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

FROM: Kathryn Robb, Esq. Executive Director, CHILD USAdvocacy

RE: SB 134

DATE: February 2, 2021

TESTIMONY IN SUPPORT OF SB134: CIVIL ACTIONS – CHILD SEXUAL ABUSE – STATUTE OF LIMITATIONS

First, I want to thank you, Chairman Smith, and thank you members for taking up Senate bill 134. This legislation is vital to the safety of the children of Maryland and to upholding basic principles of fairness and justice.

As is indicated above, my name is Kathryn Robb, I am the Executive Director of CHILD USAdvocacy and a member of the board at Massachusetts Citizens for Children. I worked very closely with legislators when Massachusetts changed their statute of limitations law for child sexual abuse victims in 2014. Most recently, I worked closely with Governor Cuomo's office and legislative leaders to change New York's statute of limitations law. After a hard fought 12-year battle, the NY Child Victims Act was signed into law on February 14, 2019. I have also testified before many legislative bodies for SOL reform.

I am also a survivor of child sexual abuse. Although my testimony here is not about the sad story of a nine-year old girl. My testimony here is based upon my experience as a legislative advocate and lawyer, and mostly as a reasonable woman, mother, and coach who seeks justice for victims and laws that protect them.

I. THE PLAIN LANGUAGE OF § 5-117(d) SUPPORTS THE FINDING THAT IT IS 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, Maryland Courts and Judicial Proceedings § 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. It imposes a limitation on the period of time that a cause of action for damages may be asserted. The trigger for the statute of limitations is when the claimant is injured or discovers the injury. By contrast, the time limit for bringing suit established by a statute of repose is triggered by a specified event always driven by some act of the Defendant, such as selling a product and placing it within the stream of commerce, or the completion of an improvement to real property. A repose period runs and can end irrespective of whether harm has occurred or has been discovered, but historically it runs by an action of the Defendant – selling a good, completing the construction. In Maryland Courts and Judicial Proceedings § 5-117 (d) the trigger event is that of the Plaintiff reaching the age of majority, not some act or event commenced by the Defendant. It is clear, that this statute is a statute of limitation.

II. § 5-117(d) WAS NEVER INTENDED BY THE LEGISLATURE 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).

- UNCODIFIED LANGUAGE CAN BE CONSIDERED: If a statute is ambiguous, the court can consider uncodified language in the bill "to shed light on the legislative intent". McHale v. DCW Dutchship Island, LLC, 999 A.2d 969, 984, 415 Md. 145, 171 (Md.,2010). See also, Cohhn v. Maryland-National Capital Park and Planning Commission, 2017 WL 4711944, at *5 (Md.App., 2017) ("provisions of the law need not be codified in order to have legal effect"). Uncodified language has been used by courts to help determine the legislative intent and has been interpreted broadly so as not to undermine the legislative intent. See Duckett–Murray v. Encompass Insurance Company of America, 235 Md.App. 344, 365 (Md.App., 2018) (interpreting uncodified language broadly so as not to undermine the legislature's purpose of providing recovery to the highest number of victims in action against automobile insurer for uninsured motorist benefits).

    - Doe v. Roe, 419 Md. 687, 692 (Md.,2011). Giving effect to uncodified language which "manifests the legislative intent that Chapter 360 have some retroactive application" and ruling that it applies retroactively to claims for sexual abuse of a minor that accrued but were not already time barred before the new law was in effect.

    - Cohhn v. Maryland-National Capital Park and Planning Commission, 2017 WL 4711944, at *5 (Md.App., 2017). "While SECTION 2 of Chapter 448 was not codified, we have previously acknowledged that provisions of the law need not be codified in order to have legal effect. *Roe v. Doe*, 193 Md. App. 558, 564–66 (2010), *aff'd*, 419 Md. 687, 709–10 (2011); see also Prince George's Cnty. v. Maringo, 151 Md. App. 662, 671 n.1 (2003) ("The parties do not dispute that this uncodified portion of the bill has the same force and effect as the codified portion."). Here, SECTION 2 of Chapter 448 manifests the explicit legislative intent that lawful hunting and trapping are not within the ambit of CL § 10–604's prohibitions against animal cruelty. Accordingly, the legislative intent is consistent with our interpretation of the plain language of the statute."

- UNCODIFIED LANGUAGE IS NOT DISPOSITIVE: The uncodified Notes of SECTION 3 which refer to Section 5-117(d) as a "statute of repose" are "not dispositive" on the issue of whether the statute is actually a statute of repose or statute of limitation. 2017 Maryland Laws Ch. 656 (S.B. 505).

    - F.D.I.C. v. Arthur, 2015 WL 898065, at *5 (D.Md.,2015). Rather, Defendants argue that this Court should disregard Congress's use of the term "statute of limitations" as employed in Section 1821(d) (14) of FIRREA. Id. While the

legislative label affixed to a statute "is instructive, but it is not dispositive," Waldburger, 134 S.Ct. at 2185, there is simply no basis for this Court to disregard the plain language of FIRREA.

- CTS Corp. v. Waldburger, 573 U.S. 1, 13 (2014). Indeed, § 9658 uses the term "statute of limitations" four times (not including the caption), but not the term "statute of repose." This is instructive, but it is not dispositive.

- NO TOLLING FOR SOR - Statutes of repose are a complete bar to liability after a certain time limit and with no exception for tolling for majority, fraud or discovery of injury.

  - Carven v. Hickman, 135 Md.App. 645, 652–54 (Md.App. 2000). Generally, a "statute of repose creates a substantive right in those protected to be free from liability after a legislatively-determined period of time," which is "typically an absolute time limit beyond which liability no longer exists and is not tolled for any reason." (quoting First United Methodist Church of Hyattsville v. United States Gypsum Co., 882 F.2d 862, 866 (4th Cir.1989).

