claudia.Remington@maryland.gov

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 SB 134:

CIVIL ACTIONS – CHILD SEXUAL ABUSE – DEFINITION AND STATUTE OF LIMITATIONS

****SUPPORT****

TO: Hon. William C. Smith, Jr. Chair, and members of the Senate Judicial Proceedings Committee

FROM: Wendy Lane, MD, MPH, Chair, State Council on Child Abuse & Neglect (SCCAN)

Claudia Remington, Executive Director, State Council on Child Abuse & Neglect (SCCAN)

DATE: February 2, 2021

SCCAN strongly supports SB 134, Civil Actions – Child Sexual Abuse – Definition and Statute of Limitations. This bill has three key components: (1) Eliminating the statute of limitations for child sexual abuse; (2) Establishing a lookback window to allow victims previously barred by the statute of limitations to file suit for a period of two years; (3) Make clear to the courts, the public, and survivors that the General Assembly was unaware of the constitutional implications of the “statute of repose” included in the 2017 revision to the child sexual abuse statute of limitations, and did not intend to vest constitutionally protected property rights in child sexual predators or those individuals and organizations that hid predators from identification and prosecution.

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 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.⁷

Some opponents of SB 134 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

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-claims>

judgements. 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 SB 134, 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

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/>

claim in this situation.ⁱⁱ Furthermore, the U.S. Supreme Court ruled that revival of a time-barred action is constitutional as long as it does not infringe on a defendant's vested rightⁱⁱⁱ, 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 134 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)