  - Carven v. Hickman, 135 Md.App. 645, 652–54 (Md.App. 2000). Unlike a statute of limitations, a statute of repose is not triggered by the discovery rule. *Id.* at 865–66. Nor is it tolled by a defendant's fraudulent concealment of the cause of a plaintiff's injury. *Id.* at 866. Instead, it "shelter[s] legislatively designated groups from property and personal injury actions after a period of time has elapsed ... and is unrelated to when an accident or discovery of damages occurs." *See* Susan C. Randall, Comment, *Due Process Challenge to Statutes of Repose,* 40 SW.L.J. 997, 998 (1986).

  - Section 5-117(d) contains explicit tolling exception for minority, tolling the expiration of the limitations period until victim reaches age of majority.

  - Anderson v. U.S., 46 A.3d 426, 442, 427 Md. 99, 125 (Md.,2012). In support of its holding that Section 5-109(a)(1) is not a statute of repose, the Court pointed out that if 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." "If the Legislature intended § 5–109(a)(1) to be an absolute time bar, it likely would not have subjected the limitations to explicit tolling for fraudulent concealment and minority.

- CTS Corp. v. Waldburger, 134 S.Ct. 2175, 2187–88, 573 U.S. 1, 17 (U.S.,2014). Another and altogether unambiguous textual indication that § 9658 does not pre-empt statutes of repose is that § 9658 provides for equitable tolling for "minor or incompetent plaintiff[s]." § 9658(b)(4)(B). As noted in the preceding discussion, a "critical distinction" between statutes of limitations and statutes of repose "is that a repose period is fixed and its expiration will not be delayed by estoppel or tolling." 4 Wright, Federal Practice and Procedure § 1056, at 240. As a consequence, the inclusion of a tolling rule in § 9658 suggests that the statute's reach is limited to statutes of limitations, which traditionally have been subject to tolling. It would be odd for Congress, if it did seek to pre-empt statutes of repose, to pre-empt not just the commencement date of statutes of repose but also state law prohibiting tolling of statutes of repose—all without an express indication that § 9658 was intended to reach the latter.

- CTS Corp. v. Waldburger, 134 S.Ct. 2175, 2183, 573 U.S. 1, 9 (U.S. 2014). Statutes of repose, on the other hand, generally may not be tolled, even in cases of extraordinary circumstances beyond a plaintiff's control. See, e.g., Lampf, *supra,* at 363, 111 S.Ct. 2773 ("[A] period of repose [is] inconsistent with tolling"); 4 C. Wright & A. Miller, Federal Practice and Procedure § 1056, p. 240 (3d ed. 2002) ("[A] critical distinction is that a repose period is fixed and its expiration will not be delayed by estoppel or tolling"); Restatement (Second) of Torts § 899, Comment *g* (1977).

- NO CASES REFERRING OR INTERPRETING SECTION 5-117 AS AN SOR: Although 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.

  - Scarborough v. Altstatt, 140 A.3d 497, 507, 228 Md.App. 560, 576 (Md.App.,2016) (generally referring to Section 5-117 as a statute of limitation).

- LEGISLATIVE HISTORY OF 5-117: Legislative history of Section 5-117 generally is reviewed in Doe v. Roe, 20 A.3d 787, 797, 419 Md. 687, 703 (Md.,2011).

III. CONSTRUING § 5-117(d) AS A STATUTE OF REPOSE IS NOT CONSISTENT WITH PRESENT MARYLAND LAW FOR STATUTES OF REPOSE

Statutes of limitation and statutes of repose are different in both their purpose and legal effect. A "statute of repose" is defined as a "statute barring any suit that is brought after a specified time since the defendant acted (such as by designing or manufacturing a product), even if this period ends before the plaintiff has suffered a resulting injury. Black's

Law Dictionary (10th ed. 2014). See also, Anderson v. U.S., 427 Md. 99, 117 (Md.,2012) (quoting Black's Law Dictionary). Whereas a "statute of limitation" is defined as a "law that bars claims after a specified period; specif., a statute establishing a time limit for suing in a civil case, based on the date when the claim accrued (as when the injury occurred or was discovered)." Id.

The purpose of a statute of limitation is to "encourage prompt resolution of claims, to suppress stale claims, and to avoid the problems associated with extended delays in bringing a cause of action, including missing witnesses, faded memories, and the loss of evidence." Anderson, 427 Md. at 118. In contrast, a statute of repose is designed "to provide an absolute bar to an action or to provide a grant of immunity to a class of potential defendants after a designated time period. Id. at 118. Numerous courts in other jurisdiction "have also held that statutes of repose are characterized by a trigger that starts the statutory clock running for when an action may be brought based on some event, act, or omission that is unrelated to the occurrence of the plaintiff's injury. Id. at 119. Statutes of repose and statutes of limitation are often differentiated "by whether the triggering event" that starts the limitations period "is an injury or an unrelated event". Id. at 118 (citing First United Methodist Church of Hyattsville v. U.S. Gypsum Co., 882 F.2d 862, 865 (C.A.4 (Md.) 1989)).[1] Notably, the Court of Appeals explained "the difference between a statute of limitations and statute of repose is that in the former, a cause of action has already accrued and a limitation is placed on the time an injured individual has to file a claim, and in the latter, a limitation is placed on the time in which an action may accrue should an injury occur in the future." Id. at 122 (quoting Streeter v. SSOE Systems, 732 F.Supp.2d 569, 577 n. 4 (D.Md. 2010) (classifying § 5–109 as statute of limitation because it was " invoked after an injury has already occurred and a claim accrued and sets a limit on how long a plaintiff has to seek a legal remedy for that claim" and classifying § 5–108 (a) and (b) as statute of repose because a cause of action did not accrue after a fixed period of time) (citing *First United,* 882 F.2d at 865–66)).

Historically, a cause of action for childhood sexual abuse, under Maryland law accrues "on the date of the wrong". Doe v. Maskell, 342 Md. 684, 689 (Md. 1996).

[1] "Numerous courts have also held that statutes of repose are characterized by a trigger that starts the statutory clock running for when an action may be brought based on some event, act, or omission that is unrelated to the occurrence of the plaintiff's injury. *See McCann v. Hy–Vee, Inc.,* 663 F.3d 926, 931 (7th Cir.2011) ("[T]here is no tort without an injury and if the period in which a tort suit can be brought runs from the date of the tort, it is a period prescribed by a statute of limitations rather than by a statute of repose"); *Hoffner v. Johnson,* 660 N.W.2d 909, 913–15 (N.D.2003) (explaining that a statute of repose "begins to run from the occurrence of some event other than the event of an injury that gives rise to a cause of action and, therefore, bars a cause of action before the injury occurs"); *Combs v. Int'l Ins. Co.,* 354 F.3d 568, 590 n. 11 (6th Cir.2004) ("A statute of limitations focuses on time measured from an injury; a statute of repose rests on the time from some initiating event unrelated to an injury."); *Clark Cnty. v. Sioux Equip. Corp.,* 753 N.W.2d 406, 415 n. 6 (S.D.2008) (explaining that a statute of repose "begins to run from a date that is unrelated to the date of an injury")." Anderson v. U.S., 427 Md. 99, 119 (Md.,2012).

Maryland has a discovery rule, which is applicable generally in all civil actions, that provides a cause of action accrues "when plaintiff knew or should have known that actionable harm has been done to him".[2] Id. at 690. Section 5-117(d) did not create a new cause of action against non-perpetrators, but rather extended the causes of action that already existed in common law. See Doe v. Roe, 419 Md. 687, 706–07 (Md. 2011) (noting "no new cause of action was created" by § 5-117). In Maskell, a case which predates the enactment of Section 5-117, victims of childhood sexual abuse sued the perpetrator chaplain, the school, the school Sisters, the Archdiocese and the Archbishop, under common law for "battery, negligent supervision, negligent misrepresentation, intentional infliction of emotional distress, fraud, and loss of consortium." Maskell, 342 Md. at 688 (Md. 1996). It follows then, that a civil action for damages against perpetrators and non-perpetrators arising out of an incident of childhood sexual abuse accrues on the date plaintiff in fact knew or reasonably should have known of the wrong. See Id. at 690.

Section 5-117(d) provides, "[i]n no event may an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor be filed against a person or governmental entity that is not the alleged perpetrator more than 20 years after the date on which the victim reaches the age of majority." Md. Code CJP § 5-117. To determine whether this statute is a statute of limitation or a statute of repose under Maryland law, a point of analysis is whether the "triggering event" for the accrual of the limitations period "is an injury or an unrelated event". Anderson, 427 Md. at 119. See also, Wood v. Valliant, 231 Md.App. 686, 701 (Md.App., 2017). Statutes of repose establish a time limit for bringing suit that is triggered by a specific event, such as the date an "improvement to real property . . . first becomes available for its intended use". Md. Code CJP § 5-108. See also Carven v. Hickman, 135 Md.App. 645, 652 (Md.App. 2000) (Statute of repose "shelter[s] legislatively designated groups from property and personal injury actions after a period of time has elapsed . . . and is unrelated to when an accident or discovery of damages occurs."). Because a cause of action for sexual abuse of a minor accrues on the date of the actual abuse, 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. A plaintiff may file suit against a non-perpetrator pursuant to Section 5-117(d) immediately following the incident of sexual abuse and need not wait until he or she turns 18. Therefore, reaching the age of majority cannot be the triggering event. Further, in accordance with the Court of Appeal's distinction between the two types of statutes, Section 5-117(d) is a statute of limitation because the "cause of action has already accrued and a limitation is placed on the time an injured individual has to file a claim". Anderson, 427 Md. at 119. Section 5-117(d) cannot be construed to be a statute of repose because it does not limit the "time in

[2] While the Court of Appeals has consistently ruled that Maryland's discovery rule is "applicable in all civil suits", Maryland courts have declined to find that the discovery rule tolled the statute of limitations for child sexual abuse where plaintiff alleged memory impairment. Doe v. Maskell, 679 A.2d 1087, 1090, 342 Md. 684, 690 (Md. 1996) (citing Poffenberger v. Risser, 290 Md. 631, 637 (1981). See also, Scarborough v. Altstatt, 228 Md.App. 560, 568 (Md.App. 2016).

which an action may accrue should an injury occur in the future"; the statute acknowledges that the injury has already occurred. Id.[3]

IV. CONSTRUING § 5-117(d) AS A STATUTE OF REPOSE IS NOT CONSISTENT WITH THE HISTORY OF THE USE OF STATUTES OF REPOSE

In Maryland, and 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". Carven v. Hickman, 135 Md.App. 645, 652-653 (Md.App. 2000), certiorari granted 363 Md. 661, affirmed 366 Md. 362. The statutes of repose were designed to limit the expansion of liability that resulted from "three developments: 1) the elimination of the 'privity of contract' doctrine as a defense, 2) the declining acceptability of 'the completed and excepted rule,' and 3) the application of the 'discovery rule' to state statutes of limitations." Id. at 652-653 (internal citations omitted). See also SVF Riva Annapolis LLC v. Gilroy, 459 Md. 632, 648–49 (Md. 2018) (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)).

In particular, legislatures were concerned about the "possibility that seemingly endless liability would deter such professionals from experimenting with new materials, designs, or procedures". Carven, 135 Md.App. at 652-653. As a solution, Maryland enacted what has been construed to be a statute of repose to "impose a limit on the expansion of liability for professionals involved in making improvements to real property" for the "purpose of protect[ing] builders, contractors, realtors, and landlords from suits for latent defects in design, construction, or maintenance of an improvement to real property that are brought more than twenty years after the improvement is first put to use." Id. at 654 (citing Md. Code CJP § 5-108).[4] See also First United Methodist Church of Hyattsville v. U.S. Gypsum Co., 882 F.2d 862, 865 (C.A.4 (Md.) 1989) (confirming § 5-108 is statute of repose); Anderson, 427 Md. at 121 (With § 5-108 statute of repose Maryland legislature "intended to tie the accrual of the cause of action to the date of completion of a particular property improvement because traditional tolling mechanisms expanded the liability of defendants".).

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[3] Further, a statute of repose can extinguish a claim before the plaintiff suffers any resulting injury, before actionable harm even occurs. See Anderson, 427 Md. at 117.

[4] The first version of this statute in Maryland was Ch. 666 of the 1970 Laws of Maryland, formally codified in Article 57, § 20 of the Maryland Code, the precursor to Maryland Courts and Judicial Proceedings, § 5-108.

Aside from Section 5-108, which deals with professional liability for defective improvements to real property, Maryland has not readily construed other statutes to be statutes of repose. Courts have questioned whether a statute governing limitations for medical malpractice claims, § 5–109, is a statute of repose, but the Court of Appeals of Maryland ultimately concluded that it is a statute of limitations instead. Anderson, 427 Md. at 126. In differentiating § 5–109 from § 5-108, The Court of Appeals pointed out that § 5-108 explicitly provides that "no cause of action for damages accrues" and commences the running of the 20-year limitations period from the date the improvement becomes available for use. See id. The Court says, in contrast Section 5–109, "is triggered by the cause of action itself—the injury" and went on to explain that "without the plaintiff's injury (the cause of action), the limitations period would not commence to run." Id. A provision that no cause of action accrues until some specified event, other than injury, is a significant criteria of a statute of repose. The explicit statute of repose language in § 5-108 is in stark contrast to the text of Section 5-117, which provides "[i]n no event may an action for damages arising out of . . . incidents of sexual abuse that occurred while the victim was a minor be filed . . . more than 20 years after the date on which the victim reaches the age of majority." The Court held that § 5–109 is not a statute of repose because its trigger is the "injury". Md. Code CJP § 5-117(d). Like Section 5–109, the statutory language in Section 5–117 is also triggered by the sexual abuse victim's injury and therefore, similarly cannot be a statute of repose.

In conclusion, under Maryland law construing a statute as a statute of repose is improper if the date of injury and date of accrual of the cause of action are the same. Statutes of repose are rare and were specifically designed to limit potential liability where the tortious conduct could result in a future injury. Because § 5-117(d) seeks to limit liability for causes of action against non-perpetrators that have already accrued on the date of injury, it is not a statute of repose.

V. EVEN IF § 5-117(d) IS CONSTRUED AS A STATUTE OF REPOSE, THE SAME CONSTITUTIONAL TEST FOR REVIVAL OF AN EXPIRED CLAIM WOULD APPLY

A. Amending Maryland's Statutes of Limitations for Child Sexual Abuse to Include a Revival Window Is Both Constitutional and Consistent with the National Trend to Give Survivors Access to Justice

Every state permits retroactive application of laws to some degree. Many states have addressed the specific question of whether revival of SOLs is constitutional. Currently, of the jurisdictions that have considered constitutional challenges to the application of revival legislation to a cause of action, 24 states plus the District of Columbia have expressly upheld the facial constitutionality of retroactive revival of civil cases that

were previously time-barred.[5] Legislatures across the country have adopted civil revival laws for survivors of child sex abuse to remedy the long-standing injustice of blocking their claims with unreasonably short statutes of limitations. In the majority of jurisdictions where these laws were challenged, they have been expressly upheld as constitutional.[6] In Arizona, Michigan, Vermont, West Virginia, and D.C., child sex abuse claims were revived

[5] **ARIZ:** *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)); **CAL:** *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, 122 S. Ct. 1788 (2002); **CONN:** *Doe v. Hartford Roman Catholic Diocesan Corp.,* 317 Conn. 357, 439-40 (Conn. 2015); **DEL:** *Sheehan v. Oblates of St. Francis de Sales,* 15 A.3d 1247,1258-60 (Del. 2011); **DC:** *Riggs Nat'l Bank v. Dist. ofColumbia,* 581 A.2d 1229, 1241 (D.C. 1990); **GA:** *Canton TextileMills, Inc. v. Lathem*, 317 S.E.2d 189, 193 (Ga. 1984);*Vaughn v. Vulcan Materials Co.,* 465 S.E.2d 661, 662 (Ga. 1996); **HAW:** *Roe v. Doe,* 581 P.2d 310, 316 (Haw. 1978); *Gov't Emps. Ins. Co. v. Hyman*, 975 P.2d 211 (Haw. 1999); **IDAHO:** *Hecla Mining Co. v. Idaho St Tax Comm'n,*697 P.2d 1161, 1164 (Idaho 1985); *Peterson v. Peterson*, 320 P.3d 1244, 1250 (Idaho 2014); **IOWA:** *Schulte v. Wageman*, 465 N.W.2d 285, 287 (Iowa 1991); **KAN:** *Harding v. K.C. Wall Prod., Inc.,* 831 P.2d 958, 967-68 (Kan. 1992); *Ripley v. Tolbert*, 921 P.2d 1210, 1219 (Kan. 1996); **MASS:** *Sliney v. Previte*, 41 N.E.3d 732, 739-40 (Mass. 2015); *City of Boston v. Keene Corp.,* 406 Mass. 301, 312-13 (Mass. 1989); *Kienzler v. Dalkon Shield Claimants Tr.,* 426 Mass. 87, 88-89 (Mass. 1997); **MICH:** *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); **MINN:** *Gomon v. Northland Family Physicians, Ltd.,* 645 N.W.2d 413, 416 (Minn. 2002);*In re Individual 35W Bridge Litig.,* 806 N.W.2d 820, 830-31 (Minn. 2011); **MONT:** *Cosgriffe v. Cosgriffe,* 864 P.2d 776, 778 (Mont. 1993); **NJ:** *Panzino v. Continental Can Co.,* 364 A.2d 1043, 1046 (N.J. 1976); **NEW MEX:** *Bunton v. Abernathy*, 73 P.2d 810, 811-12 (N.M. 1937); *Orman v. Van Arsdell*,78 P. 48, 48 (N.M. 1904); **NY:** *In re World Trade Ctr. Lower Manhattan Disaster Site Lit.,* 89 N.E.3d 1227, 1243 (N.Y. 2017); *Hymowitz v. Eli Lilly & Co.,* 539 N.E.2d 1069, 1079-80 (N.Y. 1989); *McCann v. Walsh Const. Co.,* 123 N.Y.S.2d 509, 514 (N.Y. 1953) *aff'd without op.* 306 N.Y. 904 (1954); *Gallewski v. Hentz & Co.,* 93 N.E.2d 620, 624-25 (N.Y. 1950); **N DAK:** *In Interest of W.M.V.,* 268 N.W.2d 781, 786 (N.D. 1978); **OR:** *McFadden v. Dryvit Systems, Inc.,*112 P.3d 1191, 1195 (Or. 2005); *Owens v. Maass*, 918 P.2d 808, 813 (Or. 1996); **PA:** *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); **S DAK:** *Stratmeyer v. Stratmeyer,* 567 N.W.2d 220, 223 (S.D. 1997); **VA:** *Kopalchick v. Cath. Diocese of Richmond*, 274 Va. 332, 337, 645 S.E.2d 439 (Va. 2007); **WASH:** *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); **W VA:** *Pankovich v. SWCC,* 163 W. Va. 583, 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); **WYO:** *Vigil v. Tafoya,* 600 P.2d 721, 725 (Wyo. 1979); *RM v.State*, 891 P.2d 791, 792 (Wyo. 1995).

[6] *See* Deutsch v. Masonic Homes of Cal., Inc., 164 Cal.App.4th 748, 752, 759, 80 Cal.Rptr.3d 368 (Cal.Ct.App.2008); *Coats v. New Haven Unified Sch. Dist*., 46 Cal. App. 5th 415, 427 (2020); *See Hartford Roman Catholic Diocesan Corp.,* 317 Conn. at 406 (age limit); *Sheehan*, 15 A.3d at 1258-60; *Roe v. Ram,* No. CIV. 14-00027 LEK-RL, 2014 WL 4276647, at *9 (D. Haw. Aug. 29, 2014); *Shirley v. Reif*, 260 Kan. 514, 526 (1996); *Sliney*, 41 N.E.3d at 737, 739; *K.E. v. Hoffman*, 452 N.W.2d 509, 513-14 (Minn. Ct. App. 1990); *Cosgriffe*, 864 P.2d at 779; *Doe v. Silverman,* 287 Or. App. 247, 253 (2017), *review denied*, 362 Or. 389 (2018); *DeLonga v. Diocese of Sioux Falls*, 329 F. Supp. 2d 1092, 1104 (D.S.D. 2004); *Kopalchick v. Cath. Diocese of Richmond,* 274 Va. 332, 337 (2007),

without a constitutional challenge in the courts.[7]

B. The Act's Time-limited Civil Revival Window Is Constitutional Under Both the United States Constitution and the Maryland Constitution

1. A Time-limited Civil Revival Window Is Constitutional Under the United States Constitution

The United States Supreme Court has rejected the proposition that retroactive elimination of a viable civil statute of limitations defense constitutes a denial of due process.[8] Chase Securities Corp. v. Donaldson, 325 U.S. 304 (1945). The United States Supreme Court reaffirmed this principal in Landgraf v. USI Film Prods., 511 U.S. 244, 267, 114 S. Ct. 1483, 1498 (1994), that retroactive civil legislation is constitutional if the legislative intent is clear and the change is procedural. The Landgraf Court explained the duty of judicial deference as follows: "legislation has come to supply the dominant means of legal ordering, and circumspection has given way to greater deference to legislative judgments." Landgraf, 511 U.S. at 272. The Court went on to observe that "the constitutional impediments to retroactive civil legislation are now modest . . . . Requiring clear intent [of retroactive application] assures that [the legislature] itself has affirmatively considered the potential unfairness of retroactive application and determined that it is an acceptable price to pay for the countervailing benefits." Id. at 272-73.

Any presumptions against retroactivity can be readily overcome by express legislative intent. See Republic of Austria v. Altmann, 541 U.S. 677, 692-93 (2004); see also Landgraf, 511 U.S. at 267-68; Chase Sec. Corp. v. Donaldson, 325 U.S. at 311-12. The requirement of clear intent of retroactive application can be readily overcome by express legislative language. "[T]he antiretroactivity presumption is just that — a presumption, rather than a constitutional command." Republic of Austria v. Altmann, 541 U.S. 677, 692-93 (2004) (declined to extend Hamdan v. Rumsfeld, 548 U.S. 557 (2006)); see also Landgraf, 511 U.S. at 267-68. When retroactive intent is clear, the anti-

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[7] *See* **ARIZ:** ARIZONA STAT. ANN. § 12–514 (2019), H.B. 2466, 54th Leg., 1st Reg. Sess. (Ariz. 2019); **DC:** D.C. CODE § 12-301 (2019); **MICH:** MICH. COMP. LAWS ANN. § 600.5851b (2018); **VT:** V.T. STAT. ANN. tit. 12, § 522 (2019); **WV:** W. VA. CODE ANN. § 55-2-15 (2020).

[7] *See Deutsch v. Masonic Homes of Cal., Inc.,* 164 Cal.App.4th 748, 752, 759, 80 Cal.Rptr.3d 368 (Cal.Ct.App.2008); *Coats v. New Haven Unified Sch. Dist*., 46 Cal. App. 5th 415, 427 (2020); *See Hartford Roman Catholic Diocesan Corp.,* 317 Conn. at 406 (age limit); *Sheehan*, 15 A.3d at 1258-60; *Roe v. Ram,* No. CIV. 14-00027 LEK-RL, 2014 WL 4276647, at *9 (D. Haw. Aug. 29, 2014); *Shirley v. Reif*, 260 Kan. 514, 526 (1996); *Sliney*, 41 N.E.3d at 737, 739; *K.E. v. Hoffman*, 452 N.W.2d 509, 513-14 (Minn. Ct. App. 1990); *Cosgriffe*, 864 P.2d at 779; *Doe v. Silverman,* 287 Or. App. 247, 253 (2017), *review denied*, 362 Or. 389 (2018); *DeLonga v. Diocese of Sioux Falls*, 329 F. Supp. 2d 1092, 1104 (D.S.D. 2004); *Kopalchick v. Cath. Diocese of Richmond,* 274 Va. 332, 337 (2007).

retroactivity presumption is overcome.[9]

2. A Time-limited Civil Revival Window Is Constitutional Under the Maryland Constitution

i. The Revival of a Statute of Limitations Is Constitutional in Maryland with Clear Legislative Intent

The revival of a statute of limitations is constitutional in Maryland. The standard applied by Maryland courts when judging the validity of a retroactive statute differs from the Supreme Court's standard. Allstate Ins. Co. v. Kim, 376 Md. 276, 293 (2003). Maryland asks "whether retroactive effect would impair vested rights." Id. In Allstate, the Court of Appeals of Maryland looked at whether retroactive application of a civil tort statute violated the federal or state constitutions. See generally id. Determining that retroactive application of a statute is not per se unconstitutional, the court looked to legislative intent regarding retroactivity. Id. at 289; Waters v. Montgomery County, 337 Md. at 28. In the instant case, there is clear legislative intent to temporarily revive the expired civil statutes of limitations to provide access to justice for victims of child sex abuse.

ii. Revival of a Statute of Limitations to Provide Justice for Victims of Child Sex Abuse Is Constitutional Because it Does Not Interfere with Vested Rights

Retroactive effect of a time-limited civil revival window, providing justice for victims of child sex abuse would not impair any vested rights. Vested rights are generally regarded as property rights—or a right in which one has a property interest. To determine whether a right vests, courts will assess whether "it is actually assertable 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. In Allstate, where the court determined that retroactive application of a civil statute did not divest the defendant of any vested right, the court explained that 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. The Court "[found] no violation of any vested right enjoyed by Allstate by a retroactive application of [the statute at issue]." Id.

Many states hold that the retroactive expansion of an SOL to revive 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., 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); Sheehan v. Oblates of St. Francis de Sales, 15 A.3d 1247, 1258-60 (Del. 2011) ("Under Delaware law, the CVA can be applied retroactively because it affects matters of procedure and remedies, not substantive or vested rights."); 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); Harding v. K.C. Wall Products, Inc., 250 Kan. 655, 668-69 (Kan. 1992) ("a defendant has no vested right in a statute of limitations. It is an expression of legislative public policy, is procedural, and may be applied retroactively when the legislature expressly makes it so."); City of Boston v. Keene Corp., 406 Mass. 301, 328 (1989) ("Consequently, the running of the limitations period on [asbestos] claims does not create a vested right which cannot constitutionally be taken away by subsequent statutory revival of the barred remedy."); Hecla Mining Co. v. Idaho State Tax Comm'n, 697 P.2d 1161, 1164 (Idaho 1985) ("The shelter of a statute of limitations has never been regarded as a fundamental right, and the lapse of a statute of limitations does not endow a citizen with a vested property right in immunity from suit."); 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."); Pryber v. Marriott Corp., 98 Mich. App. 50, 56-57 (1980), aff'd, 411 Mich. 887 (1981) (per curiam) ("the right to defeat a claim by interposing a statute of limitations is not a vested right."); Vigil v. Tafoya, 600 P.2d 721, 724-25 (Wyo. 1979);Roe v. Doe, 581 P.2d 310, 316 (Haw. 1978) ("The right to defeat an action by the statute of limitations has never been regarded as a fundamental or vested right. …[W]here lapse of time has not invested a party with title to real or personal property, it does not violate due process to extend the period of limitations even after the right of action has been theretofore barred by the former statute of limitations."); 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).

In Doe v. Roe, a case involving the extension of a civil statute of limitations for a claim of child sexual abuse, the court determined that the extension was a procedural and remedial statute, and thus could be given retrospective application. 419 Md. 687 (2011). The Roe court explained, "There are a number of Maryland cases which, in effect, treat ordinary statutes of limitations as dealing with procedure, but these cases involve a reduction of the time within which one asserting a claim must do so." Roe v. Doe, 193 Md. App. 558, 573 (2010) (citing Hill v. Fitzgerald, 304 Md. 689 (1985)); see also Kelch v. Keehn, 183 Md. 140 (1944) (approving a statute reducing a plaintiff's time to file). On appeal, the Doe court held that the extension of the child sex abuse statute of limitations "did not infringe any vested or substantial right of [the] Defendant." 419 Md. at 687 (2011).

Explaining that there is no vested right in a limitations period, the court found no violations of a defendant's perceived right in a statute of limitations defense. The Court noted that while there appears to be "no reported case in Maryland that would mandate the unconstitutionality of [a fully] retroactive application of [the civil SOL]" Doe v. Roe, 419 Md. 687, 698 (2011). The court noted in dicta that "**it is possible**, given the actions of other states, and its own statement in Dua v. Comcast Cable of Md., Inc., *370 Md*. 604 (2002)], that **the Court could conclude** that retroactive application to revive barred causes of action violates Due Process." Doe, 419 Md. at 698 (2011) (emphasis added). This 2011 statement is not in keeping with the national trend to find a retroactive procedural change in law, like temporary revival of a civil SOL to provide justice to victims of childhood sexual abuse constitutional. See, e.g., Peterson, 320 P.3d 1244 (Idaho 2014); Harding, 250 Kan. 655 (1992); Pryber, 98 Mich. App. 50 (1980); Cosgriffe, 864 P.2d 776 (Mont. 1993) (retroactive application of a revival window for a perpetrator of child sexual abuse does not violate due process); Panzino, 71 N.J. 298 (1976); Lane, 21 Wn. 2d 420 (1944); Vigil, 600 P.2d 721 (Wyo. 1979); see also Allstate, 376 Md. at 297 (finding that retroactive application of a statute did not violate Maryland law or divest the defendant of any vested rights).

The introduction of a time-limited "window," reviving the civil SOL for Maryland's child victims does not violate Maryland's Constitution. The revival of an expired, procedural, statute of limitations does not infringe any vested or substantial right. See Doe, 419 Md. at 687. There is no procedural right in a limitations defense. Further, plaintiffs' pursuing claims against their abusers under The Act must still meet all legal and other procedural safeguards. 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 will temporary revival of the expired procedural statute of limitations not interfere with any vested rights, it will also provide much- needed closure to these victims who have been shut out of justice due to the arbitrary procedural deadline.

3. Even If A Court Were to Find that A Defendant Has a Due Process Right Attached to a Statute of Limitations, that Right Is Overcome 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 a statute of limitations. It is long-established that a state has a compelling interest in protecting its 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."). "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).

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). "The State unquestionably has a significant interest in protecting children." Outmezguine v. State, 335 Md. 20, 37 (1994). See also Blixt v. Blixt, 437 Mass. 649, 656 (2002) ("It cannot be disputed that the State has a compelling interest to protect children from actual or potential harm."); A.H. v. State, 949 So. 2d 234, 236 (Fla. Dist. Ct. App. 2007) (in assessing "whether the State has a compelling interest in regulating the sexual behavior of minors, this Court recognizes a compelling state interest in protecting children from sexual exploitation."); In re Dependency of I.J.S., 128 Wash. App. 108, 111 (2005) ("It is well-established that the State has a compelling interest to protect children from harm."). The compelling interest in protecting Marlyand's children from sexual abuse justifies the enactment of a narrowly tailored time-limited civil revival window.

i. Window Legislation Identifies Hidden Predators, Prevents Future Abuse, and Validates the Victims

A revival window has been successfully implemented in several states[8]:

- In California, a one-year window (2003) identified over 300 previously hidden child predators.
- In Delaware, window legislation exposed prolific abuser, pediatrician Earl Bradley, who alone had abused approximately 1,000.
- In Georgia, a two-year window (2015-2017) exposed abuser, James S. Collins, leading lobbyist and former Baptist Church and YMCA youth coordinator and identified several prominent entities as causing and/or enabling decades of

[8] For a comprehensive overview of revival windows in each state, see CHILD USA, Revival and Window Laws Since 2002, available at https://childusa.org/wp-content/uploads/2020/11/Open-windows-2020-11.14.pdf.

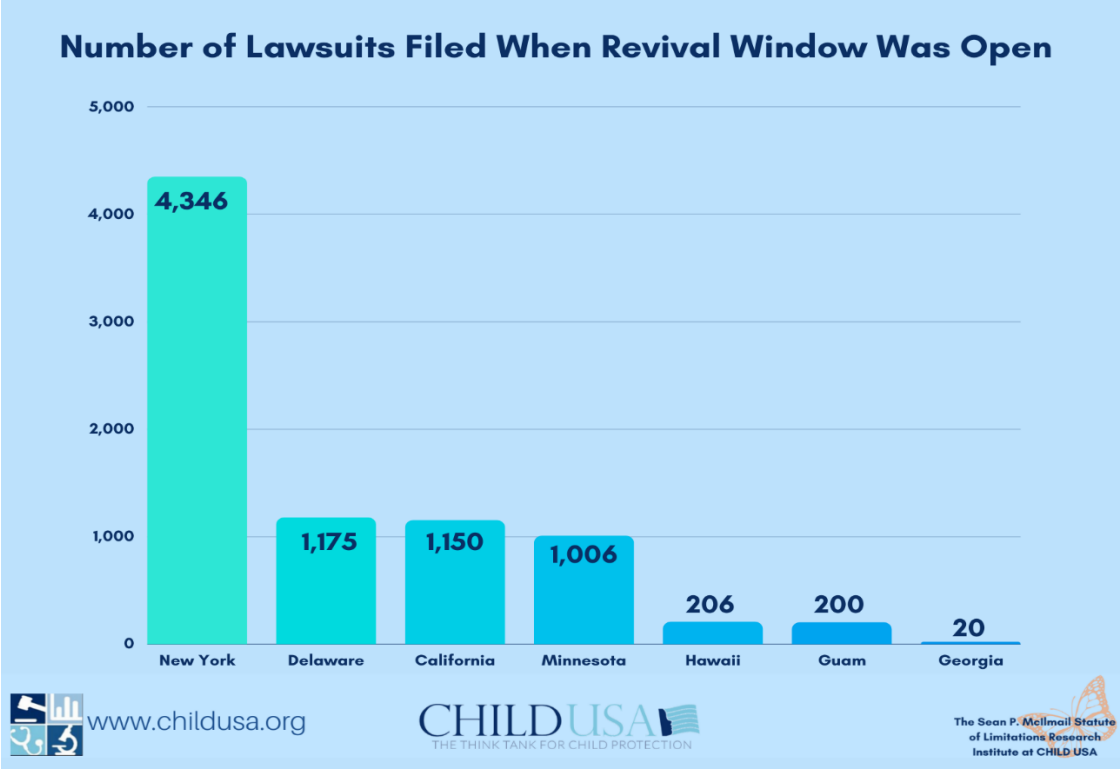
abuse.[9]

- In Hawaii, a window exposed decades of sexual abuse of young boys by the school psychiatrist at the Kamehameha school; the school had been complicit in a decades-long cover-up.[10]
- In Minnesota, John Clark Donahue, co-founder of the Children's Theatre Company was exposed as a serial abuser;[11] further, the state's three-year revival window helped to identify over 125 child predators.
- In New York, over 4,500 suits have already been filed pursuant to a two-year open window (2019-2021) including claims against institutions such as the Boy Scouts of America and the Roman Catholic Diocese.
- In response to the growing epidemic of child sexual abuse and the data from the science of traumatology the following eight (8) jurisdictions passed window or revival SOL reform legislation in 2019: Arizona, California, Montana, New York, New Jersey, North Carolina, Rhode Island, Vermont, and Washington D.C.).
- Despite significant disruptions by Covid-19 in 2020, West Virginia extended its civil SOL against perpetrators and organizations, and revived claims up to age 36, while New York extended its one-year revival window by another year.

The identification of these and other perpetrators enabled parents to prevent their child's abuse. The windows to justice also identified institutions that have engrained practices allowing this abuse. In addition to validating victims of childhood sexual abuse, these windows show the deep importance of creating institutional liability for covering up child sex abuse. Not only does this liability force institutions and organizations to show how they have endangered children (in many instances by complicity in a cover up), it also incentivizes them to alter their practices to be more child protective.

The below chart shows the relative success of revival statutes by state. The number of cases is modest overall. Notably, in all of the states that opened windows to justice, no false claims have been reported in the courts.

[9] *See* CHILD USA, 2019 SOL Report available at https://CHILD-USA-2019-Annual-SOL-Report-May-2020.pdf



Increasing access to the civil justice system for survivors of child sexual abuse puts the public on notice about child sexual predators who would otherwise go under the radar. Arrests are only made in 29% of child sexual abuse cases, and for children under six, only 19% of sexual abuse incidents result in arrest.[12] This means that over two thirds of child sexual predators are never arrested, let alone convicted. In fact, the average predator will abuse between 50 to 150 children before he is ever arrested. A.C. SALTER, PREDATORS: PEDOPHILES, RAPISTS, & OTHER SEX OFFENDERS (Basic Books, 2003).

Science shows that perpetrators operate into their elderly years, continuing to move through society with unfettered access to children. When considering that perpetrators continue to abuse later in life in light of the science of delayed disclosure, science establishes a need for lengthy statutes of limitation for child sex abuse and for those with expired claims to be revived. Permitting civil lawsuits through a time-limited revival window identifies hidden predators; by showing communities who the predators, children can better be kept safe from them. This helps both individual victims and society as a whole.

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A time-limited revival window is narrowly tailored to the end of protecting Maryland's children from sexual abuse and validating victims of childhood sexual abuse.

ii. A Time-limited Civil SOL Window Will Protect Maryland's Youth and Provide Long- Awaited Justice to Victims

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.

CONCLUSION

The plain language of § 5-117(d) supports the finding that it is a statute of limitations and not a statute of repose. § 5-117(d) was never intended by the legislature to be a statute of repose, as is evidenced by the fact that neither the sponsor or co-sponsors were even aware of the uncodified language, in fact, it can be argued that even those opposing the present bill (House Bill 687) were unaware of this language and meaning. Construing § 5-117(d) as a statute of repose is not consistent with present Maryland Law for statutes of repose or the history of the use of statutes of repose. Statutes of repose have traditionally been used in construction cases and products liability case. Under Maryland's Statute of Repose, construction defect claims are absolutely barred after 20 years, regardless of when they were or could have been discovered. Additionally, architects, professional engineers and contractors can be held liable for building defects for just 10 years after construction. (Courts & Judicial Proceedings Code of the Annotated Code of Maryland § 5-108).

Even if section 5-117(d) is construed as a statute of repose, the same constitutional test, revival of an expired claim would apply. Amending Maryland's statutes of limitations for child sexual abuse to include a revival window is both constitutional and consistent with the national trend to give survivors access to justice. The act's time-limited revival window is constitutional under both the United States Constitution and under the Maryland's constitution. The revival of a statute of limitations is constitutional in Maryland with clear legislative intent. Revival of a statute of limitations to provide justice for victims

of child sex abuse is constitutional because it does not interfere with vested rights. Even if a court were to find that a defendant has a due process right attached to a statute of limitations, that right is overcome by the state's compelling interest in identifying hidden child predators and protecting Maryland's children. **For these reasons, I urge a favorable committee report and passage of Senate Bill 134 without amendment.**

I commend you and this committee for taking up Senate Bill 134 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 me should you have any questions.

Respectfully,

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